ADDITIONAL EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

Application for Certification for
The Ivanpah Solar Electric Generating System

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CALIFORNIA ENERGY COMMISSION

HEARING ROOM A
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

MONDAY, MARCH 22, 2010
9:53 A.M.

Reporter - John Cota
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
Tim Olson, Adviser

STAFF AND CONSULTANTS PRESENT
John Kessler, Project Manager
Kevin Bell, Senior Staff Counsel
Susan Sanders
Misa Milliron
Brenner Munger

PUBLIC ADVISER
Jennifer Jennings

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
APPLICANT

Jeffery D. Harris, Attorney
Greggory Wheatland, Attorney
Samantha Pottenger, Attorney
Ellison, Schneider and Harris, LLP
on behalf of BrightSourceEnergy

Steve De Young, Vice President
Todd Stewart, Project Manager
BrightSourceEnergy

John L. Carrier, JD, Program Manager
Geoffrey Spaulding, Program Manager
Mark Cochran
Wendy E. Haydon
Thomas Priestley
CH2MILL

Steve Hill
Sierra Research

Arne Olson
Energy and Environmental Economics

PETERS SHORTHAND REPORTING CORPORATION  (916) 362-2345
INTERVENORS

Greg Suba
California Native Plant Society

Joshua Basofin
Defenders of Wildlife

Lisa Belenky, Senior Attorney
Ileene Anderson (via teleconference)
Center for Biological Diversity

Michael Connor, PhD (via teleconference)
Western Watersheds Project

Laura Cunningham (via teleconference)
Kevin Emmerich (via teleconference)
Basin and Range Watch

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

Gloria Smith, Senior Staff Attorney
(via teleconference)
Sierra Club

Bill Powers (via teleconference)
Powers Engineering

ALSO PRESENT

Mark Silverstein (via teleconference)
Clark County Department of Aviation

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

Ray Kelly (via teleconference)

Joe Howard (via teleconference)
Howard Engineering
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345
PRESIDING MEMBER BYRON: Good morning, everyone, and welcome to the Energy Commission Hearing Room A. It is a little bit later than we had intended to start this morning and I apologize.

This is an additional evidentiary hearing; I believe our fifth day of the Ivanpah Solar Electric Generating System project.

I'm Commissioner Jeff Byron, the Presiding Member of the Committee. With me is the Associate Member Vice Chairman Boyd, and his Adviser Tim Olson. To my right is my Adviser Kristy Chew. And our Hearing Officer is the busy Mr. Paul Kramer. Now the Chief Hearing Officer here at the Commission.

But, again, I apologize. We had intended to try and start 9:30 Monday, so that was a little bit difficult for everyone. And I know that many of you have traveled this morning or last night, and we appreciate that very much.

We're eager to see how much we get accomplished today, hopefully everything we need to.

I'm going to go ahead and turn this
evidentiary hearing over to Mr. Kramer who will
take us through a number of different issues. But
we're primarily here to look at the prefilled
written testimony and direct and cross-examination
of witnesses relevant to the reduced project
footprint alternative described in the applicant's
biological mitigation proposal. What we'll refer
to as mitigated Ivanpah 3. Mr. Kramer.

HEARING OFFICER KRAMER: Thank you.

Good morning, everyone. Again, sorry for the
delay. We're working out the bugs of WebEx --
actually I think WebEx is working okay -- we're
working out the bugs of my understanding of WebEx.
Maybe that's the best way to put it. And I'm sure
future events will be much less chaotic.

Let's begin by having everyone introduce
themselves. We'll start in the room and then
we'll go to the telephone. So we'll begin on my
left with Ms. Belenky.

MS. BELENKY: Lisa Belenky for
intervenor Center for Biological Diversity.

MR. BASOFIN: Joshua Basofin on behalf
of Defenders of Wildlife.

MR. SUBA: Greg Suba on behalf of
California Native Plant Society.
MR. CARRIER: John Carrier with CH2MILL, environmental consultant for the applicant.

MR. De YOUNG: Steve De Young with BrightSource.

MR. HARRIS: Jeff Harris, attorney for the applicant. Mr. Wheatland and Ms. Pottenger from my office are here, as well. As well as several members of our team who will be part of our panel and will introduce themselves at that time.

MR. STEWART: I'm Todd Stewart from BrightSource.

HEARING OFFICER KRAMER: Okay, on the telephone just hold up for now. Go ahead, sir, in the room.

MR. STEWART: Todd Stewart with BrightSource.

HEARING OFFICER KRAMER: It was Todd?

MR. STEWART: Yes.

HEARING OFFICER KRAMER: Thank you.

MS. MILLIRON: Misa Milliron, staff, biological resources.

MR. KESSLER: John Kessler, Project Manager, staff.
MR. BELL: Kevin W. Bell, Senior Staff Counsel on behalf of staff.

HEARING OFFICER KRAMER: Okay. And then on the telephone who do we have. I think we heard from -- the gentleman who spoke earlier, go ahead first.

MR. SILVERSTEIN: Okay, sorry about that before. Mark Silverstein, Clark County Department of Aviation.

DR. CONNOR: Michael Connor, intervenor for the Western Watersheds Project.

MR. EMMERICH: Kevin Emmerich --

HEARING OFFICER KRAMER: I'm sorry, you need to speak up.

MR. EMMERICH: Kevin Emmerich, Laura Cunningham, intervenor, Basin and Range Watch.

HEARING OFFICER KRAMER: Okay.

DR. PRIESTLEY: Yeah, this is Tom Priestley from CH2MILL.

HEARING OFFICER KRAMER: Okay, it was Tom Priestley?

DR. PRIESTLEY: Yes.

HEARING OFFICER KRAMER: Go ahead.

MS. ANDERSON: Ileene Anderson, Center for Biological Diversity.
HEARING OFFICER KRAMER: You need to speak up a little.

MS. ANDERSON: Ileene Anderson, Center for Biological Diversity.

HEARING OFFICER KRAMER: Thank you.

Anyone else on the telephone?

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

MR. HOWARD: Joe Howard (phonetic), Howard Engineering.

MR. HURSHMAN: Tom Hurshman, BLM.

HEARING OFFICER KRAMER: Good morning, Tom.

MR. HURSHMAN: Good morning.

HEARING OFFICER KRAMER: Anyone else?

MR. KELLY: Ray Kelly.

HEARING OFFICER KRAMER: Ray Kelly with?

MR. KELLY: I'm just an interested observer.

HEARING OFFICER KRAMER: Okay. Are you going to be wishing to make a public comment later, do you know?

MR. KELLY: No, I will not.

HEARING OFFICER KRAMER: Okay, thank you. Anyone else on the telephone?
MS. SMITH: Gloria Smith, Sierra Club.

HEARING OFFICER KRAMER: Good morning.

Is my voice coming across okay on the telephone, by the way.

MS. SMITH: Yes.

MR. SPEAKER: It's just fine.

HEARING OFFICER KRAMER: Okay, good. I don't want to accuse you of not speaking up and being an offender, myself.

Mr. Reporter, did you need any spellings?

THE REPORTER: The one gentleman that was about three or four back was very light. I didn't get his name at all. The one you said to speak up, but he didn't, he went on to the next name. I don't know who it was.

HEARING OFFICER KRAMER: Oh, was that perhaps Kevin Emmerich? Okay. I can give you his spelling later.

MR. EMMERICH: I can spell it now. It's E-m-m-e-r-i-c-h.

HEARING OFFICER KRAMER: Okay, thank you. Hold on a second. Okay, anyone else on the telephone or in the room who wishes to identify themselves? Okay.
The purpose of today's hearing is to take evidence as that little sound bite from the notice that Commissioner Byron read suggests. On the proposed mitigated Ivanpah 3, some people call them alternatives, some people just call it project modification.

But in any event, the modifications to the project that were described in the applicant's filing of February. And then were subsequently addressed in the staff's supplement to their, or rather they call it a final staff assessment addendum that was published on March 16th.

We're not here to talk about new alternatives, additional alternatives the parties might want to propose at this point in time. We're not here to rehash aspects of the testimony that we received at our, I believe it was five, actually, Commissioner Byron, previous hearings.

We're simply here to talk about that refinement to an alternative that was discussed during the oral testimony, at least, portion of the January hearings.

So, one of the things we will need to tackle perhaps are whether some of the testimony that's been proposed by the parties is relevant.
and admissible in that context.

I know that the environmental intervenors have requested to speak to Susan Sanders. And, Mr. Kessler, she's available for a limited time, is that correct?

MR. KESSLER: Yes, that's correct. She, unfortunately, is also double-booked for the Beacon hearing in southern California today. She expected she would more likely be available early this afternoon, because that proceeding is underway at 10:00 this morning.

HEARING OFFICER KRAMER: Okay, I understood from Mr. Celli, that Hearing Officer, that they'd be doing about an hour's worth of housekeeping details before they got into biology. So --

MR. KESSLER: We can try to get word to her if we wanted to try to work her in earlier this morning, Mr. Kramer.

HEARING OFFICER KRAMER: Okay. Well, let me just hear briefly from the parties about what they believe would be the appropriate approach.

Mr. Harris had proposed that the written testimony that had been previously filed last week
come in by stipulation of the parties. Let me ask first, does any party have any objection to receiving all that testimony by stipulation?

MR. BELL: Not on behalf of staff.

MR. HARRIS: Mr. Kramer, in our filing last Thursday we raised a couple issues about whether some of the testimony is within the scope of the proceeding. So with that caveat everything else though seems okay. And so do you want those numbers?

HEARING OFFICER KRAMER: And that is a housekeeping detail. We're going to have to put numbers on some of that testimony because it was not all numbered.

But let me ask generally, do any of the other parties object to that approach?

MS. BELENKY: I'm sorry, I'm not sure I completely understand what you're asking. Are you saying that we would still be able to cross-examine on all of that testimony?

HEARING OFFICER KRAMER: Yes. I think that would be appropriate.

MS. BELENKY: And there would still be direct testimony on all that testimony?

HEARING OFFICER KRAMER: Well, if it's
necessary. I don't think we want to have you put somebody up here to just repeat what they've written.

Are you suggesting that some of your witnesses would be supplementing what they --

MS. BELENKY: I'm just trying to understand what the scope is that you're asking us to agree with.

HEARING OFFICER KRAMER: It would be --

Mr. Harris, did you want to add something before I go on?

MR. HARRIS: I guess we could narrow this substantially if you'd like. The one exhibit, the CBD exhibit, which is 946, which is a video, or the transcript of a video. That particular item, obviously there'd be no one here to testify to the truth of the matter asserted. And there's no one here to be able to be cross-examined on that video.

That's the one that I think gives us the most pause. And in the interest of moving everything else along, we would waive our objections -- to the rest of the testimony, and allow everything else in. So really we're down to 946, that video, if that helps.
HEARING OFFICER KRAMER: Okay, I did have a question about Mr. Powers' testimony, which seemed to be proposing another alternative. Did the applicant or staff object to that at all?

MR. HARRIS: We did raise that issue in our filing of last Thursday. But, again in the interests of moving the proceeding along we'd be willing to allow that one to come in and just brief the issues, frankly. It is outside the scope of the hearing, but there's nothing in there that bothers me that I can't brief.

So it's outside the scope, but we leave it up to the Committee as to whether they want to exclude it.

MS. BELENKY: Can I respond?

HEARING OFFICER KRAMER: Sure.

MS. BELENKY: -- my exhibits. Thank you. I think I'll take them in order. First of all, the transcript was made by Ms. Anderson in her testimony. And it is a document that is available and anyone can look at it. And we provided the transcript as well as a link to the video.

Whether when an expert puts in a document and cites it for a particular thing, then
it is generally accepted as part of the testimony.

Now, are you saying that the producer of
the video would need to be present in order for
the video and the text of it to be considered by
the Commission?

HEARING OFFICER KRAMER: Actually it
maybe can help by referring to the portion of Ms.
Anderson's testimony where she does refer to that
document. Because I didn't see that, Lisa,
frankly.

MS. BELENKY: I'll pull it up. Ms.
Anderson, are you on the phone?

MS. ANDERSON: Yes, I am.

MS. BELENKY: It's page, I think it's on
page 4 of Ms. Anderson's testimony. And she
specifically cites to a statement made in the
video. The video was produced by the United
States Geological Survey. It has been publicly
provided. The statement was made by BLM wildlife
biologist. And I just don't see what the
objection is to.

MR. HARRIS: Well, maybe we can narrow
it further. The reference is to, I believe, page
39 of that exhibit. We would not object to the
admission of page 39 alone.
MS. BELENKY: I actually do object to admitting part of a document more than I don't understand what exactly it is that you are -- it is in the context of the video. The video discusses the desert tortoise and how it is faring out in the desert these days. It's about tortoise survival, which is completely relevant to this hearing.

MR. HARRIS: Well, I guess I'd offer one of two or more compromises. Either page 39, which is the reference cited by the witness. Or accept the document as public comment, not move it into evidence. So it would be in the record, but not as an exhibit to form the basis for a decision of the Commission.

I think it is very important, it would be like here it is in the entire encyclopedia, if I have a reference to the encyclopedia that reference is relevant because that's reference that's relevant to the opinion offered.

So either public comment or page 39 would be fine with me.

MS. BELENKY: I believe that the entire exhibit should be accepted into the record.

HEARING OFFICER KRAMER: Well, is Ms.
Anderson offering this BLM biologist statement as
expert testimony from the biologist? Or as simply
as part of the basis for an opinion that she's
formed and is offering?

MS. ANDERSON: That would be --
including it in my testimony because it does
inform my expert opinion.

MR. HARRIS: And also this comment is
from Larry LaPre of the BLM, not from the USGS,
itsel. But Mr. Lapre is not here and available
for cross. He could have been made available.

MS. BELENKY: You didn't ask for him to
be made available for cross-examination.

MR. HARRIS: Again, I don't have a
problem with admitting that portion of that larger
document that she relied upon.

HEARING OFFICER KRAMER: Okay, and the
whole point he's making is it would be better to
cite projects on disturbed land. And that
fragmentation is an issue.

Mr. Harris, I think we'll let this in,
actually we will let this in. But we'll give it
the weight that it's entitled to.

MR. HARRIS: We're clear that's the
opinion of one BLM staffer, not a BLM policy
statement. So that's fine, thank you.

HEARING OFFICER KRAMER: Okay, so that was your -- was that your only objection to the --

MR. HARRIS: Well, again, you know, that's the Powers' testimony and that portion of the attached testimony, as well, that seems to offer an exhibit outside of M3. Again, these are cited in our filing last Thursday. We believe it's within the Committee's proper exercise of its discretion to exclude those, but we're not going to press the issue here. I know your time is valuable.

HEARING OFFICER KRAMER: Ms. Belenky, do you want to -- I'm not sure you guys are arguing about the powers vested in that, so did you want to respond about its relevance?

MS. BELENKY: Yes, I would like to respond. You, yourself, said at the very beginning of this hearing a few moments ago, the issue that we reopened the hearings on was entirely unclear whether it would consider an alternative or somehow a mitigation proposal. That remains unclear, I would say, at this time. I believe that the new information and the scope of this hearing does actually implicate
alternatives. And I think Mr. Powers' testimony is perfectly on point.

HEARING OFFICER KRAMER: In what way?

MS. BELENKY: Because it shows that there are not only the alternatives that we already suggested in the record, but that there continue to be new opportunities for citing these plants in places that are far more appropriate than the place that it's proposed here. Places that do not have endangered species habitat and will not fragment that habitat, and have other very high environmental impact.

HEARING OFFICER KRAMER: Okay, now Mr. Powers has, of course, conducted an exhaustive analysis of how a power plant of this sort would fit into that particular area in the several pages that his testimony encompasses? I'm being a little pejorative there because in essence all he's done is tossed another possible alternative on the table, in the way I view his testimony.

MS. BELENKY: Well, I think it actually follows up very closely with his earlier testimony which shows that there are many other places that these could be cited. I don't understand if the
implication of your question is that Mr. Powers needs to go out and do a full engineering model for the alternative site. Or if it is enough to say there are alternative sites that have not been fully explored, and that is what he's saying?

HEARING OFFICER KRAMER: Well, and the world contains an infinite number of alternative sites. So, at some point it's the Committee's and the Commission's job to say enough; we've looked at enough alternative sites, or, you know, a reasonable range of alternatives, including alternative sites and to move on.

And I think this is the time to do that, move on. And because what Mr. Powers offers would not, by itself, be an adequate full analysis, admittedly a less than project-specific level that we would need to be able to use it as an alternative in our analysis, at this point it's really not helpful.

And what we don't want to do is get into another round of testimony to evaluate this newly proposed alternative, or even more alternatives that might be proposed, you know, after today.

So we will exclude the Powers testimony, which would be exhibit 947.
MS. BELENKY: I would like the record to show that I would continue to object to that, and preserve my objection.

HEARING OFFICER KRAMER: Okay. The record will show that.

Okay, then as far as the other exhibits go, -- I'm trying to find my master exhibit list so I can -- I think that's on my desk, so what we'll do is -- oh, here it is.

So, Ms. Belenky, you have helpfully numbered your exhibits from 941 to 947, correct.

That's what I have.

MS. BELENKY: That's right.

HEARING OFFICER KRAMER: Okay. And so is there any objection to receiving into evidence exhibits 941 through 946 at this point? Seeing none, those will be accepted. 947 will not be accepted into evidence for the reasons we have specified.

Okay, Western Watersheds Project. Mr. Connor, you've had the one document, correct?

DR. CONNOR: That's correct.

HEARING OFFICER KRAMER: Okay.

DR. CONNOR: Could I ask a question?

HEARING OFFICER KRAMER: Go ahead.
DR. CONNOR: Is it possible for us to actually get an updated exhibit list?

HEARING OFFICER KRAMER: Yes, there will be one produced in the next few days after this.

DR. CONNOR: The brief is due on Wednesday. I just want to make sure that I don't assign the wrong exhibit.

HEARING OFFICER KRAMER: Okay, I'll try to send it out today.

DR. CONNOR: Okay.

HEARING OFFICER KRAMER: Depending on when we finish. We're still wrestling with typos and stuff, but the numbers should be solid.

And just as a highlight for everyone, one of the things we will be discussing, one of the issues, after we conclude with the receipt of evidence, is the briefing schedule and the motion that was made to extend that.

So, Mr. Connor, if I have it correct your next exhibit number would be 519; that would follow your map excerpts that you submitted at the close of the, or following the close of the January hearings. Does that sound correct to you?

DR. CONNOR: Correct. I wasn't clear. I thought that in fact that some of the testimony
was added in at the end. And I wasn't sure
actually what the exhibit number should be.

HEARING OFFICER KRAMER: Okay, well,
your opening testimony that was originally un-
numbered, and your rebuttal testimony, those were,
your rebuttal was 516; your opening testimony was
517.

DR. CONNOR: Okay, then this would be
the next one.

HEARING OFFICER KRAMER: And then you
had 518 was already in; that was resubmitted.
That was a series of maps showing the contours of
the tortoise protection areas.

DR. CONNOR: That's correct.

HEARING OFFICER KRAMER: Okay, so this,
your testimony that you filed last week then will
be, as a single document, will be exhibit 519.

DR. CONNOR: Okay.

HEARING OFFICER KRAMER: Do we have any
objection to the acceptance of exhibit 519 into
evidence? Seeing none, hearing none on the
telephone, that's accepted.

Mr. Harris, the applicant's mitigated --
what's the term we're using?

MR. HARRIS: We called it biological
mitigation proposal.

HEARING OFFICER KRAMER: Right. That, according to my scorecard, would be exhibit 88. Does that sound correct?

MR. HARRIS: Yes, I think you identified it as such in the order, as well.

HEARING OFFICER KRAMER: That's correct, yes. I was ahead of myself. Okay. And that is your only exhibit at this point, is that correct?

MR. HARRIS: Actually there's a map that was filed on Thursday, as well.

HEARING OFFICER KRAMER: That's right.

MR. HARRIS: A one-page map. We don't need to include the statement that accompanies that, so it would be number 89.

HEARING OFFICER KRAMER: It would just be the map, itself?

MR. HARRIS: Just the map, itself.

HEARING OFFICER KRAMER: Does any party have any objection to the entry of exhibits 88 or 89 accepted into the evidence at this point in time?

MR. BELL: None on behalf of staff.

MS. BELENKY: I'm not sure I've seen 89.

HEARING OFFICER KRAMER: It's a color
map, I'm holding it up here. And it was attached
to a letter from Mr. Harris dated March 18th.

MS. SMITH: Mr. Kramer. This is Gloria
Smith from the Sierra Club.

HEARING OFFICER KRAMER: Go ahead.

MS. SMITH: I think that discussing this
map may be premature since we haven't discussed
whether or not the Sierra Club supplemental
testimony will be allowed. We would move that in
as exhibit 612.

I think that the idea of this map was --
if the Sierra Club's supplemental testimony is
excluded then the map is not necessary. But if
the Sierra Club's testimony was allowed, then this
map was offered in retaliation.

(Laughter.)

HEARING OFFICER KRAMER: So that's a
very -- that's what we call in-your-face rebuttal,
as retaliation or --

MS. SMITH: Yeah.

HEARING OFFICER KRAMER: Okay. Well,
then, okay, let's move to the prerequisite then.
Is there any objection to accepting the Sierra
Club's prefiled testimony? That's a single
document, correct.
MS. SMITH: Yes.

MR. HARRIS: Is that conditioned upon

the acceptance of our -- actually these were

rebuttal.

HEARING OFFICER KRAMER: It's a more

traditional word.

MR. HARRIS: With that linking the two,

we have no objection.

HEARING OFFICER KRAMER: Okay, so

anybody --

MS. SMITH: I don't that -- it's

premature to link the two. One has nothing to do

with the other. The Sierra Club in good faith

proffered intervenor's supplemental testimony.

I'd like to have a stand-alone ruling on that.

It's not connected in any way to something that

the applicant would like to presume.

HEARING OFFICER KRAMER: Okay. So that

would be exhibit 612; and did anyone object to its

acceptance into evidence?

MR. HARRIS: Again, I only object if

she's going to object to 89 coming in, the

rebuttal testimony to that.

HEARING OFFICER KRAMER: Do we have to

link these two to --
MR. HARRIS: I think Ms. Smith already called them very much linked, and I think that --

HEARING OFFICER KRAMER: Okay.

MR. HARRIS: -- one is necessary without the other. So, basically, Mr. Cashen's testimony, we can exclude 89, as well.

HEARING OFFICER KRAMER: Okay, well, let me try it -- let's try to link it then and get an answer. Does anybody object to the entry of exhibits 88, 89 and 612 as together? Ms. Smith, you're okay with that?

MS. SMITH: I'd like the record to reflect -- no, I will not object to the applicant's maps. But I do not want them inextricably linked, or linked in any way in the record or anyone's mind.

Again, the Sierra Club offered its supplemental testimony. It has nothing to do. It's not linked in any way to whatever it is the applicant has crafted.

No one else's exhibits or maps are linked to one another. We don't want our maps and our testimony linked in any way with the applicant's.

HEARING OFFICER KRAMER: Okay, well,
MS. SMITH: Fair request.

HEARING OFFICER KRAMER: Okay. I think we understand that the applicant exhibit is the applicant's characterization of what you've said. And they are allowed to characterize the testimony of others. It's up to the Committee to decide if the characterizations are correct.

So, with that understanding that they're linked only in the sense that they're purporting to talk about the same issue, is there any objection to the entry of 88, 89 and 612?

And, Ms. Smith, you can be clear again in your brief, you know, to make whatever points you need to do to separate the two.

MS. SMITH: I have no objection.

HEARING OFFICER KRAMER: Okay, then those will be accepted into evidence.

Basin and Range Watch.

MS. CUNNINGHAM: Laura Cunningham here. I'd like to request, we received a new document on March 19th that we would like to request as an exhibit. And -- we just received this in the mail and we can email it right now. It's a CH2MHILL contractor biological report on tortoise surveys.
for the Next Light Silver State project across Ivanpah Valley.

HEARING OFFICER KRAMER: Okay, this is Laura Cunningham, right?

MS. CUNNINGHAM: Yes.

HEARING OFFICER KRAMER: Okay. Now you've not shared this with any other party I presume?

MS. CUNNINGHAM: How do you mean that?

HEARING OFFICER KRAMER: Well, you haven't sent it out to anybody as a proposed exhibit, correct?

MS. CUNNINGHAM: No.

HEARING OFFICER KRAMER: And how is it relevant to the mitigated Ivanpah 3 filing of the applicant and the discussion of the impacts of the reduced footprint project?

MS. CUNNINGHAM: It relates to the cumulative impacts of the reduced footprint for the Ivanpah project in relation to another large solar project nearby for cumulative impacts to specifically tortoises and tortoise habitat.

HEARING OFFICER KRAMER: Well, I think it's unfortunate, but given that we don't even have it in front of us right now, and we are
trying to finish the hearing today, I think it's
too late to try to submit that.

There is a rather extensive, you know,
parties, I'm sure, will argue about the quality of
the analysis of cumulative impacts. But that has
been discussed rather extensively to this point.

So, without seeing this study it may be
it is simply, I hate to use the word, but
cumulative. And otherwise just more information
of the same sort that has already been presented.

But because you just received it and we're
not able -- we will need to exclude it.

But you did file one document by way of
testimony last week, correct?

MS. CUNNINGHAM: That's correct.

HEARING OFFICER KRAMER: Okay, and what
I wanted to do was deal with that document, just
as a matter of form, to make sure that that is
determined to be a part of the record or not.

So, -- need to find your exhibits.

There we are, 800 series. You previously just had
the one exhibit, 800, your photographic database.

So this, your new filing, would be exhibit 801.

Do I have any objection from the parties to its
acceptance into evidence?
Hearing none, that's accepted.

Okay, we've dealt with the Center for Biological Diversity. California Native Plant Society.

Mr. Suba, am I correct, you have one document?

MR. SUBA: That's correct.

HEARING OFFICER KRAMER: Okay, and that's the testimony of the Native Plant Society dated March 16, 2010.

MR. SUBA: Yes.

HEARING OFFICER KRAMER: That would be exhibit --

MR. SUBA: It's 1014.

HEARING OFFICER KRAMER: Actually 1015, I think, because 1014 was your opening testimony that wasn't numbered the last time.

MR. SUBA: Okay.

HEARING OFFICER KRAMER: So, any objection to receiving exhibit 1015?

Hearing none and seeing none, that will be received into evidence,

Defenders of Wildlife. Do I have it correctly that you did not submit any additional documents?
MR. BASOFIN: That's correct, we did not submit testimony pursuant to this hearing.

HEARING OFFICER KRAMER: Thank you.

Okay, the Sierra Club, we took care of you.

I think that -- oh, staff. The winner of the page count, I believe.

MR. BELL: We like to be a part of the process.

HEARING OFFICER KRAMER: No, I'm sorry, somebody else, okay. For an individual document perhaps. The final staff assessment addendum dated March 16th. That would be exhibit number 315. Do we have any objection to receiving it into evidence?

Hearing none, okay.

We'll ask again at the end just to make sure we didn't miss something. But I believe that covers all the documents. And I think I cut myself off there just a minute ago.

Hearing none then the staff assessment, exhibit 315, is accepted into evidence.

So we will go forward then with the receipt of testimony, although I think it's largely, from what the parties have filed, will be perhaps exclusive by way of cross-examination.
Mr. Kessler, you think Ms. Sanders is
occupied in the other -- is she available?

MR. KESSLER: I haven't been able to get
-- I did send her a message, Mr. Kramer. I
haven't heard back yet. So my understanding was
she was going to turn her phone off and try to
engage in Beacon and get back to us when she had a
window of opportunity. I have not heard back yet.

HEARING OFFICER KRAMER: Okay, well,
keep trying to contact her.

MR. KESSLER: Yes, sir, will do.

HEARING OFFICER KRAMER: Okay. Mr.
Harris, I gather that you would prefer to follow
the others in your cross-examination, would that
be correct?

MR. HARRIS: Yeah, it would be correct.
We don't mind going first, if you'd like us to go
first with our direct. But given that the
intervenors are now the joint intervenors, I think
it's only fair to prevent unfair cross that we be
allowed to go last for cross-examination of the
parties who are not the applicants.

MS. BELENKY: Objection. I object to
being characterized as the group intervenors. We
are still independent separate intervenors. We
are not acting as a group just because we filed certain motions as a group.

MR. HARRIS: I would agree with that characterization and meant no offense by it. I really just meant you filed together so, thank you. Sorry.

HEARING OFFICER KRAMER: Okay, but as far as the order of presentation, did you have some direct testimony you still wish to offer in light of the stipulations?

MR. HARRIS: We think we have about ten minutes. It would be beneficial just to kind of set the context -- panel available for cross-examination. So, yes, we think it would be helpful.

HEARING OFFICER KRAMER: Okay. And I think that would be helpful especially to set the context to go forward. So, go ahead at this point.

MR. HARRIS: Okay. I'd ask the panel members to come up. We'll have to kind of squeeze extra chairs around the microphones to share microphones. Have those folks come forward please.

(Pause.)
MR. HARRIS: So all the members of the panel were previously sworn and they were identified in our filing last Thursday, so.

Mr. Olson was offered as rebuttal to Mr. Powers, so he will not be on the panel. He is in the room, but his role was to offer rebuttal testimony.

Whereupon,

GEOFFREY SPAULDING, MARK COCHRAN, TODD STEWART STEVE HILL, STEVE DE YOUNG, JOHN CARRIER WENDY HAYDON and THOMAS PRIESTLEY were recalled as witnesses herein, and having been previously duly sworn, were examined and testified further as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q So I'd like the rest of the members of the panel to introduce yourselves and spell your name for the court reporter, please.

DR. SPAULDING: Dr. Geof Spaulding. That's G-e-o-f S-p-a-u-l-d-i-n-g, CH2MHILL, consultants to the applicant.

MR. COCHRAN: Hi, Mark Cochran, M-a-r-k C-o-c-h-r-a-n, CH2MHILL, consultants to applicant.
MR. STEWART: Todd Stewart with BrightSource Energy.

MR. HILL: And Steve Hill, H-i-l-l, with Sierra Research, consultant.

MR. De YOUNG: Steve De Young with BrightSource Energy. D-e Y-o-u-n-g.

MR. CARRIER: John Carrier with CH2MILL. C-a-r-r-i-e-r.

MR. HARRIS: Okay, Mr. De Young, I'm going to ask a series -- I'm sorry -- okay, Wendy, please --

MS. HAYDON: Wendy Haydon, W-e-n-d-y H-a-y-d-o-n. I'm with CH2MILL, consultant to the applicant.

HEARING OFFICER KRAMER: Before you go, on the telephone can one person just confirm to us that you're still hearing us just fine?

DR. PRIESTLEY: This is Tom Priestley; I can hear you.

HEARING OFFICER KRAMER: Okay, thank you. You've been very quiet and I was worried.

MR. HARRIS: Mr. Priestley, in addition to providing that valuable service, is also a member of the panel, part of our visual team.

DR. PRIESTLEY: Yeah, so I am -- my name
is Thomas Priestley, that's P-r-i-e-s-t-l-e-y.
And I'm with CH2MHILL, consultant to the applicant.

MR. HARRIS: And that's Doctor Priestley; sorry, Tom.

Okay, so I'll ask a series of questions, on behalf of the panel. I'll ask Mr. De Young to answer, again, on behalf of the entire panel.

So what subject matter testimony are you here to sponsor today?

MR. DE YOUNG: The biological mitigation proposal.

MR. HARRIS: And were the documents that you sponsored as part of your testimony previously identified?

MR. DE YOUNG: Yes, they were.

MR. HARRIS: And those are 88 and 89 which were moved in just a little bit ago. Any changes or corrections to the testimony?

MR. DE YOUNG: No.

MR. HARRIS: And were the documents prepared either by you or at your direction?

MR. DE YOUNG: Yes.

MR. HARRIS: Are the facts stated therein true to the best of your knowledge?
MR. DE YOUNG: Yes.

MR. HARRIS: And are the opinions stated therein your own?

MR. DE YOUNG: Yes.

MR. HARRIS: And do you adopt this as your testimony for the proceeding?

MR. DE YOUNG: Yes, we do.

MR. HARRIS: Can you begin by summarizing the mitigated Ivanpah 3 options testimony, please?

MR. DE YOUNG: Yes. During the Energy Commission evidentiary hearings on the project the Commission Staff and intervenors focused heavily on the impacts associated with Ivanpah 3, the northernmost project of the three Ivanpah projects.

For example, Commission Staff and intervenors stated that Ivanpah 3 contains more plant species and ephemeral washes than the Ivanpah 1 and 2 sites.

I'll note that the layout of the project with Ivanpah 3 is being shown on the screen as figure 2.2-1. From our --

HEARING OFFICER KRAMER: And that figure's from your new exhibit?
MR. DE YOUNG: It's from our M-3 proposal, correct.

HEARING OFFICER KRAMER: Okay, exhibit 88.

MR. DE YOUNG: Exhibit 88.

MR. HARRIS: Just for clarification all the tables that Mr. De Young is going to refer to in the direct testimony are all from exhibit 88, and will use those reference number -- the reference.

Go ahead, Steve.

MR. DE YOUNG: Similar to plants, the M-3 area also contains 15 percent of the desert tortoise that were located within the power plant site during our 2007 and 2008 surveys. That was three of the 20 live tortoises that were found on the site. And two more tortoise that were just located south of the -- actually very close to the boundary, the southern boundary, of our proposed Ivanpah 3, M-3.

MR. HARRIS: So what are some of the benefits associated with your mitigated-3 proposal?

MR. DE YOUNG: Among the more important benefits this proposal removes approximately 433
acres from the northern portion of Ivanpah 3, and
also reduces the number of heliostats used in the
project by about 40,000.

And to pull that into perspective, 433 acres
represents about 24 percent of the
originally proposed Ivanpah 3. And reduces the
overall footprint of all three projects by
approximately 12 percent.

MR. HARRIS: And again, for the benefit
of the audience, can you use the laser pointer and
point to the area of the 433 acres that have been
removed from the northern portion? And, Geof, you
may want to duck or not look directly into the
light.

(Laughter.)

MR. DE YOUNG: Yeah, actually, Geof, can
you move a little. There you go. I don't want to
zap you.

Removes approximately 109 acres from the
construction logistics area. Construction
logistics is this area here. I'm sorry --

MR. HARRIS: -- the 433 acres, the
northern portion, as well.

MR. DE YOUNG: Absolutely; 433 acres are
up in this area. The construction logistics area,
as I said, we remove 109 acres from the original 377 acres proposed in the construction logistics area. These avoided areas in the construction logistics area will be used for plant relocation, nursery for salvaged cacti and rare plants.

Further M-3 avoids and minimizes potential impacts to significant number of large ephemeral washes that are, again, located up in this area of Ivanpah 3, helping the project meet our low-impact design, or LID, objectives by allowing stormwater to freely flow through the project site.

MR. HARRIS: And it puts a lot of the issue of plants in the M-3 configuration -- can we have figure 3-2.

MR. DE YOUNG: Maybe you can blow that up just a little bit? As shown on this figure, our M-3 proposal would further avoid minimized potential impacts to plant species by completely avoiding the most densely populated rare plant communities in the northernmost portion of Ivanpah 3. And this allows for set-aside of a large contiguous area of land containing plants.

And based on testimony that was previously provided by Commission Staff, this was
preferable to the halo where we had proposed
smaller areas within the heliostat fields to be
fenced off and avoided.

MR. HARRIS: By way of clarification,
the portion of M-3 you're showing, the 433 acres,
has a whole lot of different symbols and figures.
Can you -- I know you can't see the legend on
this, but can you briefly describe what those
symbols stand for?

MR. DE YOUNG: They stand for various
rare plants that were found on the site, including
desert pin cushion, desert mallow. One of my
biologists is going to have to jump in here and
help me with the rest of these.

MR. HARRIS: Okay, all those areas are
avoided, the shaded area?

MR. DE YOUNG: All of the area within
our M-3 proposal are completely avoided. There
will be no construction other than the gas line
that goes through the area, there will be no
construction in this area.

MR. HARRIS: Okay. Let's put up figure
3.1 --

HEARING OFFICER KRAMER: Before you
leave that one, what's the route of the gas line
going to be roughly?

MR. DE YOUNG: The gas line originally down this way. I believe the gas line now will go through from this corner of Ivanpah 3 up to the interconnect right at that point.

We've done an evaluation of the pipeline corridor, 75-foot pipeline corridor. We had previously committed to a hundred percent avoidance of, during construction, of the gas pipeline. And with this configuration we'll still maintain a hundred percent avoidance of all plants in that area.

HEARING OFFICER KRAMER: And how would you do that, by just land filling or --

MR. DE YOUNG: The, I'll call them the lucky charms, the lucky charms that show the different type of plants in here are obviously much larger than the plants as they exist today. So there is an easy way to do a 75-foot construction corridor and avoid the rare plants.

HEARING OFFICER KRAMER: Okay, thanks.

PRESIDING MEMBER BYRON: And if I may ask a quick question, as well. Is the relative density of rare plants, as indicated on figure 3-2, representative for the area that is no longer
in the proposed project and the area that's still
designated as part of the project?

In other words, you're showing the
density of rare plants in that mitigated area.

MR. DE YOUNG: Yes, this is
representative of the plants that were found
during surveys conducted over two years. Perhaps,
John, if you can back out a bit?

PRESIDING MEMBER BYRON: And all the
results from the survey are also shown in the area
labeled Ivanpah 3, as well?

MR. DE YOUNG: Correct, as well as
Ivanpah 1 and 2 in the construction logistics
area.

PRESIDING MEMBER BYRON: Thank you.

MR. HARRIS: Okay, just give a quick
explanation, if you would, on the corridor, the
gas line corridor. You see there's an area with a
lot of -- John, can you go back up to the north.
Can you explain why that map appears to
show only plants within that area, in that one
little contiguous area there?

MR. DE YOUNG: This area up here?

MR. HARRIS: Yes.

MR. DE YOUNG: That area was previously
identified. It's a 1000-foot corridor previously identified as the pipeline route. What we proposed is somewhere within that 1000-foot corridor, and it's a bit hard to see, but it's there. There's a green line --

MR. HARRIS: Let me ask the question, are there no plants shown -- there's no plants shown, I guess, to the west, to east of that corridor. Back out a little bit again, John, if you can.

Is that because there's no plants there or is it because --

MR. DE YOUNG: No, no, --

MR. HARRIS: -- the surveys were only done on the gas line corridor?

MR. DE YOUNG: -- certainly not. The surveys were only done within that corridor. You would expect to see, I suspect, the same types of plants, and perhaps the same density to the east and west of that corridor.

MR. HARRIS: And so the Committee shouldn't look at that and decide that there weren't plants on either side of the corridor. The corridor just represents the information we have, is that correct?
MR. DE YOUNG: That's correct.

ASSOCIATE MEMBER BOYD: That's a 1000-foot corridor?

MR. DE YOUNG: Correct.

ASSOCIATE MEMBER BOYD: That's the 75-foot-wide needed for the gas corridor?

MR. DE YOUNG: That's correct. We did 1000 feet to give us the ability to move within that corridor to avoid plants, as necessary.

MR. HARRIS: If the Committee has no more questions on this slide we'll go ahead and move on to, I guess it's 3-1, John. Talk a little bit about desert tortoise. What about the desert tortoise issues?

MR. DE YOUNG: This figure shows the location of desert tortoise that were discovered during the various desert tortoise surveys, that symbol.

Our proposed M-3 project reduces the impacts to desert tortoise, reducing the total tortoise relocation by approximately 15 percent. And provides an additional area for relocation that's within the home range of the tortoise.

It was high density of rare plants and that the intervenors believe have comparatively
better habitat value. As noted previously, three
of the 25 tortoises observed within the project
boundary and two more just outside the boundary
were located in this M-3 proposed set-aside area.
So five of the 20 tortoise located during the
surveys were in this area.

MS. BELENKY: Excuse me. I just wanted
to clarify. Are you testifying as to what the
intervenors' testimony was?

MR. DE YOUNG: I'm giving my opinion as
to what I heard during the many days of hearings
regarding site 3 and the value of site 3.

MS. BELENKY: I'm going to object to
that. We can discuss it when we do cross-

examination. Thank you.

HEARING OFFICER KRAMER: Are you asking
that that portion of his testimony be struck,
then?

MS. BELENKY: Yes, I would ask that the
portion of his testimony where he's characterizing
someone else's testimony be struck. I wasn't
actually sure I heard him correctly.

HEARING OFFICER KRAMER: Okay, well, I
understood that as just simply to be a reference
to what he thought you were saying. We do not put
much weight, if any, in other witnesses'
characterizations of the testimony of others. So,
it can safely stay in the record with that caveat.

MR. HARRIS: Okay. Let's move on, John.

Could you put up figure 2-2 and I want to move on
to the issue of visual resources and the
significant reduction in the number of towers
associated with M-3.

So can you give us -- tell us about the
visual resources issue associated with M-3?

MR. DE YOUNG: The proposed project
further avoids and minimizes the potential visual
resources impacts associated with glare and
reflectivity by reducing the number of towers in
Ivanpah 3 from our previously proposed five
towers, now down to one tower in Ivanpah 3. And
for the entire project we're down to three towers
total. So originally seven, now down to three
towers.

In addition, the proposed M-3 increases
the distance between the site and the mountain
range to the north, increasing potential foraging
area and migration corridor for various species.

MR. HARRIS: Let's talk about the
realignment of Ivanpah 2 and 3. So can we have
figure 1, again, John, if we can.

This is the Ivanpah site plan. And there has been a realignment of the boundaries between 2 and 3. Can you explain the reasons for that realignment of the boundary between 2 and 3?

MR. DE YOUNG: What you're referring to is this realignment here. The northern heliostat, in other words those that are south-facing mirrors, are highly valued collectors, given their ability to track the sun throughout the day.

Heliostats that were formerly in the southern portion of Ivanpah 3, with this realignment are now directed to the power tower in Ivanpah 2.

MR. HARRIS: So essentially you've taken the mirrors that were formerly part of --

MR. DE YOUNG: Yeah, the mirrors that were formerly part of 3, the old boundary was in this area, that would have been directed to power towers in Ivanpah 3, are now directed to the power tower in Ivanpah 2.

MR. HARRIS: And that, again, is because that, in fact, gives you a northern heliostat and makes a south-facing heliostat, which is a better collector?
MR. DE YOUNG: It's a much more efficient collector. Also in the previous layout we had a power tower down in that quadrant, so it made more sense to point those mirrors to that power tower, one of the five. Since we're now down to one tower, it's more efficient to use those mirrors for Ivanpah 2 than Ivanpah 3.

MR. HARRIS: Let's talk about the overall capacity of the project. So what is the capacity of the project now with the M-3 proposal?

MR. DE YOUNG: In terms of overall capacity we can make up some of the lost capacity by adjusting the size of the steam turbines. And that's actually not putting in a larger shell. We're going with the same shell size for the turbines. But the internal components provide a more efficient turbine.

The total capacity of the three Ivanpah projects would be reduced on a nominal basis from 400 to 370 megawatts. And on a gross basis from 440 to 392 megawatts.

MR. HARRIS: So overall, why did the applicant advance the mitigated-3 proposal?

MR. DE YOUNG: We were looking for opportunities to reduce impacts even further. The
mitigated Ivanpah 3 has the distinct advantage of being located within an area that was previously surveyed, evaluated and scrutinized by all parties for this proceeding, including applicant, staff, our biologist, intervenor biologists, hydrologists, geologists, et cetera.

The only substantive issues that are affected by the proposed Ivanpah 3 configuration, we believe, are biological resources and visual resources with the reduction in potential environmental impacts in these areas being decidedly possible.

MR. HARRIS: Okay, I think that's all we have. I'd like to make the panel available for cross-examination unless the Committee has any questions first.

HEARING OFFICER KRAMER: The visual representation that you showed, what was the source of that, again?

MR. DE YOUNG: What is the source of this?

HEARING OFFICER KRAMER: Yeah.

MR. HARRIS: I can answer that. Are you asking for the table number or --

HEARING OFFICER KRAMER: Yeah, because
it -- I'm looking at my copy of your mitigated-3 proposal and it's not there as far as I can tell.

MR. HARRIS: Figure 2-2, artist's rendering of the biological mitigation proposal.

HEARING OFFICER KRAMER: Oh.

MR. HARRIS: And the figures are all at the end of the section. So, again, it's section 2.

HEARING OFFICER KRAMER: I was looking at a different section, okay.

MR. HARRIS: Yeah, no, in fact, the figures are at the end of each section.

HEARING OFFICER KRAMER: My problem is solved, thank you.

MR. HARRIS: The panel's available for cross.

HEARING OFFICER KRAMER: Okay. I understand that Ms. Sanders may be with us now?

MR. KESSLER: Yes.

HEARING OFFICER KRAMER: Did she call in?

MR. KESSLER: Yes, she could be available shortly if that would help.

HEARING OFFICER KRAMER: Okay, Ms. Sanders, are you on the telephone?
MR. KESSLER: My understanding is that she was on the phone and she is back in the Beacon hearing again because she was uncertain as to how long the applicant might continue. But I can try to text her and get her back if you would like.

HEARING OFFICER KRAMER: Okay, yeah, get her queued up because I think when she's available -- and let me ask that, let me suggest that it might be useful to have the staff present their -- were you going to present any sort of summary of your analysis, Mr. Bell?

MR. BELL: Mr. Kramer, the staff has already filed its testimony. And along with that testimony, containing the final staff assessment addendum, is a summary of that testimony. Staff doesn't feel that it would serve any purpose to restate our testimony and restate the summary yet again.

HEARING OFFICER KRAMER: Okay, so then you'll just be available for cross-examination?

MR. BELL: That's correct

HEARING OFFICER KRAMER: Okay, so then why don't we -- hopefully Ms. Sanders will get back soon. Let me ask the parties, including Ms. Smith, I know you were interested in speaking with
her, I believe. Do you have an estimate as to how
long your cross-examination of Ms. Sanders might
be?

MS. SMITH: -- the Sierra Club?

HEARING OFFICER KRAMER: Yes.

MS. SMITH: No, I don't. And I'm not
even certain that I'll have questions. I want to
hear -- I was keeping that open.

HEARING OFFICER KRAMER: Okay.

MS. SMITH: So we'll see if she has
anything opening to say, we'll see how this
evolves.

HEARING OFFICER KRAMER: Sounds like she
won't because she's simply another staff witness.
So, okay, when she does come back on we'll try to
find out what her time constraints are.

I'm a little hesitant to put her off
until after 1:00 because, depending on how things
go here, we may be wrapping up by then. I don't
want everyone to have to wait around for that, if
it's possible.

So, --

MR. BELL: Mr. Kramer, I will have a few
questions for Ms. Sanders. I don't anticipate my
questions will last longer than about 10, 15
HEARING OFFICER KRAMER: And would you be willing to ask those when she's available, even if it's out of order?
MR. BELL: Sure.
HEARING OFFICER KRAMER: Okay, thank you.

All right, for now then let's present the applicant's panel for cross-examination by the parties. Staff, did you have any questions?
MR. BELL: Yes, I have a couple questions for Mr. De Young, but I'd like that map that was up earlier put back up again.

HEARING OFFICER KRAMER: Which one, the one showing all the plants?
MR. BELL: With the lucky charms, yes.
HEARING OFFICER KRAMER: Okay.
MR. BELL: I just wanted to be clear; this isn't an item of evidence, this is just --
HEARING OFFICER KRAMER: Can you turn down the lights, John.
MR. KESSLER: Was this just for demonstrative purposes?
HEARING OFFICER KRAMER: This is a part of their filing.
MR. KESSLER: Okay.

MR. DE YOUNG: This is evidence, has been previously submitted. What's different on this figure is the demarcation of Ivanpah 3.

MR. KESSLER: Correct, correct.

MR. HARRIS: But this is within our -- what's the figure number, John?

MR. CARRIER: It says right here, figure 3-2.

MR. HARRIS: Figure 3-2, rare plant direct impact avoidance areas.

MR. BELL: No, I've seen the map before, but the reason why I was asking that is during direct examination of Mr. De Young somebody was using -- well, there was both a laser pointer and there was also --

HEARING OFFICER KRAMER: I think you're going to have to be up at the mic, Kevin.

MR. BELL: Okay, that's why I'm speaking loud. Is this acceptable, or should I --

HEARING OFFICER KRAMER: Can you hear him on the telephone?

DR. PRIESTLEY: No.

MR. BELL: Okay.

(Pause.)
MR. BELL: I'll try not to point it in anybody's eyes.

CROSS-EXAMINATION

BY MR. BELL:

Q The reason why I was asking was that I'm familiar with this figure, Mr. De Young. But there was both a laser pointer being used and also a hand. I'm going to try to describe this with a little more specificity for you.

Right now I'm pointing the laser pointer at a point in the -- in the area that describes the northern rare plant mitigation area. It's a grey area to the north of mitigated Ivanpah 3, is that correct? I'm now circling that with the laser, correct?

MR. DE YOUNG: Yes.

MR. BELL: You had talked about a gas line that starts at a point to the northern end of this area. And the laser pointer, is it not correct, that you had it going diagonally across mitigated-3 to a point at the northeast corner -- I'm sorry, the southeast corner of the mitigated area, is that correct?

MR. DE YOUNG: That is the alignment that we're looking at, correct.
MR. BELL: Okay. And currently there's no figure that shows the route of that gas line going through the mitigated area, is that correct?

MR. DE YOUNG: That is correct.

MR. BELL: The previous gas line it appears in a green line that borders the northern portion of this mitigated area that's descending south to that point of junction where it then turns west. Is that the route that the gas line originally took?

MR. DE YOUNG: That is correct.

MR. BELL: With the applicant's current proposal to eliminate this area from consideration, why did you feel it necessary to move the gas line so that it now bisects a portion of that mitigated area?

MR. DE YOUNG: It was simply an option that we were looking at. And if I didn't characterize it as an option, the current proposal is to put the gas pipeline along the original alignment.

One of the options that we evaluated to have less construction impact, the proposed route as we have it, is longer than the diagonal route would be. Simply less construction impact, less
disturbance, that's essentially why.

MR. BELL: Is it true, though, that if you bisect that area, that's been identified as the northern rare plant mitigation area, that you're not avoiding the rare plants in that area? You're actually going right through the middle of it?

MR. DE YOUNG: No, we'll be avoiding any rare plant that's located within the M-3 area, but --

MR. BELL: Wouldn't it be more effective to go around that area as you originally proposed?

MR. DE YOUNG: I think what you have to consider here is that those rare plants don't exist only in the area that we've identified. So that certainly along the original alignment there would be rare plants there. That's a given.

MR. BELL: Okay, thank you. No further questions.

MR. KESSLER: Hearing Officer Kramer, I just want to let you know that it appears Susan Sanders is back with us now.

HEARING OFFICER KRAMER: Ms. Sanders, are you on the telephone? Mr. Kessler says you are.
MR. KESSLER: She indicated she was calling in.

MS. BELENKY: And we also will have some questions for her.

HEARING OFFICER KRAMER: Okay. Susan Sanders, can you hear us?

MS. SANDERS: Yes.

HEARING OFFICER KRAMER: Oh, good. Okay, how much time do you have there?

MS. SANDERS: I don't know.

(Laughter.)

HEARING OFFICER KRAMER: Somebody's in the room and will know to come get you, right?

MS. SANDERS: I hope so. I think so.

HEARING OFFICER KRAMER: Okay. Well, we're going to break in the cross-examination of the applicant's witnesses then so that we can accommodate your schedule. We appreciate you multi-tasking like this.

MS. SANDERS: Okay, thank you.

HEARING OFFICER KRAMER: Now, as I recall you were previously sworn in this case, correct?

MS. SANDERS: Correct.
HEARING OFFICER KRAMER: So consider
yourself to still be sworn as a witness.

Whereupon,

SUSAN SANDERS

was recalled as a witness herein, and having been
previously duly sworn, was examined and testified
further as follows:

HEARING OFFICER KRAMER: Could you spell
your last name for our court reporter.

MS. SANDERS: S-a-n-d-e-r-s.

HEARING OFFICER KRAMER: First name

SUSAN SANDERS: Correct.

HEARING OFFICER KRAMER: Okay. And you
are a staff witness on the topic of biology?

MS. SANDERS: That's right.

HEARING OFFICER KRAMER: Okay. At least
two of the intervenors wish to cross-examine, so,
Mr. Basofin, do you want to go first?

MR. BASOFIN: Sure. Thank you.

MR. BELL: Preliminary before we go on,

Ms. Sanders should know that her testimony has
already been admitted into the record.

MS. SANDERS: I'm sorry -- interference

on the line here.
MR. BELL: That's okay. Hi, Susan.

Kevin Bell for -- for you. I just want to let you know that -- to make it clear that your testimony has already been admitted into the record by stipulation.

MS. SANDERS: I heard part of that, something about my testimony and stipulation, what did you say?

MR. BELL: That's right. Your testimony has already been admitted into the record, so we don't need to do any of the preliminaries. So Mr. Basofin and possibly one other party may have some questions for you based on your testimony.

MS. SANDERS: Okay. I'm getting a lot of a clicking sound. It's making it hard for me to understand. I don't know what that's from. It's better now.

PRESIDING MEMBER BYRON: Ms. Sanders, this is Commissioner Byron. We could hear it, as well. So let me ask if there's anyone that's on the line, if they could be cognizant of the fact they may be making noise. And if they would put it on mute, that would be very helpful.

HEARING OFFICER KRAMER: Okay,

Mr. Basofin, go ahead.
CROSS-EXAMINATION

BY MR. BASOFIN:

Q Good morning, Ms. Sanders. This is Joshua Basofin for Defenders of Wildlife.

MS. SANDERS: Good morning.

MR. BASOFIN: Thank you for joining us this morning, taking time out of your other engagement. I just have a few brief questions for you.

First, did you complete an analysis of the biological resources section for the final staff addendum?

MS. SANDERS: When you say complete an analysis, what do you mean?

MR. BASOFIN: I'm sorry, let me rephrase that. Did you do an analysis of biological resource impacts for the staff addendum?

MS. SANDERS: Well, we made a calculation, we took the calculations which the applicant had made to find the reduced number of acres and impact would be for desert tortoise, for the biological resources.

MR. BASOFIN: Okay. And --

MS. SANDERS: Is that what you mean?

MR. BASOFIN: Yes, thank you. And
according to your analysis how many individual
tortoises would be avoided based on the mitigation
proposal submitted by the applicant?

MS. SANDERS: I don't think that's a
useful calculation to make. You can't predict how
many tortoise you're going to find for numbers
that they found in the course of their survey.
It's a snapshot of when they did the survey. So I
wouldn't guess how to make sure tortoises they
would impact --

MR. BASOFIN: Okay, thank you. In your
opinion is the section, the mitigated unit 3
section, all suitable desert tortoise habitat?

MS. SANDERS: Yes.

HEARING OFFICER KRAMER: It wasn't clear
to me if you were asking about the excluded
portion or the portion that remains as part of --

MR. BASOFIN: I'm asking the excluded
portion.

MS. SANDERS: It's all suitable.

MR. BASOFIN: If that's the term you'd
like to use, I'll use that term, excluded area
pursuant to the mitigation proposal.

And according to your analysis does the
excluded portion reduce the overall land
acquisition mitigation requirement?

MS. SANDERS: Yes, the condition stipulates that you have mitigation based on the final project footprint. So if it's reduced, then it would be for a lesser amount. The same ratios would apply.

MR. BASOFIN: And so how much would that reduction be, how many acres?

MS. SANDERS: Well, the 433 is what the reduction would be, and in terms of impact of suitable habitat, so 866 in terms of acquisition the then remaining one-to-one for impacts --

MR. BASOFIN: Okay, I think that's all I have.

HEARING OFFICER KRAMER: Ms. Belenky.

MS. BELENKY: Thank you. I just want to make sure, I think we may be covering the same ground.

CROSS-EXAMINATION

BY MS. BELENKY:

Q Ms. Sanders, when you reviewed the new proposal did you look at any aspects that hadn't been, any other biological aspects of this proposal? Or only the ones that the applicant flagged for you?
MS. SANDERS: I'm not sure what you mean --

MS. BELENKY: Did you --

MS. SANDERS: -- by other aspects of it.

MS. BELENKY: Did you, for example, look at impacts to birds or impacts to golden eagles in particular? And other issues that have been raised in these hearings? Did you look at impacts to bighorn?

MS. SANDERS: I think we considered that there would be an associated reduction in impacts to all the species that are either inhabiting the 433 acres that would be avoided, or forage there, or otherwise using it. There would be a whatever percentage reduction in that much habitat loss would be achieved by the revised mitigated alternative.

MS. BELENKY: When you say you considered it, did you actually identify and analyze it? Or was this more of just a -- what does that mean, the word considered?

MS. SANDERS: I'm sorry, identified -- would you repeat the question?

MS. BELENKY: Did you actually identify the impact that would be, you're saying, reduced
by a certain percentage? Or --

MS. SANDERS: I'm not sure -- I'm not sure how to answer that question -- we assign the impact to every acre. I mean we looked at it from the perspective of there is this much habitat loss for these species. We haven't really changed our conclusions except that it will be less. It will be 433 acres less.

Does that answer your question? I'm not sure I'm getting to your question the way you want.

MS. BELENKY: Well, I think we're just trying to make sure, you know, were all of the aspects of the project analyzed under this, or you are only analyzing this little strip of land at the top.

So I guess that's the question. Were you reviewing this as a whole, or you were only looking at this top area?

MS. SANDERS: No. We considered the entire project as a whole without the 433 acres impacted above. Is that what you mean?

MS. BELENKY: Yeah, --

MS. SANDERS: As the impacts, yes. As we did the entire analysis we looked again at what
the project was like without the 433 acres. Not just with respect to plants, but with all. We didn't repeat our analysis because it would have been redundant in the supplemental filing. But we have the same conclusions more or less, except less by whatever acreage the mitigated that Ivanpah 3 would result in.

MS. BELENKY: Thank you.

HEARING OFFICER KRAMER: Is that it?

MS. BELENKY: Sorry, I'm just trying to check if Ms. Anderson has another question.

MS. ANDERSON: No, I don't.

MS. BELENKY: Okay.

DR. CONNOR: Mr. Kramer, this is Michael Connor. I have a question.

HEARING OFFICER KRAMER: You done, Ms. Belenky, then?

MS. BELENKY: Yes, thank you.

HEARING OFFICER KRAMER: Okay, go ahead, Mr. Connor.

CROSS-EXAMINATION

BY DR. CONNOR:

Q Ms. Sanders, did you look at any changes in habitat fragmentations that would result from the new proposal?
MS. SANDERS: Only in the sense that it would be less because you have a smaller footprint.

DR. CONNOR: Are you saying in your opinion that the new proposal would actually result in less habitat fragmentation for desert tortoise?

MS. SANDERS: Yeah, I think that's a fair conclusion.

DR. CONNOR: And did you consider the cumulative impacts in making that conclusion?

MS. SANDERS: I think the cumulative impacts are the same as we described in our final staff assessment.

DR. CONNOR: Are you aware of the additional projects that are being proposed in the area?

MS. SANDERS: Yes, we assessed those in our final staff assessment.

DR. CONNOR: Okay. Isn't it correct that there are projects immediately to the north and to the east of that area?

MS. SANDERS: Yes, that's right.

DR. CONNOR: Okay, so would this revised proposal reduce that fragmentation?
MS. SANDERS: I think some. Yes, I think Desert Express, for example, it's farther from the Desert Express and there's a wider corridor between the project fence line and that certain.

DR. CONNOR: The corridor?

MS. SANDERS: Well, --

DR. CONNOR: Would it be correct, that blind alley? There is a project to the east.

MS. SANDERS: Right.

DR. CONNOR: So there would be no connectivity to the east.

MS. SANDERS: I'm sorry, what's your question -- your question is how is the current reduced acreage different with respect to effect to -- well, what is your question exactly?

DR. CONNOR: Yeah, what I'm trying to do is to find out what your opinion is about how the revised footprint would actually change the fragmentation from a cumulative perspective when we have a project that will be blocking the east side of that area. And then we have the Desert Express in the north.

MS. SANDERS: Well, we concluded in the final staff assessment that it would be a
significant cumulative impact. And that opinion has not changed with this reduced footprint.

DR. CONNOR: Okay, thank you.

MS. SANDERS: Same conclusion.

DR. CONNOR: Thank you.

HEARING OFFICER KRAMER: Any other questions for Ms. Sanders?

MR. BASOFIN: Mr. Kramer, actually could I just ask one more question that I forgot?

HEARING OFFICER KRAMER: Okay, let's see if anyone else wants to ask one first.

MR. EMMERICH: Kevin from Basin and Range Watch.

HEARING OFFICER KRAMER: Okay, Kevin, go ahead, but speak up, please.

CROSS-EXAMINATION BY MR. EMMERICH:

Q And that is that this mitigation proposal, it says that the mitigation area contains 15 percent of the desert tortoises located within the power plant site. Is that 15 percent referring to the actual number of tortoises or just number of tortoises found on the preliminary present at the surveys?

MS. SANDERS: Is that a question for me?
HEARING OFFICER KRAMER: Yes.

MR. EMMERICH: Yes.

MS. SANDERS: I don't think that these numbers in any case had any bearing on our conclusions or analysis. Like I said before, I don't think the number that was found is all that informative as far as the impact analysis. I don't think that tells you a whole lot. I think they have decided 15 percent or three versus four tortoises.

So, no, that didn't have much bearing on our conclusion.

MR. EMMERICH: So you would agree that maybe some more thorough surveys would be needed to get a more accurate population?

MS. SANDERS: But I don't know what that would get for you. Your mitigation measures and your -- mitigation wouldn't be different if you found 27 or 32 or 25 and 22, they would be the same. So I don't know that that would be a helpful thing to do.

MR. EMMERICH: Well, I might just like to clarify this report. Seems to be a little bit misleading in suggesting --

MR. HARRIS: Objection, argumentative.
MR. EMMERICH: -- total population number as opposed to just a number based on surveys. I think that answers my question. Thank you.

HEARING OFFICER KRAMER: Mr. Emmerich, which report were you referring to just in the last --

MR. EMMERICH: Well, I was referring to Mr. De Young's -- this is in the biological mitigation proposal mitigated Ivanpah 3.

HEARING OFFICER KRAMER: Okay. Thank you. The objection's overruled.

Okay, any other questions from folks on the telephone?

MS. SMITH: Yes. This is Gloria Smith from the Sierra Club.

CROSS-EXAMINATION

BY MS. SMITH:

Q Ms. Sanders, you probably recall there was a lot of discussion about habitat fragmentation of the desert tortoise when we had the hearings in January, correct?

MS. SANDERS: Yes.

MS. SMITH: Can you describe for me what you consider -- can you describe habitat
fragmentation the way it impacts desert tortoise in the Ivanpah Valley, your understanding of that?

MS. SANDERS: And this is in relation to what aspect of the new proposal, the mitigated Ivanpah 3?

MS. SMITH: Well, that was in my next question. This is a foundational question. Can you describe for me how desert tortoise are affected by habitat fragmentation in the Ivanpah Valley?

MS. SANDERS: I think I said, when Dr. Connor asked his question, how the new mitigated Ivanpah 3 would change my conclusions on fragmentation. And I concluded that there would be some benefits, but our conclusion, nevertheless, there was a significant impact of this proposal and the old proposal to desert tortoise connectivity, cumulative impact, et cetera.

So, say your question again for me. I don't want to re-plow old ground of what we covered in --

MS. SMITH: I don't want to plow old ground. I'm separating this from cumulative. I just want to understand how the new alternative
mitigated Ivanpah 3 reduces habitat fragmentation for the desert tortoise in the Ivanpah Valley. Setting aside cumulative and any other close projects, just for this particular proposed project.

MS. SANDERS: Did I not answer that satisfactorily when Dr. Connor asked the same question?

HEARING OFFICER KRAMER: Well, go ahead and give it to her one more time.

MS. SANDERS: Okay. I think there might be some benefit because you're farther away from the adjacent proposed project, for example, the Desert Express.

But I think it's not enough so that we change our conclusions as to the level of significance.

MS. SMITH: So, again, you've connected it to cumulative impacts. I'm trying to get away from the cumulative impacts and just say does this reduce habitat fragmentation just for this project only? And what I understood you just said that, no, it doesn't. There's still significant fragmentation --

MS. SANDERS: Yes, absolutely.
MS. SMITH: Okay, --

MS. SANDERS: I'm sorry if that wasn't clear. Yes, absolutely.

MS. SMITH: It wasn't clear. With respect to the mitigated Ivanpah -- sorry, there are a number of proposals on the table that would site the project closer to I-15. There's the I-15 proposal and the Sierra Club proposal.

With those proposals in mind, those alternatives, does this particular -- does the mitigated Ivanpah 3 reduce fragmentation in the Ivanpah Valley equal to what you would see to those other alternatives? Is that clear?

MS. SANDERS: Kind of. So you're asking me to compare the mitigated Ivanpah 3 with a configuration where you have the two units where they are now, but Ivanpah 3 placed down next to the freeway?

MS. SMITH: In terms --

MS. SANDERS: Is that what you're asking?

MS. SMITH: Yes, in terms of habitat fragmentation for desert tortoise.

MS. SANDERS: You know, I have not analyzed that. I just saw your reconfigured
Ivanpah 3 next to the freeway not that long ago, and I did not include that in my analysis. No.

MS. SMITH: You don't feel comfortable answering the question?

MS. SANDERS: Well, you're asking me to come to conclusions about something I saw fairly recently. About the Ivanpah 3 being placed down near the freeway, and the remaining two units where they are, correct?

MS. SMITH: Yes, --

MS. SANDERS: I guess I'm not that comfortable to come to a conclusion over the phone on that without giving it some more thought.

MS. SMITH: And what about the mitigated, what about the I-15 --

MS. SANDERS: The entire I-15?

MS. SMITH: The I-15 proposal --

MR. BELL: Mr. Kramer, I'd have to interpose an objection. Outside the scope of this proceeding. The witness is being asked to now do a comparison to an entirely separate alternative that has nothing to do with the mitigated Ivanpah 3.

MS. SMITH: Mr. Kramer, I think one of the questions I would have like answered further
in the beginning of this hearing is whether or not this is an alternative.

The way the Sierra Club views mitigated Ivanpah 3 is a new alternative. If it's a new alternative, and I would argue that it is, comparing the new alternative to existing analyzed alternatives is absolutely valid, something that we will have to address in our briefs.

We now have another alternative on the table for the Commission to consider.

HEARING OFFICER KRAMER: I think it is appropriate to compare and contrast this new proposal regardless of the label, alternative or project modification, to the alternatives that have already been discussed in this case, as opposed to in the case of Mr. Powers' testimony earlier, what appears to be a new alternative.

It's okay to compare what we've already discussed, but not to add new alternatives to the mix. So the objection is overruled.

MS. SMITH: I can clarify the question if that would be helpful?

MS. SANDERS: Okay.

MS. SMITH: Habitat fragmentation in the Ivanpah Valley for the desert tortoise is on
record as being a major concern, I think, for all parties.

My question is your review of the I-15 alternative and this new alternative, which project fares better for the desert tortoise with respect to habitat fragmentation in the Ivanpah Valley?

Ms. Sanders: So back to the alternative we considered, the Ivanpah 3 alternative, you're asking just for that assessment, not for -- you asked me to compare the mitigated Ivanpah 3 and then the I-15 alternative, where the entire project was down near the freeway, is that correct?

Ms. Smith: Yes.

Ms. Sanders: I don't think it's different from the project versus I-15 and the mitigated project versus I-15. They're very similar. Maybe a slight benefit in terms of fragmentation with the mitigated Ivanpah 3.

Does that answer your question?

Ms. Smith: No.

Ms. Sanders: I'm sorry.

Ms. Smith: That's okay. We're both on the phone so I think it makes it difficult.
Are you saying that mitigated Ivanpah 3, with respect to habitat fragmentation for desert tortoise in the Ivanpah Valley, --

MS. SANDERS: Um-hum.

MS. SMITH: -- the original proposal in the AFC and mitigated Ivanpah 3 present essentially the same amount of habitat fragmentation as compared to the I-15 proposal in the FSA?

MS. SANDERS: Okay.

MS. SMITH: Is your answer yes?

MS. SANDERS: I'm sorry, I didn't know it was a question. I thought it was a clarification. Can you ask it again? I'm sorry, I apologize.

MS. SMITH: The original AFC has, you know what that proposal was. That's what we've been dealing with all along.

MS. SANDERS: Okay.

MS. SMITH: And now we have the mitigated Ivanpah 3, which takes off some few hundred acres at the top of Ivanpah 3.

MS. SANDERS: Um-hum.

MS. SMITH: In those two proposals as compared to the I-15 alternative, does mitigated
Ivanpah 3 and the original proposal present essentially the same amount of habitat fragmentation?

MS. SANDERS: I'd say more or less, yeah.

MS. SMITH: Thank you.

HEARING OFFICER KRAMER: Is that it?

MS. SMITH: Yes.

HEARING OFFICER KRAMER: Any other questions? Mr. Basofin, did we get to you yet?

MR. BASOFIN: I just had one more, yeah.

HEARING OFFICER KRAMER: Okay, go ahead.

MR. BASOFIN: Just remembered it, thank you.

RECROSS-EXAMINATION

BY MR. BASOFIN:

Q Ms. Sanders, is it your understanding that the mitigated Ivanpah 3 proposal alters the location of the desert tortoise translocation areas?

MS. SANDERS: I don't know. I've been operating on the numbers, sticking with the transportation areas originally identified. But that's what my analysis assumed.

MR. BASOFIN: Thank you.
HEARING OFFICER KRAMER: Mr. Harris.

MR. HARRIS: If I'm last, I've got one question.

CROSS-EXAMINATION

BY MR. HARRIS:

Q And, Susan, you probably don't have your testimony in front of you, or maybe you do. Do you have a hard copy of your testimony?

MS. SANDERS: I have nothing related to Ivanpah with me right now.

MR. HARRIS: Okay. Well, let me describe to you what I'll ask you about. Now, there's a table, a summary table on page 1.3 of the executive summary, which lists all the technical areas. The question is whether it complies with LORS, the second column is direct and indirect impacts fully mitigated, and then the third column is cumulative impacts fully mitigated.

Now, I want to ask you a question, because I was afraid that maybe you were a little loose with some of the language here.

Under biological resources technical area, under the question complies with LORS, the staff finding that says yes.
Under the second column, direct and
indirect impacts fully mitigated. The testimony
struck out the word no and inserted the word yes.
And then under the cumulative impacts
fully mitigated, the testimony strikes out the
word no and inserts the word yes.
Do you have that generally in mind?
MS. SANDERS: Sure, yeah.
MR. HARRIS: Is that still your
testimony in this proceeding?
MS. SANDERS: Yes.
MR. HARRIS: Okay. That 's all I have.
Thank you.
MS. SANDERS: All right.
HEARING OFFICER KRAMER: Well, let me --
I was about to ask the same question. Ms.
Sanders, earlier I thought you said that staff
still considered there to be unmitigated
cumulative impacts --
MS. SANDERS: No, I said there were
cumulative impacts, but not unmitigated.
HEARING OFFICER KRAMER: Okay. I think
you might have said --
MS. SANDERS: I'm --
HEARING OFFICER KRAMER: -- significant.
Okay. But you believe that those fragmentation impacts are insignificant?

MS. SANDERS: I believe with mitigation they'll be reduced to less than significant.

HEARING OFFICER KRAMER: Okay, thank you.

MS. SANDERS: I think this is our original conclusion in the FSA, and that has not changed.

HEARING OFFICER KRAMER: Okay, any redirect questions from anyone or follow up?

MS. BELENKY: I would like to clarify, because I thought this was a change from the original FSA.

HEARING OFFICER KRAMER: I think it's not with regard to tortoise, but with regard to the plants, the changes. That's the way I understand it.

MS. BELENKY: I guess I would like to follow up with Ms. Sanders.

RECROSS-EXAMINATION

BY MS. BELENKY:

Q You just testified that fragmentation is still significant. And then you later testified that you think it has been reduced to
insignificance. What is the basis for that?

MS. SANDERS: The application of the
proposed mitigation measures.

MS. BELENKY: Can you explain what
mitigation measures you believe reduced the
fragmentation of desert tortoise habitat?

MS. SANDERS: The enhancement measures
proposed as part of the BLM one-to-one designation
will undertake activities that will enhance
connectivity and will reduce desert tortoise
mortality, enhance reproduction.

I think we went through that pretty well
in December. The proposed condition of
certification includes habitat acquisition and
other actions to mitigate the impacts of the
project's desert tortoise.

MS. SMITH: This is Gloria Smith.

RECROSS-EXAMINATION

BY MS. SMITH:

Q How would you say a seed program at another
side reduce impacts, severe impacts from habitat
fragmentation within the Ivanpah Valley?

MR. BELL: I'll object --

MS. SANDERS: BLM --

MR. BELL: I'm sorry. Outside the scope
of this proceeding. This is covering an area
that's already been covered extensively during the
December hearings.

Here we have a proposal that shrinks the
project site. There's no testimony that it's
increased impacts. And therefore this question is
outside the scope of this proceeding.

HEARING OFFICER KRAMER: The objection
is sustained. We've certainly plowed this ground
during the January hearings. And the testimony
has established that there's basically no change
in the staff's position in this regard. So there
really is nothing by way of a change to explore
further along these lines.

Mr. Basofin?

MR. BASOFIN: Yes, I just have a follow-
up question from Ms. Belenky's question.

FURTHER REcross-examination

BY MR. BASOFIN:

Q Ms. Sanders, can you specify the habitat
enhancement actions that you just mentioned that
will be included in the BLM's one-to-one
mitigation that would reduce the impact?

MS. SANDERS: I included those in my
rebuttal testimony. That was a list of actions
that the Fish and Wildlife Service, Fish and Game, BLM, Energy Commission Staff developed. It includes a variety of things, including fencing, habitat enhancement, restoration in Ivanpah Valley.

MR. BASOFIN: And that was in your rebuttal --

MS. SANDERS: -- and that was in --

MR. BASOFIN: -- your rebuttal --

MS. SANDERS: That was in my rebuttal testimony, yes.

MR. BASOFIN: From the original hearing?

MS. SANDERS: That's right.

MR. BASOFIN: Okay, but I'm asking because your response to Ms. Belenky was that you were able to state in the addendum that cumulative impacts will be fully mitigated based on enhancement action.

So I'm just asking specific to your analysis in the addendum which enhancement actions those were that would have -- that allowed you to turn that from a no to a yes?

MS. SANDERS: Enhancement actions and acquisition of habitat throughout the range of the desert tortoise. And the change from no to yes
was relating to the change in the impacts to the plants.

Is that what you're referring to? So it was the executive summary column that Mr. Harris outlined?

MR. BASOFIN: Yeah. I guess I'm looking for specific actions. You characterized them as enhancement actions. I'm just wondering if you can give us specifics?

MS. SANDERS: Well, this --

HEARING OFFICER KRAMER: Now this is relative to the tortoise? Hold on, Susan. This is relative to the tortoise?

MR. BASOFIN: Yes, yes.

HEARING OFFICER KRAMER: You're basically asking the same question in a slightly different way that Mr. Bell objected to and the objection was sustained.

MR. BELL: You see me reaching for my button.

HEARING OFFICER KRAMER: At this point -- actually I was wondering what took you so long.

(Laughter.)

HEARING OFFICER KRAMER: As I said a minute ago, I think we fully explored this the
last time. There's nothing that's changed that
needs to be revisited at this point.

She's talking about, with regard to the
tortoise conclusion it has not changed since the
last set of hearings. It's not affected one way
or the other by the reduction of the area of unit
3. So we need to move on.

So, any other questions on any unrelated
to that last line of questioning subject for Ms.
Sanders?

Seeing none, then, Ms. Sanders, thank
you. Hopefully you can get back into the Beacon
hearings. Thank you for being able to accommodate
us today.

MS. SANDERS: Sure, thank you. Bye bye.

HEARING OFFICER KRAMER: Okay, so now
we're back in the middle of cross-examination of
the applicant's panel. Mr. Bell, you've concluded
your questioning, correct?

MR. BELL: I did, I have no further
questions.

HEARING OFFICER KRAMER: Okay. So,
let's begin then -- let's go to the telephone.
Ms. Smith, do you have any questions?

MS. SMITH: Sorry, I got distracted.
Can I wait for about five minutes?

HEARING OFFICER KRAMER: Okay. This is the applicant's panel. But, okay. Dr. Connor, any questions?

DR. CONNOR: I've got a question about the tortoises that were found on the site a couple years ago.

HEARING OFFICER KRAMER: Is that for the applicant's panel?

DR. CONNOR: For the applicant's panel, yes.

HEARING OFFICER KRAMER: Okay, go ahead and ask your questions, and any others that you might have for this panel.

DR. CONNOR: Okay.

CROSS-EXAMINATION

BY DR. CONNOR:

Q Good morning, panel members. Are you aware of what the location of the three tortoises that were in the area to be avoided under the proposal in terms of whether they were in burrows, whether they were walking across the ground, or, you know, where the actual location was on the grounds?

MR. CARRIER: That information was in
the AFC. There's a table --

MR. SPEAKER: Identify yourself, please.

MR. CARRIER: Oh, I'm sorry. John Carrier, CH2MILL. That information was in the AFC in an appendix that had a table that listed all the tortoises and where they were found.

DR. CONNOR: Okay, I did actually try to look at that table. Can you tell me, -- that are assigned to the tortoises in that table, do those match the numbers that are on your map?

MR. CARRIER: No, the numbers on this figure 3-1 are just numbers. We just numbered them. You'd have to go back to the figure in the AFC that lists the specific number that cross-references to the table.

And we didn't do any -- when the surveys were done we weren't scoping or anything, so all those were either visible -- if they were in a burrow they were visible to the searcher that walked by, or they were outside the burrow.

DR. CONNOR: Okay. From what I could tell from looking through the table it looked like one of the tortoises was found above ground and two were possibly in burrows. Does that sound about right?
MR. DE YOUNG: This is Steve De Young.

Again, we did not do an intrusive survey, so if they were in a burrow they were visible at the edge of the burrow.

DR. CONNOR: Okay. Do you have any evidence that suggests that those tortoises are still at those locations?

MR. DE YOUNG: No. I think as I indicated in my testimony, this was the location and the numbers of tortoise found during our 2007 and 2008 tortoise surveys. Protocol, U.S. Fish and Wildlife Service protocol level surveys.

DR. CONNOR: Okay, so we don't know if those tortoises are still there, is that correct?

MR. HARRIS: Asked and answered.

DR. CONNOR: Okay.

HEARING OFFICER KRAMER: Anything else?

DR. CONNOR: That's it for now, thank you.

HEARING OFFICER KRAMER: Okay.

MS. SMITH: Hi, this is Gloria. Sorry, I had (inaudible). I have one question for the applicant now.

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CROSS-EXAMINATION

BY MS. SMITH:

Q    Does the applicant agree with staff that mitigated Ivanpah 3 basically poses no added benefits to the desert tortoise in the Ivanpah Valley?

MR. HARRIS: Gloria, can you provide a reference to that characterization of the other party's testimony?

MS. SMITH: It was Ms. Sanders. She said that essentially that the status quo was the same. There was no change in the status for impacts to the desert tortoise.

MR. HARRIS: I'm going to object --

MS. SMITH: As a result of Ivanpah 3.

MR. HARRIS: I don't recall --

MR. BELL: I would object. That mischaracterizes staff's testimony.

MS. SMITH: All right. Let me get to the --

MR. BELL: For clarification I believe the testimony was that it doesn't change the ultimately conclusion. But since there's a reduction in acreage that there's a lessened impact with respect to wildlife.
HEARING OFFICER KRAMER: Objection sustained. Go ahead, Ms. Smith.

BY MS. SMITH:

Q Does the applicant see any added benefits to desert tortoise as a result of mitigated Ivanpah 3?

MR. COCHRAN: I just see the primary benefit as --

MR. SPEAKER: Please identify yourself.

MR. COCHRAN: Oh, excuse me. This is Mark Cochran, CH2MHILL. The primary benefit, I think, has been stated is that there's 433 acres that would now not be subject to development in desert tortoise habitat.

MS. SMITH: Mr. Cochran, did you prepare the biological resource section of the mitigated Ivanpah 3?

MR. COCHRAN: I was the primary author, yes.

MS. SMITH: Thank you. I don't have any --

MR. COCHRAN: Of the tortoise section.

MS. SMITH: -- other questions right now. Sorry?

MR. COCHRAN: Excuse me, I just wanted
to clarify that that was on the tortoise section.

MS. SMITH: You prepared the tortoise section of the mitigated Ivanpah 3 analysis?

MR. COCHRAN: Correct. I was the, say the primary author.

MS. SMITH: Thank you.

HEARING OFFICER KRAMER: Okay, Basin and Range Watch, Ms. Cunningham or Mr. Emmerich, any questions for the applicant's panel?

MR. EMMERICH: Yeah, we have a few more questions that we'd like to ask.

CROSS-EXAMINATION

BY MR. EMMERICH:

Q Referring to the biological opinion --

HEARING OFFICER KRAMER: Mr. Emmerich, when you first speak after awhile you need to state your name for the court reporter's benefit.

MR. EMMERICH: I'm sorry about that. This is Kevin Emmerich with Basin and Range Watch. And my first question is concerning the biological mitigation proposal, mitigated Ivanpah 3. This involves the stormwater drainage. It says here that a lot of the ephemeral washes will now be avoided from development.

However, I'm wondering, do you have a
percentage of the amount of stormwater flow that will be allowed to flow through the area with the new proposal?

MR. DE YOUNG: Can you clarify what you mean by the area?

MR. EMMERICH: Well, the mitigated area. Apparently it says that ephemeral washes will be now free from development, the ephemeral washes. And I'm wondering with the new proposal has anybody calculated a percentage of how much stormwater flow will now be allowed to flow through the entire project site with this new mitigation proposal.

MR. CARRIER: This is John Carrier. What we included in our testimony was that this gas line gulch area which is in the north has the highest potential of flood flows and erosion.

And under this alternative 470 acres of the project that are within the gas line gulch fan, only 135 remain. So that remaining area, 90 percent are located on the east side.

So it's a substantial reduction. We haven't identified specifically for the project, as a whole, what percentage change that is for just removing that 433 acres.
MR. EMMERICH: Okay, thank you. My next question I'm not sure who it would be for, maybe it would be for Mr. Carrier. Can you tell us what is the make and model of this steam turbine that's in modified Ivanpah 3 proposal?

MR. HARRIS: Kevin, give us just a minute to pull some documents here.

HEARING OFFICER KRAMER: Can you tell us while we're waiting why you're interested in this information, Mr. Emmerich?

MR. EMMERICH: I'm going to let Laura answer that.

MS. CUNNINGHAM: This is Laura Cunningham. We're just interested because there's going to be a change, how this will affect the efficiency and capacity of Ivanpah 3.

MR. STEWART: This is Todd Stewart. I can give you the make of the steam turbine. It is a Siemens steam turbine. But the specific model number I don't have.

MS. CUNNINGHAM: Okay, thank you.

MR. EMMERICH: This is Kevin Emmerich again. That's all we have.

HEARING OFFICER KRAMER: Thank you.

County of San Bernardino, always the strong,
silent one. I'll give you a shot, Mr. Brizzee.

MR. BRIZZEE: Thanks for the compliment, Mr. Kramer, but I have no questions, thank you.

HEARING OFFICER KRAMER: Okay, is there anyone else on the telephone I've missed accidentally?

Okay, in the room now. Mr. Suba.

MR. SUBA: I have just a few questions for the applicant.

CROSS-EXAMINATION

BY MR. SUBA:

Q I'd like to make sure I understand this M-3 or MI-3 proposal -- M-3 proposal. With respect to plants, you know, it is to avoid the northern acreage and two other plots of acreage, or you know, poly-- of acreage between 1 and 2. And then implement the halo approach for milkweed and (inaudible) throughout the other areas.

MR. DE YOUNG: That's correct.

MR. SUBA: So if we can divide the claimed benefits to the plants between the northern avoidance areas and the halo idea, do you have an idea what -- well, this gets a little tricky because there are two quantities of plants that are sort of in play here.
The applicant has used localities, which is a -- scale, so we can talk about localities later with the staff. I think I'll try and clarify that over the occurrence idea.

But if we look at localities, do you have an idea of what percent for the milkweed specifically the M-3 proposal avoids? In terms of not the halo, so strip out the halo idea. What percent of the milkweed is left in the avoided poly-- areas?

MR. DE YOUNG: Give us a moment, please.

MR. SUBA: Sure. I mean I can help you, I --

(Pause.)

MR. SUBA: Maybe I can move it along faster. If I give the -- you can tell me whether -- what I've looked at is the, on the map the areas, the lucky charms that have the white around them are the ones that are avoided one way or another.

So, in the northern area of block 3 I've got a count of nine or ten, between nine -- somewhere nine or ten, let's say ten, milkweed haloed localities.

And on table 5.1 in exhibit 81 you've
got a total of 202 localities for milkweed throughout the site. So I'm going to put the amount of avoided localities, if we're going to use that term, of milkweed for the reduced footprint idea, minus the haloes, at about 5 percent.

Would you --

MR. HARRIS: Is there a question? I mean it sounds like something you could brief, but I'm not sure of the question.

MR. SUBA: Well, the question was what percent of milkweed are you avoiding in that reduced block 3 area. That's the question.

HEARING OFFICER KRAMER: As a percentage of what?

MR. SUBA: Localities. Let's just start there.

HEARING OFFICER KRAMER: I mean I just have a feeling you guys, when you're talking at, you know, consultant biologist level, it's going to just go over the heads of all of --

MR. SUBA: Okay, --

HEARING OFFICER KRAMER: -- the laypeople up here.

MR. SUBA: Let me do localities. So
just on the number of localities that have been
mapped, what percentage of them are in the
northern -- for milkweed, are in that northern
avoided block?

HEARING OFFICER KRAMER: And the
locality is an individual plant that was observed,
or --

MR. SUBA: Yeah, that's their
definition.

HEARING OFFICER KRAMER: Okay.

MR. DE YOUNG: What we have in our table
3.2-2 of our M-3 proposal is the original 200
megawatt Ivanpah 3, localities avoided was 86
percent. With the mitigated Ivanpah 3, it's 84
percent.

MR. SUBA: And that includes the halo
avoidance for milkweed? And I'm trying to tease
apart the halo avoidance versus the block -- the
acreage avoided.

DR. SPAULDING: This is Geof Spaulding.
The number, if you express it in a percent, is
would be less than 5 percent.

MR. SUBA: Thank you. I have another
question about the avoidance areas in between 1
and 2, Ivanpah 1 and 2. There's a five-acre
avoidance area and a 33-acre. Am I reading the
map correctly that the 5 percent avoidance area is
bounded on all sides by active project areas?

MR. DE YOUNG: Yes.

MR. SUBA: Thank you. I just have one
more question. And this is the maintenance trails
that are in between the heliostat fields in the
blocks. What happens -- that's where the trucks
that wash the mirrors go through and are --

MR. DE YOUNG: Are you talking within
the heliostat field or the trails around the
project?

MR. SUBA: No, no, within the heliostat
fields there are, and I've always wondered this, I
just never got it clarified in my own head. There
are heliostat field circles. And then between
each of those concentrically there's a maintenance
path.

MR. DE YOUNG: Correct.

MR. SUBA: And are those maintenance
paths vegetated or cleared?

DR. SPAULDING: The mirror-washing
maintenance paths will occur upon every fourth row
of --

MR. SUBA: Okay.
DR. SPAULDING: -- heliostats, or circumferential row. Those paths will not be graded. They will be mowed and then with the vehicles traveling over them they will become compacted over time.

MR. SUBA: And then in between the rows, in between every fourth row the heliostat fields are accessed, I guess, by foot?

MR. DE YOUNG: They're accessed one time during construction of the pylon by insertion equipment. And after that they're accessed remotely from these maintenance paths.

MR. SUBA: So the mowing of the vegetation under the heliostat fields, there's going to be some far-reaching arm that can get in there and mow --

MR. DE YOUNG: I'm sorry, if you're talking about the original mowing of the site that will obviously be done locally, not remotely. I thought you were referring to during operations --

MR. SUBA: That, too --

MR. DE YOUNG: -- or during the rest of construction.

MR. SUBA: That, too, under the mirrors during operation. Under the mirrors.
MR. DE YOUNG: During operation under the mirrors it will be done by hand. It will not be done with some --

MR. SUBA: Okay.

MR. DE YOUNG: -- with a remote arm.

MR. SUBA: Thank you.

HEARING OFFICER KRAMER: Mr. Basofin, any questions?

MR. BASOFIN: Yes, I think I have a few.

CROSS-EXAMINATION

BY MR. BASOFIN:

Q This is an interesting clarification question from one of Mr. Connor's questions. Is that the location of desert tortoises on figure 3-1, is that from -- which protocol survey is that from? I think Mr. Connor asked you, but I may have missed it.

MR. DE YOUNG: There were two surveys that were conducted, during those two surveys.

MR. BASOFIN: 2007 and 2008?

MR. DE YOUNG: Yes.

MR. BASOFIN: Okay.

MR. CARRIER: I was going to say that the blue colored ones were from the 2008 survey; the orange ones were from the 2007 survey.
MR. BASOFIN: Okay, thank you. And based on the identification of desert tortoises, individual desert tortoises in the excluded area, how many actual desert tortoises would you expect to find?

MR. DE YOUNG: There was one tortoise found in the -- I'm sorry, are you talking about the construction logistics area or are you talking about the M-3 area --

MR. BASOFIN: Yes, in the M-3 area.

MR. DE YOUNG: As I previously stated during our protocol level surveys in 2007 and 2008 we found three.

MR. BASOFIN: Right, but let me rephrase my question. Based on the number of individuals that you found, are you able to extrapolate to estimate how many you would actually find during translocation --

MR. DE YOUNG: I'd ask Mr. Cochran to answer.

MR. COCHRAN: There's no way to know that. They move.

MR. HARRIS: Does that answer your question? I mean, it --

MR. BASOFIN: If the answer's no then
That's fine.

MR. COCHRAN: That's the answer, no.

There's no way of knowing how many tortoises are in the M-3 area at this point in time.

MR. DE YOUNG: As you know, without a take permit we're not allowed to scope the burrows. So there could have been tortoises in the burrows at that point. The burrows could have been empty at that point.

MR. COCHRAN: Just to be clear, all I'm pointing out is even if we had an absolute number in 2007 and 2008 and we knew exactly how many were there, we scoped all of the burrows and we were confident we saw every hatchling and every juvenile, we still would not know at this point in time how many tortoises are there because they move.

MR. BASOFIN: And you wouldn't be able to estimate or extrapolate this on the individuals, identification of individuals?

MR. COCHRAN: Estimate, extrapolate, I just think all you can do is look at the numbers you had and you could draw some reasonable conclusions about how many might be there, but to answer your question, no, you would not know until
you actually did the clearances and moved them of how many there are there.

MR. BASOFIN: Okay, so then my question is what would be a reasonable conclusion for an estimation of how many individuals would be --

MR. HARRIS: I think you've answered the question like five times now, so I'm going to object on that basis.

MR. BASOFIN: I'm just trying to clarify and understand the answer.

MR. HARRIS: The answer's been given several times.

HEARING OFFICER KRAMER: And it was that he can't.

MR. HARRIS: Should he give it one more time?

MR. COCHRAN: Yeah, there's no way of knowing how many tortoises are in the 3 area at this point in time, or any given time in the future.

MR. BASOFIN: Okay, thank you. Does the mitigated unit 3 proposal alter the location of the desert tortoise translocation areas?

MR. DE YOUNG: That will be a determination that will be made by the Service in
their biological opinion. What we stated in our proposal is that obviously the area is now available should it be chosen for translocation.

MR. BASOFIN: Can you identify where in the proposal that is?

MR. DE YOUNG: Yes. Give me a moment, please.

(Pause.)

HEARING OFFICER KRAMER: It's page 3-3? First add a partial barrier?

MR. COCHRAN: I'm Mark Cochran. I'm just looking on page 3-5 where we make the statement that it also opens this 433-acre area as a site for potential tortoise relocation.

HEARING OFFICER KRAMER: Your pagination is different than mine.

MR. COCHRAN: Also, I've just been told it's also on page 1.1. The second bullet.

MR. DE YOUNG: And again, let me clarify. We said it's available for that. That's not our determination to make.

MR. BASOFIN: Okay. Have you submitted an amended draft translocation relocation plan to the Service?

MR. DE YOUNG: Geof.
DR. SPAULDING: Not yet.

MR. BASOFIN: Okay, thank you. Mr. De Young, you stated in your testimony that the mitigated unit 3 area would allow stormwater to pass through the site, is that correct?

MR. DE YOUNG: What I said is that the mitigated Ivanpah-3 area where the ephemeral washes were previously graded, they'll quite obviously not be graded now. And stormwater that would flow into them today will not be changed by the project. That's where we're moving that project footprint.

MR. BASOFIN: Okay, thank you. Did you perform a new stormwater modeling analysis using the same model that was used in the original proposal?

MR. DE YOUNG: Give us a moment, please.

(Pause.)

MR. DE YOUNG: Stormwater impacts are presented in section 3-11.3 of our proposal. That's the extent of the evaluation of stormwater changes.

MR. BASOFIN: Okay, I'm looking for an answer to my question which is did you perform a new stormwater modeling analysis based on the same
MR. DE YOUNG: No, we didn't.

MR. BASOFIN: Okay.

MR. DE YOUNG: We didn't deem it necessary --

MR. BASOFIN: And you --

MR. DE YOUNG: -- in the areas removed from the project footprint. Stormwater flows as it is today.

MR. BASOFIN: Did you consider how the removal of the exclusion of the mitigated unit 3 area might affect stormwater scour on the units, on the remaining units?

MR. STEWART: It was considered and there is no change.

MR. BASOFIN: Thank you. The new location -- trying to understand how to characterize it, the proposal to locate the gas pipeline bisecting the mitigated unit 3 area, I'm trying to understand, is that a proposal? Is that the current --

MR. DE YOUNG: No, let me clarify. The current gas line alignment is as it has always been, along the northern area of Ivanpah 3.

What we did, what our biologist did was
to take a look, an evaluation of doing a diagonal
from the northern portion of Ivanpah 3, where it
erentered the site previously, to the new northeast
corner of Ivanpah 3, and whether there'd be any
impact on plants within that area.

   We'd made a commitment to avoid a
hundred percent of plants with the gas line
alignment. And as a point of clarification, what
I said is that this new diagonal alignment, should
it be determined that that's the appropriate way
to go, there will be no impact on the area. So
we're, no construction impacts are still at a
hundred percent avoidance.

   But, again, in this proceeding, where it
currently stands is where we have it, where we
have it located on the figures.

MR. BASOFIN: Okay, and when will you
make a determination whether you would use the new
siting of the gas pipeline?

MR. DE YOUNG: As it stands right now
we're going on the existing alignment.

MR. BASOFIN: Thank you. I think that's
all I have.

HEARING OFFICER KRAMER: Ms. Belenky.

MS. BELENKY: Thank you. I have a few,
actually quite a few questions.

CROSS-EXAMINATION

BY MS. BELENKY:

Q    So I will start just simply back to the
map, 3-2. And the Commissioner, I think,
questioned -- or I can't remember, if it was Mr.
Kramer -- whether that shows all of the plants
that you located through your survey.

And what I wanted to make sure I
understood is many of the plant locations also
have like a box around them, but not all of them.
And I think that it makes visually it look
different.

And I'm just trying to understand why
there are boxes around some of the plants and not
others.

MR. DE YOUNG: There are two plant
species, Rusby's desert mallow and Mojave milkweed
that we have proposed to fence and avoid during
construction and operation.

MS. BELENKY: But not any longer in the
mitigated 3?

MR. DE YOUNG: No.

MS. BELENKY: So you didn't take the
boxes away?
MR. DE YOUNG: We're still proposing that for Rusby's desert mallow and Mojave milkweed to fence and avoid.

MS. BELENKY: In the area that you're not going to use you're going to fence? Is that in your testimony?

MR. DE YOUNG: We're not doing -- no, I'm sorry, I thought you were talking about the areas that are within the heliostat fields in consideration of M-3. We're not doing anything in the mitigated area.

MS. BELENKY: But it's on the map, they still show up with the, I don't know, square circles. They're highlighted, is that correct?

DR. SPAULDING: This is Geof Spaulding. No, we chose to leave the symbols on the map within the M-3 area for a point of reference to demonstrate what we would be avoiding.

HEARING OFFICER KRAMER: Ms. Belenky, you're estimating 20 or 30 minutes of cross-examination?

MS. BELENKY: Probably just about 20.

HEARING OFFICER KRAMER: Okay. Then let me put you on hold there so we can go to lunch. If it was just going to be a couple minutes then
it might make sense to continue on.

But, Mr. Harris, do you have any
scheduling issues that would prevent us from
taking lunch right now?

MR. HARRIS: Well, other than taking --
lunch, --

(Laughter.)

MR. HARRIS: But I think this will be
it, though, right? I mean Ms. Belenky's questions
are it and then my panel could basically be
dismissed at that point?

I just want to make sure I understand
where we are.

HEARING OFFICER KRAMER: I think that's
correct. And if she was just talking a bout a
couple minutes, you know, I think we'd go forward.

But, --

MR. HARRIS: Whatever the Committee's
pleasure is.

MR. BELL: Staff has no scheduling
issues.

HEARING OFFICER KRAMER: Mr. Bell, what
did you say?

MR. BELL: Staff has no scheduling
issues, Mr. Kramer.
HEARING OFFICER KRAMER: Okay, thank you. Okay, well, then let's take a lunch break. So let's be back here at 1:15 on the clock in the back, which is I think optimistic. Actually, let's be back at 1:10, ten minutes after 1:00. We'll start up again then.

Those of you on the telephone, we will leave the line active. You could, I suppose, hang up and then call back in.

And, again, send me an email if for some reason when you try to come back in there's a problem.

And we are off the record.

(Whereupon, the morning session of the hearing was adjourned, to reconvene at 1:10 p.m., this same day.)

--o0o--
AFTERNOON SESSION

1:17 p.m.

HEARING OFFICER KRAMER: Okay, we're continuing about 1:15. And Ms. Belenky will continue with her cross-examination of the applicant's panel.

MS. BELENKY: Thank you.

CROSS-EXAMINATION RESUMED

BY MS. BELENKY:

Q I just want to finish up my initial question, which follows up on something I believe one of the Commissioners or Mr. Kramer asked, which is whether the plants are shown the same way on this map in the, what you're calling the M-3 section, the northern section that would be carved off. And the rest of the project area.

And I believe the answer was some of them are and some of them are not, is that correct? That some of them have these little drawn halos around them and --

MR. DE YOUNG: There should be -- this is Steve De Young -- there should be no halos. It should not be interpreted that we're doing anything with the halos in the northern mitigation area.
MS. BELENKY: Do you have another map that just shows all the plant sites with the same plant project outline so that they can be compared more fully?

MR. DE YOUNG: No.

MS. BELENKY: You do not, okay. Thank you.

HEARING OFFICER KRAMER: And to be clear we were speaking of figure 3-2 in exhibit 88.

MS. BELENKY: So I'm going to try and ask this in order, however I want to start first with the testimony you gave this morning and I have several other questions.

In the new M-3 design does it show where the road goes outside of the fence line?

MR. DE YOUNG: To help clarify here, specifically what are you talking about?

MS. BELENKY: My understanding from the original project design that we talked about at the hearing previously --

MR. DE YOUNG: Right.

MS. BELENKY: -- is that there will be a road going all the way around the fence line both for your own maintenance use and in addition as a alternate route for some of the ORV routes that
are on the public lands, is that correct?

MR. DE YOUNG: Correct.

MS. BELENKY: And does your map show the route, does the outline here include the route, or would the route be outside of the fence line that you've drawn here? And how -- does it show the width?

MR. CARRIER: The lines -- excuse me, this is John Carrier. The lines that you see, the black lines that you see on the maps are the survey boundaries. No activity is going out beyond the survey boundaries.

So all those perimeter roads and everything are inside the boundary, the survey boundary. So it may be -- the fence line, this is not the fence line that you see, this is the survey boundary.

So the fence line, if it's an exterior road for maintenance, it's inside the survey boundary on the outside of the security fence.

MS. BELENKY: Okay.

MR. CARRIER: Okay?

MS. BELENKY: That's your testimony --

MR. CARRIER: Yes, that's correct.

MS. BELENKY: Okay. I think we've
already covered the question of the 15 percent.

But I did want to understand. Mr. De Young, you testified that the number of tortoises impacted would be reduced by 15 percent. Are you a tortoise scientist?

MR. DE YOUNG: No.

MS. BELENKY: Then what was the basis for your testimony?

MR. DE YOUNG: Twenty tortoise were found onsite. Three tortoises, 15 percent of 20.

MS. BELENKY: So you were testifying as a mathematical expert?

(Laughter.)

HEARING OFFICER KRAMER: Isn't it kind of sad that simple math now requires an expert to accomplish?

(Laughter.)

MR. DE YOUNG: No, I'm not a mathematical expert.

MS. BELENKY: Okay, so first of all, I guess we need to go back and perhaps -- who prepared this part of the testimony about the desert tortoise?

MR. DE YOUNG: I did.

MS. BELENKY: You prepared this
testimony?

MR. DE YOUNG: I did. Are you referring to my direct testimony?

MS. BELENKY: I'm referring to the testimony about the desert tortoise. Either on direct today or in the one that was submitted to the CEC.

MR. HARRIS: Can you re-ask the question, please?

MS. BELENKY: Who submitted the testimony regarding the impacts on the desert tortoise from your new whatever you're calling it, alternative or new project proposal?

HEARING OFFICER KRAMER: It might be more efficient for you to pose a question of the panel, and then the appropriate person can provide the answer.

MS. BELENKY: Well, if he says he didn't, I think --

MR. DE YOUNG: We'll let Mr. Cochran respond to that. I think he already said he was the one that prepared the testimony on desert tortoise.

MR. COCHRAN: Right, it's pretty simple. I mean at the time of the surveys, as Mr. De Young
said, there were, you know, 20 tortoises. We had a snapshot in time as to where those 20 tortoises were.

And then the 433, you know, acres reduction. Within that 433 acres at that time there were three live tortoises. And then as Mr. De Young testified, you know, three over 20, 15 percent.

And I think we've testified before that, you know, the basis of those numbers.

MS. BELENKY: Thank you, Mr. Cochran. I thought I understood your prior testimony was that you can't tell how many tortoises would be there now because they move, and therefore what is it exactly that you are testifying to as to the 15 percent?

MR. COCHRAN: The 15 percent is the tortoises that would be avoided, I suppose would be a way to put it, if the projected -- if the project were to be constructed in 2007 and 2008.

I think we're on the same page here, and that is that at this point in time, you know, 2010, you know, we cannot say how many tortoises would be avoided by the reduced footprint.

MS. BELENKY: Thank you. Mr. Carrier, I
believe that you testified this morning -- I'm sorry, my notes are not completely clear -- but you testified as to some of the biological impacts, is that correct?

MR. HARRIS: You want to -- pose the question. I don't know that I recall anybody's individual testimony --

MR. CARRIER: I don't recall, either, if I did or not. I may have made comments on that, I don't recall.

MS. BELENKY: And do you have background as a scientist?

MR. CARRIER: I don't have a background -- I mean, if you're talking about a degree in science, I don't have a degree in science.

MS. BELENKY: Are you testifying here as a scientist or as an expert in science, in biology?

MR. CARRIER: I'm testifying here as a project manager that has reviewed these section.

MS. BELENKY: Thank you. I have some questions about the project design. I believe Mr. De Young testified this morning. In the past we had asked that Yoel Gilon be available. Is he going to be available today?
MR. HARRIS: Let me respond to that.

Mr. Gilon did not sponsor any of the testimony that's before the Committee today, so, no, he's not on this panel.

MS. BELENKY: Thank you. This is for the applicant generally. Who re-designed the project?

MR. DE YOUNG: BrightSource, the company.

MS. BELENKY: Did the person who re-designed the project, are they available for testimony today?

MR. DE YOUNG: We're all part of a large company, and, yes, the people who prepared these documents are available. We are here today.

MS. BELENKY: Thank you. In earlier testimony we discussed that under certain conditions, for example clouds or so forth, where there may be asymmetric amount of sunlight on a tower, that the mirrors need to go into a safe position.

And my understanding was that having a symmetrical array of mirrors was very important, is that correct?

MR. HARRIS: Actually I'm going to
object. That wasn't our testimony. The safe position was during times of high wind.

MS. BELENKY: Well, I will find that in the testimony, but I believe it was actually the testimony.

MR. HARRIS: You can brief it in your --

MS. BELENKY: I will find it. I'm asking what -- the purpose of my asking the first question was that when looking at the new design, especially Ivanpah 3, it's very asymmetric. Is there any -- can you explain why that design is still optimal?

MR. DE YOUNG: It's not optimal. The project avoids a land feature, a mining claim to the west. So, it -- can I explain?

MS. BELENKY: Um-hum.

MR. DE YOUNG: What was optimal would have been our 200 megawatt plant.

MS. BELENKY: Okay. But it's your testimony that the asymmetric design is still your preferred design?

MR. DE YOUNG: We proposed a mitigation proposal for biology that you have before you. And we certainly optimized what's left of the site, yes.
MS. BELENKY: In your testimony, and I'm not sure which of you wrote this, this is in your written testimony, you just said rough grading. Is that a technical term?

MR. DE YOUNG: Ask Mr. Stewart to answer that.

MR. STEWART: Yes.

MS. BELENKY: And can you provide us with a definition of rough grading?

MR. STEWART: The definition of rough grading, as we're using it, has connotations of a certain amount of variance in the amount of grading. The specific number of inches up and down I don't recall.

MS. BELENKY: Is it in the testimony, the difference, the amount of inches between rough grading and other grading?

MR. STEWART: I don't believe so.

MS. BELENKY: In table 5.11-3 R2 there's a table that has the amount of grading on each site.

MR. HARRIS: Is that in the M-3 proposal or is that --

MS. BELENKY: I believe it's the one you are calling the M-3 proposal.
MR. HARRIS: -- it's attachment B.

Attachment B. I'm sorry, I just want to make sure my witnesses know which document. I didn't recognize it by the reference.

HEARING OFFICER KRAMER: What was the table, again?

MS. BELENKY: I used the table number rather than the page number, --

MR. HARRIS: It's that attachment B to exhibit 88. Soil loss table, is that what you're referring to?

MS. BELENKY: 3 R2. Yeah, um-hum. So, this table actually describes the amount of grading on each site, is that correct?

MR. STEWART: Could you repeat --

MS. BELENKY: This table describes the amount of grading on each of the sites?

MR. STEWART: Could you repeat which table you're looking at?

MS. BELENKY: Oh. It's on page 61 of the pdf, and it is table B, 5.11-3 R2.

MR. STEWART: Thank you.

MS. BELENKY: This table describes grading, is that correct?

MR. STEWART: Yes.
MS. BELENKY: And when it refers to the
690 acres of grading on the Ivanpah 1 site, what
kind of grading is that?

MR. STEWART: It's not clear in the
table what kind of grading that is.

MR. HARRIS: Let me interject. This
isn't a table of estimate of soil loss. This
refers to grading?

MS. BELENKY: This table describes the
grading and the acreage of grading.

MR. CARRIER: That's correct. This is
John Carrier. This table is an estimate of soil
loss using the Russell Equation. And it uses some
relatively conservative estimates to estimate the
amount of soil that would be lost from the
project.

And so they are some estimates, and the
assumptions for those are in the footnotes below
the table about what the assumptions were in
calculating these figures.

MS. BELENKY: But the amount of grading
listed for each of the project sites, is that the
correct amount of grading?

MR. CARRIER: These are assumptions and
estimates. There's no final design to determine
the exact amount of grading.

MS. BELENKY: I'm just trying to find --
sorry, I don't have everything printed out so it
may take me a bit longer.

So on page 3-12 of your exhibit 88, this
M-3 proposal, you discuss the reduction of grading
impact. What kind of grading impact would be
reduced? Can you be specific?

MR. STEWART: Are you referring to
grading and earthwork impacts paragraph?

MS. BELENKY: Well, that is the title of
the paragraph. But I'm still trying to get at and
understand what you mean by rough grading and
other grading. Clearly from your own chart there
will be hundreds of acres of grading in the
remaining area. So what is the difference in the
grading? And what is your testimony as to the
difference?

MR. STEWART: What is referred to on
page 3-12 where the document says: this mitigation
proposal would eliminate roughly 150 of the 170
acres or about 88 percent that would otherwise
need to be graded" that is full conventional
grading --

MS. BELENKY: But your other chart --
MR. STEWART: -- that will be eliminated.

MS. BELENKY: What is the 170 acres?

Your own chart that we just looked at shows that there will be 917 acres of grading. So where does the 170 acres of grading come from?

MR. STEWART: The 170 acres is in what was mostly the northwestern area of the original Ivanpah 3.

MS. BELENKY: So you're just saying that in the area you would avoid, you also would not grade, is that correct?

MR. STEWART: Yes.

MS. BELENKY: Okay. It won't reduce grading in any other area of the project?

MR. STEWART: It does not reduce grading within the remaining footprint of the Ivanpah 3 or the mitigated 3 project.

MS. BELENKY: And the 20 acres that are remaining, you're saying roughly 150 of the 170 acres of grading would not happen. What are the 20 acres that are still going to be graded?

MR. STEWART: There is still a small portion of gas line gulch, which is a large wash, that is still part of the M-3 project boundary.
That is where the remaining 20 acres is.

MS. BELENKY: Is that on one of the maps? Can you show us that?

MR. STEWART: It's in staff supplemental testimony.

MS. BELENKY: The map is?

MR. STEWART: Yes.

HEARING OFFICER KRAMER: Do you have a page cite we can look at?

MR. STEWART: Figure 17.

MS. BELENKY: In this area what kind of grading would be done?

MR. STEWART: Rough grading.

MS. BELENKY: I think there's still some confusion. When you say the 170 acres of grading, did you mean in the original proposal or in this area in the original proposal?

MR. STEWART: The 170 acres was in the original proposal. And it was, by and large, in the original Ivanpah 3 configuration. There are 20 acres remaining that require grading.

MS. BELENKY: Well, no, I think we've established that there are over 900 acres that are going to be graded in Ivanpah 3. That's what your other table shows. That's why I don't understand
MR. HARRIS: Is there a question?

MS. BELENKY: Yes. The question is how many acres are going to be graded in the Ivanpah 3 under your mitigated proposal.

MR. CARRIER: This is John Carrier. I think your confusion is because you're taking a table that was conservatively estimated and thinking that that's a design feature.

If you look at the notes in the table of 5.11-3 R2 that you started with, it talks about -- and actually on page B-2 -- what some of the assumptions are.

And it's assuming, for example, that, you know, that the laydown area would take one month to grade, basically that the whole construction logistics area it's assuming would be -- other than the part that's being removed for rare plants and succulent storage, those areas that are being avoided -- that that whole area would be graded.

Now whether that's going to happen or not I don't think so. But we don't have design drawings. So to be conservative, he assumed that grading would take place over larger areas than
what will likely happen.

But we do not have design drawings so we
don't know exactly where grading will occur.

MS. BELENKY: So you have no estimate
for the amount of grading that will be on the
site, is that your testimony?

MR. CARRIER: We have maximum
assumptions that are in this table. We have no
minimum assumptions of what it will be.

MS. BELENKY: Sorry, I'm just looking
for the earlier maps that did show the graded, it
showed the large grading area, which I don't --

MR. CARRIER: That was back --

MS. BELENKY: Yeah, but they didn't
show, if I understand correctly, they did not show
the grading that's going to be done in other
areas. It only shows the big areas where they
pull out large amounts of --

MR. CARRIER: And those areas are the
ones that Todd was referring to in the text.

MS. BELENKY: I think it's more than 170
acres. That's why I'm confused by your testimony.

And I will find it.

(Pause.)

MS. BELENKY: Okay, on page -- it's
HEARING OFFICER KRAMER: The addendum or the original staff assessment?

MS. BELENKY: The original staff assessment. Discusses an overall grading plan.

MR. HARRIS: So this is called not a supplement to the staff's testimony --

MS. BELENKY: Staff assessment, it's on the pdf, page 94.

MR. HARRIS: In which section of the assessment?

MS. BELENKY: It's right before alternatives, the page before alternatives.

MR. HARRIS: Sorry, can you give the page number again?

MS. BELENKY: The pdf page 94. And it's called figure 12, project description.

(MPuse.)

MR. HARRIS: I guess I want to ask the question, this is not in the applicant's testimony, from the applicant's testimony about M-3, so I'm not following.

MS. BELENKY: I'm trying to understand the basis for the statement that there would only be 20 acres left of grading after this
alternative. I do not see any evidence of that. In fact, all of the evidence points to the opposite direction. I don't see where these numbers are coming from.

You have testified that there will only be 20 acres of grading left. There were 170 acres of grading, now you've taken out 150, there will only be 20 acres of grading left. I do not understand the basis for that statement.

DR. SPAULDING: This is Geof Spaulding. To be clear we're talking about grading only within the original defined Ivanpah 3 area. And we're still talking only about the Ivanpah 3 area that remains.

The 170 acres, Mr. Stewart will concur, is that part that was rough grading for the bouldered terrain associated with that wash area, is that correct?

MR. STEWART: That is correct.

DR. SPAULDING: And therefore, since we're not affecting that bouldered terrain, most of that terrain is no longer part of the project. Therefore only about 20 acres are left, within Ivanpah 3, alone, for rough grading for boulders. We apologize if that wasn't a clear as
it could be.

MS. BELENKY: Well, it's still not clear
at all.

DR. SPAULDING: Well, I'm real sorry. I
don't think I can make it any clearer.

MS. BELENKY: I think the evidence in
the record seems to show quite a bit more grading.
And I still don't see the basis for your saying
this. But I'll move on.

I'm not sure which of the applicants
this is for. I notice that the applicant has
asked the air district to provide your air permit,
is that correct?

MR. HILL: This is Steve Hill. Yes,
that is correct.

MS. BELENKY: And does that mean you are
no longer proposing, you're no longer applying for
your original proposal? You are only applying for
the new proposal?

MR. HILL: I'm not sure I understand
your question.

MS. BELENKY: You had an air district
permit from your original proposal?

MR. HILL: What we have is an FDOC.

MS. BELENKY: That's the FDOC, thank
you. And you have asked the air district to change that, is that correct?

MR. HILL: That is correct.

MS. BELENKY: When you applied to the air district to amend your permit did you ask them to include the 5 percent limit on the use of the gas boilers that is proposed by the staff at the CEC?

MR. HILL: No, we did not.

MS. BELENKY: Mr. De Young, this morning you testified that the area that is now excluded from your M-3 proposal would be set aside. What did you mean by that?

MR. DE YOUNG: Perhaps that wasn't the best term to use. It's being removed from the project, so it will no longer be impacted by project construction.

MS. BELENKY: Thank you. You also testified this morning that you will be preparing an amended translocation plan?

MR. DE YOUNG: No, I did not. What I --

MS. BELENKY: To the best of your knowledge is the applicant or the applicant's contractors working on an amended translocation plan?
MR. DE YOUNG: What I indicated this morning was that the decision on where to, and actually let's use the correct term, it's relocation not translocation. The applicant has not proposed, other than the comment that was made that the northern mitigation area would be available for relocation of tortoise.

The decision on where to locate the tortoise is not an applicant decision. It's an agency decision, and will come out of the biological opinions being prepared by the Service. Should the Service come back and ask us to evaluate the area, I'm not sure there's much more would need to be done. It's already been thoroughly evaluated over the last three and a half years of this project.

MS. BELENKY: Thank you. And you've just testified that the correct word would be relocation. What is your basis for that statement?

MR. DE YOUNG: Relocation being within 1000 meters of wherever the tortoise is located. I believe that that area, or that that distance might, in fact, be increased.

Translocation I associate with movement
into a completely different area.

MS. BELENKY: Thank you. And I think I just have one last question for the applicant.

When you use the term, and I believe it was Mr. De Young this morning, the term low impact design, which you stated you were using that term to discuss the fact that water would flow freely across the site, is that correct?

MR. DE YOUNG: Low impact design is a term that's used in stormwater management.

MS. BELENKY: Thank you.

HEARING OFFICER KRAMER: Anything else?

MS. BELENKY: I think I'm all done.

Thank you.

HEARING OFFICER KRAMER: Okay, I think we've gone through all the parties at this point.

Any redirect, Mr. Harris?

MR. HARRIS: No, thank you.

HEARING OFFICER KRAMER: Okay. That'll will conclude -- well, actually we had some questions.

EXAMINATION

HEARING OFFICER KRAMER: The laydown servicing area between units 1 and 2, I think at various times you've used the term, called parts
of it an avoided area, but also in the same breath suggested that it might be used -- those avoided areas might be used for nurseries or transplanting or, you know, some other activities in connection with mitigating some of the impacts to the species, plant species you find onsite.

And to me that sounds inconsistent that you would be using an avoided area for some project purpose. Could you set me straight on my misperception, perhaps?

MR. CARRIER: This is John Carrier. Yes, you're correct. It should probably be more precisely stated as it's going to be avoided from construction impact. That there will be, we plan to use those areas for succulent storage, for rare plant transplant. If we have a rare plant that's in the path of construction we'll transplant it to an area.

So it's not going to be part of the construction areas. That's what we mean by removed from construction.

HEARING OFFICER KRAMER: Okay, so those uses will occur in such a way that you wouldn't affect the plants that are already in those areas?

MR. CARRIER: We'd try to minimize any
impact. There's not going to be big equipment
coming in grading, you know, not laying out gravel
for a parking area or those kinds of things.

HEARING OFFICER KRAMER: Okay. And at
various time, I think, both in your filing and in
the staff's analysis, 433 acres is used. And in
other places, 476 acres. Could you reconcile
those? Do those numbers ring in your memory?

MR. DE YOUNG: I'm not familiar with
476; 433 acres is what we've described. Geo.
I'm sorry --

DR. SPAULDING: Those figures are from
table 3.2-1 in the mitigated Ivanpah 3 proposal.
There are actually two rather small areas within
what's commonly termed construction logistics area
that account for 38 acres and five acres,
respectively.

When those are added to the 433 acres
for the northern rare plant avoidance area that
we've been discussing, they come up to 476.

HEARING OFFICER KRAMER: Okay, I --

MR. BELL: Mr. Kramer, if I could, I
know we're doing party panels, subject matter
panels, however Misa Milliron is here. Am I
saying your name right? I'm sorry.
MS. MILLIRON: Milliron.

MR. BELL: Milliron, sorry. New last name for me. And I think she might be able to provide some clarification based on the same question.

HEARING OFFICER KRAMER: Okay, well, I think he's already provided it, but thank you for the offer.

MS. MILLIRON: I would say the same thing.

HEARING OFFICER KRAMER: But we will get to the staff in a moment.

MR. CARRIER: Let me -- excuse me, but that clarifies my response to you earlier, that if you look at that table, 3.2-1. So of that area that's being removed from construction, 66 acres will be used for transplanting, but that 38 plus 5 will be completely avoided, other than there will be a underground transmission line that goes through that 38-acre parcel. Those will remain untouched other than that underground transmission line.

But the 66 acres will be not used for construction, but will be used for supplement succulent nursery and rare plants.
HEARING OFFICER KRAMER: Okay, so it's in a different category.

MR. CARRIER: Yes.

HEARING OFFICER KRAMER: Okay. My final question was staff, in their analysis, suggested that there was some, I hate to use the word significance, but that the applicant had failed to recognize the halo concept in its filing.

And I believe they wanted to make it clear that they expected that halos would still be applied to those plants that were found, of the two species -- I'm blanking on the name right now, but they were found within the actual construction area.

MR. DE YOUNG: The Rusby's desert mallow and the Mojave milkweed.

HEARING OFFICER KRAMER: And, Mr. De Young, earlier this morning I think you said something that suggested that there was no attempt to eliminate the halos. But I just wanted to confirm that.

MR. DE YOUNG: That is correct. There is no attempt for those two species to remove the halos. Those areas will be located in the field, the shape and size defined. Fences installed
prior to the start of construction. And they'll be avoided during construction and operation.

HEARING OFFICER KRAMER: Okay, thank you. Did you have any questions?

PRESIDING MEMBER BYRON: No.

HEARING OFFICER KRAMER: Okay. That will do it then for the applicant's panel. Thank you, gentlemen.

And we will then go to the staff.

(Pause.)

HEARING OFFICER KRAMER: So, let me ask you, any of the parties wish to cross-examine any of the staff witnesses? You've already talked to Ms. Sanders. Ms. Milliron is here. Do you have questions for her?

MR. SUBA: I have a question for Ms. Milliron.

HEARING OFFICER KRAMER: Okay. Ms. Milliron, you testified previously and were sworn?

MS. MILLIRON: I did.

HEARING OFFICER KRAMER: Okay, so you're still sworn.

HEARING OFFICER KRAMER: Go ahead, Mr. Suba.

MR. HARRIS: I'm sorry, Mr. Kramer, a
question. Can we figure out who else from the staff -- and ask questions of the air expert and I can let my air experts go.

I wanted to know how many staff witnesses there are and how many people have questions for us, so I can release people.

HEARING OFFICER KRAMER: Let's see. On that list would be -- actually at least on the Sierra Club's list Ms. Milliron is not there. So that's a good point.

Let's try to assemble a panel of the staff witnesses. Defenders did ask, let's see, for Mr. Kessler, Susan Lee, Susan Sanders, Ms. Milliron and Brenner Munger.

MR. BELL: Yes. Staff does have an objection as to Susan Lee. Ms. Lee worked on none of the materials that have been submitted. I understand that Ms. Lee only worked on a section that has already been the subject of hearings.

The intervenors had been given the opportunity to cross-examine Ms. Lee as to the sum of her testimony. And since she has nothing further to offer with the current proceedings, staff would be objecting to her being made available for cross-examination.
MR. BASOFIN: Mr. Kramer, I have a response to that. As you stated earlier, it's appropriate to compare various alternatives to this proposal. And Ms. Lee, as the staff's preeminent alternatives expert, it's entirely, I think, appropriate to have her testify.

HEARING OFFICER KRAMER: On what particular topic do you wish to make a comparison with her?

MR. BASOFIN: I have a few questions for her regarding this proposal, and --

HEARING OFFICER KRAMER: I mean relative to what? Biology, traffic?

MR. BASOFIN: Relative to biology.

HEARING OFFICER KRAMER: Okay. Mr. Kessler, Ms. Lee was, in offering the alternatives section, did she serve in the role as an expert on biology? Or did she rely upon others in that?

MR. KESSLER: She relied upon others.

HEARING OFFICER KRAMER: Okay. That would be the biological witnesses who are available today?

MR. KESSLER: Yes.

HEARING OFFICER KRAMER: So in that circumstances, Mr. Basofin, I don't think it's
necessary to have her here to tell you what she
heard from the very people to whom you could pose
those questions.

MR. BELL: Mr. Kramer, just a
clarification. There were two additional bio
witnesses, Dick Anderson and Carolyn Chainey-
Davis, that supported the alternatives in the bio
assessment. And neither of them have been asked
to appear today.

So I believe that Ms. Milliron could try
to address anything, if you saw that appropriate.

MR. BASOFIN: Mr. Kramer, I guess an
additional point I would have is that we now
effectively have two proposals for a reduced
acreage of the site. One of them was analyzed in
the alternatives analysis by Ms. Lee. I think
that was previously referred to as a reduced
acreage alternative.

We now have an additional proposal that
also reduces the acreage. So I think it's
entirely appropriate to compare those two
proposals together. And I think that Ms. Lee
would be witness to do that, having assessed the
reduced acreage alternative.

HEARING OFFICER KRAMER: Mr. Bell, were
you about to say something?

MR. BELL: I think if Ms. Lee had anything to do with offering any section of the staff addendum, if Ms. Lee had done any work with respect to the applicant's proposal, then her testimony may be relevant to this proceeding.

But she's done nothing to any issue that's germane to this proceeding. She's looked at none of the information that's provided by the applicant. She's done no work at all on the subject of this proceeding. Her testimony simply isn't relevant to this proceeding.

MR. BASOFIN: Mr. Kramer, I'll preserve my objection for the record. I think, based on your statement earlier that it is appropriate to compare alternatives to each other in this proceeding, that Mr. Bell's argument that it's not germane to this proceeding, you know, I think that's -- argument.

But I will, as a matter of compromise and to move things along, I will address my questions that were for Ms. Lee to Mr. Kessler.

HEARING OFFICER KRAMER: And Ms. Milliron?

MR. BASOFIN: Yes.
HEARING OFFICER KRAMER: Especially if they're biological ones. She -- believe she is the biological expert, not Mr. Kessler.

MR. HARRIS: Mr. Kramer, I just want to support staff's position on this. I think it's a dangerous precedent for the Commission to have witnesses who were not involved in the preparation of testimony to be cross-examined. I think that's outside the scope of the proceedings here.

Mr. Bell and staff has testified that Ms. Lee had nothing to do with the preparation. And so they can cross her on all her testimony, which is zero, in this case.

And so I think this is really a non-issue and something that I'd urge the Commission to be aware of going forward as an attack to create the impression that somehow people are being deprived the opportunity to ask questions about the testimony presented. That is simply not the case here.

HEARING OFFICER KRAMER: Okay. Let me ask, the applicant basically convened a panel of all of its experts on all topic areas; and although the discussion was certainly focused on biology.
Let me ask, does anybody have -- is anybody planning on having any questions of Mr. Munger with regard to air quality questions?

MR. BELL: Staff will have just a couple of clarifying questions for Mr. Munger.

HEARING OFFICER KRAMER: Okay. Is he here right now?

MR. BELL: He is.

HEARING OFFICER KRAMER: Okay. Why don't you come forward, sir, and what we'll do is create a panel similar to the applicant's, where all the subject experts are available. And they can be questioned at once.

Right, these are all the staff's experts.

MR. BELL: Yes. We previously heard from Ms. Sanders. Present are Mr. Kessler, Ms. Milliron and Mr. Munger. Testimony has previously been admitted. I just have a couple of follow-up questions for Mr. Munger based on his testimony that was previously admitted.

HEARING OFFICER KRAMER: Okay, go ahead.

MR. BELL: Mr. Munger has not previously been sworn, however.

HEARING OFFICER KRAMER: Okay, if you
would stand and raise your right hand.

Whereupon,

BRENNER MUNGER

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

(Telephone interference.)

PRESIDING MEMBER BYRON: Stand by.

HEARING OFFICER KRAMER: I just stood up

away from my microphone to swear in a witness.

You didn't miss much.

Please state your name, your full name,
and spell your last name for the benefit of the
court reporter.

MR. MUNGER: My name is Brenner Munger;
it's spelled B-r-e-n-n-e-r M-u-n-g-e-r.

MR. SPEAKER: Is your mic on?

HEARING OFFICER KRAMER: For some reason

that side of the room is always a little quieter.

So if you could -- if all of you could project it
would be very helpful.

Whereupon,

MISA MILLIRON and JOHN KESSLER

were recalled as witnesses herein, and having been
previously duly sworn, were examined and testified
further as follows:

HEARING OFFICER KRAMER: Go ahead,

Mr. Bell.

MR. BELL: Thank you.

DIRECT EXAMINATION

BY MR. BELL:

Q    Mr. Munger, did you prepare testimony to
be included in the final staff assessment addendum
in the matter being heard here today?

MR. MUNGER: Yes, I did.

MR. BELL: In what subject matter area?

MR. MUNGER: Air quality, an addendum to
the air quality testimony and an addendum to the
greenhouse gas testimony.

MR. BELL: Are there any changes to your
testimony?

MR. MUNGER: Yes.

MR. BELL: And could you describe what
those changes are?

MR. MUNGER: Yes. As a result of the
re-scoping of the project given forth in the
mitigated Ivanpah 3 proposal, the applicant has
requested the Mojave Desert Air Quality Management
District to revise the final determination of
compliance including the permit conditions.
Once those revisions are made we will be revising the conditions of certification to match the changes that the district makes in their permit conditions.

MR. BELL: What are the things that you're still waiting to receive before you can make those suggested changes?

MR. MUNGER: Completion of the FDOC revision process. We also have pending with the applicant requests for additional information which would update the basis for the 5 percent fossil fuel limit. And that's AQSC-10.

MR. BELL: Do you have a timeline before you'll receive that information from both the air district and the applicant?

MR. MUNGER: Yeah, --

MR. BELL: Two-part question, sorry.

From the air district?

MR. MUNGER: From the air district my understanding it's a matter of weeks.

MR. BELL: And from the applicant?

MR. MUNGER: That I do not know.

MR. BELL: Okay. Nothing further.

HEARING OFFICER KRAMER: Now, maybe I missed something, but would the applicant's
information have to come before the air district could finally act?

MR. MUNGER: No. The certificate, conditions of certification that's requiring the information is AQSC-10, which has to do with the 5 percent of fossil fuel.

HEARING OFFICER KRAMER: Okay. So when you say weeks, you're thinking two to three weeks or --

MR. MUNGER: That's the district's process, as I understand it. And I don't have any firm schedule from the district at this time. I know that a draft revision to the FDOC has been issued.

MR. BELL: I can represent to the Commissioners and Mr. Kramer that as soon as the information is in, staff is intending to file an errata with those changes. But we can't do that until we hear back from the air district.

HEARING OFFICER KRAMER: To what extent will the -- the emission limits will increase, is that right?

MR. MUNGER: No. The changes to the FDOC permit conditions are administrative in nature and they're prompted by the re-scoping of
These include reduction in size of the Ivanpah 3 auxiliary boiler; the elimination of one of the emergency generators for the Ivanpah 3 power block.

And so the permit conditions would be changed to reflect that the Ivanpah 3 boiler would be the same as the Ivanpah 1 and 2 boiler, and there only would be three emergency generators total.

HEARING OFFICER KRAMER: So would the permitted level of emissions change at all in the conditions?

MR. MUNGER: Not in the district's current conditions.

HEARING OFFICER KRAMER: What about the conditions that staff is proposing?

MR. MUNGER: There may be a change in greenhouse gas emissions depending upon what the response is for our request for an update on the annual fuel usage associated with the revised re-scoped project.

However, at this point we don't expect that to change the conclusions of the ongoing analysis, that the impacts will not be
significant.

HEARING OFFICER KRAMER: Okay, so then the emissions limits, to be clear, in the conditions would be the same as they are proposed currently?

MR. MUNGER: If I may clarify. The short-term emission limits will not be changed. In other words, the pounds-per-hour emission rates for the boilers or generators will still be subject to the tier two requirements.

What may change is the annual fuel usage, which would impact in the annual impacts, annual air quality impacts and greenhouse gas issues.

HEARING OFFICER KRAMER: And so it would impact them upward or downward direction?

MR. MUNGER: It depends on what the information is that they provide. But on the annual basis, the impacts are very very low. In fact, in my testimony I related that the change in impacts would result from the Ivanpah 3 new configuration is lost in surrounding air. They are that small.

HEARING OFFICER KRAMER: Okay, thank you.
And then you had no direct for any of
the other staff?

MR. BELL: No.

HEARING OFFICER KRAMER: Well, the one
other staff that's with you.

MR. BELL: I'm sorry, Mr. Kessler
counts.

HEARING OFFICER KRAMER: He's always
here.

(Laughter.)

HEARING OFFICER KRAMER: Okay. Ms.
Belenky, any questions for the staff?

MS. BELENKY: I do, thank you.

CROSS-EXAMINATION

BY MS. BELENKY:

Q For Mr. Munger, is that correct?

MR. MUNGER: Yes.

MS. BELENKY: Thank you. I did have a
question. I was -- this goes specifically to the
greenhouse gas addendum. On page 4-24, it's the
last paragraph there. You state that the
emissions would be approximately 20,900 metric
tons, is that correct?

MR. MUNGER: That's correct, that's what
the testimony shows.

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MS. BELENKY: On the chart on the next page, it shows that the emissions, the boilers would emit 23,549 metric tons. And then the emissions from the total from the facility would be 25,359.

Can you explain to me how those numbers relate?

MR. MUNGER: That is a typographical error. The numbers in the table are the correct numbers.

HEARING OFFICER KRAMER: So to be clear, then, the text on 4-24 should be changed?

MR. MUNGER: Correct.

HEARING OFFICER KRAMER: And the new number should be --

MR. MUNGER: 25,359, sir.

HEARING OFFICER KRAMER: Give it to me, again?

MR. MUNGER: 25,359 metric tons --

HEARING OFFICER KRAMER: Okay.

MR. MUNGER: -- CO2 per year.

MS. BELENKY: Thank you. On page 4-24, and while I'm here I'll just check -- 4-26, you state that there would not be stationary -- this is the third paragraph, 9, down under the
compliance with LORS.

You state that the project would not have stationary source emissions greater than 25,000, as shown in the first row of the greenhouse gas table. Designated solely to the boilers, is that correct?

MR. MUNGER: Yes.

MS. BELENKY: But the facility, as a whole, would have greater than 25,000 million pounds or something -- no, -- metric tons, is that correct?

MR. MUNGER: Yes.

MS. BELENKY: The facility, itself, would have more than 25,000, is that correct?

MR. MUNGER: Yes.

MS. BELENKY: Okay. So you were speaking there solely of the boilers?

MR. MUNGER: Yes.

MS. BELENKY: Okay. Going back to the table on page 4-25, what is the basis of these calculations? By that I mean how did you -- the basis for your emissions that you then used to make this calculation?

MR. MUNGER: The first -- third column, excuse me, represents the numbers that were
provided in the final staff assessment for the project. And we used those as starting point.

The fourth column represents the numbers associated with the revised project scope. And these were done, again, in the context of an envelope approach, looking at simplified metric to prorate the original estimates of greenhouse gas emissions for the original project, to reflect the mitigated Ivanpah 3 scope.

So then that's the number that was used for the different sources of emissions, different metrics were used for the boilers. We're looking at the capacity. That's been revised from 400 megawatts to 370. For the emergency generator emissions the number is -- 3 and so forth. And then that got to prorate a factor.

So we started with what was in the original FSA and then prorated those.

MS. BELENKY: So, the original number of 480,000, I believe that number came from the applicant, we learned in earlier testimony. You didn't go out and do any independent analysis to get this 480,000, is that correct?

MR. MUNGER: Correct.

MS. BELENKY: Okay, thank you. And I
just wanted to check. You said that this was a
typographic error, but earlier today you added to
your testimony. You didn't know this typographic
ero**r**, is that correct?

**MR. MUNGER:** I did not -- no, ma'am.

**MS. BELENKY:** I just was curious because
you had already amended your -- and what
information are you waiting for from the
applicant? Can you tell us what you asked for?

**MR. MUNGER:** We've asked for an update
of what would be here, the 480,000 mmBtu per year,
which was the estimate of the annual fuel usage
for the original scope of the Ivanpah project.
And with the reduction in number of heliostats,
with reduction in the size of the steam turbine
generators. We're looking to get a number from
them as to what would be their estimate of 5
percent, total solar-thermal input.

**MS. BELENKY:** Thank you. I think that's
all my -- oh, I did have one more question. Did
you make any calculations based on the -- let me
start back one step.

The air district permit, as it currently
exists, allows for four hours of use of boilers
per day. Whereas the staff condition would allow
for only the 5 percent.

Did you make a parallel calculation on
the greenhouse gas emissions that would ensue
under a four-hour day scenario?

MR. MUNGER: No, I did not.

MS. BELENKY: Thank you. I have a few
other questions on other topics. I didn't know if
you wanted to finish air quality?

HEARING OFFICER KRAMER: No, go ahead
and ask them of each of the panelists.

MS. BELENKY: All right. And I'm not
sure which of the panel. Going back just briefly
to the question of grading. On page 1.6 in the
staff's filing, again states that there would be
the 20 acres of remaining heavy grading in the
Ivanpah 3 site.

And I'm trying to understand what the
basis of that statement is.

MR. KESSLER: Could you be a little bit
more clear as to what is your question?

MS. BELENKY: In the staff addendum at
page 1.6 -- 1-6, it says that the area in Ivanpah
3 that would require heavy grading due to the
volume of boulders in the area would be reduced
from 170 acres to 20 acres.
What is the basis for the statement?

MR. KESSLER: We captured what we understood the applicant to be telling us in their filing. And our interpretation of that is that we'd understood that within the mitigation area that that would be avoided.

That that was a predominant part of the Ivanpah 3 site that required grading, largely because of rocks and the presence of rocks that would have to be removed.

So our understanding is that for the remaining portions of the updated proposed Ivanpah 3 site, that there's 20 acres remaining within that that would still require grading.

Again, we relied on information from the applicant.

MS. BELENKY: So it's your testimony that your understanding is that the entire Ivanpah 3 site there will only be 20 acres of grading?

MR. KESSLER: That's our understanding.

MS. BELENKY: And that's what was analyzed in the FSA and the FSA addendum, is that amount of grading?

MR. BELL: I have to object as that mischaracterizes the testimony. I think there's a
differentiation between grading and heavy grading. Areas that require grading because of boulders versus areas that require grading for other construction purposes.

HEARING OFFICER KRAMER: Sustained.

Please clarify your question.

MS. BELENKY: I simply asked was it his testimony that there would be 20 acres of grading in the Ivanpah 3 site?

MR. KESSLER: Where we evaluated any changes to soil and water was in, within that section at all. And as we concluded, I can say this on behalf of Mr. Christopher Dennis, is that we saw that there was a reduction in grading, a reduction in impacts. We considered all the potential impacts of the larger scale project without our FSA Draft EIS and concluded that the impacts would be mitigated to less than significant. And therefore our conclusion is the same for this FSA Addendum.

MS. BELENKY: I do understand what you're saying. What I am concerned about is that there is this term being used, heavy grading, as opposed to grading, and that there is no clarity or analysis of the amount of grading.
MR. KESSLER: I understand your concern. I can't offer any clarity on that.

MS. BELENKY: Thank you.

MR. KESSLER: Sure.

MS. BELENKY: The staff issued a Notice of Availability of the addendum, I believe on March 17. Can you tell me what the comment period for public comments for that addendum is?

MR. KESSLER: We did not offer any public comment period. We saw this proceeding as being the opportunity for the parties as well as the public to offer their comments. This proceeding being the hearing today, and anything else offered by the Committee.

MS. BELENKY: So is it your -- I'm just trying to understand. Staff's position is that any public comment must be submitted by today?

MR. BELL: I'd have to object because that is outside the scope of this proceeding. There's nothing before us with the Final Staff Addendum and nothing that this witness has prepared that has anything to do with the public comment period.

HEARING OFFICER KRAMER: Well he is the project manager. They normally, at least they are
certainly well informed of what staff's intentions are with regard to public comment. So if he knows the answer he can provide it.

MR. HARRIS: I guess I want to object on the basis of there isn't a comment period on a staff document in the Energy Commission's certified regulatory program. There simply isn't a comment period that Ms. Belenky is suggesting should have been noticed as part of your regular process and thus nothing lacking.

HEARING OFFICER KRAMER: That's an answer, probably not an objection.

MR. HARRIS: That's the basis for the objection.

MR. KESSLER: And I would just ditto that. I mean, that's our understanding as staff is that we don't normally provide a public comment period on an FSA and we felt we didn't need to do that on the FSA Addendum.

The reason there is a public comment period on the FSA Draft EIS was because that was a joint document which, as you know, got out of sync early in the process and we needed to provide that for the federal NEPA purposes as a Draft EIS. But otherwise it's the staff's understanding that it
is not necessary for us to provide that
opportunity with an FSA Addendum.

HEARING OFFICER KRAMER: And apparently
you do not intend to.

MR. KESSLER: That's correct.

HEARING OFFICER KRAMER: Okay, there's
your answer.

MS. BELENKY: I think that's all my
questions, thank you.

HEARING OFFICER KRAMER: Mr. Basofin,
any questions? Ms. Belenky then you dealt with
all this biology and Mr. Kessler in all of the
topic areas then? I just want to make it clear
that we're hoping that you will ask all of your
questions in all areas at this time.

MS. BELENKY: I certainly tried to.

HEARING OFFICER KRAMER: Okay.

MS. BELENKY: I may find another one
hidden in here later. But I think I tried to deal
with all of them.

HEARING OFFICER KRAMER: Okay. Mr.

Basofin.

MR. BASOFIN: Thank you Mr. Kramer. I
just have a couple of questions for Mr. Kessler.

Mr. Kessler you received the mitigated
unit 3 proposal of this document on February 12th.

Is that correct?

MR. KESSLER: That's my recollection.

MR. BASOFIN: Okay. When you received that proposal did you consider it to be a new project proposal?

MR. KESSLER: We considered it to be in response to the mitigation that we proposed in Bio-18, Condition of Certification Bio-18.

MR. BASOFIN: Okay. Did you consider the circumstances of the project as being changed?

MR. KESSLER: Well certainly we recognized that there was some change and that we felt that they needed to be addressed in the FSA Addendum. That was the purpose of our document.

MR. BASOFIN: And isn't it enough change that you felt it merited a new project description in the addendum? Is that correct?

MR. KESSLER: We wanted to disclose to the parties and the public and the Committee how the project had changed.

So we felt that those relevant parts of our FSA draft EIS that had changed we wanted to make it clear as to the substance of the mitigation proposal by BrightSource.
MR. BASOFIN: Okay. And again, you felt it necessary to draft a new project description. Is that right?

MR. KESSLER: We felt --

MR. BELL: That's been asked and answered.

MR. BASOFIN: I don't think it's been answered.

MR. BELL: Not the way counsel wanted. But it's been answered.

MR. BASOFIN: But it's a yes or no answer.

HEARING OFFICER KRAMER: Overruled.

MR. KESSLER: We revised, yes we felt it was necessary to update the project description just as Air Quality, Bio, Soil and Water and Visual because we felt that the updated mitigation proposal were reflected some updates in staff's assessment and we felt the project description provided the basis for our updated assessment in those other technical areas.

MR. BASOFIN: And as part of your updated staff assessment did you consider performing an additional alternatives analysis?

MR. KESSLER: We considered it but we...
MR. BASOFIN: Did you consider comparing the Mitigated Unit 3 Proposal with the reduced acreage proposal that had previously been identified?

MR. KESSLER: We felt that it was within the confines of that previous analysis for the reduced acreage alternative and that it would not change our conclusions within that alternative. And again, we looked at this as really mitigation and the applicant responding to that request and a recommendation by staff in Bio-18.

I guess just to be really candid, we didn't see a need to update our alternatives analysis based on this response to our mitigation proposal.

And we understand that the parties may look at that differently. But in terms of staffs's testimony as included in our FSA draft EIS we would have not of changed anything any conclusions within that alternative section.

Therefore we didn't feel it necessary to update the analysis.

MR. BASOFIN: Okay. Thank you. Mr. Kessler did you prepare the Notice of Availability
for the Mitigation Unit 3 Proposal?

MR. KESSLER: Yes I did.

MR. BASOFIN: Okay. And would you consider the staff, I'm sorry strike that. In your analysis in the addendum in your analysis did you consider the possibility that the avoided area in Unit 3 might be used as a translocation area?

I'm sorry a relocation area for the Desert Tortoises?

MR. KESSLER: We understood that that was included in the applicant's proposal.

I did not evaluate bio impacts myself. I was responsible for the Project Description Section and the Executive Summary.

MR. BASOFIN: Okay. Thank you. I think that's all I have.

HEARING OFFICER KRAMER: Mr. Suba.

MR. SUBA: I have questions for Ms. Milliron regarding the rare plants on site.

Good afternoon Ms. Milliron. So I'm going to refer to a few things, Mitigated Ivanpah 3, Biological Mitigation Proposal, my comment M-3.

And the applicant's Exhibit 81, Special Status Plant Avoidance and Protection Plan. That was previously submitted, if I say Exhibit 81
that's the number I'm referring to.

So do you understand all that.

MS. MILLIRON: Yes.

MR. SUBA: Thanks. So to summarize the FSA Bio Resource Section 6.2 for rare plants, we don't have to go through all this. It's already been put in.

But the direct and indirect impacts to rare plants on the site include altered hydrology, altered soil and nutrient chemistry, altered light regime and introduction of invasive species. Would you agree with those?

MS. MILLIRON: I'd agree with that.

MR. SUBA: In addition to those listed impacts the project will also have impacts relating to the fragmentation of the plant population habitat and the interruption of evolutionary processes inherent in the fragmentation. Would you agree with those things?

MS. MILLIRON: I didn't specifically refer to the evolutionary processes but we did, I did include the concern of habitat fragmentation in the testimony.

That's before us and also in previously filed filings.
MR. SUBA: Would you agree that fragmenting plant habitat could impact the pollinator species for those plants, the ability for those plants to pollinate and disperse their seeds or to invade or immigrate into new areas in the project site.

MS. MILLIRON: That was a concern that I brought up previously, yes. I agree with that.

MR. SUBA: Okay. I consider those evolutionary processes.

MS. MILLIRON: Okay.

MR. SUBA: We're just talking different languages. So regarding this list of impacts do you agree this will amount to uncertainty contained in the mitigation proposed for the project's impacts both uncertainties with what's being proposed in M-3 and in Exhibit 81 and in the new Bio-18?

MS. MILLIRON: Yes I acknowledge those uncertainties.

MR. SUBA: So in response to the M-3 Proposal, Mitigated 3 Proposal, staff has amended Bio-18 to recommend that if the applicant implements the footprint reductions of the M-3 footprint reductions and if the applicant
implements the Halo Plans, do you understand what I mean by Halo Plans?

MS. MILLIRON: I do.

MR. SUBA: For Milkweed and Rusby's and Desert Pincushion as explained in Exhibit 81, as outlined in Exhibit 81, so a footprint reduction, Halos for the Milkweed, Rusby's and Pincushion, the need for offsite surveys for Milkweed and Rusby's and to provide compensatory mitigation lands for Milkweed, that if they do those things impacts to rare plants will be considered less than significant under CEQA, is that correct?

MS. MILLIRON: Yes, that's what I wrote in the testimony that's before us.

MR. SUBA: So on page 46 of the addendum, Bio Resources, staff writes, the staff is willing, quote, the staff is willing to accept a limited amount of uncertainty in this case regarding the onsite mitigation proposed for those individuals located in the project area but outside protected areas designated in Mitigated Ivanpah 3.

So just to be clear, that means that the staff is willing to accept a limited amount of uncertainty about the Halos.
MS. MILLIRON: Correct. I think, are you referring to, I'm sorry, I didn't see which part. Is it the last sentence, the added sentence at the end? It's 4-6 about --

MR. SUBA: The staff is willing to accept a limited amount of uncertainty --

MS. MILLIRON: Oh, it's the last sentence. In this case regarding, okay, I see.

MR. SUBA: Yeah.

MS. MILLIRON: Yeah, I was referring to Rusby's Desert Mallow.

MR. SUBA: Okay and in terms of the Rusby's. The individuals located in the project area but outside protected areas designated in M-3. Does that mean the plants in the Halos?

MS. MILLIRON: Right. What I was referring to there is that the uncertainty with what the fate of the plants that we protected by the Halos or the fencing within the solar field.

MR. SUBA: Okay. That's what I thought you meant. I just making sure that that's what all that meant. So, okay, so just a few more questions.

In order for the impacts to plants to be mitigated to less than significant there seems to
be several pieces that need to fall into place here. Based on the M-3 proposal in Exhibit 81 and in the FSA Addendum the following things need to happen.

The Halos would have to succeed in mitigating the list of impacts we discussed earlier, the change in water, the soil conditions, light, fragmentation. All those impacts the Halos would need to succeed in mitigating.

If needed the salvage and transplantation of rare plants will need to succeed.

All site surveys will need to identify additional occurrences of plants.

And if they are found additional offsite occurrences will need to be protected somehow. Somehow that they are not protected here at Ivanpah.

And identified milkweed compensation lands will actually have to have milkweed growing on them. So do you agree that those things would need to fall in place in order for mitigation to be mitigation?

MS. MILLIRON: Are you seeking to clarify what I put into Bio-18 or? Because what I
put in there is a little bit different in terms of whether the compensation land is occupied or not. There was some discussion earlier in the addendum that talked about protecting land that's adjacent to, in the same watershed as a known occurrence. But I didn't actually, I don't believe in Bio-18 it requires the compensation land be occupied.

MR. SUBA: I agree with your statement. But thinking ahead into the future. If the reason for identifying and acquiring those compensation lands is to mitigate the milkweed, presumably we are going to want milkweed on those lands.

MS. MILLIRON: Yes.

MR. SUBA: Okay, that's what I was trying to get at.

MS. MILLIRON: That would be ideal. But I realize that we don't have a way of determining whether they are occupied right now so that's why it was written the way it was.

And it would allow, if it wasn't occupied, the thought is that it would still have conservation value because it would be in a suitable or at least historically suitable habitat. So perhaps it could be, it would have a better chance of being restored or reintroduced.
into an area if it's no longer there.

MR. SUBA: My point of listing these, if these happen then mitigation happens, is to underscore all the maybes and mights and ifs that are involved in this mitigation proposal, both the M-3 in Exhibit 81 and the FSA Addendum, are taking great leaps of faith in establishing mitigation for our plants.

So my follow-up question to that statement is that if those measures don't succeed, if the Halos don't succeed in mitigating the list of impacts we described, over time. If the salvage and transplanting are not successful, the surveys don't turn up any new occurrences of milkweed, and if compensation lands don't turn up any occurrences of milkweed or represent milkweed habitat, then will the project impacts, in your opinion, lead to the extirpation of milkweed in California?

MS. MILLIRON: Well, I don't know that I could say that it would directly lead to the extirpation. It would certainly I think have a substantial impact on its continued existence in the state if all of those things failed.

But part of Bio-18 is a remedial action
plan that there would be some seed collection and
storage in the event that everything failed for
preservation of the germoplasm. Now I realize
that doesn't put the plant back in the habitat but
that was my intent in including that remedial
action plan.

MR. SUBA: Thank you. Would you say the
same for -- that you just said for milkweed, would
you say the same for the pincushion, the desert
pincushion?

MS. MILLIRON: What was the question?

MR. SUBA: If those lists of ifs didn't
succeed then would pincushion suffer potentially
the same fate as the milkweed?

MS. MILLIRON: I think it would be a
substantial effect but not as much as for the
milkweed. Just because owing to the number, the
pincushion has a larger number of occurrences that
are not associated with the project.

So, you know, the proportion of the
state's occurrences that would be impacted from
this project is lower compared to the Mojave
Milkweed. And there's just, I believe there's
just more total occurrences in the state that are
recent. Whereas with the milkweed there's not as
many recent confirmed occurrences.

MR. SUBA: And one more along this line, the Rusby's Desert Mallow. If these measures don't succeed, its fate in California?

MS. MILLIRON: I think for the Rusby's Desert Mallow. It seems to me based on its, just its overall life form and pollination strategy, which tends to be a little bit more generalized compared to the milkweed. Again, there would be an impact if all of those mitigation measures would fail. But it wouldn't be as devastating, I guess I would say, compared to the milkweed.

MR. SUBA: Thank you.

MS. MILLIRON: There's just a lower number of occurrences that are impacted. And more of the occurrences are actually within the area that's going to be protected.

MR. SUBA: Thanks. A couple more. So in the FSA Addendum, in the Bio-18 addendum there is a recommendation to identify and acquire off-site compensation lands for milkweed on private land. In the original FSA, 6.2-40, the FSA reads, quote:

"Essentially all occupied habitat, i.e. habitat containing
special status plants, occurs on federal land, primarily BLM and NPS land. And no suitable private parcels were found that could be placed under a conservation easement or other restriction to prevent future development."

End quote.

So my question is, what changed in your analysis?

MS. MILLIRON: Well in this case we went back and asked our GIS staff to redo that ownership analysis with specific emphasis on the milkweed. We basically did a process of elimination. They put on all the public ownership layers.

At the end of that it appeared that there were parcels that didn't fall into any of those public ownership layers. And there were some that were, essentially from process of elimination, they looked to be private because they were next to National Park Service land or BLM land. And they appeared to be in holdings. There was one that overlapped with a milkweed known occurrence, another one was right adjacent
to one, it abutted the known occurrence.

Before when we were looking at the FSA
we were looking at whether those -- a substantial
amount of acreage for all of the species that we
were analyzing were -- unless we did a more
targeted analysis based on the milkweed.

MR. SUBA: Okay. My final question or
questions have to do with the plans that are
referenced in Bio-18 and outlined in Exhibit 81.
Yeah, it's Exhibit 81, the special status plan,
avoidance and protection plan.

Can you explain what the timeline is for
these plans to be developed and implemented, first
of all. There's a draft plan out now. So what
happens to that draft plan in Exhibit 81?

MS. MILLIRON: Well the condition, the
verification of Bio-18 calls for no less than 30
days following the publication of the Energy
Commission's decision for those drafts of those
plans to be submitted.

So I believe the next step would be for
us to see a revised version of Exhibit 81 that
takes into account the removed acreage from the
footprint and how that affects the rest of it. It
would include a revision of the map that we saw
today that the applicant provided and description
of -- we'd essentially have to revise it to
describe which plants would continue to receive
the Halo treatment or on-site minimization and
which ones would be completely avoided.

MR. SUBA: So two last questions. How
are the measures outlined in the draft plan to be
-- how are those measures -- how is the public
involved, if at all, to ensure that these measures
in the plan are implemented? Is the draft plan
developed outside the public question? That's my
question.

MS. MILLIRON: I don't know that I have
an answer for that because -- I don't know if John
might have an answer from compliance. We
typically, the staff in their review of applicant
mitigation plans, we seek input from other sister
agencies and other knowledgeable individuals on,
you know, what changes might be needed.

But I don't know that there is a forum
like, there isn't a forum like this that I know
for review of that kind of a plan. So it's -- I
mean, it's not -- other people can participate but
I don't think that it's sent out, it's not sent
out for a comment period or anything like that.
MR. SUBA: Well then the last thing I'll say is if nothing else is done well.

The plan calls for baseline numbers. It's looking for the numbers of plants on the site that have been protected somehow and tracing those over time, following them over time. And then they reach a certain number and something happens. The baseline numbers. It's unclear to me in the plan whether those baseline numbers are to be taken before construction begins or after construction has already happened. What's your starting point?

MS. MILLIRON: We want to look at the baseline as being before any disturbance, any ground disturbance. So you could compare --

MR. SUBA: Okay, that should be really clear.

MS. MILLIRON: Yeah, so you could compare pre and post.

MR. SUBA: Thank you.

HEARING OFFICER KRAMER: Thank you.

Basin and Range Watch, any questions?

MS. CUNNINGHAM: (Indiscernible).

HEARING OFFICER KRAMER: I'm sorry, we couldn't quite make that out.
HEARING OFFICER KRAMER: Basin and Ranch Watch, Ms. Cunningham or Mr. Emmerich.

MS. CUNNINGHAM: Can you hear me?

HEARING OFFICER KRAMER: Yes, just barely.

MS. CUNNINGHAM: No questions.

HEARING OFFICER KRAMER: Okay, thank you.

Sierra Club. Ms. Smith.

MS. SMITH: No questions, thank you.

HEARING OFFICER KRAMER: Dr. Connor for Western Watersheds.

DR. CONNOR: No questions, thank you.

HEARING OFFICER KRAMER: County of San Bernardino.

MR. BRIZZEE: No questions, thank you.

HEARING OFFICER KRAMER: Thank you. I think I covered everyone except the applicant. Do you have any questions?

MR. HARRIS: A comment actually. I wanted to complement the staff on their work. I thought it was a really tremendous piece of work on a short time period; thank you for your work. We have no questions for the staff.

HEARING OFFICER KRAMER: Okay. Did I
miss anyone by chance?

MR. BELL: No redirect.

HEARING OFFICER KRAMER: Okay, thank you. Okay.

I could be wrong but it appears to me that everybody who was on the list for cross examination was either a staff or an applicant witness. Do any of the intervenors have any other witnesses that they wish to call to our attention that they wanted to cross examine? I believe we already covered the direct testimony from the intervenors. Ms. Belenky.

MS. BELENKY: I just wanted to clarify that question that came up during Mr. De Young's testimony regarding whether the intervenors had said that -- well, his characterization of -- in terms of the testimony.

HEARING OFFICER KRAMER: Okay, go ahead briefly. Are you meaning to ask Mr. De Young another question?

MS. BELENKY: I actually need to ask Mr. Connor, Dr. Connor a question.

HEARING OFFICER KRAMER: Okay, go ahead.

Dr. Connor, are you there?

DR. CONNOR: Yes, I'm here.
HEARING OFFICER KRAMER: Okay. You were previously sworn, correct?

DR. CONNOR: Correct.

HEARING OFFICER KRAMER: Did you say, yes?

DR. CONNOR: Yes.


Whereupon,

DR. MICHAEL CONNOR was recalled as a witness herein, and having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MS. BELENKY:

Q Dr. Connor, were you on the phone this morning when Mr. De Young was testifying?

DR. CONNOR: Yes, I have been on the phone all day.

MS. BELENKY: There was a question as to the value of the habitat for desert tortoise in various areas. Perhaps it would be easier to have you discuss briefly your understanding, your background on Ivanpah 3 area if you've been there. Have you ever been there?
DR. CONNOR: Yes, I've been there.

MS. BELENKY: Okay.

DR. CONNOR: And Ivanpah 3 I have been

three times.

MS. BELENKY: Thank you. And of the

Ivanpah 3 site do you have any opinion as to

whether the area that would be excluded under the

so-called M-3 alternative is good habitat or not?

DR. CONNOR: I think perhaps before I

answer that I just make it clear that as far as I

am aware at no time have I ever identified Ivanpah

3 as a key issue for desert tortoise. It is my

expert opinion that the entire project is the

issue, not the specific component of the project.

I just want to make that clear because

the suggestion keeps being raised that somehow

Ivanpah 3 is the greatest concern with the

intervenors. And from my position the habitat in

Ivanpah 3 overall is as important as the habitat

in Ivanpah 2 and 1. The entire project itself is

going to fragment tortoise habitat in the northern

Ivanpah Valley. And I think that is one of the

principal impacts.

As far as the habitat itself is

concerned on Ivanpah 3. The area of the project
of Ivanpah 3 that would be avoided under the new proposal, in my opinion that's not the best tortoise habitat. There are a couple of issues with it. First of all, as we have heard several times today, this area has, this area is slated for some of the most intense grading of the site. It has these bolded areas. It's also got this large wash going through the northeastern portion of it.

And because of those features I'd be concerned that it's actually of less importance to desert tortoise in this area. Because the desert tortoises there typically prefer the Tejada itself. Does that answer your question?

MS. BELENKY: Yes, thank you.

DR. CONNOR: Perhaps I would also add that the tortoise distribution list that came out in the previous hearing is not even, it's going to be patchy. And I think that the applicant's data showing the distribution of tortoises and tortoise burrows and so on on Ivanpah 3 shows that the distribution of tortoise activity in the area is going to be patchy.

HEARING OFFICER KRAMER: Okay, thank you.
Earlier today we covered the admission of all the exhibits that were presented in preparation for this hearing. Do any parties have any additional exhibits they wish to offer into evidence at this point in time?

MS. BELENKY: Not at this time.

HEARING OFFICER KRAMER: Okay. We also noticed this hearing as the opportunity to argue, to take argument if there was to be any, on Applicant's Exhibit 87, which was it's mapping of Dr. Cashen's transects. It was prepared as an outgrowth of the hearings in January. And as I recall it was accepted into evidence subject to the ability of the parties to later argue once they had seen it about its accuracy.

I heard some rumblings that somebody might want to argue to that effect, for instance the Sierra Club. So we wanted to offer this as an opportunity to do that. So let me begin with you, Ms. Smith. Did you have any continuing objections to Exhibit 87 that you wanted to discuss with us?

MS. SMITH: The Sierra Club has never understood the purpose of the applicant's depiction. Mr. Cashen submitted a map of his transects. He was offered up for cross
examination, discussed how he conducted his work.
So the Sierra Club continues to question the value
of another party going and replicating what
Mr. Cashen has already submitted to the
Commission. In good faith.

If that's how the applicant wants to
spend its time and resources the Sierra Club
certainly can't object. But I always wondered
what the purpose of the exhibit was.

HEARING OFFICER KRAMER: Well, he has
spent his money. What you're saying, I gather, is
you did not find any inaccuracies in the
depiction.

MS. SMITH: I checked with Mr. Cashen
and he stands by his submission.

HEARING OFFICER KRAMER: Apparently does
not want to dispute --

MS. SMITH: The truth, the Sierra Club
does have limited resources and we can't respond
to every single thing that the applicant comes up
with. Frankly I asked him if he wanted to go back
to the drawing table and change his testimony in
any way in response to this and he said no. Then
I had him move on to supplemental testimony.

HEARING OFFICER KRAMER: Okay, well, I
am hearing there are no objection to the continued
admission of Exhibit 87 so that will remain a part
of the evidence.

MS. SMITH: I do have a question of
clarification. Throughout these proceedings there
has been discussion about the weight that certain
exhibits would be given. There seems to be some
sort of a continuum. I'm wondering about the
weight of this exhibit in light of the fact that
an expert prepared it, you know, under oath,
asserted to the truth of the matter therein. And
now, you know. Is what the applicant prepared
going to be given the same weight as what -- as
Mr. Cashen's own map?

HEARING OFFICER KRAMER: Well, weight is
a subjective, ultimately it's subjective. You
know, the Committee will view all the evidence.
Even expert opinion is subject to some diminution
if the assumptions upon which it's based are
questioned. So it's not strictly and absolutely
binding on the Committee.

Beyond that I can't say much more. To
my way of thinking that exhibit shows us more
precisely than -- if I recall Mr. Cashen had
marked on a piece of paper. And so we had a, we
had art, which probably wasn't as precise.

And now the applicant has reduced that
to a map that's similar to all the other drawings
of the area that we have been looking at. But
ultimately all that tells us is where he said he
walked. And then we look at that and we review
the transcript to see what he said about what he
saw when he walked, and his testimony to the
extent that it talks about the same thing.

We factor that in with all the other
statements we received from other experts and
somehow we have to sort it out. It's not the
easiest part of the job but it is our job and we
will do that.

That probably didn't completely answer
your question but I'm not sure that I can.

MS. SMITH: I understand.

HEARING OFFICER KRAMER: We have a few
more housekeeping items. Let me first say that,
let me ask if there is any reason why we should
not close the evidentiary record on the topic of
mitigation, Mitigated Ivanpah 3?

MS. BELENKY: I had two follow-up
things. I don't know if Tom Hurshman is still on
the phone from the BLM but if he is --
MR. HURSHMAN: I am.

MS. BELENKY: Could you perhaps give us an update on the record as to the timing of the Supplemental EIS work at BLM.

MR. HURSHMAN: Sure. At this point we are anticipating getting the Supplemental Draft EIS published in a Notice of Availability on April 16. That's, in my view, the best case that we would be able to pull this thing together and get our notices out. So it may actually lag an extra week or so beyond that.

HEARING OFFICER KRAMER: And then the comment period was going to be how long for that, Tom?

MR. HURSHMAN: That is yet to be determined, actually. Our proposal is that we would put this up for a 30 day comment period in light of the fact we have already had a 90 day comment period. And we are doing nothing to change the planning portion that required a 90 day comment period to begin with. So we are hoping that we will get approval for a 30 day comment period but that's tentative at this point.

HEARING OFFICER KRAMER: Is there any chance that a shorter period would be approved?
MR. HURSHMAN: I don't believe so.

HEARING OFFICER KRAMER: Okay. So if it changed it's more likely to be longer than 30 days.

MR. HURSHMAN: Probably so.

HEARING OFFICER KRAMER: Okay. And then after that period closes, am I correct that that's when you would begin the preparation of your Final EIS?

MR. HURSHMAN: That is correct. And actually we have already begun portions of that final EIS preparation in terms of comment analysis for all of the comments that we have received on the Draft EIS.

Of course we'll get, if we get additional comments on our supplemental Draft EIS we'll have to incorporate those as well.

HEARING OFFICER KRAMER: So do you have any prediction as to the earliest that the EIS could be published?

MR. HURSHMAN: Well again based on our earliest analysis it's going to be July for a Final EIS.

HEARING OFFICER KRAMER: And then how soon after that to a Record of Decision?
MR. HURSHMAN: Well the time frame
between a Final EIS and a Record of Decision is
somewhat dependant upon if we receive any protests
to the land use plan amendment. Without any
protests there would be at least a 30 day period
between the Final EIS and the Record of Decision.

If there are protests to the Land Use
Plan Decision those have to be resolved and
answered prior to publication of the ROD. And I
really don't have an exact date except that the
resolution of a protest typically takes a couple
of months.

HEARING OFFICER KRAMER: Okay, thank
you. One of our duties here as a committee for
the Commission is to keep track of and try to make
sure that any decisions that we make are
synchronized, as far as requirements go, with the
decision that the BLM might make.

MR. HURSHMAN: And my duties too,
Mr. Kramer. Make sure we're in sync with the
Commission.
(Laughter.)

HEARING OFFICER KRAMER: Right. So when
we -- Is it fair to say that we are likely to know
what BLM is planning on doing with near finality
at the point in time when the FEIS comes out or
would it be at some later time?

MR. HURSHMAN: It's likely to be at the
time the Final EIS comes out. We are at this
point trying to maintain consistency between the
conditions of certification, mitigation measures
that are being developed that would carry forward
in the BLM document.

HEARING OFFICER KRAMER: Did I cover
everything you were looking for, Ms. Belenky?

MS. BELENKY: Yes, thank you.

I did have one other point before we
close the record.

HEARING OFFICER KRAMER: Go ahead.

MS. BELENKY: Mr. Powers' testimony was
not accepted as an exhibit at the hearing and we
have heard that there was no public comment period
provided for the Addendum except as to this
hearing today. So I would like to ask that his
testimony be accepted as public testimony.

HEARING OFFICER KRAMER: As public
comment?

MS. BELENKY: Public comment, thank you.

MR. HARRIS: Mr. Kramer, we have no
objection to receipt of that as public comment.
MR. BELL: Staff has no objection for it to be received as comment.

HEARING OFFICER KRAMER: Okay. Then we will accept it as public comment. That's Exhibit 947. And you'll see it marked that way in the exhibit list.

Today we already discussed -- So any other issues to raise before we close the record? Seeing none we'll close the record.

There are a few more housekeeping items. Today we already mentioned the pending changes to the air quality conditions of certification. What I heard, those would not be in the nature of changes to the emission limits.

MR. HARRIS: And let me clarify further, Mr. Kramer. What we're talking about there is implementation of the compliance demonstration for the five percent fuel. That's verification language, that's not condition language. It's the kind of thing that can be done post-certification. So, you know, that type of detail is regularly put into clarification and will be in the verification of that condition, as I understand it, as well.

HEARING OFFICER KRAMER: Okay. Then as a matter of formality, though. When this new FDOC
comes out we do need to somehow absorb it into the
record for this case.

Mr. Bell: Staff does believe that we
will be filing an errata based on the new
information when it comes in, if necessary.

Hearing Officer Kramer: Okay.

Mr. Bell: But it's staff's anticipation
that the new information will result in some minor
changes to at least one table that will correct by
way of errata.

Hearing Officer Kramer: Okay. So we
will receive that. What I am looking to find out
is if we need to plant for an additional hearing
on that. It would be a very limited hearing. Or
if that can come in by stipulation of the parties
subject to further comment if some comment is in
order.

But something as simple as, you know.
These conditions tend to have in their text that,
you know. Sometimes the serial number of some of
the various equipment like the emergency
generators. That's not the kind of thing that I
would hope that anybody thinks we need to have a
hearing about. But again, it is a formality that
we need to deal with.
Do any of the intervenors see any need
to have a further hearing on the air quality
changes, at least as they have been described
today?

MS. BELENKY: Not as they have been
described. But I guess we wouldn't stipulate
without seeing what it is.

HEARING OFFICER KRAMER: Okay, well
that's fair. Well we can do that when it comes
out. And staff, you could help by putting it in
your notice. Let's give everyone ten days to
indicate whether they wish to file any testimony,
additional testimony with regard to the changes in
the FDOC.

Mr. Kessler isn't here but, Mr. Bell, he
also suggested to me the other day that there is
the possibility that there will be some additional
information that will be provided with regard to
golden eagles. Are you aware of that?

MR. BELL: I'm peripherally aware of
that. As you know I'm just standing in for
Mr. Ratliff here but I am aware of some of the
issues. I know there were some questions raised
as to the federal requirements as to the golden
eagle.
I do know that based on what those requirements are when we are made aware of them from the appropriate federal authorities that staff may be offering conditions of certification or a condition of certification based on those federal requirements to ensure that they are carried out. But we don't anticipate that there would be need for further testimony. We already think that the record has already been made from the various parties on the issue.

HEARING OFFICER KRAMER: For the other parties is that something that -- and Mr. Hurshman, are you still on the line?

MR. HURSHMAN: Yes I am.

HEARING OFFICER KRAMER: Do you know, is BLM planning on adding in its Supplemental DIS an additional discussion of golden eagle impacts?

MR. HURSHMAN: You know, I don't know exactly what that will say but yes we are.

HEARING OFFICER KRAMER: Okay. So then BLM is definitely doing something already within their 30 day more or less comment period that they're talking about.

MR. HARRIS: I guess I would like to comment. The issue is compliance with the new
federal requirement. But that's certainly not a state law issue that requires reopening the record of this proceeding.

MR. BELL: Correct. I thought I made that clear that we didn't anticipate reopening the record or taking additional testimony on this.

HEARING OFFICER KRAMER: But you're talking about adding a condition.

MR. BELL: Possibly. Depending on what we receive by way of federal guidelines. I agree with Mr. Harris, it's a federal requirement. But it's something that staff might have to take into consideration. We won't know until we see it.

MS. BELENKY: Mr. Kramer, may I speak to the point?

HEARING OFFICER KRAMER: Go ahead.

MS. BELENKY: My understanding is that under the requirement that you show that the project is consistent with all of the other laws and ordinances you would need to show consistency with this law as well. I do think it is relevant and the intervenors have specifically raised issues regarding impacts to golden eagles. And if there is going to be new information coming from staff and submitted then we would like a chance to
review it and possibly submit additional testimony as well.

HEARING OFFICER KRAMER: Okay. Well when it comes out then. I guess we'll have to play it by ear and consider arguments. There will be a short turnaround for your arguments in favor of additional hearing.

I don't think that needs to hold up the preparation of the PMPD, though. Because we could always reopen the record and modify it if we need to.

MR. BELL: And again, I would agree with that statement, Mr. Kramer, if we need to. Staff doesn't see the potential for reopening the record on this since we are just talking about clarification for a federal requirement. There is no additional testimony to develop out of that.

PRESIDING MEMBER BYRON: Maybe it's premature, Mr. Bell, but do you know? Is this a new federal requirement?

MR. BELL: This is a -- it's not new, no. But we're looking at -- I know there's an agency, and maybe Mr. Harris can help me with this because he has been with this longer than I have. Is it Fish and Wildlife that's developing the
MR. HARRIS: There are some guidelines that are in development but those may be two or three years away. And I guess I want to caution the Commission against the idea of constantly reopening the LORS door here, if you will. So until we see what comes out of the federal government, if anything comes out in the time frame, I don't think we can make a determination there.

But I do think we need to be cognizant of the idea that the application to consider is the project from the point of time from the filing of the application Notice of Preparation. And you could end up in a circumstance where if you are constantly reopening the record then local governments, for example, could pass new ordinances in the middle of the proceeding and say, look, now it's a scenic highway. Which has happened in one of my cases, by the way.

So those are legal issues we can brief going forward. But at some point the snapshot in time has to be taken so.

MR. BELL: Correct. And that's why I keep saying maybe.
HEARING OFFICER KRAMER: You know, well and I'm --

MR. HARRIS: I appreciate that, Kevin.

MR. BASOFIN: Mr. Kramer I'm a little confused if there is proposed mitigation measure that would be memorialized by a Condition of Certification. I think that's the thing that we should be able to speak to.

And I hear that Mr. Bell and Mr. Harris are sort of trying to divorce federal law and state law issues but it sounds like there's a need to comply both at the state and the federal level, at the state level through a Condition of Certification and at the federal level through their process.

So if there is a Condition of Certification that includes a mitigation measure I think the parties all ought to be able to speak to it.

MR. HARRIS: Well that's the big if. I mean you don't get a Condition of Certification that says, apply with the Federal Clean Air Act. I mean you have to do it either way. And so it very much will depend on what this says.

But I'm more worried about the example,
I can see it Josh, where somebody comes along and says we need a state law condition that says comply with federal law. And that's clearly redundant.

MR. BELL: Correct. And I'm being overly cautious again. I'm somewhat hobbled here in that I'm standing in for Mr. Ratliff and I simply don't have the history with this case that others do.

But I was responding to a question about possible additional information being developed. And I'd rather proceed in an abundance of caution with what we might have to, you know, what may be coming rather than represent that we're not expecting anything else to happen.

HEARING OFFICER KRAMER: Right. And my bringing it up was meant to be a heads up to the parties that we're aware of it.

And on that score we have, if we need to, the Committee has reserved time on its schedule for some other reason that we might want to get together May 3rd. So mark that date.

And we're not offering this as an incentive to find reasons to use it or anything of the sort. But because scheduling is such, well it
was a recent cause for some consternation in this
case even, we are giving you advance warning of a
date that you should probably try to set aside on
your calendars in case we might need it.

Okay, we've discussed BLM's current
plans. A question for staff I guess. This is a
drafting issue.

Mr. Harris I know you've been talking
about, and I gather you're probably still going to
address in your brief, the question of compliance
submittals needing to go to both the BLM and the
CEC staff.

I don't know if you've come to any
conclusion about that. Perhaps you have even had
more talks with staff about that.

What my office has noticed is that in,
for instance, in the Ivanpah Case it requires that
the BLM's authorized officer and the CPM receive
various things. That's just a general phrase that
used in the Modes of Verification of the
Conditions.

And in a more recent case, the Imperial
Valley Case which is also on BLM land, somehow the
BLM's authorized officer has dropped out of that
equation. And I don't know, we don't know what to
make of that. Again, it's unfortunate Mr. Kessler
had to go to another conference on another case.

    But I wanted to see if maybe, Mr. Bell,
you have some information about that. Is that a
change or just a style difference or --

MR. BELL: I do have some information
Mr. Kramer. It just so happens that I am the
attorney that handles all the compliance issues
for the Commission for our compliance staff.

    And I'm currently reviewing a joint
agency MOU between the Commission and BLM that
while it's not finalized yet I think it's going to
provide for a more consistent approach for all of
these cases where there's some overlap in
jurisdiction between our agency and BLM.

    As to specific cases I can't tell you
exactly why there's a difference right now. But I
can tell you that we're working on something
that's going to solve that inconsistency.

HEARING OFFICER KRAMER: Do you know
when you might be able to give us a definitive
recommendation to go one way or another in the
cases?

MR. BELL: I can tell you right now that
the two documents that we're proposing are with
BLM with their legal office for review.

And we're told that we should hear back from them by Thursday of this week.

HEARING OFFICER KRAMER: Okay. If you could file, if you do receive word, file some kind of statement as to your recommendation after that and serve that on all the parties. That would be very helpful.

And I'm sure Mr. Harris is going to weigh in one way or another and I suppose I should give him a chance to talk at this point (laughter).

MR. HARRIS: I keep leaning into my mic. I just wanted to redirect the proposal we put on the table for Kevin's consideration before, which would be to have a generic term in Conditions like, approving authority.

So the document goes to the approving authority and then the BLM and the CEC between themselves could decide whether one or both of them will be part of the approving authority for a particular condition. And so on your compliance matrix you just add another column that says, you know, approving authority, you know, BLM, CEC, you know, both.

Because there may be documents that the
BLM doesn't want to receive. And then there are other things that even BLM's, you know, like federal land management requirements are going to have to receive. I'll let the two agencies kind of work that out and maybe that's part of the MOU process. But it seems like it almost needs to be done on a condition-by-condition basis.

And that's the beauty of defining approving authority that allow the flexibility of the staffs to figure out which ones they want to share.

It doesn't completely address the applicant's concern about duplicative review processes but we might be able to narrow things.

HEARING OFFICER KRAMER: Okay. Well Mr. Bell if you can get back to us as soon as you, I think for all the cases it would be helpful as we're starting to draft these.

MR. BELL: I will.

HEARING OFFICER KRAMER: Briefings. Now first of all, I'm informed that we will be getting an expedited transcript. And so it may be available as soon as this Thursday which is an improvement on the former standard which was two full weeks.
So keep that in mind in our discussion we will now enter into about a briefing schedule.

The current schedule requires the opening briefs this Wednesday, March 24th and reply briefs on April 12th.

A motion from the environmental parties, I forget the exact name used, requested April 26th for an opening brief and May 10th for the reply briefs.

I think we're willing to extend the briefing schedule somewhat but not to that extent. There would be some value in allowing the parties a little more time to soak in as much as they can today's discussion. Although I emphasize, in the view of the Committee what today's discussion was about was learning the extent to which previously drawn conclusions about the impacts and LORS compliance about the project change because of this reduction in the footprint. Not to reopen old issues that are unrelated to that. Not to put new alternatives on the table. Basically a relatively simple question. What, if anything, changed? And staff reported that in their opinion a couple of changes to their previous conclusions did occur. And the
intervenors who have had a chance to test staff's position and offer their own conclusions, which I'm presuming have not changed.

So given that, and given that the meat of the proposal, if you will, has been on the table since mid-February and that even these briefings, the current briefing schedule allowed three weeks from when it was communicated to the parties, and that was a standard adopted way back in January.

So the Committee is, I think we've been fair. To the extent the parties are expecting that they don't have to start work on their briefs until the Committee says, go, or that they have some kind of right to fully brief all of the issues in both an opening and reply round, we don't accept those premises.

What we can do and are willing to do in response to the motion is extend the opening briefs until a week from today. That would be Monday the, is that the 29th. And hold on a minute, let me find the other date. And then the reply briefs until April 16th.

That will postpone the issuance of a PMPD a little bit. But I'll point out that, you
know that, because of the delay in the federal process that we do not see any particular harm from that.

Because as we mentioned we're not going to be able to act in any sort of final way until we know from the federal government what their intentions are.

In some of these cases frankly there has been a debate about whether we should put out a PMPD prior to the FEIS. But because this case involves a proposed change to the project and is the sort of the case of first impression in this joint system, we think it's appropriate to put out something to send a signal of, at least, our initial intentions to the other parties including the BLM and to receive responses.

And of course once a PMPD goes out then there's a comment period. And the Committee will meet to consider those comments and then issue if necessary a revised decision.

So that's our proposed order. Do the parties have any comments on that?

MR. HARRIS: Isn't Monday a state holiday, next Monday?

HEARING OFFICER KRAMER: No, it's the
Wednesday is Cesar Chavez Day.

MR. HARRIS: So it's the day of, you don't get the Monday holiday. They put it in the middle of the week for you.

HEARING OFFICER KRAMER: That's a holiday I think they, some people tried to take back. They have certainly not made it a Monday holiday.

MR. HARRIS: Checking on this.

MS. BELENKY: I had one question. When you stated that the parties shouldn't feel that they have a right to fully brief issues both on opening and reply. And then earlier in the back and forth email about the briefing schedule you said that we were, that intervenors who were asking for additional time were free to put anything, any issues they thought they didn't have time to brief into our reply.

That's why me -- however what I don't want is an objection to issues that we raise in our reply brief that we feel that we haven't had time to adequately pursue in the openings.

And I say that in the context that you opened this today with, which is that it was completely unclear whether this was going to be a
reopened hearing about, that would also include
the alternatives question, how alternatives would
be dealt with and how this new, what they're
calling now the M-3 Proposal would relate to the
other alternatives that have been discussed in the
previous hearings.

And I think that that was probably the
heart of the intervenors, it was at least one part
of heart of intervenors' questions and why we had
sought originally to have a prehearing conference.

MR. HARRIS: Yeah, I guess I need to
respond. The order here that's currently before
us and you haven't issued a new order yet. The
order that these parties are currently under is
very clear about opening briefs and reply briefs
and it says the opening briefs are due when
they're due.

And in regard to reply briefs they're
due -- and those briefs are to cover in addition
to responding to opening briefs, the reply briefs
may address any new issues raised by the evidence
presented in the March 22, 2010 Evidentiary
Hearing.

So the reply briefs are only about M-3.
And the idea that you could save for your reply
brief things that are not related to M-3 is
clearly contrary to your order.

And I think it's very important for
those of us who have moved heaven and earth to
have a brief ready for Wednesday to have the
fairness of keeping that same scope. That the
reply briefs should be focussed solely on M-3-
related issues.

HEARING OFFICER KRAMER: Well, okay, but
what about the traditional function of briefs?

MR. HARRIS: And responding to opening
briefs.

HEARING OFFICER KRAMER: Right, okay.

MR. HARRIS: Yeah, responding. I won't
say, what was the word Gloria used today?

Rebuttal, we'll call it rebuttal in this case.

MS. BELENKY: Well --

HEARING OFFICER KRAMER: Retaliation?

MR. HARRIS: Retaliatory. No

retaliatory briefing, yeah, just rebuttal.

HEARING OFFICER KRAMER: Ms. Belenky
were you offering an explanation about the concern
or were you making some particular request?

MS. BELENKY: Well I think our concern
is that we understood that there would be more,
that there would be allowed discussions of
alternatives and now you didn't allow discussion
of alternatives in this hearing.

And what it means to be about the M-3 is
topically unclear on this record.

MR. HARRIS: It's absolutely clear.

There was pre-filed testimony on M-3. That is the
scope of the new issues. That's it.

MS. SMITH: Mr. Kramer this is Gloria.

HEARING OFFICER KRAMER: Okay.

MS. SMITH: We've discussed, I think
we've learned from today's hearing that we have a
new alternative on the table with potentially the
proposed project.

I think we have a better idea that
that's the correct assumption. I mean that's how
I'm going to operate.

Maybe a better way to handle this is to
go ahead and give us some time to digest what was
done today. Take what we've heard today, take a
look at the transcripts and then rather than just
giving us two or, you know, a couple of business
days and a weekend to craft a opening brief,
especially in light of what we heard from the BLM,
it just seems like a little more open, the little
more chance for a coherent opening brief is going
to save us a lot, perhaps some confusion in
duplicative and, you know, contentious work on
reply.

You know, as I mentioned before I have a
trial on Friday the 26th and this is just really
difficult. And again, given the BLM's schedule I
just don't understand why we only picked up a
couple of days.

I mean I would ask that we get more, a
couple of more days at least past March 29th. I
just don't see how that would change the PMPD
measurably especially in light of the BLM process.
This was supposed to sort of go in tandem.

HEARING OFFICER KRAMER: Okay. Let me
point out, we're going to deliberate in a minute.
But let me point out that I guess I don't agree
with the characterization that alternatives were
not allowed to be discussed today, at least
etirely, because questions about comparing this
new project to one of the previously analyzed
alternatives were allowed.

What was rejected was the introduction
of a whole new alternative or additional evidence
on alternatives that were already, that were not
in the project change and had already been discussed at our previous hearings.

So with that, did any party, did any other party wish to address this question before we, before the Committee takes a moment to deliberate? And then we, before we do that we'll also hear from our Public Advisor. But any other party first?

MR. HARRIS: Yeah, I have one more idea for the Committee's consideration. Again, I think your order is very clear on the scope of opening briefs.

But if you want to give them another two days and make it Wednesday of next week and so a full week beyond the current schedule with the understanding that it is everything but M-3. That makes sense to me.

But then I'd ask that you hold the 16th date for the reply because it is on that narrow issue. So rather than getting a shorter time frame to get a whole time period there we should make the brief due on 3/31. Okay we'll avoid April Fools Day.

HEARING OFFICER KRAMER: Well actually I think April Fools Day is probably the better
choice because 3/31 is a holiday.

MR. HARRIS: Then appropriately April 1st. And then the reply on the 16th. The traditional time frame for reply briefs with the Commission is 10 days. That's 16 days from 4/1 to 4/16, and that to me is more than generous.

The Committee has been extremely generous with their time here. That would give them an extra week to get this done and then it would get Ms. Smith through her trial.

And so would suggest that then 4/1 and 4/16 is a compromise.

HEARING OFFICER KRAMER: Okay. And Ms. Jennings and please identify yourself for the court reporter and spell your last name for us.

MS. JENNINGS: Yes, Jennifer Jennings, Public Advisor for the Energy Commission. And one of my roles is to advise the Commission on how to ensure public participation in its process.

And I would like to endorse the request of Ms. Smith in this regard. I think that one of the backgrounds of this is that the applicant submitted another alternative that became the project after the close of the evidentiary record.

Nothing was done for another three weeks
or so. And now we're here at an Evidentiary
Hearing. I don't think it's fair for the public,
in this case environmental intervenors to be
 jammed like this with regard to the briefs.
And I do agree with their position that
the briefing on this issue of whether it was from
the January hearings or whether today's hearing,
will be a very awkward process and you'll just
raise more arguments and objections than you would
solve.
So I would, it would be my
recommendation that the Commission allow at least
until April 5th for the opening briefs.
The opening briefs would be on all the
subjects. This is assuming that the transcript
for today's hearing would be available by this
Thursday which would be the 24th.
And then give a reasonable time
thereafter for reply brief and a reply brief on
all the projects in the entire range of the
project alternatives.

ASSOCIATE MEMBER BOYD: Ms. Jennings
what did you think of the applicant's proposed
time frame?

MS. JENNINGS: Like I said I believe
that April 5th would be a more reasonable time frame. That would give them, you know, from Thursday of one week to Monday the following week after that, ten days after the transcripts would be available.

ASSOCIATE MEMBER BOYD: Another question. Were you deliberate in your use of the word, alternative project?

MS. JENNINGS: You know, it was, I sat through this hearing. I've looked at all the paperwork that's come in since this. I was not here at the Commission during the time of the first hearings and I don't know, you know. It was confusing to me from the addendum that the staff put out exactly what was the context of this hearing and what was, what the project is now. And I finally figured out the project is the Ivanpah Mitigated Number 3 but I don't think that that was particularly clear previously.

And frankly, Commissioner Boyd hearing some of the things I've heard about the staff addendum not being out for public comment, I mean that puts even more of a burden on the intervenors that are present here. And I think it's an important, this is an important project and it
shouldn't get hung up at this stage over a couple of days whether or not they're going to have an opportunity to brief fully.

MR. HARRIS: Yeah, I've got to take issue with the word jamming though because there has not been a jamming on this schedule.

The hearing order currently calls for briefs this Wednesday on issues that were closed on January 14th. It'll be nearly, what, two months I guess, three months. The better part of two months. This is the longest briefing schedule I have ever seen.

MS. JENNINGS: With all due --

MR. HARRIS: Ever. Let me finish --

MS. JENNINGS: -- will all due --

MR. HARRIS: -- this is the longest.

The scope of brief are the issues closed on January 14th and the brief is being requested now from the 22nd of March more the two months later. That's unprecedented in the terms now.

If you want to change the scope of the brief as you have suggested now that's a complete shift. This is day 875 in this proceeding. And the word, jam, hardly applies.

MS. JENNINGS: May I respond? With all
due respect, Mr. Harris, your letter with regard
to this mitigated alternative indicated you were
going to file a motion to reopen the record. The
Evidentiary Record was closed at the time you
filed this alternative. And then nothing
happened.

I mean I looked on the docket. I
couldn't find anything happened in that entire
three weeks. So at least that period of time, you
know, is something, it was on the applicant's
shoulders to reopen the record to have everybody
discuss what's going to happen next. And nothing
happened.

MR. HARRIS: Well the Staff Assessment
certainly happened during that time period. They
didn't write that in the last week.

Now the record can be reopened by the
Committee upon their own motion.

MS. JENNINGS: And that didn't happen
either.

MR. HARRIS: All right. So the record
was reopened by order. It was absolutely reopened
by order, by this Committee.

So the facts are that the brief that's
due this Wednesday by the current schedule are on
the limited subjects that were closed on January 14th.

I'm unaware of ever having nearly two months for briefing anything in the Commission's history. It's absolutely unprecedented in that respect and it's not a jamming of these folks.

MR. BASOFIN: Mr. Kramer just a follow up to Ms. Jennings comment. For those of us who are waiting for motions to re-pen the Evidentiary Record and walked into this room and were asked to stipulate it to the applicant's primary piece of evidence coming into the record, I think we felt a little awkward. Because we hadn't ever seen a motion but we didn't feel like we could be stipulating since we're already in this room and the Commissioners' time is being used. And this is a very strange situation to be in. So I certainly concur with Ms. Jennings.

MS. BELENKY: Well and I just --

MS. SMITH: This is Gloria --

MS. BELENKY: Oh, go ahead Gloria.

MS. SMITH: Actually everyone knows the Sierra Club has been focussed on alternatives.

My brief will not waste the Committee's time rehashing alternatives that for all intents
and purposes have been rejected.

My opening brief will streamline as much as possible the alternatives that are on the table and what we, what the Sierra Club thinks this Commission should do. Rather than briefing alternatives that were proposed before this one. That serves nobody.

So I have been waiting to hear what was said today so that I could put the best possible brief in front of the Committee and not waste anybody's time on alternatives.

Now I learned today we have an alternative back and forth on that and that's what I'm going to focus on.

It's ridiculous to say that I've had all this time to brief alternatives that were raised back in January. Why would I waste the Committee's time with that when we know what the alternative is now.

I just wanted the full opportunity to do the best job on my opening and closing briefs on this new proposal.

I mean that's just the thing that makes the most sense for everyone's time and resources.

MR. BELL: Mr. Kramer.
HEARING OFFICER KRAMER: Yes.

Ms. Belenky and then Mr. Bell.

MR. BELL: Thank you.

MS. BELENKY: Well I just wanted to add that in, that I think that was extremely confusing as well is that the addendum from the staff basically creates a new proposed project. And in order to brief anything about this project we need to brief it, especially on alternatives and impacts, you need to brief against the proposed project. What are the impacts of the proposed project? What are alternatives to those impacts? And without having a stable project it is very difficult to provide briefing.

HEARING OFFICER KRAMER: Mr. Bell.

MR. BELL: Thank you Mr. Kramer.

Believe it or not I'm not going to add to this discussion much. I think it's starting to gather steam and it's probably time to turn the fire down a little bit. I think that the Committee has proposed a very generous schedule for briefing.

My understanding of this and I don't have the history that many others do in this case
so I don't bear the burden of those frustrations as some parties may feel on this. However an opening brief due April 1st for issues that, covering only issues that have been closed since, well for a couple of months now, seems reasonable. Reply briefs that would address other parties' issues that are raised in those opening briefs along with any issues that were discussed today of April 16th also to me and to staff appears to be reasonable. And I think that at this time this might be a good time to move on and just make a decision as to what the briefing schedule is going to be. Staff's position is that the modified briefing schedule giving all the parties additional time to prepare that opening brief due April 1st and reply brief due April 16th is very reasonable.

HEARING OFFICER KRAMER: Okay, give us a minute. Okay. Opening briefs will be due on April 1st. To the extent you can please feel free to address the, what Mr. Rubenstein in his letter to the Air District called the Revised Project I think.
It would suggest to me that the applicant has, although in their letter to us they did say that they still think the full project would be acceptable.

But Mr. Harris, is it fair to say that the applicant is now requesting approval of the modified project?

MR. HARRIS: Yeah. We proposed mitigation that's called Mitigated 3 because we removed certain areas that we thought satisfied the staff's concerns about rare plants. So, yeah.

HEARING OFFICER KRAMER: Okay. So now let's consider Mitigated 3 the project now. And we don't have to, we don't have to think about the originally proposed project as at least the main focus of the analysis.

So, opening briefs due April 1st. To the extent you can talk about Mitigated 3 at that time please do so.

And then reply briefs due on April 16th with whatever you were not able to marshall by way of thoughts about Mitigated 3 and anything you're saying by way of reply to the other points that the parties make.

A lot of the issues really haven't
changed, traffic, waste management, and so you
should be able to fully cover those.

And as far as the nature of this change
and the idea that it's made it hard for people to
start marshalling their thoughts let me just point
out that this project is a reduced version of the
project that was discussed at length in January.

So there's no, nobody has had to go
outside the bounds of that to conduct new
analysis. In effect what you merely need to do is
refine the analysis that you hopefully have, at
least, been sketching out in your minds, maybe
during your nightmares, maybe in the shower,
wherever great ideas come to you.

But my point is that it's new only in
that it's different. But it's not, none of the
underlying information is really new to us at this
point. We've discussed it at length.

So that is the order. I will try to
circulate the revised exhibit list tomorrow or the
next day and you can use that for your exhibit
numbers. Please let me know if you see a
discrepancy on there.

What we're still wrestling with is the
accuracy of the descriptions of the documents. So
if you see something that just, you know, looks
like we've missed it by a mile, I'm open to
helpful edits to the exhibit list.

I believe that covers the issues that
were on the table for rulings.

We have one last order of business. It
should go quickly. That would be public comment.

Do we have anybody --

MR. BASOFIN: Mr. Kramer I'm sorry
before you go to the public. Now that we've
gotten through the scheduling issues. I'm
wondering, are you going to issue a new schedule?

And I'm particularly thinking about I
don't have a lot of familiarity with the Energy
Commission's process so my understanding is that
there is a brief hearing on the PMPD?

And I'm wondering if we need to be
reserving dates for that. It would be really
helpful if we had a revised schedule so we knew
going out a few months what's happening.

HEARING OFFICER KRAMER: Yeah, that's an
exercise that we've been going through on the
various committees that I work with and that my
colleagues do. And I'll see what we can do about
predicting dates. Probably what I'll do is just
send out an email saying, hold on to these dates
on your calendars.

You know, they'll be premised on the
assumption that the PMPD comes out at a particular
time. And then ultimately we're going to have to
wait before we go to the full Commission.
Certainly until we know more precisely what our
federal partners are intending to do.

So it's a guess. But I agree. And in
our other cases we have been trying to tell
people, you know, what we're, what our current
schedule is just so they have a heads-up.
Because, you know, our Commissioners are very busy
on these siting cases and on other policy-making
matters and when we can get time on their
calendars we like to make the best use of it, that
we can.

So public comment. Is there anybody on
the telephone? There are no members of the public
in this room with us who wishes to make a public
comment?

Is there anybody still left on the
phone? Gloria, are you there?

MS. SMITH: Yes.

HEARING OFFICER KRAMER: Okay, good.
Just making sure the phone is working.

Okay, is there any other business we need to conduct today before we adjourn?

PRESIDING MEMBER BYRON: Mr. Kramer. I just want to characterize a couple of things you may or may not be aware of.

While we were working here this afternoon the Governor as well as Secretary Salazar were out in the desert, I believe near Harper Lake this afternoon, signing new legislation that expedites the siting.

Ms. Chew tells me the law is effective immediately. It helps to conserve land for endangered species and developers.

I also understands it changes some aspects of the ex parte rule which we will endeavor to understand here closely.

I believe that it allows Commissioners to spend more time in consultation with other agencies such as the Bureau of Land Management.

And I guess the reason I bring that up is that there are a lot of moving parts here.

There are many projects that are under consideration by this Commission.

I'd like to thank Commissioner Boyd for
his time today because I know he has many of those projects. In fact, I don't believe any Commissioners were present at the signing of this legislation because they were tied up in cases.

I'd also like to extend my appreciation to the applicant for providing us with a responsive reduced footprint based upon the Evidentiary Hearing that we conducted --

HEARING OFFICER KRAMER: Two months ago.

PRESIDING MEMBER BYRON: -- two months ago. And I'd like to make it clear to the parties that the reason we continue to push on schedule and to limit the scope of what we're looking for in your briefs is so that we can move towards a proposed, Presiding Members Proposed Decision in a timely way.

Mr. Kramer is very calm and relaxed. He has a lot of responsibility on his shoulders.

Commissioner Boyd you want anything else to say?

ASSOCIATE MEMBER BOYD: Well a word or two. Thanks everybody for all that you've done to try to move this along.

As Commissioner Byron indicated, these are tough times. Particularly tough on the staff
of this agency which many of you know. We don't
like the fact that some of these things take so
long. We don't have a lot of choice in this new
area with more partners and, you know, with the
record caseload we have.

And, you know, actually, I probably
shouldn't use the phrase, plowing new ground, when
talking about biological things but in any event
there are some new and additional territories
we're into.

And it's tough on the Commissioners as
well because there's a lot of question about the
relevance of the Energy Commission and this siting
process.

There are debates on reorganization
proposals. Those of you who think the siting
process is worthy of the citizens of California
should pay attention to some of that.

But nonetheless we learn by doing. And
yes, a few barriers have been knocked down where
we can actually talk to our friends at BLM and
even in the state agencies now instead of that
being deemed an ex parte communication which
hopefully will be helpful.

Strangely enough our own staff is still
off-limits to us but, which has been real strange
to me in the years I've been here as compared to a
long list of other places I've worked that were
regulatory in nature but so be it.

Anyway, I can tell all of us are
strained and everybody take a deep breath and
we'll keep pushing on this. Thanks.

PRESIDING MEMBER BYRON: Okay. Thank
you Commissioner Boyd. All the parties thank you
very much for being here today. I know it was
difficult on short notice.

And I believe --

HEARING OFFICER KRAMER: We're
adjourned.

PRESIDING MEMBER BYRON: -- we're
adjourned. Thank you.

(Whereupon, at 4:16 p.m., the
Evidentiary Hearing was adjourned.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Status 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 conference, nor in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of March, 2010.

JOHN COTA

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