PREHEARING CONFERENCE

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of: )
The Ivanpah Solar Electric ) 07-AFC-5
Generating System )
__________________________)

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

MONDAY, JANUARY 4, 2010

1:11 P.M.

Reporter - Peter Petty, CER**D-493
Transcriber - Margo Hewitt, CET**00480
Contract No. 170-08-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
COMMITTEE MEMBERS PRESENT
Jeffrey Byron, Presiding Member
James Boyd, Associate Member

HEARING OFFICER AND ADVISERS
Paul Kramer, Hearing Officer
Kristy Chew, Adviser
Sarah Michael, Adviser

STAFF AND CONSULTANTS PRESENT
John Kessler, Project Manager
Dick Ratliff, Staff Counsel

APPLICANT
Jeffery D. Harris, Attorney
Greggory Wheatland, Attorney (via teleconference)
Samantha Pottenger
Ellison, Schneider and Harris, LLP

Steve De Young, Vice President
Todd Stewart
Arthur Haubenstock
Bright Source Energy

INTERVENORS
Greg Suba
California Native Plant Society

Gloria Smith, Senior Staff Attorney
Sierra Club

Joshua Basofin
Defenders of Wildlife
INTERVENORS

Bart Brizzee, Deputy County Counsel  
(via teleconference)  
County of San Bernardino

Michael Connor (via teleconference)  
Western Watershed Project

Lisa Belenky (via teleconference)  
Center for Biological Diversity

ALSO PRESENT

Thomas Hurshman, Project Manager  
(via teleconference)  
Bureau of Land Management

Mark Silverstein (via teleconference)  
Hana Rocek  
Clark County Department of Aviation
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PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
P R O C E E D I N G S

1:11 p.m.

PRESIDING MEMBER BYRON: Good afternoon, everyone. I'm Commissioner Jeff Byron, the Presiding Member on the Ivanpah Solar Electric Generating Station Project.

With me is my Associate Member of this Committee, Vice Chairman Boyd. All the way to my left is my Adviser, Kristy Chew. And, of course, our Hearing Officer is Paul Kramer.

Happy New Year, everyone. It seems like we've been here before. And I think we're going to spend a lot of time together next week. I really appreciate all of your attention to maintaining our schedule and trying to keep the documentation flowing during what normally is a very challenging time of year for everyone.

But, I believe everything has been on schedule and I'd like to thank you ahead of time for meeting those dates.

We're going to do a prehearing conference today. I think we've done one of these already, if I'm not mistaken. Didn't we do a prehearing conference before we did our evidentiary a few weeks ago?
HEARING OFFICER KRAMER: Yes, and then we sort of changed things, so we wanted to have this one again before the main evidentiary hearings to make sure everything is running on track. Or if it isn't, to put it back on track.

PRESIDING MEMBER BYRON: Well, this is a very important project. Let's go ahead, Mr. Kramer, and see how much we can get done in terms of the prehearing conference today, and scheduling material for next week.

I believe that we're going to target completion here today, if we could, by about 4:00 or 4:30, is that correct?

HEARING OFFICER KRAMER: I hope so.

PRESIDING MEMBER BYRON: Okay. Please go right ahead.

HEARING OFFICER KRAMER: The first order of business is to introduce the parties. We'll get to the telephone folks in a minute.

Applicant, could you introduce yourself?

MR. HARRIS: Good morning, or afternoon, I guess. It's Jeff Harris on behalf of the applicant. To my right is Steve DeYoung with BrightSource. And behind me are Todd Stewart and Arthur Haubenstock from BrightSource. And
Samantha Pottenger from my office.

HEARING OFFICER KRAMER: And staff.

MR. RATLIFF: Dick Ratliff, Energy Commission Staff Counsel. And with me is John Kessler the Energy Commission Staff Project Manager.

HEARING OFFICER KRAMER: We have a couple of intervenors here with us. Sierra Club.

MS. SMITH: Good afternoon, Gloria Smith from Sierra Club.

HEARING OFFICER KRAMER: And Defenders of Wildlife.

MR. BASOFIN: Good afternoon, Happy New Year. Joshua Basofin with Defenders of Wildlife.

PRESIDING MEMBER BYRON: Is the volume up sufficiently so that everyone on the phone can hear us?

MS. BELENKY: Yes.

PRESIDING MEMBER BYRON: All right, thank you.

HEARING OFFICER KRAMER: Anyone else in the audience? I don't see anyone that needs to identify themselves.

So, let's go to the telephone. Let me call some of the parties first, and then we'll
allow anyone who I didn't catch to identify
themselves.

Do we have anyone from CURE? Western
Watersheds Project?

MR. CONNOR: Yeah, Michael Connor.

HEARING OFFICER KRAMER: Good afternoon.

MR. CONNOR: Good afternoon.

HEARING OFFICER KRAMER: Basin and Range
Watch? Center for Biological Diversity?

MS. BELENKY: Yes. Good afternoon.

This is Lisa Belenky.

HEARING OFFICER KRAMER: California
Native Plant Society? County of San Bernardino?

MR. BRIZZEE: Yes, Bart Brizzee, County
Counsel.

HEARING OFFICER KRAMER: Okay. Anyone
from the BLM with us on the phone?

MR. HURSHMAN: Tom Hurshman.

HEARING OFFICER KRAMER: Hi, Tom.

Anyone else from BLM? Department of Fish and
Game, State Department of Fish and Game?

Okay, so who's on the telephone that I
didn't pick up there?

MR. SILVERSTEIN: Mark Silverstein and
Hana Rocek with Clark County Department of
Aviation.

HEARING OFFICER KRAMER: Okay. And we know how to spell Hana's name, Mark. How do you spell your last name?

MR. SILVERSTEIN: S-i-l-v-e-r-s-t-e-i-n.

HEARING OFFICER KRAMER: Thank you.

Anyone else?

MR. WHEATLAND: Gregg Wheatland, attorney for the applicant.

HEARING OFFICER KRAMER: Anyone else?

MR. WHEATLAND: Gregg Wheatland, attorney for the applicant.

HEARING OFFICER KRAMER: Oh, I'm sorry, Gregg, we got you.

MR. WHEATLAND: Okay, thank you.

HEARING OFFICER KRAMER: Okay. We have a few issues to deal with, and then if I've missed some, please bring them up after we go through the Committee's list.

First was Defenders of Wildlife subpoena. They wanted to subpoena a witness from the California Department of Fish and Game. And, Mr. Ratliff, I understand it's staff's intention now to add a witness from the department to the staff witness list, is that correct?
MR. RATLIFF: Yes, Mr. Kramer. As you know, the Department of Fish and Game is responsible for take permits, and the Energy Commission incorporates take permit conditions into its in lieu permit.

We have been in consultation with Fish and Game Staff over the months, and the two people with whom we have been in contact are Kevin Hunting and Scott Flint.

They have indicated that one of them will be available. It's not clear which one because Scott Flint has some family health issues to deal with.

But we would request that you add them as witnesses with regard to the biological testimony. In other words, as co-sponsors to the existing testimony with regard to those conditions that have to do with the incidental take permit.

HEARING OFFICER KRAMER: Okay, that was Scott Flint and -- I'm sorry I didn't --

MR. RATLIFF: Kevin Hunting.

HEARING OFFICER KRAMER: Now, are you expecting both of them, or --

MR. RATLIFF: No. I expect one of them, but I don't know which one. Kevin Hunting
expressed a willingness to come if Scott finds himself unable to.

HEARING OFFICER KRAMER: Okay. Mr. Basofin, does that alleviate your need for a formal subpoena?

MR. BASOFIN: I believe it does. I mean, I think our subpoena requested the attendance of Mr. Flint, or the appropriate DFG representative. So, I suppose if both are -- if Mr. Flint is unable to attend and Mr. Hunting is familiar with the issues, and able to testify, then I believe that will suffice.

PRESIDING MEMBER BYRON: My recollection is that Mr. Hunting is Mr. Flint's boss, is that correct?

MR. RATLIFF: That's correct.

PRESIDING MEMBER BYRON: It's always nice to go up in the organization.

HEARING OFFICER KRAMER: Okay, well, then we'll consider --

MR. HARRIS: Mr. Kramer, could the applicant speak on this question?

HEARING OFFICER KRAMER: Certainly.

MR. HARRIS: Your order, I think, clearly laid out one of the hallmarks is
preventing unfair surprise at these hearings.

And my question now is which witness and
what testimony. I don't know how to prepare for
Scott or someone else.

The parties were ordered to file
testimony in this proceeding, opening testimony,
by Friday the 18th of December. And if staff had
intended to sponsor them as a witness, it should
have filed that testimony at that time on the
18th.

And all parties were also ordered to
file rebuttal testimony by today. And so if staff
intends to sponsor this witness, I'd like to see
written rebuttal testimony that should have been
filed today, to have been, you know, strictly
complying with the order so far.

And, you know, your admonition to
cautions parties to exchange witnesses and
information is a very important one. And so, you
know, while you can accept comments during this
period, the Committee cannot really, in fairness
to the applicant or the other parties, allow the
staff to introduce testimony in violation of the
Committee order.

It doesn't matter whether the witness is
a staff member or a consultant or a member of another agency. If CDFG feels compelled to address the Commission at this late date in the proceeding and after the deadlines have all passed, then it seems like you really have two choices under this, the Commission's rules.

The CDFG can submit their comments as public comment, and not as testimony or evidence in the proceeding. Or it can prepare written testimony, have it approved by hopefully the Director or someone farther up the food chain, and file a motion for that late filing of that testimony.

Because at this point we don't know who the witness will be or what they're going to say. And you've been very clear about how to put testimony in in this proceeding. And the applicant objects to allowing basically a stream of consciousness testimony at this point, when the prefile dates passed almost a month ago.

MR. RATLIFF: If I may, Mr. Kramer, staff has already filed its testimony. I thought it was quite clear that the testimony to which the Fish and Game witness would be testifying are those portions of the testimony which pertain to
the take permit for desert tortoise. That's prefiled.

We will be filing rebuttal testimony today as the order calls for. So there's nothing new, no surprise. And I think the applicant's well aware that responsible agencies whose permit authority has been subsumed within the Energy Commission permit, are frequently witnesses in our cases, as to those portions of the testimony for which their agency would otherwise be responsible.

You see this all the time in our cases in the area of air quality where you have air district witnesses who come in and testify as to the air quality issues, particularly those that pertain to the conditions which the air district has proposed. This is no different from that.

MR. HARRIS: If I may, Mr. Kramer. It's very different from that. Your regulations have a specific provision that allow the air districts to testify on the PDOC. And so your regulations specifically contemplate this.

And where it's important, as in the air district, it's called out. And I could get the citation, if you want, but I think it's 1747 or '8. It's specific to the air districts. It's not
general to any state agencies.

And so to suggest this is normal course, I think, is a mis-reading of the Commission's regulations. And there is a prefiled testimony requirement. And right now staff cannot identify either the witness or the testimony. And they expect us to be prepared.

MR. RATLIFF: I think we've identified both the witness and the testimony. And I guess it's just, to me, very strange that the applicant would be so alarmed that the Department of Fish and Game would testify in this proceeding.

HEARING OFFICER KRAMER: Am I correct that one or both of these gentlemen has participated in some of the workshops that have occurred between staff and the applicant over the last year or two?

MR. RATLIFF: Mr. Hunting attended at least one workshop that I'm aware of.

HEARING OFFICER KRAMER: And one of them was at the -- one of those scheduling conferences we had in the summer, I believe. I recall him speaking to the subsumation, if that's a word, of their permit in our permit.

MR. RATLIFF: I'm told that was Scott
Flint who attended in July.

MR. HARRIS: Mr. Hunting did participate in one of the workshops, but made it very clear that he was not there to participate, only observe. And did leave early.

So, it's kind of a tenuous hat to hang on here.

MR. RATLIFF: Well, Mr. Hunting's expression of intent to me was to participate. But after waiting all morning and not having an opportunity to participate, he had to leave for a different appointment. I don't think it was his intent not to participate.

He attended with the intent to participate. That's why we had him there.

MR. HARRIS: Neither one of these witnesses were identified in the FSA as having prepared the testimony that Mr. Ratliff now suggests that they will sponsor.

Their declarations were not included. Their qualifications were not included. And he's essentially asking them to adopt someone else's testimony as their own. And I think that's as clear violation of the rules, as well.

HEARING OFFICER KRAMER: Mr. Basofin has
asked that one of these gentlemen be a witness. Presumably -- or he'll have to answer for sure, but possibly by way of rebuttal. And are you suggesting, Mr. Harris, that it would be inappropriate for him to identify these witnesses at this stage of the exchange of evidence?

MR. HARRIS: I think they have until close of business today to file rebuttal, written rebuttal testimony. I don't know whether they're intending to do that. And if they are, maybe this discussion is moot.

But, again, I'd like to know which witness and what testimony.

MR. RATLIFF: We've already identified that. But, keep in mind the reason --

MR. HARRIS: You have not.

MR. RATLIFF: -- we find ourselves even having this conversation is because of the applicant's insistence on an expedited schedule. If they weren't trying to go 2000 miles an hour with this case, we'd have plenty of time for both the -- all of the parties to identify witnesses and identify their testimony more completely.

But in this case I think it's entirely appropriate for the Department of Fish and Game to
testify about those portions of the take permit
for which they are ultimately responsible in
participating with the Energy Commission in
identifying.

So, I mean, again, what are we afraid of
here?

MR. HARRIS: We're afraid of nothing.

Written testimony would indicate that it is the
position of the department, and if you want to
allow the department till Wednesday, close of
business, to file written testimony so I have
testimony and a witness identified, I'm okay
allowing you a couple extra days to do that
testimony.

I'm not trying to -- we're not afraid of
anything and we're not trying to cut anything off.
We just want a fair trial without surprise. And
so we're willing to give a little bit on the
timing, but not a lot, given that this starts next
week.

MR. BASOFIN: If I could --

HEARING OFFICER KRAMER: Mr. Basofin, I
think it is your turn.

MR. BASOFIN: My objective in submitting
an application to subpoena a witness from DFG was
to have someone there from DFG who I couldn't
sponsor as a witness because they were unwilling
or unable to serve as a sponsored witness.

So I don't think I can or need or should
file rebuttal testimony. I think, you know, my
intent was to essentially subpoena an adverse
witness. And I think I filed my application for
subpoena in a timely manner.

It was my intent to allow the parties to
identify their witnesses before I did submit that
application for subpoena. So I think it was filed
in a timely way.

HEARING OFFICER KRAMER: Mr. Harris, are
you suggesting that no witness can testify about
something that they have not first reduced to
writing?

MR. HARRIS: My understanding of the
Commission's practices is that the witnesses are
bound by their prefiled testimony. And, in fact,
we had a couple blow-ups during our first
evidentiary hearing about well, we haven't seen
this map before, and we hadn't seen a map from the
staff, the measles map I like to call it, with the
-- Mr. Kanemoto's map.

And staff had similar complaints about
some of our maps with Mr. Priestley. And it was
very disruptive to the hearing. And so I'm try to
avoid that kind of situation.

Mr. Basofin's actions would have been
completely proper if they had been done before
December 18th when opening testimony was
requested. And there's been no showing of good
cause as to why he delayed in seeking this
witness. And there's been no showing as to good
cause as to why the staff now wants to bring a
witness in when the day for opening testimony
passed on the 18th of December.

We're willing to compromise if we can
get some written testimony prefiled. But
otherwise we continue to object for the lack of
showing of good cause.

MR. BASOFIN: Again, you know, I don't
believe that December 18th was the deadline to
submit applications for subpoenas. That was never
in an order from the Committee.

The document that requested oral
testimony is predicated on is the letter, the
comment letter that was submitted by the
Department of Fish and Game commenting on the
preliminary staff assessment, which all the
parties received through the docketing system. And has also been identified by Defenders, and I believe other intervenors, as an exhibit.

So I think the argument that any of the parties are ill-prepared to deal with what a representative from the Department of Fish and Game will be testifying on is a faulty argument.

MR. RATLIFF: And I might add to that, I mean, again, the testimony is the testimony that is already filed, to which these witnesses, whichever one appears, would be testifying.

And so it's prefiled. There's no surprise. I think Mr. Basofin is saying that his purpose was to -- the purpose of subpoenaing this witness from the Department of Fish and Game was to ask questions about inconsistencies that he perceives between correspondence from Fish and Game about the PSA and what appears in that testimony. I think it's entirely within his right to do that.

But I think the most important thing here, and this is what staff believes is appropriate for this, is to have the most complete, the most fulsome discussion we can have about the issues pertaining to biological
resources, which is the principal case of this issue -- issue of this case.

And if we can have all of those people with expertise in this area in this room, available to the Commission to have that exchange, I think you'll have the best exchange. And that includes the Department of Fish and Game, obviously, since they're responsible -- they would otherwise be responsible for issuing a take permit.

HEARING OFFICER KRAMER: Let's go off the record for a second.

(Off the record.)

HEARING OFFICER KRAMER: We are going to allow the CDFG witnesses. Mr. Harris, you're free, if you find that they are going beyond the scope of the testimony that Mr. Ratliff refers, to bring that to our attention and we'll rule upon whether testimony of that sort will be admissible.

And if need be, you can, if you need time to prepare a response to something truly new that they add to the mix, we'd be inclined to allow that, as well. So that's our ruling.

MS. SMITH: Point of clarification.

HEARING OFFICER KRAMER: Ms. Smith.
MS. SMITH: I don't anticipate having questions for the biologists from CDF&G. But in my prior involvement in these cases, CDF&G has been there just sort of available.

And now I'm feeling like this is going to be very limited testimony. I'm a little bit confused. Do I need perhaps to file some rebuttal testimony if I want to discuss alternatives, for example, with CDF&G? I mean this seems a little unprecedented what's going on here.

HEARING OFFICER KRAMER: Well, alternatives are in the -- already in the scope of the FSA, are they not?

MS. SMITH: Yes, they are, but I hadn't identified CDF&G, you know, per se, as a component to our concerns, you know, as they relate to alternatives in biological resources.

So I'm just concerned there's going to be some narrowing here that I just haven't seen before.

HEARING OFFICER KRAMER: Well, without a specific instance it's hard to say for sure. But I think it is fair to say that this process that we're working through, exchange of documents, it is relatively new, the formality of it. And we
are, to a degree, learning as we go.

We do want to avoid surprise, as much as we can, but I don't think we can ever completely avoid it. And there are remedies if somebody is truly surprised to their prejudice, and that would be additional time to prepare a response.

For instance, when we get to the topic of visual, at our last hearing we offered the staff time to review that rather lengthy EIS, I believe it was, that was offered as an exhibit, to what the professed to be their surprise. And they have an opportunity, if they choose to take it, to make some sort of response to that document.

That actually will be one of my questions for a little bit later, is whether they intend to do that.

I note that Mr. Suba, from --

MR. SUBA: California Native Plant Society.

HEARING OFFICER KRAMER: -- has now joined us in the room. Welcome. And that's Greg Suba, for the record.

MR. BASOFIN: Mr. Kramer, if I could just take a brief opportunity in the interim here between topics. We've had some discussion about
the rebuttal testimony and it is due today.

I'd like to request, because this preconference hearing is coinciding with the deadline for that rebuttal testimony, that we have a brief extension.

HEARING OFFICER KRAMER: Do the other parties wish to have any objection to that?

MR. HARRIS: Yes. We're going to be starting in hearings a week from today. Mr. Basofin and Defenders, in opening testimony, which again was due on the 18th of December, filed only exhibits. No witness was identified; no testimony was submitted.

He has now, in his prehearing conference statement, said that he's going to be sponsoring the testimony of a professor from the University of Reno, Nevada, as quote "rebuttal".

I'm already skeptical if that will be true rebuttal testimony. And I don't know how he could file his exhibits for his rebuttal testimony before he files his rebuttal testimony.

So, I think the process here is being disrespected, not intentionally, but I think that's the result.

And I guess I want to put Mr. Basofin on
notice that we're going to look closely at whatever he files today to see if it really is truly in the nature of rebuttal testimony. Because if it is additional opening testimony, it, too, is late, and should not be allowed.

MR. RATLIFF: Mr. Kramer, if I may, I think in all fairness we should have more time to file testimony. I mean this is an extremely tight timeframe to respond to the voluminous testimony that staff and the applicant have sponsored into the record.

I'm actually quite sympathetic to the plight of the intervenors in having time to file their cases. And if they need an extra day, or two extra days, good grief, we ought to be able to suffer that on their account. I think it's an extremely difficult situation the schedule puts them in.

MR. BASOFIN: I could even just use a couple more hours to make up for the time that the prehearing conference is usurping, I mean, frankly.

MR. RATLIFF: I mean, it is one thing to accommodate the applicant's request for an expedited schedule. And it's another thing then
to apply the rules so strictly that the
intervenors can't participate. I feel like that.
I think they're kind of caught in this vise.

MR. HARRIS: We had 12 days to file our
opening testimony over Thanksgiving. And we've
had, you know, less than 14 days over Christmas to
prepare our --

MR. RATLIFF: You've had (inaudible) two
years --

(Parties speaking simultaneously.)

MR. HARRIS: -- our rebuttal testimony.
We have a 1250-page document and filed our
testimony 12 days later. And so to suggest that
we're not holding up our end of the bargain, I
think, is just simply incorrect. We'd take back
our Christmas and our Thanksgiving in a minute.

But we are where we are. And this is
beyond the 11th hour to suggest that we're moving
too fast. And I'd remind everybody, we're
probably 1000 days into this proceeding.

MS. SMITH: Intervenors are in no way
trying to delay this proceeding. And none of our
requests for extensions or any of our concerns are
delay tactics. Please know that.

I counted 15 people on BrightSource's
behalf at our workshops. There was Josh for
Defenders, myself for the Sierra Club, and Greg,
alone, as well. We're doing this alone. So we're
doing the best we can, but we don't want our cases
to be compromised because of this really insane
schedule. And I say this with all due respect.
We're really not using this as a delay tactic.

HEARING OFFICER KRAMER: Okay, --

MR. BASOFIN: I believe this should be
noted, as well, I believe in all or most of the
intervenors' prehearing -- final prehearing
statements we agreed to move forward with the
hearing, although there were ongoing discussions
happening between staff and applicant. We did
agree to move forward, so I think that's further
evidence that it isn't our intent to delay.

PRESIDING MEMBER BYRON: Mr. Kramer, I'm
just thinking, we're going to spend a great deal
of time together next week. Can we bring it down
a notch here, in terms of the strife?

I appreciate the comments that everyone
has provided here. Very sympathetic to the
schedule that we're trying to move to. And as I
said in my opening comments, very appreciative
that you all made efforts over the holidays to do
that.

Mr. Kramer, I'm inclined to grant an additional 24 hours so that we can get the evidence -- I'm sorry, the rebuttal testimony. We are certainly interested in it. And if that's acceptable to parties, that would be my suggestion.

Commissioner Boyd?

ASSOCIATE MEMBER BOYD: (inaudible)

PRESIDING MEMBER BYRON: Okay.

HEARING OFFICER KRAMER: And given that one party's objected, I suppose what you want to say is that will be the ruling.

MR. HARRIS: We'll withdraw our objection. I just want to make sure that I can get on the phone with our witnesses and tell them to stop the presses, literally, because we went to print at noon. And so we'll take the time that's being granted.

And I would like you to consider the possibility of the DFG additional testimony since we're going to take some additional time for testimony. I'd like to know if that testimony speaks for the department, not on behalf of Kevin or Scott, but the department.
And I think something on department letterhead, even if they just simply recast their comments on the FSA, would be very helpful to us.

HEARING OFFICER KRAMER: Would it not be sufficient to simply ask them when they come whether they're speaking for the department or not?

MR. HARRIS: I think something on their letterhead would suggest that they're speaking for the department. I don't think that's too much to ask.

HEARING OFFICER KRAMER: Mr. Ratliff, do you believe they could do that?

MR. RATLIFF: Well, I think it's silly. I mean, yes, you can ask them a question when they come here. I mean, do they speak for the department or not. Who do they speak for, if not the department. Yes, let's let them be asked.

MS. BELENKY: Excuse me. This is Lisa, the Center for Biological Diversity.

HEARING OFFICER KRAMER: Go ahead.

MS. BELENKY: I just wanted to make sure I understood the ruling on the extension. So that's one day, so it's due tomorrow at -- there was a 4:00 deadline, I thought, but I just want to
make sure I know when it's due.

HEARING OFFICER KRAMER: Let me verify that. I think you may be correct.

No, it's 4:00 on the dates in the filing schedule table. So it will be 4:00 p.m. tomorrow.

MS. BELENKY: Okay. 4:00 p.m. tomorrow.

Thank you.

HEARING OFFICER KRAMER: Okay, moving on. As I mentioned a minute ago, at the last evidentiary hearing we kept the record open on the topic of visual resources for the staff to respond to that exhibit that the applicant introduced.

I just wanted to ask the staff if they intended to make some sort of response?

MR. RATLIFF: Yes, my intent was to have our witness take the stand very briefly. And in about three minutes, summarize his comments on the document which the applicant filed at the hearing without prefiling.

We did not prepare any prefilled testimony to reflect that summary. I didn't understand that to be your directive at the time.

If you would like, then tomorrow we would file some form of prefiled testimony for Mr. Kanemoto.
HEARING OFFICER KRAMER: I'd say that's your choice. If you were simply meaning to have him respond orally, I think that's perfectly appropriate.

MR. RATLIFF: That was the intent.

HEARING OFFICER KRAMER: I don't think that that has to be reduced to writing. It's just a continuation of the --

MR. RATLIFF: Yes.

HEARING OFFICER KRAMER: -- dialogue that went on in December.

Okay, so then visual resources will be part of the mix during next week's hearings for a brief period.

MR. HARRIS: Mr. Kramer, the Basin and Range Watch filed testimony on visual. Is that going to be taken at that time as well?

HEARING OFFICER KRAMER: They're not here. Did they identify a witness?

MR. HARRIS: Yes, Laura --

MR. CONNOR: They identified Laura Cunningham.

HEARING OFFICER KRAMER: Okay, you're here now. So that's Kevin?

MR. CONNOR: No, this is Mike Connor.
HEARING OFFICER KRAMER: Oh, I'm sorry.

MR. CONNOR: (inaudible).

HEARING OFFICER KRAMER: I'll have to admit, when I was preparing my list of witnesses I didn't notice their identification. They were here the last time, though, and they had an opportunity. So I would suspect that their opportunity has probably passed, unless they make a compelling case to revisit the issue.

MS. BELENKY: This is Lisa Belenky. I believe that they did intend to try and discuss it at the next -- during the hearing. And I'm not sure why they're not on today, but they do live in a very rural area. And it's difficult for them to get phone line.

HEARING OFFICER KRAMER: I'm trying to recall, though, why they didn't bring that up at the last hearing.

MS. BELENKY: They did actually bring it up, I thought. But perhaps not in the correct format.

HEARING OFFICER KRAMER: Okay, well, I think we'll have to -- Mr. Harris, we'll both have to go back and look at the transcript and see. Perhaps there will be some testimony from them. I
can't imagine the whole thing taking more than half an hour.

MR. HARRIS: Okay, so we're available to -- we're able to file rebuttal testimony on that subject, as well, towards Basin and Range Watch?

HEARING OFFICER KRAMER: Certainly.

MR. HARRIS: Okay, thank you.

HEARING OFFICER KRAMER: Okay, now traffic and transportation. I also had a question as to whether that record truly should be closed. Because my notes show that staff was going to submit to revise conditions trans-1 and -4. And --

MR. RATLIFF: We have done so. I guess I would ask Mr. Harris, have you received that?

MR. HARRIS: Received the revised --

MR. RATLIFF: Trans-4 --

MR. HARRIS: -- trans-4?

MR. RATLIFF: You perhaps have not seen it.

MR. HARRIS: No, I would imagine that was part of what John was going to file today.

MR. RATLIFF: Right.

MR. HARRIS: So, it'll be filed tomorrow, I guess. So, no, I haven't seen it.
HEARING OFFICER KRAMER: Okay, so it sounds like we may need to have a bit of a discussion about transportation to just tie up those loose ends.

MR. HARRIS: I'm not sure -- ask Mr. Ratliff. I'm not sure --

MR. RATLIFF: I think we --

MR. HARRIS: -- that we need live witnesses, but I guess I'd defer to you, Dick, whether you think we do for those issues.

MR. RATLIFF: I don't think we do. I think the condition has been changed in a way that is unobjectionable to both CURE and the applicant. But I'd like to confirm this by getting Mr. Kessler to show you guys a copy of that so you can look at it.

I think he may have it, or if he can't, he can get it. And if you look at it you can tell us if we need any further discussion of it. But I don't think we do.

HEARING OFFICER KRAMER: Okay, so why don't we leave it if it's on at all, it's just about trans-1 and trans-4.

MR. HARRIS: Yeah, and I won't have all my witnesses available. But, again, I don't think
HEARING OFFICER KRAMER: And this is one of those kind of filler items we can push around the agenda as needed, if you needed them on the telephone, for instance.

MR. HARRIS: Okay, thank you.

HEARING OFFICER KRAMER: For the folks on the telephone, --

MS. BELENKY: Yes.

HEARING OFFICER KRAMER: -- you should have received in your email, from Rosemary Avalos, a spreadsheet --

MR. SPEAKER: Yes, received it.

HEARING OFFICER KRAMER: Okay, this is basically just a discussion tool that I prepared, identifying the witnesses that various parties have identified for the different topics that will be on the table next week.

And so if you have not looked that up in your email box, I think you'll find it helpful to have that in front of you as we continue on today.

MS. BELENKY: I'm sorry. This is Lisa Belenky. I notice that none of our witnesses from the Center for Biological Diversity have made it onto your list.
HEARING OFFICER KRAMER: And that may be just -- I had a lot of papers and I must have missed them.

MS. BELENKY: Okay.

HEARING OFFICER KRAMER: But, how many were there?

MS. BELENKY: We have four witnesses.

HEARING OFFICER KRAMER: Okay. And were they all under biological resources?

MS. BELENKY: No. Two are under biological resources. One is alternatives. And the other could be sort of a mixed category of the project description and alternatives.

HEARING OFFICER KRAMER: The problem may be that I don't think I received a prehearing conference statement from you.

MS. BELENKY: Really? Well, I can re-send it. I know that we served it.

HEARING OFFICER KRAMER: Okay, well, when we get to the list I'll make sure we get those names from you.

MR. CONNOR: Mr. Kramer, Western Watersheds Project isn't on here, either.

HEARING OFFICER KRAMER: Dr. Connor, you're under biological resources.
MR. CONNOR: (inaudible).

HEARING OFFICER KRAMER: See it?

MR. CONNOR: Where am I supposed to look?

HEARING OFFICER KRAMER: Second page, --

MR. CONNOR: Second page.

HEARING OFFICER KRAMER: -- right above soil and water resources.

MR. CONNOR: Oh, okay, sorry. Yeah.

Thanks.

HEARING OFFICER KRAMER: Okay.

MR. CONNOR: I got that -- I'm scrolling.

HEARING OFFICER KRAMER: So before we get to that in detail, several of the prehearing conference statements mentioned that negotiations were going on between staff and -- I guess the BLM and Commission Staffs and the applicant about the conditions of certification.

And my question for those parties is whether we have, in the evidence, all of those proposed changes at this point. Or is that something we'll receive when we get the rebuttal testimony tomorrow?

Mr. Harris, do you want to go first?
MR. HARRIS: We've been having, as part of the workshops, discussions about changes to conditions. And I understand that staff has the pen in terms of making those recommendations.

So we may have one or two conditions we're going to suggest changes to in our rebuttal testimony. But by and large what staff and applicant are working on together is going to be filed by staff tomorrow.

I guess I want to make the observation, based upon one of the statements in the prehearing conference statements, that those are moving targets. People are not sure what's going on.

Those conditions are really just the recommendations of the parties. They're not binding on the Commission obviously.

And so I think those have been sort of elevated a little bit in the rhetoric beyond what they need to be. People will have an opportunity to respond to conditions proposed by the applicant, the staff or any of the parties jointly in their briefs.

So I don't want to spend a whole lot of time focusing on those recommendations. But we'll be looking for the staff to file their document, I
guess, tomorrow to see where we are on those conditions.

I don't think that we're going to require live witness testimony on any of those topics that were -- I don't think it changes your list of topics for hearings. I think -- they're not factual issues, they're some legal questions that can be briefed.

HEARING OFFICER KRAMER: Okay, yeah, I was more interested in the process and just trying to keep track of all that, and find it in a convenient place so it doesn't get lost with Ms. Belenky's witness list, in my mind, anyway.

MR. CONNOR: I'm a little confused by what was just said. Mr. Harris, is deletion of conditions of certification considered legal, not factual?

HEARING OFFICER KRAMER: Mr. Connor, right?

MR. CONNOR: Yes.

MR. HARRIS: Michael, no, I didn't mean to suggest that the conditions, themselves, were legal or factual. Suggesting on some of the issues that are closed out, you know, pick one of them like one we didn't have any witness testimony
on, the reliability or socioeconomics. To the
extent we're trading conditions back and forth,
there aren't any factual questions.

There are questions about how those
conditions ought to be worded. But, Michael, I
was just speaking narrowly to the issue of whether
there's a factual dispute that required live
witness testimony. And for the most part, I think
those conditions do not.

Biology, I would see exception, and some
of the other open topics, there are exceptions to
that general statement. Does that help?

MR. CONNOR: To be clear, because, you
know, I'm not really -- I'm not a lawyer, and it's
not clear to me sometimes what is a factual
question versus what is considered a legal
question in this setting. So I just wanted
clarification.

HEARING OFFICER KRAMER: Well, and
lawyers will quite often argue about that, as
well. And courts will write long opinions trying
to sort that out.

MR. CONNOR: Okay.

HEARING OFFICER KRAMER: Okay.

MR. RATLIFF: Mr. Kramer, if I could,
and perhaps it's useful. Because this prehearing conference occurs on the same afternoon when the testimony is supposed to be filed, we think we know what our testimony is, but nobody has it yet.

But the list of topics where we think there has been resolution of the issues over the conditions, is air quality; hazardous materials; land use; soil and water resources, although we're still, I guess, discussing soil and water-4; traffic and transportation, although we're still discussing, as we just said, transportation-4, but I think that will be resolved; waste management; and worker safety and fire protection.

We aren't aware of issues in those areas other than what I just mentioned. Although I do note that I think one or more of the intervenors may have raised an issue about air quality, and I'm not certain as to what that was. They may have proposed some different condition.

MS. BELENKY: This is Lisa Belenky at the Center. We actually have raised issues about air quality. And I have some questions about the analysis, some specific questions. And it's hard to address the conditions without having the resolution of the issues.
So, again, this is a little bit of the chicken-and-egg sometimes for those of us who haven't done this particular process before. But my understanding from what was said just now is that we're not closed out on responding to conditions by tomorrow to the extent that some of these issues remain open. But the substance of the issues still remains open, is that correct?

HEARING OFFICER KRAMER: I think so, yes.

MS. BELENKY: Thank you.

MR. RATLIFF: Maybe --

HEARING OFFICER KRAMER: Although I'm seeing some puzzled looks here in the room.

MR. RATLIFF: Maybe what I could say then is that at least with regard to air quality is I think there are no disagreements between staff and the applicant. Am I correct about that? At least with regard to the conditions.

And there may be substantive issues being raised by the Center that we're not quite sure what they are, but actually it would be good if today we get to find out what those are, or we can discuss what those are and whether they need to be adjudicated.
HEARING OFFICER KRAMER: Or to put it another way, just because the applicant and staff agree about something doesn't mean that's the way it's going to be.

MR. RATLIFF: Right.

MR. HARRIS: I guess I would add, one of my objectives today is to try to be able to release some of my witnesses if we know we're not going to need them for live testimony.

Air quality is a good example of that class of categories. If I can let Mr. Rubenstein and Mr. Hill from Sierra Research know that they're not going to be needed, for example, live witness testimony, that would be helpful.

So, that's one of my objectives today. That's why I keep asking about what's open and what's closed. Because people are scrambling to try to make themselves available all next week.

HEARING OFFICER KRAMER: I understand. And we're going to try to pick the days on my blank calendar that I handed out to make that a little bit easier on all of the witnesses. But we'll get to that in a couple minutes.

I want to revisit the issue of witness panels, something Mr. Ratliff raised the last
time. And, Mr. Harris, you were not quite a
convert, as I recall.

And part of our hearings were held by
the use of partial panels. I wanted to discuss
whether or what the current positions of the
parties are on the use of panels for some or all
of the contested hearings, issue hearings we're
going to have.

Mr. Ratliff, I think you're in favor?

MR. RATLIFF: Yes, Mr. Kramer. I think
Commissioner Byron remembers that we used informal
hearing procedure in the Russell City hearings on
one of the most difficult and complex issues of
that hearing, which was aviation safety.

And I think that is a demonstrable
effectively that can work for a
complicated issue where you have different parties
with different testimonies and different points of
view.

It enables you and Mr. Kramer to
actively engage the parties and ask them
questions, yourself. And get, I think, to the
very bottom of a complicated issue.

And I think the biological issue here is
a complicated issue with a number of different
perspectives that are going to be expressed.

And I think fortunately, the good thing
about this is that you are going to have in the
room a great deal of biological expertise in one
place, which will enable you, I think, to get a
very very full discussion and picture of the
issues that we're dealing with.

I think I would at least urge you to try
this to see if it works. I think there's some
question as to how large a group of biologists
you'll have.

But what I would suggest is that you
start off by having each of the witnesses testify
that portion of the testimony for which they're
responsible, or the testimony that they have
sponsored, briefly to sponsor that testimony. And
to summarize it. And the points that they think
are most important.

And then allow it to turn into an
informal hearing where there is discussion and
interaction directly with you. If you do that I
think it could work very well.

If it doesn't work very well you can
change it back to a formal proceeding and have
cross-examination.
But if it works well I think it will make the issue go much more quickly and efficiently with your time. And I think you'll get actually a better understanding of the issue than you will through formal cross-examination that the lawyers will subject all of us to. I think sometimes we feel like we haven't earned our pay if we don't do that.

But on the other hand, I think if you let us participate, just at least peripherally, maybe we can make some positive contribution to what you're hearing. And round out issues that we think you need to hear discussed.

MR. BASOFIN: Mr. Kramer, I'm a little confused, just for clarification. Are we contemplating here having expert witnesses from multiple parties serve on one panel? Or is it experts from one party serve on the same panel?

HEARING OFFICER KRAMER: Well, I think we have a choice. Mr. Ratliff, what were you proposing?

MR. RATLIFF: Well, the use of panels where you have, for instance, you might -- I think the term panels, I think, is something that is often something we use in formal hearing procedure
where, for instance, we might put on all of the staff biology witnesses simultaneously. And then allow them to summarize their testimony, and then be cross-examined by all the parties. And that's one way, of course, of doing it.

The staff would put on its witnesses.

The applicant would put on its witnesses. They would be cross-examined as a panel, rather than individually.

This has the advantage of saving time. It gets you some efficiency. You saw it at the last proceeding, actually, on visual. The applicant had a panel of witnesses.

But what we're talking about with informal procedure would be essentially to have all of the witnesses basically participate in a conference in which they would summarize the salient points of their testimony.

And then it becomes a discussion conducted by you and the Commissioners, themselves. So that you can actually find out what are the most important issues, how are they addressed, what is insufficient and what is, and what is the, you know, is this impact significant or not. If it is, what kind of mitigation is
there that's feasible.

I think with those fundamental questions being the ones you're trying to answer, then I think you might be able to get to it more quickly and more, perhaps, intelligibly through an informal process.

HEARING OFFICER KRAMER: Now, for biology, I think we'd probably have to adjust the tables in the room to seat all those people. So that, I guess the answer to your question, Mr. Basofin, is that it would be multiple parties' witnesses, or could be.

MR. BASOFIN: Okay. That does answer my question, then. And I guess to the extent that that's the proposal that's under consideration here, I think I would have to object.

You know, I think anything less than a formal cross-examination is going to preclude me from eliciting the information that I need to elicit from some of the witnesses, particularly the witness from the Department of Fish and Game. I'm not sure how, notwithstanding cross-examination, I can really question those witnesses under this sort of paradigm.

HEARING OFFICER KRAMER: Well, you would
still be allowed to ask questions, as would
everyone else. I think one of the advantages is
that all of the witnesses are sitting there. So,
if we have a question about a particular subtopic
we can hear their answers, one after another,
rather than one person answering it in hour one,
and the second witness may be answering it half an
hour later. And so on throughout the day.

It creates more of a dialogue that I
think we have found -- I was the Hearing Officer
in Russell City, and it did seem to be more
helpful than the, you know, watching Perry Mason
at work.

MR. BASOFIN: Well, I mean I certainly
want, you know, desire a certain amount of
efficiency, as I think all the parties do.

I'm just sort of trying to understand
this. If we'll have an opportunity to ask
multiple questions of witnesses during the panel
examination, or multiple questions of one
particular witness during the panel examination, I
think that would be fine.

HEARING OFFICER KRAMER: That certainly
could be part of the design. I think that's a
reasonable request.
MR. BASOFIN: Okay.

MR. RATLIFF: Yes, I don't know how Mr. Basofin intends to discomfort my witnesses at the hearing, but I would hope that he could answer those questions, assuming they're legitimate questions. And get them answered.

I mean, there shouldn't be more room for evasion in an informal hearing than there is in a formal hearing. In fact, I would think that there is less. I think you've got the ability to go directly to the source, and hopefully without a lot of intervention from the lawyers trying to protect their witnesses from cross-examination or awkward questions.

So, I mean the advantage is, I think, you can actually have a more meaningful and less obstructive discussion.

That would not, I hope, preclude Mr. Basofin from asking his questions of my witnesses, whatever they might be.

HEARING OFFICER KRAMER: No, I don't think the Committee wants to fully take over the job of extracting truth from the witnesses.

MS. SMITH: Mr. Kramer.

HEARING OFFICER KRAMER: Ms. Smith.
MS. SMITH: I think the Sierra Club provisionally supports this method. I'm very concerned, based on the uncontested issue hearings that we had, that the contested issues could drag on for the entire week, and maybe into a second week. And I think this seems the most efficient way to proceed.

So, you know, I'd like to -- we support giving it a try.

HEARING OFFICER KRAMER: Okay, Mr. Basofin, where did you settle out on that?

MR. BASOFIN: I guess if I'll have the opportunity to ask multiple questions of a particular witness on the panel then I will withdraw my objection.

HEARING OFFICER KRAMER: Mr. Harris?

MR. HARRIS: Depends on the subject matter, frankly. I think biology is going to be a difficult subject to conduct this type of informal process. There are probably 15 witnesses, you know. There are three from CBD, there's several from us, there's several from the staff. And that's the contested issue in the case.

And I share Mr. Basofin's concern about being able to follow a line of questioning to its
logical end. If I start down a set of questions on rare plants and Mr. Ratliff jumps in with a question on desert tortoise, then at some point I've got to try to get back to finish my line of questioning on rare plants. And so I think for the biology issue it would be quite cumbersome.

I think the other difference between this case and Russell City -- well, there's several. One is that there are ten parties in this case. I think there were only four at Russell City. And staff and applicant were pretty much aligned on a lot of those issues.

There was, you know, two panels of applicant and staff witnesses that were basically saying the same thing, so it was a little easier to conduct it in that setting.

I guess we'd be amenable to thinking about that in the discussions of project description, purpose and need, alternatives and cumulatives. Those three areas, which were identified by several parties, really seem kind of like they're part and parcel of one set of discussions about, you know, is this the right project in the right spot. And are there alternatives.
Maybe for a grouping of those three topics together, a panel might make sense. You know, I don't expect a lot of direct testimony on alternatives, for example. But I'll make my folks available to answer questions.

Same thing with project description and with cumulative impacts. And cumulative is another strange one, since it's not really typically a subject the Commission does. But there is a section of that. So, maybe on those three, grouping together as a panel makes sense.

If there's going to be some hearing on air quality issues, I think there's only a couple of people who have questions, and those are pretty straightforward. That might be a good one to put an entire panel on for air quality, if we have to have air quality witnesses.

Same thing with water and land use, if we're doing those. And maybe visual.

But bio just seems to be the outlier for me in that respect. There are a lot of issues and a lot of parties. And if people are concerned about getting this done on time, I think one of the things the Committee has at its disposal is the ability to set pretty strict time limits for
direct testimony and cross-examination. And then
people are going to have to live within those.
But, you know, there are ways to handle the length
of the hearing on those issues.

So, I guess, as to bio, no. As to the
rest, we'd be open to thinking about it.

HEARING OFFICER KRAMER: Let me ask you
this about your concern about bio. Is your
concern that you wouldn't be able to ask all the
questions that you want before somebody else is
asking them?

Or are you concerned that answers would
come from more than a single witness at a time to
each of the questions?

MR. HARRIS: Well, I guess my concern is
about being able to follow a line of questioning
all --

HEARING OFFICER KRAMER: With a single
witness?

MR. HARRIS: -- the way to the end, the
same witness on the same topic.
Within biology there's like three or
four areas that are controverted, desert tortoise
mitigation and rare plants being two of the more
prominent ones.
If we start having a discussion about desert tortoise and the conversation flips back to rare plants, we're going to have to try to bring it back to make sure that we get all the line of questioning pursued.

And I think cross-examination really helps us to do that. And a panel is going to make it very difficult. And, you know, quite frankly, if Josh has a set of questions that he's in the middle of, if I jump in with a question on a related topic I might take him off course.

ASSOCIATE MEMBER BOYD: Is it possible to, once a topic's introduced, to limit the entire discussion of that topic till everybody's satisfied that it's finished before moving to another topic?

I mean to me the advantage of this is not having people jump up and down from the audience back to the table. And you've got everybody there.

If we could commit to address your concern of jumping topics and finish a topic, it seems to me that it might work smoothly.

MR. RATLIFF: Commissioner, I think the answer is yes. I mean the informal hearing
procedure is really what you decide to make it.

And if you --

ASSOCIATE MEMBER BOYD: Informal, but structured.

MR. RATLIFF: Right. I mean you give it the structure that you think works and you set the rules. And you can intervene and ask the questions if you feel like one hasn't been answered satisfactorily.

It really does require, I think, more of the decisionmaker and more of the Hearing Adviser to basically --

ASSOCIATE MEMBER BOYD: Referee.

MR. RATLIFF: -- give it structure and referee it. And also get the bottomline answers that you seek.

But, there's no reason why, for instance, you couldn't do desert tortoise impacts, and then desert tortoise mitigation. And then do plants separately, or however you chose to do it. You could subdivide it even further.

I think Mr. Harris does make good points, though. I think you do have a number of witnesses. That does make it more complicated. You do have a number of parties that those
witnesses represent, likewise more complicated.

You also have the cross-over issues of
alternatives which are closely related with the
biological issues, since that is an impact which
parties seem to mitigate or avoid.

So, I think those are genuine
complications, and I don't want to downplay that.
I think those are things that have to be
considered.

I don't think, for instance, if you were
to hold alternatives as a completely separate
issue, that you could really do it without the
biologists participating in that discussion, as
well, because they are so closely linked.

So, even though I see those as
complications, complicating factors, I don't think
it should deter you from trying it. And I suppose
if Mr. Harris or Mr. Basofin or I feel like
something important is getting left out, we can
say so. And then ask for your help in getting to
the bottom of an issue.

Or if you decide it's not working out
satisfactorily, it just isn't, there are too many
witnesses, there are too many parties, the
witnesses are fighting with each other, or
whatever, then you could turn it into a formal hearing and we could do the more traditional and structured way.

But I do think it would offer the possibility that in one long hearing day we could do the most difficult issue in this case, and perhaps get a better resolution from your point of view than would otherwise be possible.

HEARING OFFICER KRAMER: Anyone on the telephone wish to comment?

MR. CONNOR: Yeah. This is Mike Connor. I have a question here, sort of a logistic question. And a concern about this panel. If I'm a witness on the tortoise panel or the biology panel, or whatever you call it, am I free to ask questions of the other witnesses?

HEARING OFFICER KRAMER: You'll have to --

MR. CONNOR: Have to move back and forward from the table?

MS. BELENKY: You have to have a different hat.

(Laughter.)

MR. CONNOR: I just want to be clear, you know, that being on a panel is not going to
preclude me from asking questions.

HEARING OFFICER KRAMER: No, you'll just have to honor -- you know, you'll have to wear the appropriate hat at the right time, and we'll let you know if you have the wrong hat on.

Anyone else on the telephone?

MS. BELENKY: This is Lisa Belenky with the Center. I think actually it sounds like it's worth trying, especially for the biological and maybe we could do some of the, for example, desert tortoise, and the rare plants each as separate panels.

I did want to -- someone mentioned the table, and I did -- not to get off topic, but I did notice last time we were sitting almost with our backs to the Commissioners. And I would prefer if we could find a way to move the table so that works.

HEARING OFFICER KRAMER: Yeah, I think if we do this we're going to have to have a couple rows. It will be more like a college lecture hall. Hopefully that won't bring back nightmares for anyone.

Anyone else on the telephone? Mr. Harris.
MR. HARRIS: I'm trying to think about how I'm going to prepare my witnesses now if you go this route. They ask me what does it look like when I show at the hearing; you know, what's the room look like, how does it start, how does it end, what happens in the middle.

I've already got a difficult task to try to figure out how to put on this case, and to turn it into a open, more of an open format like this, really doesn't give me a clear picture of how I answer that question tomorrow when I try to start prepping my witnesses about what is this going to look like, what should they expect. I mean, are we going to have our witnesses go first and let everybody fire questions at them and then they sit down? And then the staff's witnesses? Are we going to have all the desert tortoise experts up there? It sounds to me like it's not going to save us any time. In fact, I think it's got a real potential to push the hearings out.

So I think, at this point, without a clear specified structure that I can take to my witnesses and prepare them around, I think the applicant does object, at least as to the biology
issue, for an informal hearing.

I mean, you know, I'm already worried about who my witnesses are, what their testimony is going to be on cross. If I have to now tell my own witnesses I'm not sure what the format is, on an important case like this, that's a big problem.

MR. BASOFIN: Yeah, I think just to follow on Mr. Harris' concerns, you know, I think most of the parties are probably going to prepare very specifically our cases, both our direct examinations and cross-examinations and all of the various contingencies that could occur in the hearing.

And, you know, to not be clear on the format before we sort of walk into the hearing on the day of, I think maybe produces some anxiety for us. Sort of like fitting a square peg in a round hole, because we have, you know, the sort of highly developed way to proceed on the day of the hearing, and we're just not sure if we're going to be able to do it.

MR. RATLIFF: Mr. Kramer, if I could I'd just offer that again, I think, we always, you know, in formal hearings, allow witnesses to make an opening, usually a summary of their testimony.
and the high points of their testimony.

I don't know, certainly we don't have to forego that here. I think you need something like that, really, for your own benefit. And in that way the informal hearing need not be a departure from that aspect of formal hearing procedure.

Whether you want to hear 20 different people summarize their testimony, or however many witnesses you have, summarize their testimony at once, and then go into a discussion of it, I guess, is up to you.

But I do think you'd want to stage it topic by topic in some manner that would allow it to be focused on one particular issue at a time.

PRESIDING MEMBER BYRON: Mr. Kramer --

first of all, Mr. Ratliff, thank you for your suggestion, I think it's very good. And, of course, I know you have many years of experience in this regard. And you're correct, this did really benefit the contentious set of evidentiary hearings that we conducted on another case.

I am always a little bit concerned when attorneys sit here and tell me that they're going to prepare highly developed testimony for the Commissioners to hear.
We really are interested in getting evidence and getting to the bottom of understanding these issues. So, this kind of discussion, this more informal approach, tends to have less arguments around the process and procedure, and allows us to get more to the bottom of these issues, which I think we're all interested in.

So I'm inclined for us to give this a try in those areas that we don't have disagreement from the parties.

Really, we want you to be comfortable with this. And I'm surprised, but willing to accept that the applicant's quite concerned about this on the biological issues, because we have so many witnesses.

We're interested in accomplishing two objectives here. One is reducing the amount of time that we're all going to be here. And second is making sure we get to the bottom -- maybe I'm using the wrong phrase -- that we get all of the evidence out on the table for our consideration.

So, Commissioner Boyd, unless you object I'd be inclined to make sure we try this at least, early on, on some of those issues that I believe
Mr. Harris described earlier, that we could probably proceed with panel discussions on. And if, indeed, others are comfortable with that approach, that we proceed that way with all of the evidentiary hearings. But again, everybody's comfort level needs to be high; that you have an opportunity to make sure your case is presented the way you wish to present it.

But please keep those two objectives in mind, what we're trying to accomplish here. Commissioner Boyd, did you want to add anything?

ASSOCIATE MEMBER BOYD: No. I think, as you and I discussed, I'm open to -- let's experiment with it in the easier area, and we'll see how everybody adjusts to it.

MS. SMITH: Mr. Kramer, --

PRESIDING MEMBER BYRON: So how does that work for you, Mr. Kramer?

HEARING OFFICER KRAMER: That's fine. What I wrote down is we will try it on issues other than biology.

ASSOCIATE MEMBER BOYD: You mean saving the best for last, right?
HEARING OFFICER KRAMER: Ms. Smith.

MS. SMITH: Yeah, I just wanted to make one point. I do support this approach, but Mr. Harris did make the suggestion that some of those issues could be lumped together. And I do have a problem with that.

We're very interested in alternatives and we'd like to single out alternatives and have that be a separate discussion, panel or otherwise. Just make sure that that's all we're talking about, rather than putting in project description and visuals and other things.

Thank you.

HEARING OFFICER KRAMER: Okay, well, I think that does bring us to the actual topic areas to be heard next week. And so we go back to the spreadsheet, our visual aid.

We've already decided that traffic and transportation will be just about the conditions trans-1 and -4. Visual resources will be about the staff's response to the draft or final EIS that was presented as an exhibit impeachment at the last hearing. And possibly about the Basin and Range Watch testimony that was previously filed.
And that takes us to project description.

MR. HARRIS: Mr. Kramer, before we do visual, --

HEARING OFFICER KRAMER: Okay.

MR. HARRIS: -- the staff is going to be offering rebuttal testimony on the applicant's, I think, exhibit 69, is that correct? Is that what was left open?

HEARING OFFICER KRAMER: I think 69 was that map, so it --

MR. HARRIS: The map, yeah, the map that has the viewsheds on it.

HEARING OFFICER KRAMER: So that wasn't the exhibit, it was --

MR. HARRIS: No. There was one piece of the staff's testimony that was new to us, and I pejoratively referred to it as the measles map. It's near the very end of Mr. Kanemoto's presentation. His map showing, I think, roads and various projects.

We'd be very interested in receiving that map with some additional detail as to what exactly those red dots are on that map. Because there's been some conversations back and forth
between Mr. Kanemoto and Mr. Priestley about that map and why it was intended to be introduced. And it would be very helpful for the staff to label what those red dots are, at a minimum, on that map.

It's the next-to-the-last page of his PowerPoint, or somewhere thereabouts. So could we ask staff to label that map and provide that, as well, as part of their filing tomorrow?

HEARING OFFICER KRAMER: Staff, do you have any objection?

MR. RATLIFF: I don't know. This is the first I've heard of that. The map was a map of alternative projects in, I believe, the greater CDRA area. I thought it was part of our -- I had thought that it was part of our alternatives analysis, which included maps. But I don't know if it was or not. I haven't been able to determine that.

I'm not certain what we're doing here, but maybe I should talk about it with Mr. Harris to see if we can figure out what the point of this exercise is. If he's unhappy with the map, then perhaps we can find one from our alternatives analysis.
I think we identified other energy
renewable projects that affect the cumulative
impact analysis elsewhere, either under cumulative
impact analysis or under alternatives. And if he
would prefer that we also enter that map, as
opposed to the one that appeared in the slide show
that Mr. Kanemoto did, we could do that, of
course. It's already in evidence.

But I take it maybe he wants the
identification, what the name of the project is,
where the red dots occur, or some such thing?

ASSOCIATE MEMBER BOYD: Well, I infer
that some legend was missing or something from the
map?

MR. HARRIS: There was a map that showed
some roads and the dots were various projects.
And we asked several times which project is that.

And all I'm asking really is that we add
names to those red dots. And this goes -- and
I'll pull the curtain back, it goes to the
question of reasonable foreseeability. I don't
know whether all those projects are still on the
board. I don't know whether some of those
projects are in the Feinstein National Monument.
And I can't make those arguments without knowing
the names of the dots, the projects that are
associated with the red dots.

And so all I'm asking staff to do is
identify with specificity the names of the
projects that are the red dots on that map.

HEARING OFFICER KRAMER: Well, if staff
can do that, I think that would be helpful to the
Committee, as well.

PRESIDING MEMBER BYRON: Absolutely. In
fact, there's some new information that's come out
in just the last month, not necessarily related to
this case, but I believe on our website there is
now a bunch of additional information that's
available, including maps that shows over 200
renewable projects. So they may be identified
there.

Also, Mr. Harris, I'd just correct you
in one regard. Senator Feinstein's proposed
national monument.

MR. HARRIS: Thank you, yes.

HEARING OFFICER KRAMER: Okay.

MR. RATLIFF: So we should then provide
that map with the identities of what the red dots
stood for, is that then what you're asking for?

HEARING OFFICER KRAMER: Yes.
MR. RATLIFF: Okay.

MR. HARRIS: Thank you.

MS. BELENKY: I'm sorry. This is Lisa Belenky on the phone. We did finally receive the map that applicant put into the record during that hearing, as well, the visual resources map.

However, we had asked what one of the -- it says areas from which the project is not visible. And we had asked for the applicant to at least explain what that meant. If it means the surface of the valley floor there, or the whole project, the full height of the towers. And we still haven't gotten clarification on that.

HEARING OFFICER KRAMER: Is that something you're going to provide, Mr. Harris?

MR. HARRIS: Yes. I'll provide that in the form of Dr. Priestley.

HEARING OFFICER KRAMER: To testify at the --

MR. HARRIS: Well, to answer any questions Ms. --

HEARING OFFICER KRAMER: Okay. During the next hearing?

MR. HARRIS: Yeah.

HEARING OFFICER KRAMER: Okay. Next is
project description, and that was not intended to
be closed the last hearing; it was basically a
context provider for the rest of the hearings on
that day.

Mr. Harris, you've got several witnesses
identified here. Do you expect any more of them
to testify?

MR. HARRIS: No, I do not. I actually
didn't think this topic was a separate topic that
was still open. We can have those witnesses show
up, because I think they're pretty much the same.

HEARING OFFICER KRAMER: Well, let me
ask. Let me set the context and we'll try to
apply this approach to all of your topics.

Basically in your prehearing conference
statement you said all our witnesses have been
identified in our filed testimony. So all I could
do was then pull all those names out.

And we're now at the point to find out
how many of them are actually, you're planning on
having come to testify.

And also to hear from the other parties
of whether they want to have witnesses available
to cross-examine on any of these topics.

So, I'm gathering then unless somebody
wants one of your witnesses to be here on project
description, you feel as if you're done, is that
correct?

MR. HARRIS: We would be pleased to
release those witnesses, yes.

HEARING OFFICER KRAMER: Okay. So a
question of all the other parties. Do you desire
to cross-examine any of the applicant's -- and
let's extend that to the staff's witnesses about
project description?

MS. BELENKY: This is Lisa from the
Center for Biological Diversity. We would like to
have a more full discussion about project
description. And my understanding was that at the
earlier hearing it was only being provided as sort
of a setup, so that we could talk about other
issues.

So I didn't -- do you need me to
identify which of these people? I have no way of
knowing which of these people I'm supposed to --

HEARING OFFICER KRAMER: Well, in very
brief form, what are you issues? If you just want
to argue about something, if it's not in the
nature of actual or expert opinion testimony from
one of the witnesses, we really don't need the
witnesses to be there. That's something you would
do either in oral argument portion of the hearing,
or in your briefs.

MS. BELENKY: Well, there are some
specific questions we have; in fact, even some
things that were mentioned at the earlier hearing,
as far as the operation when there is either cloud
cover or shadow on the site. And we have a
witness on that issue. And then on the issue of
when there may be shadow on the site.

And I also have some specific questions
about the use of the gas-fired plant, and the
amount, which also goes to the air quality issue.
Because there seems to be some inconsistency that
I have perceived, at least, in the documents about
the actual use that's intended for that, for those
both -- description. I think there are some other
specifics about the description, but I didn't
prepare all my notes for this right now. I could
do that if --

HEARING OFFICER KRAMER: Mr. Harris, can
one or two of your witnesses address each of those
topic areas, subtopic areas?

MR. HARRIS: I'm sorry, it wasn't clear
to me what those subtopic areas were. But I
thought she jumped to air quality. I'm sorry --

HEARING OFFICER KRAMER: She was talking

about how the plant was operating, as well.

MS. BELENKY: Which is the project
description.

MR. HARRIS: It's cloud cover she's

concerned about?

HEARING OFFICER KRAMER: How it would

operate during cloud cover. How much the gas
boilers would be used.

MR. HARRIS: I know she's got witnesses

that are dealing with those issues. Lisa, you've
got a series of black-and-white maps on shading.

Is that what you're talking about?

MS. BELENKY: That's not the only issue

we have with the project description. You know,
I'm happy to write something up. I didn't -- I'm
not prepared right now to give you every single
issue I was going to raise on project description
right this minute. If you would like me to write
something up?

I assumed that your witnesses would be

there, and that we were still going to actually
discuss this issue. If you're trying to take it
off the table, then --
HEARING OFFICER KRAMER: No, we're not necessarily trying to take it off the table. We're trying to identify situations where there are no real questions so that those people are not brought here unnecessarily.

It sounds then as if the applicant will need to bring witnesses, not necessarily all of them, but witnesses that can answer your questions.

Would you object to any of these witnesses testifying by telephone, Lisa?

MS. BELENKY: No, I don't, especially if they would not object to my witness testifying by telephone. Because he has to come from Arizona. That would actually be a very good solution for us, as well.

HEARING OFFICER KRAMER: Your witness is Curt Bradley on this topic?

MS. BELENKY: That's right; um-hum.

HEARING OFFICER KRAMER: I have your email so I have the list now.

MS. BELENKY: Thank you.

MR. HARRIS: So is this -- we're going to be putting on a panel for alternatives. And Ms. Smith has already said she wants that to be a
Are the questions that Lisa's identified as project description questions things that they could be asked of my alternatives panel, so I can release my project description witnesses? Or air quality, if we're going to do air quality?

HEARING OFFICER KRAMER: Well, it looks like Mr. DeYoung is the only person who's -- oh, no, and Mr. Carrier are on both project description and --

MS. BELENKY: Yeah, I just have no way of knowing who on your panel knows what because of the way, you know, you put them all on each set of testimony.

I'm happy to, if you feel like they can address the issues, that's fine. I'm not attached to having them be there, the other people be there if you don't think they're necessary.

HEARING OFFICER KRAMER: Well, Mr. Harris, I'm suspecting that Mr. DeYoung and Mr. Carrier are going to be there anyway, right?

MR. HARRIS: Yeah, they won't be released, sure.

HEARING OFFICER KRAMER: So what you could probably do then is have the others
available by telephone if you need them. And we
can offer some flexibility during the course of
the day to bring them up on the telephone if
necessary.

MR. HARRIS: Well, if Lisa is suggesting
that she needs my panel for project description in
full to show up, we will have our whole panel show
up. And I don't anticipate putting on any direct
testimony. I'm likely just to make those people
available for cross-examination at that point.

HEARING OFFICER KRAMER: Okay, thank
you. Anybody else interested in cross-examining
either the applicant's or staff's or the Center
for Biological Diversity's witnesses on project
description?

MR. CONNOR: This is Mike Connor with
Western Watershed Project. I might have some
questions.

HEARING OFFICER KRAMER: Okay, but you
have a witness of your own, correct?

MR. CONNOR: I don't have a witness of
my own, no.

HEARING OFFICER KRAMER: Okay. Did
somebody else chime in there? No?

Project alternatives.
MS. BELENKY: Well, does this mean my witness can be on the phone, as well? Or are we all -- I just got confused in the middle of that conversation.

HEARING OFFICER KRAMER: Mr. Harris, did you have any objections?

MR. HARRIS: Obviously our preference would be for the witness to be here, but, you know, we understand if that's impossible, that it could be then over the phone.

HEARING OFFICER KRAMER: Any other party?

MR. HARRIS: So no objection, I guess.

MS. BELENKY: If we knew what day it was, but I suppose at the end of the process we may know which day, and would help.

HEARING OFFICER KRAMER: Yeah, we're going to try to do that.

MS. BELENKY: Thank you.

HEARING OFFICER KRAMER: And the witnesses that fly in, you know, they'll have at least a little extra point or two on the priority scale.

MR. HARRIS: On alternatives we do have a constraint on the 13th. We have one witness who
will not be available on the 13th. So 11, 12 or 14 for our panel on alternatives.

HEARING OFFICER KRAMER: How long do you think the alternatives discussion is going to take? Half a day, perhaps?

MR. HARRIS: It's going to depend on how many questions the other parties have for my panel, because I can't imagine we'd have more than five minutes of direct testimony.

HEARING OFFICER KRAMER: Okay. So no alternatives on the 13th, you said. And that's only a half-a-day hearing anyway, so that may not be the best place to put something like that.

MS. BELENKY: Which is only half a day?

HEARING OFFICER KRAMER: Wednesday the 13th. It's in the afternoon following the Commission's business meeting.

I think we said it starts at 1:00. Yes. The other days are all day.

MS. BELENKY: Well, and our alternatives witness cannot make it on the 14th, which we did put in our prehearing conference statement.

HEARING OFFICER KRAMER: Because alternatives relates so closely to biology, it makes sense to me that biology should probably go
first to set the context.

Otherwise I'd be inclined to say that
this alternative discussion could be worked as a
panel, and might offer a useful test run for some
of the other potential uses of a panel, perhaps
even including biology.

Do the parties disagree with my
assumption that biology should probably go first?

MR. RATLIFF: As the first issue you
mean, or --

HEARING OFFICER KRAMER: Well, before
alternatives, because, after all, alternatives is
discussing variations on or comparing the
biological and other impacts at other sites and --

MR. RATLIFF: Okay.

HEARING OFFICER KRAMER: -- technologies
to the biological impacts at the project site,
which would be discussed in depth during the
biological discussion.

MS. SMITH: Mr. Kramer, I definitely
agree. I think that a big portion of our witness'
time would go to describing the various impacts of
the project, as proposed, on biological resources.
So if we could have the project setting
and the biological setting beforehand, I think it
would make the alternatives discussion more streamlined. We'd all be on the same page about what we were talking about.

HEARING OFFICER KRAMER: Okay. So, looks like alternatives will probably be tentatively on the 12th, then.

MS. BELENKY: Alternatives on the 12th?

HEARING OFFICER KRAMER: Tentatively.

We have a whole page of calendars, so we can write things and cross them out many times --

MS. BELENKY: Okay.

HEARING OFFICER KRAMER: -- formula here.

MR. RATLIFF: Mr. Kramer, did we have something on the 11th yet already, or did I miss something?

HEARING OFFICER KRAMER: I'm thinking project description, --

MR. RATLIFF: Okay.

HEARING OFFICER KRAMER: -- and biology.

MR. RATLIFF: And biology?

HEARING OFFICER KRAMER: Yes. But I may be getting ahead of myself.

MR. RATLIFF: Does that mean we'll be doing biology by informal hearing or by formal
HEARING OFFICER KRAMER: Because we didn't, in our notice, give the Committee the opportunity to impose --

MR. RATLIFF: Oh, I thought you did.

HEARING OFFICER KRAMER: That was the other case we're on.

MR. RATLIFF: Oh, I thought you'd done it in both cases. You have not done it in this case?

HEARING OFFICER KRAMER: No.

MR. RATLIFF: Okay.

HEARING OFFICER KRAMER: It came too late, the request.

MR. RATLIFF: Okay.

MR. BASOFIN: I'm sorry, just a point of information. I'm a little confused. I think I just heard that we'd be doing project description and biological resources first, on the 11th?

HEARING OFFICER KRAMER: That's tentative, yes.

MR. BASOFIN: Tentative. But previously when we had discussed the informal hearing procedure we had said we would do a test run with the sort of more uncontested subjects, which
wouldn't seem possible if we were doing the most
contested --

HEARING OFFICER KRAMER: No, but for the
reasons I alluded to a minute ago, I don't think
logically it'll work very well to have
alternatives come before biology. In a way,
biology, an in-depth discussion of the impacts of
the project site educates us and provides a
shorthand sort of way for us to then discuss
alternatives probably more efficiently.

MR. BASOFIN: I understand the strategy
there. I'm just wondering if it wouldn't be more
useful to take something like traffic and
transportation or --

HEARING OFFICER KRAMER: Well, those are
pretty much done as far as panels go.

MR. BASOFIN: Okay.

MR. RATLIFF: We think we're done with
those. Almost done with those.

HEARING OFFICER KRAMER: Mr. Ratliff?

MR. RATLIFF: Well, I don't want to
belabor this. If the Committee decides it doesn't
want to use informal hearing procedure, then --
for biology, then certainly I understand that
decision.
But I do want to point out that under section 25521 the Commission has the discretion to determine whether it will have formal hearings, and how it's going to hold the hearing process.

So, you have that authority, I think, independently of the provision in the Administrative Procedure Act. I think you can hold the hearings in whatever manner you feel provides you with the best information.

So I would like just to make sure that you're aware that you may have greater authority than simply that offered by the APA.

HEARING OFFICER KRAMER: Well, I think a little while ago we decided that we were not going to override the applicant's objection on the issue of biology. And we would try it on the other topic areas.

MR. RATLIFF: But I notice you're starting with biology, though, on the first day. So if you don't override it then you are doing it by formal hearing procedure.

HEARING OFFICER KRAMER: Well, just for biology.

MR. RATLIFF: Well, right, but --

HEARING OFFICER KRAMER: I mean --
MR. RATLIFF: -- but that's the one
where you might get the greatest bang for the buck
if you go to informal hearing procedure. That's
my point.

HEARING OFFICER KRAMER: No, I
understand, but -- actually I think your advice to
us has changed.

MR. RATLIFF: Well, I told you
originally, that informal hearing procedure has to
be noticed to be utilized. And that was my
understanding at the time from reading that
provision in the APA.

But I've also since become aware that
our own statute provides us, I think, ample
discretion to determine how to run our hearings,
our evidentiary hearings.

So I think you can have your hearings in
whatever manner you choose, even if the APA didn't
exist. That was my point.

(Pause.)

HEARING OFFICER KRAMER: Well, we're
reluctant to, especially at this point, given the
applicant's preparation and reluctance to switch
to panels, we're not going to have the informal
process for biology. We will for the subsequent.
ASSOCIATE MEMBER BOYD: Let me just say,
I'm going along with this because I've been
persuaded that with regard to the argument that
alternatives needs to follow biology, and the
arguments were persuasive. Because earlier I'd
suggested saving it for last and trying the
informal process on everything else, and then
deciding.

But if there is a consensus, there seems
to be up here, that you've just got to do biology
in order to do alternatives. I don't know what
your views are on that. Then that kind of gives
us no choice but to proceed with biology first in
a formal way, and then switch to informal for
everything else.

But I, you know, I see a 12-hour hearing
on the 11th, but, anyway I just wanted to share my
thoughts.

HEARING OFFICER KRAMER: And the parties
can think about perhaps some kind of, after the
formal testimony is produced, something that's a
little less formal.

Because one of the places you can waste
a lot of time is if you have to, when you're
cross-examining someone if you have to first
remind them of what was said four hours ago.

I've seen people get into a loop, you
know, where they'll spend 20 minutes arguing about
what their remembrance of that was. And we have
no court reporter to read things back. And that's
certainly something we want to avoid.

But we are also sensitive that the
parties should be able to tell their story, at
least initially, and in the way that they want to,
and in the way that they prepared it. Mindful
that our job is not, you know, to -- our job is to
get at the truth, which means we want to hear
everything and decide what, you know, what we
think is relevant and what we believe is
compelling testimony. And then decide on that
basis, rather than on technicalities and
procedural events.

PRESIDING MEMBER BYRON: Commissioner
Boyd, as we get into the 11th and 12th hour on
Monday, I'll just remind you that it was the
applicant, Mr. Harris, that made that suggestion
that we maintain a formal hearing process.

But that's anticipating where we're
going, and who knows, maybe it will go a lot
quicker than that.
HEARING OFFICER KRAMER: Okay, can we move on to power plant reliability? Mr. Harris, I couldn't figure out which -- you divided your topics somewhat differently, so I wasn't quite sure who your witness would be, if we need one.

Rather than having you identify one, let me ask, are any of the parties interested in cross-examining or examining witnesses on the topic of reliability?

MR. BASOFIN: Defenders is.

HEARING OFFICER KRAMER: And could you be more specific about the subtopics involved?

MR. BASOFIN: Well, at the previous prehearing conference we had cited power plant reliability as a somewhat disputed issue in terms of -- and it was somewhat related to soil and water resources, but the effect of stormwater scouring on the heliostat units was initially disputed based on the modeling results for stormwater.

HEARING OFFICER KRAMER: So then it would really be the soil and water witnesses there, even though it's a cross-over issue you're talking about soil and water basically.

MR. HARRIS: If the issue is scour that
would definitely be our soil and water witnesses,
yes.

MR. RATLIFF: Could we agree to put it
under that topic perhaps?

HEARING OFFICER KRAMER: Do you have any
objection to combining it with --

MR. BASOFIN: No, I mean I agree with
you, Mr. Kramer, it's a cross-over issue. I don't
have an objection to putting it under soil and
water resources.

HEARING OFFICER KRAMER: Okay, so
anybody else want to cross-examine, on the
telephone or in the room here?

Okay, so power plant reliability will be
combined with soil and water.

MR. RATLIFF: Rather than combining it,
making it worse, can't we just let it go and put
it under soil and water? I mean do we really have
a reliability -- when our witness testifies he
knows nothing about scouring. We'll say that
right now.

HEARING OFFICER KRAMER: Right. Well, I
think just as Mr. Harris is going to be bringing
soil and water witnesses to this discussion, you
probably would, as well.
MR. RATLIFF: Do we need our reliability -- the witness for our reliability testimony to attend the hearing?

HEARING OFFICER KRAMER: That's a question for Mr. Basofin. Do you want to ask any questions of the person who wrote the section on reliability?

MR. BASOFIN: I mean to the extent that there's statements in the final staff assessment regarding the stormwater modeling and scour, I think it's appropriate to have the staff person who worked on that testify.

MR. RATLIFF: That would be our soil and water witness.

MR. BASOFIN: That's fine.

HEARING OFFICER KRAMER: Okay.

MR. HARRIS: So your question, Dick, was can we close out that and release our witnesses?

MR. RATLIFF: We don't have anything in our reliability testimony that has to do with scouring. I think it assumes that the project doesn't wash away.

But the soil and water testimony does go to the issue of scouring, and we did, you know,
discuss that possibility in that testimony. So, I
guess I'd just like to have our -- I guess I'd
rather call it soil and water and say that we are
adjudicating power plant reliability.

HEARING OFFICER KRAMER: Well, I think
you are, in a way; but, it's really -- but it
doesn't sound as if the author of that section
needs to come to the discussion.

MR. HARRIS: Okay, so are we closed on
that issue, because I've got witnesses I'd like to
release on that one, as well.

HEARING OFFICER KRAMER: Any other
parties want to talk to the authors of the AFC or
the FSA on reliability? Hearing none.

MR. HARRIS: Thank you.

HEARING OFFICER KRAMER: Air quality.

Mr. Harris, from what you said earlier I gather
that both your witnesses will be attending?

MR. HARRIS: Yeah, but I guess I'd like
to probe a little bit as to whether we need live
witness testimony on these issues. And then maybe
that's for Lisa -- Lisa, how come I can't say your
name right?

MS. BELENKY: That's no big -- don't
worry. It's like a bell and a key, that's what my
grandfather always said, bell and key.

MR. HARRIS: Okay. You cut out a little bit, so I'll believe my hearing on that. But, so I've seen your statement a couple times and I'm not really sure whether there are factual questions that you need my witnesses to cross-examine, or whether those are legal arguments. And if I can release those guys I'd be glad to do that, as well.

MS. BELENKY: Well, I just went back through this on Friday, and I do have really specific questions. So I'm happy to forward them to you and see if you think you could answer them on paper instead of bringing your witnesses. I'm happy to do that.

Does that answer the question?

HEARING OFFICER KRAMER: What's the general area of your questions?

MS. BELENKY: Well, some of the numbers, and then the way the conditions are set up they don't seem to match up. For this project our main issue with air quality is the way the staff analysis was performed and put together.

And one of the basic questions is how they reached some of the numbers they're using.
Because it doesn't actually say what assumptions
they're using. Or in one place it says one thing
and in another place it says something different.
And then that the conditions don't
necessarily match what is said in the text, the
actual conditions don't match them.
So just trying to tease out all those
questions, because it doesn't -- they are factual
questions, they just simply don't add up, as we're
reading it.
So I wouldn't know how else to deal with
this, if not during the hearing. I'm happy to do
it a different way if that's easier for everybody.
MR. RATLIFF: Lisa, Dick Ratliff here.
Is that also the staff testimony you're talking
about, or is it just the applicant testimony?
MS. BELENKY: Well, it's very hard to
tell who -- it's in the FSA. It's what it says in
the FSA. Whether it's someone said it's depending
on numbers that came from the applicant.
So, to the extent that that's who
prepared the actual numbers, then I would imagine
you would want to have the applicant experts
there, as well.
MR. RATLIFF: But it is based on what
the staff said in the FSA then?

MS. BELENKY: It is based on the text of the FSA.

MR. RATLIFF: Okay, thank you.

HEARING OFFICER KRAMER: I think it's always dangerous to not have an air quality witness around during hearings. Stuff always comes up.

PRESIDING MEMBER BYRON: Even on renewable projects.

HEARING OFFICER KRAMER: Yes, believe it or not.

PRESIDING MEMBER BYRON: Well, at our New Years Eve party, Mr. Kramer, we have an annual questionnaire we do. And we have a saying that winners must be present to win and losers are losers wherever they are. So I think we'd like to have the witnesses present --

(Laughter.)

PRESIDING MEMBER BYRON: -- so that we're not precluded from hearing their testimony.

MR. HARRIS: I'll have our winners show up.

HEARING OFFICER KRAMER: Okay, we'll pick a more precise time in a little while. Oh,
by the way, do we have the appropriate declaration from the air district to meet the requirements of 25023, is it? That all the offsets are, they meet -- you know what I'm talking about, Mr. Harris.

MR. HARRIS: The ERCs certification?

We've got the FDOC, so that would say that the offsets have been identified and -- no, right, there isn't any offsets for this project, that's right.

HEARING OFFICER KRAMER: FDOCs, quite often you really have to reach in them to find them, you know, all the elements that the statute requires.

MR. HARRIS: Right, --

MR. DE YOUNG: Is there a question about whether offsets are required for this project, and if so, have they been identified?

HEARING OFFICER KRAMER: It's the information -- I don't have the magic words on the tip of my tongue, but it's a statement, a certification I think is the word the statute uses, from the air district that it meets their requirements, and all of the -- I think it's all of the offsets either have been obtained or provided, or will be, within the time provided by
the district's rules.

It's more of a formality; it's a --

MR. DE YOUNG: Yeah, we --

HEARING OFFICER KRAMER: -- we're
dotting an "i" and crossing a "t" here.

MR. DE YOUNG: We can find the comment
in the FDOC and point that out to you. We did not
trigger offsets for this project, sir.

HEARING OFFICER KRAMER: Okay.

MR. DE YOUNG: No ERCs have been
required.

HEARING OFFICER KRAMER: That might be
good enough. It's a detail more than anything
else. And I'm sorry, I didn't look specifically,
but is one of the parties introducing the FDOC as
an exhibit?

MR. RATLIFF: We typically do that. I
don't think we have yet, but we can do that.

HEARING OFFICER KRAMER: Okay. So if
you could put that on your list for tomorrow's
filing.

Okay, worker safety/fire protection.

Who wants to cross-examine, if anyone, staff or
the applicant's witnesses on that topic?

MS. BELENKY: Oh, I'm sorry, fire
safety, is that what you said?

HEARING OFFICER KRAMER: Yes.

MS. BELENKY: I believe fire safety is an issue that we have some questions about, as well. But it's not worker safety/fire safety. So maybe it's two different things, I'm sorry.

HEARING OFFICER KRAMER: No, it's a combined topic, worker safety and fire protection of the project. So if you --

MS. BELENKY: So fire impacts on surroundings, the likelihood of increase impacts of fire on the surrounding areas, I think is how we phrased it.

HEARING OFFICER KRAMER: Okay. Do you anticipate that would take more than a couple minutes?

MS. BELENKY: I don't think it would take that long.

HEARING OFFICER KRAMER: Okay.

MR. HARRIS: Lisa, didn't you identify that as an issue related to the biology and fire, not to, you know, like the fire suppression plants or programs --

MS. BELENKY: Right, but I don't know how much it overlaps. I just -- it is an issue
that we raised, how it would affect biology, but I
also think it may overlap, that's all. I just
wanted to make sure that if it's going to be
discussed, we have a few minutes.

MR. HARRIS: On page 11 of your second
prehearing conference statement, you identified it
under bio. And I think we have got the right
people on our bio panel to be able to answer those
questions.

MS. BELENKY: Okay, great.

HEARING OFFICER KRAMER: Okay, so then
you will not need anyone from -- Mr. DeYoung's
going to be here anyway. Do you think you'll need
anyone from the Commission Staff? That is who
wrote the worker safety/fire protection section.
They're not biologists.

MS. BELENKY: Right. I don't think so.
I mean I think -- but it's sort of hard for me to
say. So does that -- then you would take it off
the, you would take it off all together, though,
and it would be --

HEARING OFFICER KRAMER: No, I think you
could ask your --

MS. BELENKY: Okay.

HEARING OFFICER KRAMER: What we can do
is if you're, for some reason since biology's

going to go before this, --

MS. BELENKY: Right.

HEARING OFFICER KRAMER: -- if for some
reason your questions aren't answered, we should
be able to have staff available on call at some
point later in the week to answer them. Will that
work for you --

MS. BELENKY: That would be fine.

HEARING OFFICER KRAMER: Because after
all, our staff is, unless they're on vacation,
they're here in the building. That's not a -- and
we have elevators, so it's not a long trip for
them.

Okay, so worker safety will be only if
biology doesn't answer it.

Are your questions more about the
likelihood of the plant spreading fire to the
neighborhood, or just what the effects would be of
a fire on the plants in the area?

MS. BELENKY: It's both the likelihood
of fire and then the impacts, both of them.

HEARING OFFICER KRAMER: Okay, well --

MS. BELENKY: And what measures are
directly related to the spread of fire out into
the plants.

HEARING OFFICER KRAMER: So you're really asking about how well the plant is protected from, I guess, causing a fire in the vicinity.

MS. BELENKY: I guess that's one way to look at it. I mean I think we also had noticed that there's no discussion of how all of the equipment and, you know, cars and trucks coming on and off would or may increase fire risk, as well. But there's just some big gaps in the fire discussion.

HEARING OFFICER KRAMER: Okay, well, I think the traffic going to and from the site would be biology, not the worker safety/fire protection. Okay, so they'll be on call if your questions are not answered in the biological resources discussion, which is the next topic on the second page of the spreadsheet.

Mr. Harris, you have quite a few witnesses identified. Are you expecting all of them to testify?

MR. HARRIS: We're going to present them as a panel, will probably have one or two take the lead in describing and answering questions for
direct testimony. And then make them all
available for cross. So I don't need, you know, a
set time for all of them, you know, ten minutes
for each of them or anything along those lines.

MR. RATLIFF: I'm sorry, which topic are
we discussing?

HEARING OFFICER KRAMER: Biology.

Sounds like we're drifting towards a modified
version of your panel.

Staff, we should add Mr. Flint or Mr.
Hunting.

MR. RATLIFF: Yes. And then the
rebuttal testimony we have had two staff
witnesses, Carolyn Chainey-Davis on plants, and
Richard Anderson on tortoise habitat. Both of
these witnesses were involved in trying to look at
alternatives, particularly in the I-15 portion.
So we wanted to add them as witnesses for that
purpose.

HEARING OFFICER KRAMER: You said
alternatives, so is that --

MR. RATLIFF: I'm sorry, it's -- yeah,
but it's, well, I guess they could be witnesses in
either area. But their testimony, I think I'm
correct in saying their testimony was focused on
the alternatives aspect of the biological issue. Because they looked specifically at the I-15 alternative. Am I correct about that, John?

MR. KESLER: Yes.

MR. RATLIFF: And so if it made more sense they could testify under alternatives, but they're biologists who did work on alternatives.

HEARING OFFICER KRAMER: And is there going to be written testimony associated with their rebuttal?

MR. RATLIFF: Yes, it's being filed today.

HEARING OFFICER KRAMER: Okay, could you spell their names for us again, the reporter and me?

MR. RATLIFF: Carolyn Chainey-Davis is C-a-r-o-l-y-n, Carolyn, Chainey, C-h-a-i-n-e-y - dash- Davis.

HEARING OFFICER KRAMER: C-h-a-i-n-e-y?

MR. RATLIFF: C-h-a-i-n-e-y.

HEARING OFFICER KRAMER: Davis, okay.

MR. RATLIFF: And then either Richard or Dick Anderson, I think he goes by Dick, but Richard Anderson.

HEARING OFFICER KRAMER: Okay, former
full-time employee here?

MR. RATLIFF: Yes.

HEARING OFFICER KRAMER: And is that e-n or s-o-n?

MR. RATLIFF: O.

HEARING OFFICER KRAMER: Okay, so would it be better to include them in both alternatives and biology?

MR. RATLIFF: Well, certainly on the alternatives issue. They're really witnesses that can be in either area, but their testimony is largely directed, if not entirely directed, to the I-15 alternative.

HEARING OFFICER KRAMER: Okay. So I think we'll put them on both lists then.

Sierra Club had Scott Cashen.

California Native Plant Society, Jim Andre.

Defenders of Wildlife, Dr. Ronald Marlow. Western Watersheds Dr. Michael Connor. And Center for Biological Diversity had Mark Jorgensen, J-o-r-g, as in golf, -e-n-s-e-n. And Iieene Anderson, I-i-e-e-n --

MS. BELENKY: No, I-l.

HEARING OFFICER KRAMER: I'm sorry, I-l-e-e-e-n-e, Anderson spelled -o-n at the end.
MR. RATLIFF: And John Kessler just corrected me. He said that at least with regard to Carolyn Chainey-Davis, her testimony goes to rare plants more generally than just for alternatives. Although I'm correct that Dick Anderson's work is on the I-15 alternative exclusively.

HEARING OFFICER KRAMER: Okay, well, to the extent the issues are going to cross over, --

MR. RATLIFF: Okay.

HEARING OFFICER KRAMER: -- we'll leave them in both places.

Okay, did I miss any witnesses?

MR. HARRIS: Just a point of clarification, Mr. Kramer, in some of the rebuttal testimony today I think there may be one or two witnesses, new witnesses that we'll be adding with our rebuttal testimony. But again, as parts of panels. You'll see those when we file tomorrow.

HEARING OFFICER KRAMER: Okay, when you send it out, could you email me perhaps separately just to call out those names to make sure I don't miss them? Because they kind of fall off my radar screen.

MR. HARRIS: Okay. Mr. Carrier is not
here, but I'll see that we do that, so.

HEARING OFFICER KRAMER: Okay. Just adding up the time, Mr. Harris, in your prehearing conference statement that you estimated for direct and cross-examination, I came up with about seven or eight hours.

MR. RATLIFF: Which is one of the reasons why we urged you to use informal hearing procedure. Just looking at Mr. Harris' cross-examination time alone, it was a whole day.

So, I mean I don't know how we get through hearings at that -- the cross-examination goes on at that length.

HEARING OFFICER KRAMER: Well, I think what we'll have to do is --

MS. SMITH: Mr. Kramer, could I just add a wrinkle?

HEARING OFFICER KRAMER: Sure.

MS. SMITH: Sierra Club assumes that Ms. Susan Lee was going to be testifying on alternatives. And I guess we'd just like maybe clarification on whether or not Mr. Anderson will be offering something new, or sort of what's happening here.

Because we're not going to have an
opportunity to rebut this testimony that we'll see
today. So I'm just not sure if this is something
new.

MR. RATLIFF: It's in testimony that
we're filing today, yes. New meaning?

MS. SMITH: Well, you know, I've spoken
with Ms. Lee at the workshops at length, and then
also --

MR. RATLIFF: Yes.

MS. SMITH: -- I was able to review her
testimony in the FSA. And now it sounds like you
have a new witness on the I-15 alternative that
may have -- need to be discussing a different
aspect of the alternative. I have no idea.

MR. RATLIFF: Well, in the workshops we
did discuss the fact that staff had done field
work in the I-15 area. One of the principal
persons who did that was Dick Anderson.

And I think you've heard, at the
workshops, discussions of what he found
principally through Susan. But I don't know if
it's new information to you or not. It may be
more specific information that he can offer about
what the result of the survey was.

But it's an effort to try to summarize.
Both he and Ms. Davis were looking at the areas in the proximity to I-15 to try to determine its suitability for habitat, to try to further the discussion of alternatives. So it's offered in that vein.

MS. SMITH: I think that's fine. It doesn't sound like it's anything new, and it sounds consistent with what we were talking about at the workshops. Mr. Kessler's nodding his head.

HEARING OFFICER KRAMER: Thank you. I noticed the one witness I forgot to mention, the Center for Biological Diversity. Back again in the area of alternatives is Bill Powers.

MS. BELENKY: Yes.

HEARING OFFICER KRAMER: And is that the gentleman from San Diego, he's an engineer?

MS. BELENKY: Yes.

HEARING OFFICER KRAMER: So he's testified in some of our proceedings before?

MS. BELENKY: Yes.

HEARING OFFICER KRAMER: Okay, so in biology, we now have all the witnesses identified, as far as I can tell.

Is there any other issues any of the parties wish to raise with regard to biology?
Hearing and seeing none, let's move on to soil and water resources.

There Mr. Harris estimated about a half an hour for his direct and cross, I believe it was. And we've heard earlier that there are certainly going to be questioning from Mr. Basofin about scour. Are there any other issues, specific issues, we should note in the minds of any of the parties.

MR. CONNOR: This is Mike Connor. Is bio-20 going to be dealt with under biology or under water?

HEARING OFFICER KRAMER: I don't have that one in front of me.

MR. RATLIFF: Bio-20, I believe, is the requirement that staff proposed to incorporate provisions of what the Department of Fish and Game would require in the form of a stream-alteration agreement to put it into our license.

So we had proposed specific conditions in the staff testimony for that, based on discussions with Fish and Game. And I think if there's an issue, it's the issues that the applicant suggested that they didn't think there should be a condition, so.
HEARING OFFICER KRAMER: Okay, so it sounds like it will be discussed in the biological topic. Does that answer your question, Mr. Connor?

MR. CONNOR: Yeah, as long as I get an opportunity to ask questions about it.

HEARING OFFICER KRAMER: Okay, so is there anything else besides the sort of wash away, the scour issue, that any party is planning on discussing?

MS. BELENKY: Yes. This is Lisa Belenky. On the water resources we still have some questions about the recharge in the basin, the numbers that were collected by staff. And some of the basis for those determinations. We just have a few questions on that.

HEARING OFFICER KRAMER: Okay, so it sounds like staff will need to have those witnesses here, as well.

MR. RATLIFF: Do you anticipate that that would be on Tuesday or on Wednesday?

HEARING OFFICER KRAMER: We'll have to see. We're going to have to juggle these things in a moment.

Cultural resources. Two witnesses each
from the applicant and the staff. Do we have any plans, any need to cross-examine them from any party?

MR. CONNOR: This is Mike Connor. I would like to ask some questions of staff regarding some of the cultural resources that are found on the site.

HEARING OFFICER KRAMER: Are you going to need to get into any sort of information that might be confidential, do you think?

MR. CONNOR: No. I'm, you know, I'm cognizant of that kind of issue.

HEARING OFFICER KRAMER: So you would be speaking generically?

MR. CONNOR: It will be more general, although I will be asking questions about specific sites.

HEARING OFFICER KRAMER: Okay. Do you have any specific witnesses in mind, the applicant versus staff witnesses, for instance?

MR. CONNOR: I don't know. I don't know who was responsible for the statements in the FSA.

MR. RATLIFF: The staff.

MR. CONNOR: Well, then it would be staff.
HEARING OFFICER KRAMER: Although sometimes staff does rely on work that was done by the applicant.

How long do you think your examination will take?

MR. CONNOR: I'm not expecting to ask more than a couple of questions.

HEARING OFFICER KRAMER: Okay. I'll give you .2 hours.

MR. CONNOR: I think less than that.

HEARING OFFICER KRAMER: Well, then you get a credit somewhere else, how's that?

(Laughter.)

HEARING OFFICER KRAMER: Okay, land use. That's kind of a cross-over issue with visual, as I understand it. And -- to some degree, or at least the argument is that the visual impacts of the project conflict with some general plan policies of the county, for instance. But I think there's more to it than that, possibly.

So, does anyone need to or desire to cross-examine any of the land use witnesses for either party, the applicant or staff?

MS. BELENKY: Well, this is Lisa from the Center. We may have some questions. I'd have
to go back over it. It is a contested issue, whether there's a specific fact that I know of today that I need to cross-examine on.

I believe there are some questions that we have.

HEARING OFFICER KRAMER: Okay, well, we will put that down then as a need. If you discover that you no longer have a need to question the witnesses, as a courtesy to the parties if you could let them know. And let me know, as well. And perhaps we can save them a trip.

MS. BELENKY: Yes.

MR. CONNOR: There's also some overlap between land use and the alternatives issue.

MS. BELENKY: I believe there is.

HEARING OFFICER KRAMER: In what sense?

MR. CONNOR: Well, in the applicant's testimony they argue that the no-project alternative was felt to implement the multiple use goals of FLPMA. And I'd like an explanation of that.

HEARING OFFICER KRAMER: I'm not sure that would be a land use issue, though.

MR. CONNOR: What are the multiple use
goals of FLPMA? I mean that's all about land use.

HEARING OFFICER KRAMER: Right, but land use is about the project's conformance with the applicable laws and standards. And I mean land use environmental impacts.

And it does sound like it's an alternative issue, because if you're talking about whether an alternative site or an alternative technology, or some other kind of alternative, fails to meet a land use plan, that really is -- I think, you know, it's properly dealt with in the alternative section, or the part of the discussion.

MR. RATLIFF: It can be dealt with either place, I suppose. But, --

MR. CONNOR: I have no problem as long as we can, you know, raise the issue in the discussion of the alternatives.

HEARING OFFICER KRAMER: Yeah, --

MR. RATLIFF: FLPMA is a land use, the federal statute regarding the land use for federal lands. And it does have revisions, in addition, that it recognizes the need for congruity with state and federal laws. So it has a very strong land use aspect. And that may be what Mr.
Connor's referring to.

I think it could be, you know, -- but

I'm unfamiliar with the testimony to which he's
referring where the applicant said that the no-
project alternative would be more consistent with
FLPMA.

But, in any case, I can see the
discussion of FLPMA would come under land use
perhaps more appropriately than under
alternatives.

HEARING OFFICER KRAMER: Even if it's a
discussion about an alternative as opposed to the
project site, itself?

MR. RATLIFF: Well, I don't know then.

I mean I --

HEARING OFFICER KRAMER: Well, so I
guess the message --

MS. BELENKY: (inaudible) --

HEARING OFFICER KRAMER: Go ahead.

MS. BELENKY: I do think it's trying to
compare one to the other. So if you're saying
another area is not appropriate but this area is,
there may be ways in which you're making arguments
that actually goes to both issues.

So I do think that there is a need to
discuss land use and the way it's dealt with in
the FSA. And I do think it goes also to the
alternatives.

HEARING OFFICER KRAMER: Well, it does
sound as if you're asking for a land use expert to
be there to answer questions about land use
opinions that are offered in connection with the
alternatives.

MS. BELENKY: As well as the site,
itslf. I think there are --

HEARING OFFICER KRAMER: Okay.

MS. BELENKY: -- anyway, I think it
shouldn't take very long, but I don't think
anyone's ready to let go and preclude any
discussion.

HEARING OFFICER KRAMER: Okay. Well, --

MR. HARRIS: I don't see the issue that
we're talking about identified in any of these
prehearing conference statements. So what is the
issue? And, again, do I have to have my witnesses
here for that panel?

By the way, Michael, I don't remember
making that statement about FLPMA and the no-
project alternative the way you described it.

MR. CONNOR: It's on the first page of
the applicant's testimony on alternatives.

MR. HARRIS: I guess, again I'm trying to save my witnesses the burden of having to be here if we've got legal questions about FLPMA, you know, that doesn't require witness testimony.

And these other issues I don't think are land use issues. So I'm just trying to avoid having my panel show up for questions that can be answered by alternatives.

HEARING OFFICER KRAMER: Well, do you have a panel? Because I only have one person down as your witness.

MR. HARRIS: No, I'm talking about if it's an alternatives issue and not a land use issue, that someone on my alternatives panel could probably answer it. But I don't even know what it is, really, with any specificity here.

What is the land use issue that they want to ask my witnesses about? Poorly phrased.

HEARING OFFICER KRAMER: Mr. Connor, or Ms. Belenky. Did I get it right, close?

MS. BELENKY: Um-hum, yeah. Well, I mean I think we've raised this repeatedly. There's, you know, whether this is an appropriate use under the plans.
And actually I believe that -- even
raised this other question, as well. So, it seems
to me there's some -- we would want to be able to
at least ask some specific questions about that.

If you need a list of the questions
before the hearing, I didn't realize that was
necessary to have every question written out
already.

HEARING OFFICER KRAMER: Well, no, you
don't have to submit them in advance, but we are
trying to get people to describe the general area
of their interest and concern so that the parties
can bring the proper witness, and not
unnecessarily bring witnesses who have nothing to
contribute.

MR. HARRIS: Yeah, the prehearing
conference statements make statements like whether
this could become a de facto solar zone. And so I
mean, are they going to ask my witness, do you
think this should be a de facto solar zone.

I don't know what topics they want to
ask questions on for my witnesses. Their
statements are nearly identical. Page 4 and page
11 of Center for Biological Diversity. It talks
about FLPMA policy and then it talks about de
facto solar zones, and interfering with the PEIS.

And on page 4 of Western Watersheds Project, the same arguments almost verbatim.

I don't think any of those issues are factual issues that require my witnesses to show up. I'd like to release them. But if I'm wrong, you know, I'm willing to hear the other side.

MR. CONNOR: You know, the issue from my perspective is that the project basically ends multiple use on that site.

MR. HARRIS: So are you going to ask my --

MR. CONNOR: That's where I'm coming from.

MR. HARRIS: Yeah, I think --

MS. BELENKY: Well, I think that -- I just want to say I think that you presented your position and the FSA present what is considered expert opinion about these questions.

And so to the extent that we want to understand what the basis of that opinion is, I think we have to do it in this forum of the evidentiary hearings.

The fact that we may have a different interpretation of the law is also at issue.
But the question for this hearing, as I understood it, was that we are entitled to probe the factual basis of the opinion that is provided by the staff, and the opinion that is provided by the applicant in their filings on these issues. And you are presenting these people as experts on these issues. And therefore we are entitled to cross-examine them on those issues. Is that not correct?

MR. HARRIS: Well, maybe there's some misunderstanding. Just because there's no live witness testimony doesn't mean the issue is resolved in the applicant's favor. I mean those are legal questions for briefing. Again, I'm just trying to release people from having to prepare to answer the question, do you think this should be a de facto solar zone, or do you think this is consistent with FLPMA, when those look like legal issues to me, and not factual questions for live witness testimony.

HEARING OFFICER KRAMER: Well, Mr. Harris, I think these parties certainly are entitled to probe the underlying assumptions that witnesses made in rendering their expert opinions.

MR. HARRIS: I don't disagree, Mr.
Kramer. But this is not our testimony. Our testimony does not say de facto solar zone. This is their characterization of what the site looks like after. Which part of our testimony factually are they disputing?

And you know, with all due respect, the Sierra Club has made it very clear, they don't want to delay the proceedings. But other people seem to be interested in bringing panels for things that don't have any factual basis here.

HEARING OFFICER KRAMER: Well, wait, you have --

(Parties speaking simultaneously.)

HEARING OFFICER KRAMER: -- one witness and the staff has one witness. So, this isn't a --

MR. HARRIS: We were prepared not to have live witnesses, even though we want to litigate this issue. Again, I'm trying to keep a panel away from -- having a panel here to answer the question of should this be a de facto solar zone.

HEARING OFFICER KRAMER: Well, I think you can object to that question at the appropriate time, if that's what they ask. But they're also
talking about asking other questions that perhaps
are appropriate.

MR. HARRIS: Well, you know, we've heard
a lot of discussion about how long these hearings
are going to be, and potentially wasting time, and
eight hours of cross on that.

Having panels on non-factual issues that
are not disputed will waste the applicant's time
and money in preparation. It will waste other
people's time in hearings.

And so what is the factual issue on land
use that they want to probe? And why do they need
to ask a question of my witnesses? Why do I have
to prepare witnesses, and why does BrightSource
have to pay for those witnesses to be prepared and
show up if there are no factual disputes?

HEARING OFFICER KRAMER: Well, they
refer to the FSA, which was authored by staff.

MR. RATLIFF: I guess I'm curious, are
you saying, Mr. Harris, that you don't want to
cross-examine our witness on land use?

MR. HARRIS: I was prepared to do it all
in briefs. We have a legal, you know, we have a
legal question. I wasn't going to put my
witnesses on, and I'm not going to cross yours.
MR. RATLIFF: Okay. I can agree to that.

MR. HARRIS: And so the only purpose of bringing the witnesses in, it seems to be to answer Lisa's questions. And if that wasn't clear, I apologize. I had not planned on putting on live witness testimony nor cross-examining your witnesses on land use. Although I will brief the issues.

But, you know, if her questions are for staff, then I'll shut up and you can bring your panel.

HEARING OFFICER KRAMER: Well, I think staff should have their witness ready. Again, Ms. Belenky is going to review her notes. And if she decides that she doesn't have any questions, she'll let people know.

Nobody else, correct me if I'm wrong, in the room and on the telephone has any questions on the topic of land use? So, hearing none — Mr. Connor —

MR. CONNOR: Just to be clear, I will, if there is no discussion, specific discussion, of land use, I would be able to raise my questions during the discussion of alternatives?
HEARING OFFICER KRAMER: If your questions are about the land use implications and impacts and conformity of the alternatives, that would be the place to raise it, would be in the alternatives discussion.

If your questions are about the conformity of the project site, then that is analyzed in the land use section.

So which category do they fall into?

(Pause.)

HEARING OFFICER KRAMER: Are you there?

MR. CONNOR: Yeah, yeah, I'm thinking about it.

MS. BELENKY: Yeah, and I'm thinking about it, as well. I guess it didn't occur to me that we weren't going to discuss land use during these hearings. And I will have to go through and prepare those questions now at the beginning, and make sure that I have enough sufficient questions that I need to have all of these people there. Because it's apparently a huge burden to the applicant to have the person discuss land use.

But I am concerned that the statement that our opinion, I want to make sure that I understand the position. My understanding is that
opinion statements in testimony and in the FSA can be probed during the hearing for their factual basis. Is that not correct?

HEARING OFFICER KRAMER: It is. If it looks like, at some point, that you've got a fishing pole and you're just casting in every direction, though, we will ask you to wrap it up very quickly.

MS. BELENKY: Well, I don't think we've put anything in our testimony that would make anyone think that we are simply fishing. We are trying to do the best that we can on a very short timeframe. And not to omit issues that are important, while at the same time letting go of issues that we believe perhaps are not as important.

But I do have to echo what's been said by several other people, this is an extremely short timeframe for a lot of factual background and documentation. And even getting documents from staff and getting all of the -- being able to read all of these documents is very time consuming.

And we are doing the best we can, but we are not prepared to give up our right to probe on
certain issues at the beginning of the process rather than later.

So I will, not wanting to waste anyone's time, I will certainly put my needs at the top of my list now, so that the applicant can be relieved of having to have anyone at the hearings. Because apparently this is a problem for them.

But I do object generally to the fact that this prehearing conference is being used to push us to make substantive statements, and to provide all of our questions a week before we thought we had to, when we're all rushing to get a million things done, and get all this work done. And I really feel that this is inappropriate.

HEARING OFFICER KRAMER: No, I don't mean to imply that you're fishing in any way. Just trying to tell everybody who's listening the sort of standard that we apply to help you to organize your work in this case.

And as I said a few minutes ago, we're not looking for you to identify and list specific questions, but we are trying to find out which subtopic areas you're interested in to help the parties make sure that they have the proper witnesses there.
And then it helps them to prepare more efficiently, as well. Because they have the same time limits. They probably have more resources than you do, I'm sure of that. But we want to make sure that everybody is not wasting time in their preparation.

So, land use, staff will certainly have their witness available, is that correct?

MR. RATLIFF: Yes.

HEARING OFFICER KRAMER: Okay.

MR. HARRIS: Could we ask Lisa and Michael to look at both land use, air quality and let us know if between now and the hearings that they decide they don't need to have live witness testimony?

We'll bring witnesses and prepare for it, but if, on further cool reflection, you guys decide -- because you're the only people that asked for land use or air quality. If you decide that those could be dealt with under biology or alternatives or some other section, that would be helpful.

But, again, we'll bring whoever you guys decide you need to question. Thank you.

HEARING OFFICER KRAMER: Well, I'd have
to say on several areas, land use is one that's a likely candidate. Air quality, as I said earlier, there always seems to be something that comes up. Alternatives, certainly, the hotly contested areas, alternatives and biology, the Committee may have some questions, as well, that we've not fully formulated.

So I would expect to at least have your witnesses on call for those topics.

So that brings us to the end of the list of topics we need to work through to complete the hearings.

Now we need to put them in some sort of order. Let me just throw out a suggestion and then listen to any responses from the parties.

There are some areas that I think we can just have as floaters, that we can use if we find ourselves with an extra few minutes. So we won't specifically place them on the timeline.

And I would say that would be traffic and transportation, visual, project description -- well, that has a couple outside witnesses, we'd better not do that one.

Worker safety, that's where everybody will be in the building, so that would be easy to
move around.

MR. RATLIFF: Is that fire protection?

HEARING OFFICER KRAMER: Worker safety and fire protection, right. I guess those would be the floaters.

MR. RATLIFF: Could I ask that we put our visual witness on at the outset so he can give his reaction to the document that was introduced at the last hearing? That should take three to four minutes. And if the applicant wants to cross-examine him, they can. If they don't, so much the better. And then we can go on to the next topic.

HEARING OFFICER KRAMER: Any objection from another party?

Okay, visual will be first on Monday, the 11th. Followed by project description. Followed by biology. And I don't think we need to put anything else on Monday.

MR. RATLIFF: Do we have the possibility of going late Monday to try to finish the biology?

HEARING OFFICER KRAMER: I think yeah, if we need to. Is that okay?

(Pause.)

MR. BASOFIN: Mr. Kramer, is there a
possibility of biology running over to Tuesday? I just want to know in case I have to have my witness available Tuesday.

It seems to me that having those three topics on Monday is ambitious, to my mind. I think biology might, probably merits an entire day.

HEARING OFFICER KRAMER: Well, I think the other two items there are only -- well, visual will take 20 minutes; and project description maybe the rest of an hour.

PRESIDING MEMBER BYRON: Mr. Basofin, it also matters how many hours do you consider there are in a day.

We are intent upon getting through these in the time that we have allotted, or sooner. So I think you'll find this Commission is happy to continue into the evening hours to get through these issues.

MR. BASOFIN: I'm happy to get -- and hang around, too.

HEARING OFFICER KRAMER: Let's see, alternatives we have to finish on the 12th.

So, Mr. Basofin, for your witness, would you need your witness around for all of the
biology discussion, to the bitter end? Or if we
made sure and got his testimony in on the Monday,
would that take care of your concern about his
schedule?

MR. BASOFIN: Well, that's fine, I think
he just needs to be available for direct
examination and cross, which I assume there will
be some.

HEARING OFFICER KRAMER: And then not
rebuttal after rebuttal, surrebuttal, I guess they
call it?

MR. BASOFIN: Well, I imagine there will
be some redirect.

HEARING OFFICER KRAMER: Okay.

MR. BASOFIN: I'm sure there'll be some
redirect, let me rephrase. But I'm just
considering the entirety of the witnesses for
biological resources. I mean I think there's, I
don't know, how many --

HEARING OFFICER KRAMER: Well, hopefully
they're not all going to repeat each other.

Because I think we need to start alternatives on
Tuesday, so we can make sure and finish it. The
consensus seemed to be that we can finish
alternatives in a day. Half a day did somebody
say, I think. Does that sound fair to everyone?

It's a complicated issue, as well.

MS. BELENKY: I'm not sure half a day is
going to be enough, but a day.

HEARING OFFICER KRAMER: Well, and, Mr.

Basofin, your witness could, I supposed, finish up
on the telephone. That's an option, correct?

MR. BASOFIN: On the telephone?

HEARING OFFICER KRAMER: Yes, if he

needed to leave.

MR. BASOFIN: Sure.

HEARING OFFICER KRAMER: Okay. All

right, so let's go with alternatives starting on
Tuesday. And then we'll take -- hopefully we can
finish biology before or into the evening on the
11th. And alternatives on Tuesday beginning at
the beginning of the day.

Air quality trail at the end of the day.

Well, let me ask this. Do the parties feel a need
to specifically schedule any of the other
witnesses? I guess soil and water is the other
big one, relatively large, after alternatives.

So why don't we have soil and water
follow alternatives on Tuesday afternoon. And
then Wednesday afternoon can be air quality to
And then we can just fit in the others when we have time, unless somebody wants to request that we set a specific interval for some of the other topics.

MR. HARRIS: We're going to need to know what days to make our witnesses available. So, can we kind of fill it out so I can at least give my guys an idea of -- guys and gals, sorry.

HEARING OFFICER KRAMER: We're trying to avoid -- you received my email that said mark your calendars, the 14th is reserved on the Committee's calendars and we have the room and everything. So we have that day available.

But I don't think we want to schedule in for that day until we know we need it. But what we can do is adjust the schedule as we go. So, if biology finishes early, we'll try to do some of the little things.

And if, for some reason, I hate to even say it, but if things get less quick than we were hoping, we can -- for instance, if we know air quality is not going to be possible on the 13th, by the middle of the day on the 12th, then we can reschedule on the fly so that you'll have a little
But did you have a specific topic, Mr. Harris, or witness who you really need to time?

MR. HARRIS: You've already accommodated my major concern about no alternatives on the 13th. I'm just trying to figure out what to do about like land use and cultural and whether those folks are -- worker safety and fire protection, whether we're even going to have hearings on those issues. And it sounds like they would be Wednesday or Thursday, regardless. So I can at least let my witnesses know that. The ones you're calling the floaters are not going to happen before Wednesday.

HEARING OFFICER KRAMER: Yeah, air quality -- what's a fair estimate of air quality again? Half an hour?

MR. HARRIS: Is that for direct? We'll have very little on direct.

HEARING OFFICER KRAMER: Okay, so just the questions from the other parties. Yeah, so I think we could assume, unless it becomes more convenient, that the remaining items will be on Wednesday afternoon.
MR. HARRIS: Which half of the day do we have on Wednesday? Is it the --

HEARING OFFICER KRAMER: The afternoon.

MR. HARRIS: It's the afternoon.

HEARING OFFICER KRAMER: It's following the business meeting.

MR. HARRIS: Okay, so 1:00? Or immediately following the business meeting.

HEARING OFFICER KRAMER: I think I had a specific time. Yeah, 1:00.

Okay, so we could go into the evening again to finish up those items if we needed to, the floaters or the --

MR. RATLIFF: I think -- Mr. Kramer, I think on some of those issues we -- I mean I'm not going to be cross-examining their witness about air quality, for instance. And I don't think they're going to be cross-examining the staff witness. So it's really --

HEARING OFFICER KRAMER: The intervenors.

MR. RATLIFF: -- whatever the intervenors want to make of it, I think. And by the way, I wanted to confirm that our air quality witness, who is in southern California, can
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1 testify by telephone on that, or?

2 HEARING OFFICER KRAMER: Does any party

3 have an objection to Mr. Walters, staff's air

4 quality witness, testifying by telephone?

5 MS. BELENKY: No.

6 MR. CONNOR: No.

7 HEARING OFFICER KRAMER: Okay, then that

8 will be fine.

9 MR. HARRIS: We may need similar

10 accommodations on land use. We're not sure

11 there's going to be a panel on land use, and our

12 witness is in Santa Barbara. So, we'd like the

13 same kind of flexibility for our land use witness.

14 I think everybody else is local.

15 HEARING OFFICER KRAMER: Okay, so you're

16 thinking about additional witnesses to Ms. Scholl?

17 MR. HARRIS: No, just Ms. Scholl. I'm

18 sorry. Mr. Scholl is --

19 HEARING OFFICER KRAMER: Okay.

20 MR. HARRIS: -- she's in Santa Barbara,

21 so.

22 HEARING OFFICER KRAMER: Okay.

23 MR. HARRIS: And, again, I'm not

24 intending on putting on any direct testimony on

25 land use or air quality unless required.

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HEARING OFFICER KRAMER: I understand.
Okay, so does any party object to applicant's land
use witness, Ms. Scholl, testifying by telephone?
MR. RATLIFF: No.
MS. BELENKY: No.
HEARING OFFICER KRAMER: Thank you.
So, to recap, and I'll put out at least
an outline. I don't know that I'll make it a
formal Committee order, but I will email something
around hopefully tomorrow to summarize all this.
But on Monday morning, the 11th, we'll
start with visual for just a few minutes. Project
description for a few more minutes.
Then we'll jump into biology; and take a
lunch break; jump back in. Maybe a dinner break
and try to finish up biology on Monday.
We'll start on Tuesday morning with
alternatives. And then finish the day with soil
and water.
And on Wednesday we'll take up the
remaining items beginning with air quality.
Allowing the possibility that if Monday or Tuesday
goes really smoothly and we have a few minutes,
and it is possible without inconveniencing any
party to bring some witnesses in, that we may
cover some of those other topics on those days, as well.

MR. HARRIS: Mr. Kramer, Mr. DeYoung has generously offered to have food brought in, as needed. Because we know it's hard to find stuff around here, especially in the evenings. So on Steve's behalf I'll make that offer for at least dinners, and maybe lunches, as well, if it will help facilitate the hearings.

HEARING OFFICER KRAMER: Thank you.

PRESIDING MEMBER BYRON: I appreciate that. Of course, you'll need to make that available to everyone. I'm inclined to not say lunch, just because --

HEARING OFFICER KRAMER: We have a vendor in the building.

PRESIDING MEMBER BYRON: Yeah, and that's when we have the opportunity to break and we'll need that break.

But since I've interrupted, if I could, I just want to add a couple of other things. You know, I appreciate all the efforts to reduce the time, and that's the purpose of today's prehearing conference, the efforts to release witnesses, extremely important. In fact, it goes without
saying we're conducting the hearings here because we are under enormous constraints with regard to staff time and availability and cost.

So I'm completely sympathetic to that. But as they say in Hollywood, this is showtime. And we need to make sure we have the right people here. So, when in doubt, let's make sure they're here.

And I guess my comment applies mostly to the applicant. There's been every effort on the part of the intervenors to release witnesses. But we don't want to come up short.

The second is, or maybe the third item. I consider myself a technologist. I love to use the technology, the phones work great most all the time. But we are taking some risk there that we should also consider.

And we will do our best to make sure that this technology works to our advantage. But as we all know, that fails occasionally. Nevertheless, we will press on on the other topics until we can fix those things.

So, I just want to make sure everybody understands, that's not a purpose for delay or not continuing with the evidentiary hearing. We will
continue. At least that's my plan.

Mr. Kramer.

HEARING OFFICER KRAMER: Thank you. Two more little housekeeping items. One is the briefing schedule. Reviewing the suggestions of the parties, it appears that everyone would agree with the applicant's proposal that opening briefs be scheduled for three weeks after the last transcript is made available. So we'll adopt that approach.

As a practical matter, we may have to set dates before we know when the transcripts are going to be available. It's generally two weeks, so we may say five weeks from the end of the hearing or something like that. But to go along with that formula. And unfortunately, there's no way to expedite the transcripts.

And then that also suggested reply briefs ten days after the opening briefs, optional reply briefs. So you're not required to file one. So does any party object to that briefing schedule? Hearing none, that's what we will do. We will formalize that when we pick a date at the end of the hearings to be clear to everyone what that's going to be.
And then a simple housekeeping matter.

At the last hearing the applicant provided us with exhibit 69, which was the viewshed map that Ms. Belenky was asking about clarification for.

And I notice that since then in my email, I guess they produced a cleaned-up version that no longer has handwritten corrections to the KOP numbers.

So I wondered if we couldn't just get another, was that 11-by-17, copy, a couple copies of that for the record. And if the parties would stipulate to the substitution of the newer cleaned-up version for the exhibit that was passed out at the last hearing? Any objection to that?

Hearing none, that is all that I had on my list to cover today. Is there any other issue any party wishes to raise with the Committee?

Mr. Suba.

MR. SUBA: Yes, Mr. Kramer. Could you just review which of the agenda items are going to be informal versus which ones are formal? Is biology the only formal hearing process?

HEARING OFFICER KRAMER: It may be that some of them, like land use where there's only one witness for each party, we may just handle that in
a somewhat more formal way where everybody
questions one witness at a time.

So it'll be somewhat situational. But
where we have a contested issue, where there are
multiple, more than two, say. And maybe even in
those cases, even two witnesses, those will be
held as the panels.

But the plan there will be that each
party initially will be able to ask all of their
questions without interruption of the panel. And
then once all the, basically the opening to the
direct testimonies has been taken, then we'll have
a more free-form exchange.

But even at that point I'll be calling
on people to ask the questions. Although on
occasion people will just ask them of each other.

So it'll be kind of a hybrid. As
necessary, we'll modify the process as we work
through it and learn. And try to make it better,
and even more effective.

But, as you've heard, in the prior case,
certainly Commissioner Byron and I found it to be
a very effective way to get at all the details of
a rather sticky issue.

No issues, other issues?
MR. HARRIS: Could I just --

HEARING OFFICER KRAMER: Mr. Harris.

MR. HARRIS: -- make a comment?

HEARING OFFICER KRAMER: Certainly.

MR. HARRIS: I want to thank the staff and Mr. Kessler, in particular, John, thank you for facilitating the workshop on the 15th, and the subsequent phone calls. I thought those were very helpful, and went a long way to both putting issues on the table; and I think it also kind of broke down some of the barriers between the parties as combatants versus individuals. So I thought that was very useful. So I want to thank them, the staff, for that.

I guess the one other procedural thing that I've just been handed a note to remind me of, is that I'm anticipating that the applicant will want to go last on all these subjects. So on biology I'd like our witnesses to be the last panel. We've got the burden of proof.

And I think that would potentially cut down on the amount of time I'm going to need on direct, for example, if some of the issues are played out by some of the other parties. So carving our analysis down, I think it will help us
to go last on those topics.

So that's the applicant's request. So I think that's the way we'd like to proceed in terms of order of witness presentation.

HEARING OFFICER KRAMER: Does any party object to the applicant going last?

MR. BASOFIN: It seems to me that the party with the burden of proof would want to have their witnesses go first.

HEARING OFFICER KRAMER: Well, he's saying otherwise. So, do you object is my question for you and the other parties.

MS. BELENKY: This is Lisa Belenky. I also am a little bit confused why they would go -- have their panel go last. To the extent that several of our -- the witnesses from the intervenors are going to be discussing that testimony that they've already put in the record, I think it may be confusing to have them go last, actually.

MR. HARRIS: Let me be real clear about why we're making the request. We've got the burden of proof, which I think means that we ought to have the opportunity to present a full case.

And some of the intervenors will be
providing for each other what's essentially friendly cross-examination, bolstering arguments that they share against the project.

And I think for us to fully meet our burden of proof, that it's important that the entire record on biology, for example, be put out there so that we have an opportunity to respond.

Otherwise, if we go first, there will be a chance for parties to basically rehabilitate their witnesses back and forth, without another change for the applicant to put their case on, in chief.

So that's exactly why we've asked to go last. And I think it's a procedure that they typically follow at the California Public Utilities Commission and regularly follow there in circumstances where you have multiple intervenors with, you know, common goals that in apposite to the applicant's position.

So that's why I made the request.

MR. RATLIFF: If I could just interject. I mean it's always the applicant's burden of proof. Typically, I mean the typical fashion in which we -- the order in which we produce our testimony is typically that either the staff or
the applicant goes first. And then the intervenors follow.

I don't think there's any, you know, order that is required. It's really whatever makes sense to you. In a way, staggering the testimony, I think there's a sense that whoever gets the last word, you know, wins.

But I -- to me it emphasizes sort of the, perhaps the disadvantage of the formal approach is that when you do have the informality of people in a discussion, then there's always the opportunity to respond or to supplement.

But when you take it sequentially, party-by-party, then you always have the disadvantage of, oh, if only I'd had a chance to address that.

And that is the disadvantage, I suppose, in doing it in the formal way. And I realize that maybe we aren't going to do it that way.

But we don't object to them going last. But we don't prefer it, either. We leave it to your decision.

MR. BASOFIN: I think on further consideration I would object. It seems to me that the intervenors' testimony is sort of in the
nature of rebuttal testimony, in that we are
reacting and responding to what's included in the
FSA as a seminal document and the applicant's
testimony, as the project proponent.

So I think it might be a little bit
awkward for us to be examining our witnesses who
are, you know, really responding to what the
applicant and staff have put into the record.

I would also add that I think that if
intervenors are examining each other's witnesses
it would not be in the nature of cross-
examination, as Mr. Kramer has said, has
requested, that the intervenors coordinate amongst
each other, so that there isn't any duplication.

And so if the intervenors are examining
each other's witnesses, I think that would be in
the nature of direct examination.

MS. SMITH: Right, I completely agree. I
mean I'm not trying to game some kind of a
litigation strategy here. Mostly just as a
practical matter we are responding to an
application. And then the AFC. And typically
that's the baseline of what was presented.

And then the intervenors follow up with
any issues that they have as a result of that
testimony. So, it just seems awkward to me and 
not really all that productive.

Thanks.

HEARING OFFICER KRAMER: There's another 
model where parties want to go first, and then 
have the ability to rebut. So they still get the 
last word, but they get to frame, to the extent 
they can, the discussion by going first.

As I hinted earlier, the Committee's 
more interested in getting the truth and rather 
than just relying on the evidence that came out, 
because, you know, we had a particular order, and 
we went through the order and there was no more 
ability for anybody to talk and address some 
unanswered questions.

So, I don't know, as a practical matter, 
that it's going to matter much, for us, who goes 
first or who goes last. Because we're likely to 
have rounds, and especially when we get into the 
panel discussions, we're going to have, you know, 
back and forth, and back and forth, until we've 
heard everything. And in a very efficient time, 
of course. And so I don't know that there's any 
tactical advantage to that.

PRESIDING MEMBER BYRON: Mr. Kramer, I
would always think, as the Presiding Member, I have the last word. But I'm reminded there are four other Commissioners that will likely have the last word, too.

Mr. Harris, let's take this as a suggestion. We're not going to decide this here. I'll certainly rely upon my fellow Commissioner and Mr. Kramer on how we'll proceed. Maybe we'll even mix it up a little bit.

But my recommendation, Mr. Kramer, is that we take the suggestion and consider it prior to the evidentiary hearing next week.

HEARING OFFICER KRAMER: Okay. So, look for a footnote on the informal outline of the events.

Any other issues?

Okay, well, thank you all for coming. Anybody on the telephone -- do we have any public comments that anyone wishes to make, either in the audience or on the telephone?

Hearing none, thank you all for participating. And we will see you next week.

And we're adjourned.

(Whereupon, at 4:05 p.m., the conference was adjourned.)
CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of January, 2010.

PETER PETTY

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I certify that the foregoing is a correct transcript, to the best of my ability, from the electronic sound recording of the proceedings in the above-entitled matter.

January 11, 2010

Margo D. Hewitt,

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