

COMMITTEE HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of: )  
 )  
Modification of Certification ) Docket No.  
Starwood-Midway Energy Project ) 06-AFC-10  
Presiding Member's Proposed )  
Decision )  
\_\_\_\_\_ )

CALIFORNIA ENERGY COMMISSION  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 3, 2008

10:00 A.M.

Reported by:  
Peter Petty  
Contract No. 170-07-001

COMMITTEE MEMBERS PRESENT

John L. Geesman, Associate Member

HEARING OFFICER AND ADVISORS

Garret Shean, Hearing Officer

Gabriel Taylor, Advisor

STAFF AND CONSULTANTS PRESENT

Jared Babula, Staff Counsel

Che McFarlin, Project Manager

APPLICANT

Allan J. Thompson, Attorney

Richard H. Weiss, Project Manager  
Starwood Power-Midway, LLC  
Starwood Energy Group

Ronald W. Watkins  
CalPeak Power, LLC  
Starwood Power-Midway, LLC

Angela Leiba  
URS Corporation

ALSO PRESENT

Russ Freeman (via teleconference)  
Westlands Water District

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## 1 P R O C E E D I N G S

2 10:00 a.m.

3 ASSOCIATE MEMBER GEESMAN: This is the  
4 hearing on the Starwood Power project comments on  
5 the Presiding Member's Proposed Decision.

6 I'm John Geesman, the Associate Member  
7 of the Committee. Commissioner Byron had to go  
8 home ill today, so he will not be here. To my  
9 right is Garret Shean, the Hearing Officer. And  
10 to his right, Gabe Taylor, Commissioner Byron's  
11 Advisor.

12 We are somewhat time constrained because  
13 I need to leave for the Governor's Office at about  
14 10:45, but the Hearing Officer has a proposed  
15 approach that I think will make that easily to  
16 accomplish, at least as to my participation.

17 So, Garret, why don't you take over the  
18 proceeding.

19 HEARING OFFICER SHEAN: All right.  
20 Thank you, Commissioner. If we can have the  
21 parties identify themselves, initially with the  
22 applicant, please.

23 MR. THOMPSON: Thank you very much.  
24 This is Alan Thompson representing Starwood. To  
25 my right is Mr. Rich Weiss; and in back of me Ron

1       Watkins and Angela Leiba.

2                   MR. BABULA:  Jared Babula, Staff  
3       Counsel.  And sitting next to me is Che McFarlin,  
4       the Project Manager on this.

5                   HEARING OFFICER SHEAN:  All right.  The  
6       Committee -- let me go through the documents that  
7       we have.  We have several staff filings including  
8       one just received this morning.  I have a  
9       multipaged memorandum under the signature of Mr.  
10      McFarlin that deals with essentially minor  
11      editorial comments on air quality, biological  
12      resources, cultural resources, noise,  
13      socioeconomics, facility design and that's it.

14                   We, just this morning, got another  
15      memorandum also under Mr. McFarlin's signature and  
16      Mr. Babula's, dealing with project description,  
17      air quality, again biological resources, cultural  
18      resources, hazardous materials and water  
19      resources, and worker safety.

20                   From the applicant, I guess there are a  
21      couple of other -- that's pretty much that -- from  
22      the applicant we have two submittals.

23                   One is shown to be filed under the  
24      signature of Mr. Weiss from the applicant, dated  
25      December 28th, entitled, Starwood Power Midway,

1 LLC, response to the PMPD backwash filter water;  
2 and a second document, applicant's additional  
3 comments to PMPD regarding conformance with CEQA.  
4 And as shown as appended to that three pages of  
5 suggested changes to the water resources section  
6 and conditions of certification.

7 So, are there any other documents that  
8 we should be considering from the parties?

9 MR. THOMPSON: Not from applicant.

10 MR. BABULA: No further documents from  
11 us.

12 HEARING OFFICER SHEAN: Okay. I think  
13 given the time constraints that we're under, and  
14 just for the efficient use of our time, I guess we  
15 could go -- first of all, we've read all the  
16 comments and we understand them. And there's no  
17 point in going back through them.

18 I think what the Committee has  
19 identified in the materials from the applicant was  
20 a request for a workshop. And to some degree  
21 we're sympathetic with that. Let me just indicate  
22 the following things.

23 In reading the applicant's materials  
24 what's fairly clear is that in support of your  
25 argument that the backwash water option should be

1 at least included in the proposed decision, and  
2 ultimately the Commission's decision, there are  
3 several references to facts that I am unable to  
4 find in the record.

5 First of all, with regard to the Baker  
6 Farms contract, that it has a seven-year term, I  
7 don't find that in any of the materials that we  
8 have in the record to date.

9 Also the suggestion that either the  
10 contract provided for, or the concept of the  
11 mitigation provided for, providing at least an  
12 equal, if not a greater, amount of recovered  
13 backwash water to Baker Farms for agricultural  
14 use, as would be used by the project if it were at  
15 14 acrefeet per year, that's a new concept as far  
16 as I can tell from the record.

17 Also, and perhaps a little bit  
18 perplexing, was the applicant's discussion of the  
19 CalPeak well water option as having some  
20 potentially significant adverse economic and  
21 environmental effects. First being the discussion  
22 that if the PMPD condition with respect to the use  
23 of CalPeak well water would impose, it would  
24 create an uneconomic situation for the project.

25 I guess the reaction that the Committee

1 really has to that is, well, that was your  
2 proposal initially in the AFC to use the CalPeak  
3 well water. So if it's uneconomic, it started out  
4 as an economic when you proposed it.

5 But leaving that aside, the second item  
6 is discussion about the 2000 diesel truckloads,  
7 presumably, of wastewater that would have to be  
8 removed from the project were it to operate at  
9 4000 hours per year.

10 Again, I do not find any reference in  
11 the AFC, in any of the data responses. The  
12 staff's FSA analysis fairly clearly discussed at  
13 least what would happen in the event that  
14 operating at 4000 hours per year.

15 And they concluded in their FSA section  
16 that the project would then generate I believe it  
17 was 34 acrefeet of water to be disposed of in the  
18 evaporation pond. And that if the evaporation  
19 pond were susceptible to, or to reach capacity,  
20 that there were provisions in the conditions to  
21 shut down the reverse osmosis system so that there  
22 would not be an overtopping of the evap pond.

23 I don't find any discussion with respect  
24 to truckloads of wastewater being removed from the  
25 site.



1           So, with that we know we have an  
2           evidentiary record which is not sufficient, first  
3           of all, to deal with what you're requesting, which  
4           is that we now adopt, at least as an option, the  
5           backwash water option for water supply. Because  
6           we don't have in the record the information that  
7           you use to support it.

8           And I will say, the Committee finds it  
9           intriguing, but we just know that our record right  
10          now doesn't have it. So, we can't use it.

11          Which leaves us with the following  
12          situation: With respect to a workshop, I think we  
13          think the potential is there, that we could move  
14          this thing forward. Understanding that in a  
15          workshop you may be able to discuss with the staff  
16          the merits of your project.

17          I know, based upon my past experience  
18          with the staff, that first of all, in the absence  
19          of the information in the record for some time,  
20          that they're going to have issues with respect to  
21          the ability to review it, and either do further  
22          discovery on it, or at least get a concept of it.

23          And I understand, too, from the  
24          applicant that you have serious problems with  
25          respect to timing on when the Commission may act

1 on this decision.

2 Having said that, I think the Committee  
3 is interested in understanding what would a model  
4 condition look like if it were to reflect the  
5 circumstance that you suggest a supplemented  
6 record would give the Commission and the  
7 Committee.

8 And so what we would like to do is  
9 shortly break for converting this into a workshop  
10 which will be administered by the staff to discuss  
11 your proposal. But also specifically to attempt  
12 to draft a model condition that was reflective of  
13 what I'm just going to discuss.

14 And specifically that is -- first of  
15 all, there are other provisions in the water  
16 resources conditions that require an accounting  
17 for the amount of the water that's being used by  
18 the project.

19 In order for the Committee to view what  
20 you're proposing as essentially a water  
21 conservation program that has some compensatory  
22 elements to it, it would be necessary for the  
23 mitigation you propose to at least offset the  
24 amount of water that you are receiving from Baker  
25 Farms.

1           In the discussion you provided you  
2           indicate that that will be so. The model  
3           condition would merely have to have provisions  
4           that reflect how that accounting will be taken  
5           care of.

6           Also understand that there may be  
7           variation from year to year with respect to the  
8           amount you'd use versus the amount you'll recover.  
9           So perhaps the concept of a rolling average can be  
10          incorporated in that.

11          I note also from the comments that you  
12          made, as well as the testimony of Dick Anderson at  
13          our hearing on November 19th when he talked to  
14          somebody from Baker Farms there will be apparently  
15          a period in which, for the operation of the  
16          proposed project if it is permitted, there would  
17          be this recovery system and a retention pond at  
18          Baker Farms would be in existence prior to the  
19          operation of the project.

20          So essentially you've got a lead; you  
21          can bank some of the available water that you are  
22          making available for Baker's ag use so that  
23          somehow, in the overall accounting, what we want  
24          to make sure is that your mitigation would fully  
25          mitigate and compensate for any of the water

1 that's used.

2 Also understand, if the representations  
3 in your materials are correct, that this agreement  
4 is for seven years, at which, according to your  
5 comments again, potentially Baker could terminate  
6 the contract. And then you'd have to revert to  
7 the CalPeak well water.

8 And if I understand correctly there are  
9 no configurations with respect to the construction  
10 of the project that would change between the two  
11 water sources other than the evaporation pond  
12 would not be lined for the Baker Farms backwash  
13 water, whereas it would be double-lined for the  
14 CalPeak well water.

15 So, that's the general outline of what  
16 we'd like to see. At least in a model. We're not  
17 asking that the staff consent to that. We're just  
18 trying to see what would this look like, and what  
19 the staff's compliance office and the  
20 administration of its function would need to see  
21 in order to be satisfied that the full offset of  
22 the use of the project over the initial seven-year  
23 period, and any extension that would occur would  
24 be taken care of. And that the reversion, if it  
25 were to happen to the CalPeak well water, would

1 provide for the installation of the lined  
2 evaporation pond.

3 So, at this point what I'll do is sort  
4 of ask if there are any questions or comments, as  
5 we would lead into this workshop, of the Committee  
6 or just in general over our process. And so we'll  
7 go to the applicant.

8 You may want to think about it.

9 MR. THOMPSON: Commissioner Geesman, is  
10 the workshop for like 15 minutes and then come  
11 back to --

12 HEARING OFFICER SHEAN: No, no, I think  
13 it would be --

14 ASSOCIATE MEMBER GEESMAN: I can be back  
15 at 12:30.

16 MR. THOMPSON: Oh, okay.

17 ASSOCIATE MEMBER GEESMAN: So it's  
18 really a function of how you guys would like to  
19 spend the rest of the day. I do have one question  
20 that I'd like both Mr. Thompson and Mr. Babula to  
21 give some consideration to. And that is if we do  
22 go forward with any form of Baker Farms backwash  
23 option, what are we to do, or what should we make  
24 of the expressed opposition of the Westlands  
25 District to that.

1 MR. BABULA: I would like --

2 ASSOCIATE MEMBER GEESMAN: And you don't  
3 need to respond now. You can if you want to.

4 MR. BABULA: Actually, I'd like to do  
5 that. Do we have Westlands on the phone?

6 HEARING OFFICER SHEAN: I think they  
7 haven't signed on. I'd understood they were  
8 interested in getting into our proceedings. And  
9 we would intend that the phone line remain open --

10 MR. BABULA: Okay.

11 HEARING OFFICER SHEAN: -- during the  
12 pendency of your workshop.

13 MR. BABULA: Because they had indicated  
14 they wanted to call in --

15 HEARING OFFICER SHEAN: Right.

16 MR. BABULA: -- and comment on this  
17 whole thing. I do have a concern with the  
18 workshop in that the purpose is a little unclear  
19 in the sense that a lot of the information that  
20 they have in that 14-page letter, of course, as  
21 you pointed out is in evidence in the record.

22 And that what might be more useful is to  
23 get that information in the record through witness  
24 testimony or some witness sponsoring that  
25 information in there, so we have that as a

1 foundation to move forward. Because there are  
2 numbers in there for the first time. There's some  
3 ideas in there that never came out earlier. And  
4 so right now it's just in a letter form.

5 So I don't want that to get overlooked,  
6 where it just gets put into the record or  
7 considered by the Committee without it actually  
8 sponsored by anybody looking at the specific  
9 numbers of \$1000 or \$2000 or seven years or  
10 surplus water. So that was one concern.

11 So a workshop, in and of itself, doesn't  
12 really rectify that situation. And I think it's  
13 also important to make sure that Westlands -- we  
14 get Westlands' information on this opinion.  
15 Because their letter that Westlands sent obviously  
16 opposed it, but it didn't have a lot of detail.

17 So, you know, whether Westlands would  
18 agree to this -- and I know that the applicant has  
19 met, or is in the process of meeting with  
20 Westlands, so I would kind of like to find out how  
21 that's going and open that process up. Because I  
22 believe they're meeting next week with Westlands.

23 So I'd just like to kind of get  
24 everybody on the same page. Because Westlands is  
25 a key factor here.

1           One other aspect that's important is my  
2           understanding from Westlands, and this is  
3           something we need to find out, is they believe  
4           they have actual legal title to this water, and  
5           that they not only are commenting that they don't  
6           believe it should be transferred, but they can  
7           stop it. And that needs to be addressed, too.

8           So those are my comments.

9           MR. THOMPSON: We are in discussions  
10          with Westlands, and Westlands is discussing this  
11          issue among themselves. And the Board of  
12          Westlands will be involved starting next week.

13          We are hopeful that the position, as the  
14          record reflects it today, will be changed. But  
15          obviously we do not know that today.

16          With regard to the two documents that we  
17          submitted, I would like to request that the record  
18          be reopened with the express purpose of taking 30  
19          seconds of testimony from Mr. Weiss sponsoring  
20          those two exhibits so that the numbers that have  
21          been referred to would be on the record.

22          HEARING OFFICER SHEAN: All right.

23          We've given some thought to how this record  
24          reopening would occur, if at all, and how to do  
25          it. And with respect to comments of both counsel



1 I think the Committee's preference is that you  
2 provide whatever information it is that you want  
3 to in this workshop.

4 And that from the workshop decide what  
5 it is that needs to be introduced to the record.  
6 Because it may not be that all that the applicant  
7 would want to introduce into a reopened record  
8 would be these two documents.

9 I don't know if you've brought the paper  
10 contract with you; I don't know if you have any  
11 other information with you; I don't know if you  
12 have information that you didn't have since the  
13 November 19th hearing, or you do have information  
14 that you had prior to but it now looks that you  
15 need to use.

16 But it seems, to the Committee, at  
17 least, that rather than put the cart before the  
18 horse, that you disclose whatever information that  
19 you have and want to put forward during the  
20 workshop, and then identify anything that you  
21 would like to put into a reopened record, assuming  
22 the Committee is going to allow you to do that.

23 Obviously there's some procedural issues  
24 with regard to reopening the record, opportunity  
25 to examine the offering by the applicant. And

1 that's one of the reasons to at least have the  
2 workshop before we have the admission into  
3 evidence of any new evidence, as well as any  
4 procedures that would need to be worked out for  
5 others to comment, such as Westlands, on the  
6 material that you provided.

7 So, we're not going to have a  
8 supplementation of the record prior to the  
9 workshop. If it occurs, it will occur after. And  
10 we expect two things: Number one, discussions  
11 between the two parties; a draft of a model  
12 condition that reflects what I have said; and a  
13 list of any new evidence that you would present  
14 were the Committee to favor your motion to reopen  
15 the record.

16 MR. THOMPSON: Got it.

17 HEARING OFFICER SHEAN: Okay. Anything  
18 more from you?

19 MR. BABULA: Okay, if that's the  
20 Committee's choice, to do a workshop, then staff's  
21 amenable to that.

22 HEARING OFFICER SHEAN: All right.

23 MR. THOMPSON: One last thing, Mr.  
24 Shean, --

25 HEARING OFFICER SHEAN: Yes.

1           MR. THOMPSON: -- we'd like to apologize  
2 to the Committee for not having all of our  
3 information in on a timely manner. Somewhat in  
4 our defense, a lot of it has been coming in late  
5 and is still being developed. But I do apologize  
6 for not giving the full picture to the Committee  
7 at the time we should have done that.

8           HEARING OFFICER SHEAN: Well, it had  
9 that appearance, and, you know, the reality is  
10 that you can't shift the burden to the Committee  
11 from that in terms of the timing to get this  
12 matter to the full Commission.

13           We're going to do the best we can, and  
14 the reason we think this is the appropriate  
15 process at this point is that when we come back at  
16 12:30 you'll be able to tell us where you've  
17 gotten. We'll have the model condition and you'll  
18 have a list of any information that you propose to  
19 add to the record.

20           MR. THOMPSON: Good.

21           HEARING OFFICER SHEAN: All right. Now,  
22 for our purposes, this does not need to be  
23 reported. We will keep the teleconferencing line  
24 open. And it is now 10:25 essentially.

25           We will be back here at 12:30. Thank

1       you very much for your cooperation and effort.

2                   (Whereupon, at 10:20 a.m., the hearing  
3                   was adjourned, to reconvene at 12:30  
4                   p.m., this same day.)

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## 1 AFTERNOON SESSION

2 1:35 p.m.

3 HEARING OFFICER SHEAN: It is now  
4 basically 1:30, following this interlocutory  
5 period where we had the staff conduct a workshop,  
6 as we had requested.

7 And the work product that came from that  
8 that I see is a one-page representation of a noise  
9 soil-and-water-8 and soil-and-water-10. So why  
10 don't we have at least one of the parties let us  
11 know what this is.

12 MR. THOMPSON: What we tried to do was  
13 to take the suggestions made by the Committee and  
14 had some discussions with staff that we think were  
15 very productive, and came up with these two new  
16 conditions. And also committed to soil-and-water-  
17 4 and -8 that were in the FSA of staff. So, 4 and  
18 8, together with 9 and 10, we think, cover the  
19 creation and monitoring of the piping and  
20 collection system.

21 There are certain guarantees that are  
22 contained in this, such as the obligation that  
23 greater than 50 percent of the water will be used  
24 for agricultural purposes.

25 We took a draft of this and solicited

1 some input from staff. And while not committing  
2 staff to agreeing with what we have here, we had  
3 some very good input on the draft of 9 and 10.

4 So, if you would like I can put Mr.  
5 Weiss on to discuss some of the contract terms  
6 that you will see later that lead to some of these  
7 provisions or guarantee some of the provisions.

8 But we believe that 4, 8 and the new 9  
9 and 10 should cover the Baker backwash  
10 contingency.

11 HEARING OFFICER SHEAN: Okay. Well,  
12 rather than have him sort of testify, let's go  
13 through the wordsmithing of the condition.

14 Any comments from staff at this point?

15 MR. McFARLIN: The only thing I would  
16 say to clarify is that soil-and-water-4 and -8 are  
17 actually from staff's November 9th filing, which  
18 was staff's brief and supplemental testimony.

19 MR. THOMPSON: My apologies.

20 HEARING OFFICER SHEAN: Okay.

21 MR. McFARLIN: I just wanted it clear  
22 for the record.

23 HEARING OFFICER SHEAN: All right. I  
24 guess I do have a couple of brief questions here  
25 with respect to your soil-and-water-9. In item C,

1 what's meant by rolling three-year average?

2 What's the rolling part?

3 MR. WEISS: The rolling part is that you  
4 look at over -- you'd measure it over a three-year  
5 period. So, you'd say, you know, in year one if  
6 we were equal, you know, more than 50 percent went  
7 in, it would be even.

8 You'd add year one to year two and  
9 measure it again. In year three you'd measure it  
10 again. And then when you got to year four you'd  
11 drop off year one. When you got to year five  
12 you'd drop off year two.

13 So, over a three-year period that would  
14 provide the flexibility so that if there was a  
15 run-up in hours, you know, we'd have a chance to  
16 collect more water in a subsequent period to  
17 offset that.

18 HEARING OFFICER SHEAN: Okay, just  
19 wanted it explained. So it's a three-year  
20 average, but it moves --

21 MR. WEISS: Moves, correct.

22 HEARING OFFICER SHEAN: -- over time.

23 MR. WEISS: Right.

24 HEARING OFFICER SHEAN: Okay. And I'm  
25 trying to understand the reason for including also

1 in C, thus guaranteeing a savings and reducing the  
2 demand for agricultural water. Isn't it just that  
3 you are going to provide the remaining 50 percent  
4 or more will be used for agricultural purposes  
5 essentially?

6 MR. WEISS: It will be used for ag --  
7 right.

8 HEARING OFFICER SHEAN: Okay.

9 MR. WEISS: It would be Baker's Farm  
10 water.

11 HEARING OFFICER SHEAN: And I guess --

12 MR. WEISS: The point we were trying to  
13 make was that if we only use 50 percent there was  
14 a -- we'd collect twice what we use.

15 HEARING OFFICER SHEAN: And is this  
16 actually used or available to Baker's Farm --

17 MR. WEISS: It's available to his --

18 HEARING OFFICER SHEAN: -- for use.

19 MR. WEISS: Yeah. And we'd expect him  
20 to use it, but it's up to him to use it.

21 HEARING OFFICER SHEAN: Okay. Yeah,  
22 well, we're not trying to commit Baker Farms to  
23 anything, --

24 MR. WEISS: Right.

25 HEARING OFFICER SHEAN: -- but, so



1 that's available for use. Right?

2 MR. WEISS: Um-hum, yeah.

3 HEARING OFFICER SHEAN: Now, in item E  
4 it says: applicant will install" and you've got  
5 three meters. One is the, I'll call it retention  
6 pond to the plant; that'll measure the water that  
7 you receive. And then pond to irrigation system;  
8 that would be the water going to Baker. And then  
9 the third would be all water going into the pond,  
10 is that the idea?

11 MR. WEISS: Right. Right.

12 HEARING OFFICER SHEAN: Now, again, if I  
13 understand correctly from as you had previously  
14 described this, Baker is going to be doing the  
15 construction of this, right?

16 MR. WEISS: Correct.

17 HEARING OFFICER SHEAN: And will own the  
18 pond and the piping --

19 MR. WEISS: That's correct.

20 HEARING OFFICER SHEAN: -- and  
21 everything else like that. Is this that you will  
22 install these, or you will cause them to be  
23 installed? Or how --

24 MR. WEISS: Yeah. I mean the metering  
25 will be at the pond. And I would say we would

1 cause them to be installed is probably the more  
2 precise way to phrase it.

3 HEARING OFFICER SHEAN: Okay.

4 MR. WEISS: The metering on our pipe,  
5 you know, we can specify. The metering on Baker's  
6 pipes we can ask, we'll make sure they're  
7 installed, cause them to be installed.

8 HEARING OFFICER SHEAN: Okay. And I  
9 assume that you can either, through your contract  
10 or amendment to the contract, essentially agree  
11 that you'll --

12 MR. WEISS: Right.

13 HEARING OFFICER SHEAN: -- pay for the  
14 installation of this. And that they're agreeing  
15 that it can be installed.

16 MR. WEISS: Right.

17 HEARING OFFICER SHEAN: Right? Okay.  
18 And then lastly, with respect to the verification,  
19 it says: The CPM will inspect installation of all  
20 meters." Now, I guess the question arises in my  
21 mind is the CPM for the State of California having  
22 access to Baker Farms' property.

23 Is there another way to -- I mean, if  
24 you're getting -- is there another way to verify  
25 that they've been installed and are operating, I

1       guess is the question.  So that we're not put in a  
2       position that --

3               MR. WEISS:  We can -- do you want us to  
4       attest to it and --

5               HEARING OFFICER SHEAN:  Pardon me?

6               MR. WEISS:  Do you want us to attest to  
7       it and witness it and --

8               HEARING OFFICER SHEAN:  Well, I guess,  
9       let's go over here to the staff.  I don't know if  
10       this is a make-or-break deal for you, that you  
11       need to have access to their property, or there's  
12       another way for you to verify that these meters  
13       would have been installed.

14              MR. McFARLIN:  Yeah, well, this was in  
15       Dale Edwards' comments, who's overseeing the  
16       compliance unit at this point.  One of his  
17       comments to that verification was the project  
18       owner will insure the CPM access to Baker Farms'  
19       property for the inspection of installation of all  
20       meters and piping.

21              So that was one of his comments, and  
22       that speaks directly to that, that, yeah, they  
23       would like to at least be able to verify that they  
24       are installed correctly.  So they would need  
25       access to do that.

1                   HEARING OFFICER SHEAN: Well, I mean at  
2                   least it's appropriate it's in a verification; but  
3                   you may not get it. And then you're going to have  
4                   to have some other means of assuring yourself that  
5                   -- I mean I don't know that Baker's going to be a  
6                   problem with this, but --

7                   MR. WEISS: He's not.

8                   HEARING OFFICER SHEAN: -- this is not -  
9                   - as we well know, we're not dealing with somebody  
10                  who's subject to our jurisdiction at every step in  
11                  this process if we go ahead with this.

12                  Okay, and do you have any other items  
13                  along that same line that are of concern to the  
14                  staff?

15                  MR. BABULA: Just on the prior topic,  
16                  what's your feeling about Mr. Baker? You've been  
17                  working with him.

18                  MR. WEISS: I don't think there's a  
19                  problem with that.

20                  HEARING OFFICER SHEAN: I'm sorry?

21                  MR. WEISS: I mean in respect to the  
22                  meters and having the --

23                  HEARING OFFICER SHEAN: Yeah.

24                  MR. WEISS: -- CPM visit the meters, I  
25                  don't see a problem with that.

1 HEARING OFFICER SHEAN: Okay.

2 MR. WEISS: We can agree to that, you  
3 know, --

4 HEARING OFFICER SHEAN: All right.  
5 Anything else of concern to the staff about the  
6 compliance aspect of verifying any of these  
7 conditions if the Committee and Commission adopt  
8 them?

9 MR. McFARLIN: Not at this point.

10 MR. BABULA: Not now, no --

11 HEARING OFFICER SHEAN: Not now? Okay.  
12 So we've done the wordsmithing with respect to  
13 these. At this point do you have whatever it is  
14 that you were going to offer in to reopen the  
15 record?

16 MR. THOMPSON: What I would like to do,  
17 if it pleases the Committee, is cover about six  
18 points that either are contained in the contract  
19 or are commitments made that are numbers, things  
20 like that, if that would be acceptable.

21 HEARING OFFICER SHEAN: That's fine. Is  
22 there an objection from the staff for proceeding  
23 to reopen the record --

24 MR. BABULA: No objection.

25 HEARING OFFICER SHEAN: -- and allowing

1 this in?

2 MR. BABULA: No, that's fine.

3 HEARING OFFICER SHEAN: Okay.

4 MR. THOMPSON: We have copies of the  
5 agreement but they are signed by only one party.  
6 We're going to get the two-party signature  
7 contracts later this week and submit them under  
8 confidentiality.

9 HEARING OFFICER SHEAN: That's fine.

10 MR. THOMPSON: Want to swear the  
11 witness?

12 HEARING OFFICER SHEAN: He's been  
13 previously sworn, I believe.

14 MR. WEISS: Yeah.

15 HEARING OFFICER SHEAN: Have you not?

16 MR. WEISS: Yes.

17 MR. THOMPSON: Okay.

18 Whereupon,

19 RICHARD H. WEISS

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

23 DIRECT EXAMINATION

24 BY MR. THOMPSON:

25 Q Mr. Weiss, with regard to the contract

1 with Baker Farms, would you please discuss the  
2 length of the contract and the extension  
3 provisions?

4 A Yes. The length of the contract is a  
5 base of seven years. It has an evergreen  
6 provision in that it'll continue until such time  
7 as either party would cancel. Cancellation notice  
8 is a minimum of 730 days, or two years. So that  
9 the project would have two years to reconfigure  
10 the pond, the waste pond, in the event the  
11 contract was canceled.

12 Q And keeping in mind the confidentiality  
13 of the contract, can you give the Committee an  
14 approximate dollar figure of the amount that the  
15 applicant will be paying for this service?

16 A The price for the water is certainly --  
17 it's an above-market price to reflect the capital  
18 costs of installing the piping system to collect  
19 the backwash filter water that Mr. Baker is going  
20 to do. It's approximately \$5000 an acrefoot for  
21 this water.

22 Q Am I correct that the initial design of  
23 the collection pond is 30 acrefeet? And could you  
24 address whether or not that could increase?

25 A That's correct. The initial design is

1 30 acrefeet and there is space to allow it to  
2 increase. It was -- actually there's enough space  
3 for about 80 acrefeet. And Barry was creating --  
4 part of the 80-acrefoot pond was being subdivided  
5 to create space for our 30-acrefoot pond.

6 Q And Barry is Mr. Baker?

7 A Barry is Mr. Baker.

8 Q And in the condition of certification  
9 applicant made a commitment that this gathering  
10 system, collection system, would be in service in  
11 2008, is that correct?

12 A That's correct.

13 Q And a further commitment is that at  
14 least 50 percent of the water that is collected  
15 would go to -- that could be available for  
16 agricultural purposes, is that right? And how  
17 would you insure that?

18 A That's correct, and how we would propose  
19 to insure that is by metering what's collected and  
20 what's used. That we would only use 50 percent or  
21 less of that what is collected for agricultural --  
22 from the backwash filter ponds.

23 MR. THOMPSON: Those are the items that  
24 we wish to put in. Mr. Weiss is tendered for  
25 cross-examination.



1                   HEARING OFFICER SHEAN: Okay, so just so  
2 I understand. With the three meters if the meter  
3 showing the recovered filter backwash water, for  
4 example, shows a total annual of 30 acrefeet, and  
5 you use 14 acrefeet, and that is shown by the  
6 meter on your meter, --

7                   MR. WEISS: Right.

8                   HEARING OFFICER SHEAN: -- that would  
9 constitute compliance with the condition,  
10 irrespective of how many acrefeet are shown to be  
11 used in the pond to Baker meter, --

12                  MR. WEISS: Baker.

13                  HEARING OFFICER SHEAN: -- is that the  
14 idea?

15                  MR. WEISS: Right.

16                  HEARING OFFICER SHEAN: Okay. And as  
17 this was discussed earlier and maybe it was met by  
18 your term "evergreen" in discussing the length of  
19 the contract, I'd understood you to say that it's  
20 an initial seven-years and it renews annually.

21                  MR. WEISS: Yeah. It's initial seven  
22 years, but it doesn't terminate until either party  
23 sends notice after the seven-year period.

24                  HEARING OFFICER SHEAN: Okay.

25                  MR. WEISS: And when that happens, then

1       there's -- the notice requires 730 days.

2                   HEARING OFFICER SHEAN:   So that in the  
3       absence of the notice of termination the contract  
4       continues --

5                   MR. WEISS:   Right.

6                   HEARING OFFICER SHEAN:   -- for an  
7       indefinite term after seven years?

8                   MR. WEISS:   That's correct.

9                   HEARING OFFICER SHEAN:   Okay.   So that I  
10       guess one of the thing that was in the PMPD that  
11       was of concern to the Committee was the idea of  
12       creating essentially a life-of-the-project either  
13       allotment, entitlement or vesting of the rights to  
14       use this water.   So that, for example, should,  
15       either through Westlands, which provides this  
16       water to Mr. Baker, is that correct, or some other  
17       state agency that, based upon future  
18       circumstances, we don't know of, either reduces  
19       his allotment or something that might make lesser  
20       amounts of water available than are sufficient for  
21       your project, I'm assuming that then the mechanism  
22       is that Mr. Baker tells you, I'm sorry, we don't  
23       have enough water to provide to you.   Here's your  
24       notice.

25                   MR. WEISS:   Here's your notice.   Right.

1 And that's that right.

2 HEARING OFFICER SHEAN: Okay. So that  
3 if under dire water availability circumstances for  
4 the State of California, if there's a reduction in  
5 water available to him, this is how --

6 MR. WEISS: He gives us the notice. He  
7 gives us --

8 HEARING OFFICER SHEAN: He gives you the  
9 notice, and you switch over --

10 MR. WEISS: -- two years notice and we  
11 switch over.

12 HEARING OFFICER SHEAN: -- to the  
13 CalPeak --

14 MR. WEISS: The shallow aquifer.

15 HEARING OFFICER SHEAN: -- middle  
16 aquifer water, or shallow aquifer water.

17 And as far as you're concerned, the  
18 staff's soil-and-water-4 condition, the soil-and-  
19 water-8, and your revised soil-and-water-9 and  
20 soil-and-water-10 are all acceptable to the  
21 applicant?

22 MR. WEISS: Yes.

23 HEARING OFFICER SHEAN: Is that correct?

24 Do you have anything, Mr. Babula?

25 MR. BABULA: Couple questions. One has

1 to do with reliability.

2 CROSS-EXAMINATION

3 BY MR. BABULA:

4 Q Can you speak to the information you may  
5 have on why you believe this is a reliable water  
6 source, given that it's a byproduct of an  
7 agricultural operation? What's to say that that  
8 will stop, will cease to exist, and something else  
9 will be done there?

10 A Well, yeah. I mean the question really  
11 I think you're asking is, is Baker Farms viable.  
12 I mean as long as Baker Farms is viable his  
13 business is to, you know, to produce pecans and  
14 pomegranates and other agricultural products, he's  
15 going to use the backwash filter water, he's going  
16 to use the backwash filter system. His trees are  
17 set up with a drip system.

18 So, if Baker Farms were to go away, you  
19 know, we'd have to create an alternate supply,  
20 which would be the shallow aquifer. And the same  
21 issue is really, you know, if the contract  
22 terminates at some point how would we supply  
23 water. And that would be our next choice.

24 Q Okay. Also with regards to the waste  
25 pond there seems to be, obviously using two

1 sources, if you are able to have these two sources  
2 of water available, one source you may not need  
3 the line and the other one you do, will you be  
4 lining the pond then so that you are ready to go  
5 in case that water cuts off or --

6 A No. Yeah, if we -- yeah, we wouldn't  
7 be, right, we wouldn't be lining the pond -- if we  
8 meet the conditions and satisfy the requirements  
9 to use the backwash filter water, we wouldn't line  
10 the pond. We will design the pond and lay  
11 everything out so it's ready to be lined. But  
12 until such time as, you know, we realize we can't  
13 use that for whatever reason, we would then line  
14 the pond.

15 Q Okay. Can you describe the collection  
16 mechanism a little bit more? I don't think it's  
17 really in the record. It was in the 14 pages.  
18 But exactly the network of piping or so forth of  
19 collecting this water and getting it to the pond.

20 A Well, each, and maybe Ron would be  
21 better suited to explain the collection system?  
22 Ron?

23 HEARING OFFICER SHEAN: Okay, we're  
24 going to need to do a little of this, and have him  
25 identify himself for the record.

1                   MR. WATKINS:  Yeah, I was sworn  
2  previously.

3                   MR. THOMPSON:  Mr. Watkins has been  
4  previously sworn.

5                   HEARING OFFICER SHEAN:  I don't believe  
6  he has.

7                   MR. WATKINS:  Not today, but --

8                   HEARING OFFICER SHEAN:  Were you at a  
9  prior hearing?

10                  MR. THOMPSON:  Yes.

11                  MR. WATKINS:  Yes.

12                  HEARING OFFICER SHEAN:  Oh, okay, I beg  
13  your pardon.

14                  MR. THOMPSON:  You're still under oath,  
15  Mr. Watkins.

16                  ASSOCIATE MEMBER GEESMAN:  He's under  
17  oath from 1977.

18                  (Laughter.)

19                  MR. WATKINS:  Glad you remember.

20  Whereupon,

21                                 RONALD WATKINS  
22  was recalled as a witness herein, and having been  
23  previously duly sworn, was examined and testified  
24  further as follows:

25  //

## 1 DIRECT TESTIMONY

2 MR. WATKINS: The collection system, and  
3 I don't claim to be an expert on it, but there are  
4 sand filters there. And water is used to backwash  
5 those filters. It now just goes into a puddle on  
6 the ground.

7 Their collection system would be to, at  
8 several of those filter stations, and perhaps  
9 ultimately all of them, we would install some sort  
10 of a collection basin at each of the filters. And  
11 then run that water from the basin into a low-  
12 pressure piping system, underground piping system.

13 And that piping system would then,  
14 hopefully by gravity, feed back to the settling  
15 pump.

16 Then we will, in fact, have designed a  
17 system after that water settles in the pond to  
18 take suction off the pond and pump it through  
19 another filter and then pump it to the power  
20 plant.

21 And Mr. Baker would also be required to  
22 install a system to deliver the excess water back  
23 into his supply system. And we don't know the  
24 details of that, but, you know, it would be  
25 coordinated with our supply system.

1                   MR. BABULA: One of the key issues here  
2                   that the staff has been struggling with, of  
3                   course, is whether this water would have been used  
4                   anyway. And I know in the stuff you submitted  
5                   now, you indicate that, at least based on the  
6                   information you have, and some of this is somewhat  
7                   hearsay-ish, but since no one from Baker will get  
8                   here, what's the economics then on why farmers  
9                   aren't just collecting this water since it is  
10                  high-quality. And that's well established in the  
11                  record that this water is high-quality water,  
12                  which is why you want to use it, what information  
13                  do you have that the farmer won't be collecting  
14                  this water anyway?

15                  MR. WATKINS: We've had extensive  
16                  discussions with Baker Farms and the fact we have  
17                  assisted in that process and doing an economic  
18                  analysis,

19                  First of all, you have to put this in  
20                  perspective. This 160 acrefeet that is from  
21                  backwashing the filters is out of a total use for  
22                  Baker Farms of 24,000 acrefeet.

23                  Sorry, let me turn that off.

24                  MR. BABULA: Mr. Baker.

25                  (Laughter.)



1                   MR. WATKINS: It is out of a total of  
2                   24,000 acrefeet of water, so it is less than 1  
3                   percent of the water. So it's not wasteful.

4                   But therein lies the problem. You have  
5                   a very small amount of water spread over a very  
6                   large area; 7000 acres is approximately 11 square  
7                   miles, I think, of area. So, it takes a lot of  
8                   piping and a lot of facilities to do that.

9                   We have worked with Baker and estimated  
10                  the cost of that collection system to be  
11                  approximately \$800,000 to collect that.

12                  And if you then make an assumption that  
13                  you would finance that over a ten-year period at  
14                  12 percent interest rate, and you run through that  
15                  economics, and also there's going to be  
16                  substantial evaporation and percolation in the  
17                  settling pond. If you run that through the  
18                  economics it comes out to approximately \$2000 an  
19                  acrefoot to collect that water.

20                  And even if you recognize that that is a  
21                  very preliminary cost estimate, and you give it a  
22                  plus or minus 50 percent range of accuracy, you're  
23                  still looking at a minimum of \$1000 an acrefoot to  
24                  collect and use that water.

25                  The current rate for agricultural water

1 from Westlands is approximately \$120 an acrefoot.  
2 So there is no economic incentive for the farmer  
3 to collect that water unless somebody else pays  
4 for it. And that's basically what we are agreeing  
5 to do.

6 MR. BABULA: Okay, I have no further  
7 questions, thank you.

8 MR. THOMPSON: I have one.

9 REDIRECT EXAMINATION

10 BY MR. THOMPSON:

11 Q Mr. Weiss, in the discussion of the  
12 length of the contract term am I correct that the  
13 contract term for the water will not run beyond  
14 the term of the lease? Is that correct? And  
15 that's how many years, 15?

16 MR. WEISS: Fifteen years.

17 (Pause.)

18 MR. WEISS: Okay, I didn't get down that  
19 far. Yes, that's correct, the lease is the length  
20 of the PPA. So in no event will the water  
21 agreement exceed the term of the lease or 15  
22 years.

23 MR. THOMPSON: Thank you.

24 MR. BABULA: I have one additional  
25 question for you.

## 1 RECROSS-EXAMINATION

2 BY MR. BABULA:

3 Q What happens if there's a severe drought  
4 and Westlands cuts water to Baker? How do you  
5 anticipate that? Would that be -- let me just put  
6 it this way. What would be your sort of three  
7 point as your water gets reduced you have a sort  
8 of a scenario to handle sort of a chain reaction  
9 where there's a drought. So Westlands cuts water  
10 to Baker; then Baker obviously cuts back its use.  
11 And therefore the backwash water is reduced.

12 MR. WEISS: Right, and we'd obviously  
13 have to look at what's available in the pond, what  
14 we've got in inventory, and, you know, make a  
15 decision as to whether we want to line RO waste  
16 pond so that we're ready to go with, you know, RO  
17 shallow aquifer water. That would be the decision  
18 we'd have to make.

19 MR. WATKINS: Can I add to that. If it  
20 were a short-term shortage of water on the part of  
21 Westlands, Baker does have other sources of water.  
22 For example, he has just drilled a well into the  
23 deeper aquifer that he will use to supplement his  
24 water supply.

25 So, first, you know, he's obviously

1 going to protect his trees. And so he's going to  
2 do everything he can to access other sources of  
3 water to prevent destruction of his trees. So  
4 there would still be some backwash -- filter  
5 backwash water available.

6 If we had to use the CalPeak well water  
7 and did not have a lined pond, then another option  
8 that you could do is to use the CalPeak well water  
9 discharge the RO discharge into a holding tank and  
10 truck it to a disposal site.

11 MR. WEISS: We can put a bladder, you  
12 know, a large bladder to collect it to hold it.

13 MR. BABULA: Okay. No further  
14 questions. Is there anyone on the phone? I just  
15 want to see if Westlands --

16 HEARING OFFICER SHEAN: We were just  
17 going to check that after one question here.

18 Can you tell me what is it that has  
19 caused you to move so adamantly to this supply of  
20 water as opposed to the one you had from CalPeak?

21 MR. WEISS: Well, we've been working  
22 this for -- I know it may no be obvious to you  
23 that we have been working this since the middle of  
24 last year and trying to put the pieces together.  
25 Obviously it needed to happen sooner.

1                   But we can use the CalPeak water. The  
2                   issue we have with the CalPeak water from a  
3                   financing perspective and a long-term operational  
4                   perspective is the two things that we brought up  
5                   again. And that is if we had to run 4000 hours,  
6                   it's what would it look like, you know. \$3  
7                   million worth of trucking costs is substantial.  
8                   That becomes a financing issue. And how the  
9                   lenders will deal with that.

10                   And the other issue is the fact that the  
11                   collecting of the sediment is likely to be a  
12                   hazardous waste, potential to be a hazardous  
13                   waste. And collecting a hazardous waste and  
14                   dealing with that are the two key reasons why that  
15                   water is not as desirable to our perspective. We  
16                   can use it, but it's not as desirable as the  
17                   backwash filter water.

18                   HEARING OFFICER SHEAN: Okay, and at  
19                   year 15, the term of the power purchase agreement,  
20                   what happens with respect to any further use of  
21                   Baker Farms water?

22                   MR. WEISS: Our lease with the site  
23                   would expire unless it's extended. And our  
24                   ability to use the water would expire. The water  
25                   agreement, the end date is co-terminus with the

1 lease.

2 HEARING OFFICER SHEAN: Okay. But  
3 assuming you don't fold your tent --

4 MR. WEISS: And go away?

5 HEARING OFFICER SHEAN: -- and go away?

6 MR. WEISS: Then we'd have to re-up.

7 HEARING OFFICER SHEAN: Potentially  
8 renegotiate or renew the lease?

9 MR. WEISS: Renegotiate the agreements,  
10 yeah.

11 HEARING OFFICER SHEAN: Okay. But at  
12 least the term of this agreement is 15 years,  
13 essentially?

14 MR. WEISS: Yeah, right.

15 HEARING OFFICER SHEAN: Or corresponds  
16 to the term of the power purchase agreement?

17 MR. WEISS: Right.

18 HEARING OFFICER SHEAN: Okay.

19 All right. We don't have anything  
20 further.

21 MR. BABULA: Just a second.

22 (Pause.)

23 MR. BABULA: We have a follow-up  
24 question. When you mentioned 4000 hours, now we  
25 again probably won't reach that, but the Baker

1 Farm water's not going to cover 4000 hours, I  
2 guess if you're only holding 30 acrefeet at a  
3 time. So that would then, if you were to run, you  
4 would have to go to another source, as well.

5 MR. WEISS: Yeah, if we were to -- well,  
6 that's part of the rolling average. If we were to  
7 get to, you know, a situation where we're using --  
8 one is, you know, is it just going to happen and  
9 are we going to have no notice of it. There is an  
10 ability, 4000 hours is six months, and, you know,  
11 there's time to put in things to try to mitigate  
12 it.

13 It wouldn't be an instantaneous event.  
14 We'd have 30 acrefeet in the pond, so that's 800  
15 hours of operation. So we'd have notice that we  
16 were headed towards a problem and we were using a  
17 lot more water and the system would be telling us  
18 that. And we'd be out there installing more  
19 piping to collect more water.

20 MR. BABULA: Okay, thanks. No further  
21 questions.

22 HEARING OFFICER SHEAN: All right, let's  
23 check on the phone. I understand from Mr. Lee  
24 that they were going to bring us back up at 1:30.  
25 So is there anyone on the phone?

1           All right, then for the little  
2           evidentiary portion of our hearing now is  
3           concluded, and we want to thank you.

4           MR. WEISS: Thank you very much.  
5           Appreciate it.

6           HEARING OFFICER SHEAN: All right. I  
7           just have one question of the staff. You had, I  
8           guess, Mr. Greenberg on the phone earlier today.

9           It is the staff's apparent desire to  
10          have the condition with respect to the relocation  
11          of the residents of the fiveplex appear not only  
12          as it currently does, once in the PMPD, but in all  
13          three sections that you had it previously, which  
14          was air quality, noise and hazardous materials.

15          Can you --

16          MR. McFARLIN: I think that the  
17          condition, you're right, it certainly covers those  
18          different scenarios. But we think we wanted the  
19          PMPD to reflect that was occurring for three  
20          different purposes. That it was addressing air  
21          quality and those hazardous materials.

22          HEARING OFFICER SHEAN: All right,  
23          so the condition, itself, need not be repeated,  
24          but each section ought to, --

25          MR. McFARLIN: At least --



1 HEARING OFFICER SHEAN: -- in your mind,  
2 refer --

3 MR. McFARLIN: -- refer back to that  
4 condition --

5 HEARING OFFICER SHEAN: -- refer back to  
6 the need --

7 MR. McFARLIN: -- and state the impact.

8 HEARING OFFICER SHEAN: -- for such a  
9 thing, and may even refer to it in the alternate  
10 section where it appears.

11 MR. McFARLIN: Right.

12 HEARING OFFICER SHEAN: Is that the  
13 idea? Okay. So you're not asking that it be put  
14 back in?

15 MR. McFARLIN: No. Either way is fine.

16 HEARING OFFICER SHEAN: Well, apparently  
17 the phone is not re-established at this particular  
18 point.

19 ASSOCIATE MEMBER GEESMAN: Have we had  
20 anybody on the phone that --

21 MR. BUBBICO: I'm not connected right  
22 now. It'll take me about two minutes if you want  
23 to get reconnected.

24 HEARING OFFICER SHEAN: Well, unless  
25 they're ready to go, do you have a way of

1 contacting Westlands?

2 MR. BABULA: I have -- we could call the  
3 number I have for the person who sent the letter,  
4 submitted the letter, I have his phone number.

5 ASSOCIATE MEMBER GEESMAN: Has he been  
6 on at any point during the day?

7 MR. BABULA: I don't know. The phone  
8 was making some noises, but we never had any --

9 HEARING OFFICER SHEAN: Well, why don't  
10 you attempt to call him and see if he wants to  
11 make comments. Go ahead then, please.

12 MR. BUBBICO: Okay.

13 (Pause.)

14 MR. BABULA: He's going to call in right  
15 now.

16 HEARING OFFICER SHEAN: All right. I  
17 want to ask the staff at this point, if on the  
18 basis of the evidence that we have and the  
19 anticipated filing of the Baker contract under  
20 confidentiality, the Committee were to decide that  
21 the Baker Farms filter backwash water option was  
22 one we wanted to include, are there any other  
23 concerns or questions or matters that the staff  
24 would want to raise with the Committee?

25 MR. BABULA: Well, certainly what

1 Westlands' view is that should be --

2 HEARING OFFICER SHEAN: Yeah, and we'll  
3 let them --

4 MR. BABULA: Right, we'll let them --

5 HEARING OFFICER SHEAN: -- say whatever  
6 they want to say.

7 MR. BABULA: -- to do that. I mean the  
8 staff's -- staff was fine with the PMPD the way it  
9 was initiated. Staff's FSA and the supplemental  
10 FSA --

11 MR. FREEMAN: Hello; this is Russ  
12 Freeman from Westlands.

13 MR. BABULA: Okay. Why don't we --

14 HEARING OFFICER SHEAN: Hello, Russ.  
15 This Garret Shean. I'm the Hearing Officer for  
16 the Energy Commission. And we wanted to make sure  
17 we had an opportunity for you to address the  
18 Committee.

19 What we are doing here today is  
20 conducting a public hearing to discuss the  
21 Presiding Member's Proposed Decision that you  
22 either have or have access to through the  
23 internet.

24 And I guess what I'll just indicate to  
25 you is that the applicant has, in its comments,

1 requested that further consideration be given to  
2 the use of the Baker Farms' filter backwash water.  
3 They have provided evidence of the terms of the  
4 agreement that they have with Baker. And composed  
5 four conditions with regard to its use.

6 Those conditions essentially represent  
7 two, that being soil-and-water-4 and soil-and-  
8 water-8, which the staff had authored and  
9 presented in their testimony for the Committee  
10 hearing on November 19th. And I think the date of  
11 their filing was November 9th.

12 And in addition to that, today during a  
13 brief workshop held essentially in the middle of  
14 this proceeding, the applicant, with some  
15 cooperation from the staff, and I say cooperation  
16 not meaning agreement by the staff, has come up  
17 with a soil-and-water-9 and a soil-and-water-10  
18 condition that discuss the conditions that would  
19 apply if they were to use the Baker Farms' filter  
20 backwash water.

21 Now, understanding that you have not  
22 seen any of this material, and that Westlands had  
23 previously submitted a letter indicating its  
24 objection to the use of the water for  
25 nonagricultural purposes, I guess at this point if

1       there's anything that Westlands District would  
2       like to say.

3               MR. FREEMAN: Well, I guess what we'd  
4       just reiterate the position we expressed in that  
5       letter that I sent. The District is water short,  
6       especially going into this year and for the  
7       foreseeable future due to the ruling concerning  
8       delta smelt that restrict pumping south of the  
9       delta.

10              We are of the opinion that any water be  
11       recycled to the greatest extent possible and  
12       reused on agricultural lands, for agricultural  
13       purposes, or purposes incidental to that. And  
14       that overall reduces the competition for water  
15       among our water users and other folks south of the  
16       delta.

17              Now, we would recognize that this is not  
18       a lot of water, but they're concerned about  
19       (inaudible).

20              HEARING OFFICER SHEAN: All right.

21              MR. FREEMAN: I guess moreover we have  
22       terms and conditions for water service here in the  
23       District that require that all water users who are  
24       receiving water and water service provide control  
25       of the water and backflush and reuse that on their

1 own land.

2 So, in that regard, you know, we think  
3 that this may be is in violation of our rules and  
4 regulations, using this for something other than  
5 what its original purpose was.

6 HEARING OFFICER SHEAN: Were you going  
7 to say something, Mr. Babula?

8 The Commission Staff is here, as well.

9 MR. BABULA: Yeah, hi, Russ. This is  
10 Jared. I do have a question that you might be  
11 able to speak to or not. But what the applicant  
12 has proposed today, or has brought up today, that  
13 they would be collecting water that, based on the  
14 economics, just would not be collected by the  
15 farmer, Mr. Baker.

16 And that this water, then -- this source  
17 of water, a portion of it will go to the power  
18 plant, and a portion of it, 50 percent or more of  
19 this collected water would be available for Baker  
20 to use for agricultural purposes.

21 So, would you be able to speak to that  
22 issue, itself, in the sense that they are  
23 collecting this water and at least 50 percent or  
24 more will be going to the farmer. So, is that, in  
25 and of itself, not benefit enough?

1                   MR. FREEMAN: Well, our position is that  
2                   if there is an investment made, it should be done  
3                   by the farmers. It shouldn't necessarily be  
4                   hooked to the other party to make that investment  
5                   to collect this water.

6                   We do have at least one example in the  
7                   District where another water user has made an  
8                   effort to collect filter backflush and use it. So  
9                   I can't speak to the layout of the Baker system  
10                  compared to the one I just mentioned, but you  
11                  know, we know that it can be done, and it is being  
12                  done.

13                  And I think the District, you know,  
14                  (inaudible) on their own. So, the economics that,  
15                  you know, that have been presented to us seems to  
16                  show that the water costs might be in excess of  
17                  \$1000 an acrefoot. I don't know if that's the  
18                  figures you guys are talking about.

19                  But I would note that in that economic  
20                  analysis that the project being paid for in five  
21                  years -- 13 years, I'm sorry, and thereafter, you  
22                  know, obviously the water costs a lot less, which  
23                  seems to be important thing here.

24                  So, I'm not sure that the figure of  
25                  \$2000 is exactly what it is, the payback or

1 (inaudible). So I guess that was about what I had  
2 to say on that.

3 MR. BABULA: Okay. One other question  
4 then has to do with the legal title. Are you able  
5 to speak to whether Westlands feels they have a  
6 legal ability to actually stop this water transfer  
7 if the Commission goes on to approve the use of  
8 the backwash water?

9 And you may not be able to speak to  
10 this, but does Westlands believe they can actually  
11 stop the transfer?

12 MR. FREEMAN: I think that under the  
13 rules and regulations for water service, the  
14 District would have a pretty good argument for  
15 submitting that, even though, of course they would  
16 probably end up in litigation or something if we  
17 tried to stop it, because you'd essentially come  
18 to be shutting off the water service to the farm.

19 I don't think the District has  
20 (inaudible) the water and legally bound by our  
21 rules and regulations of water service.

22 MR. BABULA: Do you have any citation  
23 that you could point to so we could just be able  
24 to look into that?

25 MR. FREEMAN: Well, that would just be



1 under our, you know, our rules and regulations for  
2 water service that prohibit waste and require  
3 water users to recycle all their water, whatever  
4 they use. So, I can refer you to our website;  
5 there's a link there to what our rules and  
6 regulations say. That would be (inaudible).

7 MR. BABULA: Okay, thank you. I don't  
8 know if the applicant has any questions for you,  
9 or comments.

10 MR. WATKINS: Russ, this is Ron Watkins  
11 with Starwood.

12 MR. FREEMAN: Hi, Ron.

13 MR. WATKINS: And I really don't have  
14 any questions except to clarify that, you know, we  
15 appreciate your concerns and I think we will have  
16 the opportunity to explore those issues in more  
17 detail of the economics, in particular.

18 And I believe that I'm scheduled to meet  
19 with your policy committee, your board, to review  
20 this in more detail next Monday, is that correct?

21 MR. FREEMAN: Yeah, that's correct. I  
22 did want to let the Commission know that, too,  
23 that the water policy committee is going to take  
24 up this matter on Monday morning. That all these  
25 (inaudible) economics of it overall, (inaudible).

1           Like Ron said, you know, we have this  
2           (inaudible). But that doesn't forgive water  
3           user's responsibility that, you know, (inaudible).

4           ASSOCIATE MEMBER GEESMAN: This is John  
5           Geesman; I'm one of the assigned Commissioners on  
6           the case. And I think that it does need to be  
7           clarified that at least what's been proposed by  
8           the applicant would require that they be able to  
9           provide a letter from the Westlands Water  
10          District, signed by an authorized officer of the  
11          Westlands Water District, that states that it is  
12          permissible for Baker Farms to provide backwash  
13          water for use at the Starwood Plant.

14          And that if such a letter cannot be  
15          provided, that Starwood would not be permitted to  
16          use the backwash water.

17          So, ultimately this is a question that  
18          if the Commission goes in this direction, the  
19          Westlands Water District will have the final say  
20          on it.

21          MR. FREEMAN: I understand that  
22          (inaudible). But, I mean, we are meeting on  
23          Monday and, you know, our water policy committee  
24          may change its mind. As it stands right now, we  
25          haven't changed our position.

1                   ASSOCIATE MEMBER GEESMAN: Thank you.

2                   MR. BABULA: I have one final question  
3 for you, Russ. Staff originally proposed paying  
4 into a mitigation fund or the conservation fund  
5 that Westlands has, as a form of mitigation.

6                   Would you be able to speak if that would  
7 be something that would be appropriate, or that  
8 that is insufficient because this is surface water  
9 and it should be conserved anyway?

10                  MR. FREEMAN: Yeah, I can't really speak  
11 to that. We haven't done any analysis to try and  
12 see what levels seem to be appropriate for use of  
13 this water. I'm afraid I'm not prepared to  
14 comment on that.

15                  MR. BABULA: Okay, fair enough. Thank  
16 you.

17                  HEARING OFFICER SHEAN: All right, I  
18 think we'd like to wrap this up. And I'd just  
19 indicate, having spoken to the Commissioner, that  
20 it's the Committee's intention to, in the next day  
21 or two, issue a notice of a full Commission  
22 hearing to consider the PMPD and revisions to it.

23                  And among the revisions to it will  
24 include the incorporation of the option for the  
25 use of the Baker Farms filter backwash water. I

1 think the Committee is essentially convinced by  
2 virtue of the new evidence that had been submitted  
3 that relates to the contract, that first of all,  
4 the proposal to provide for the recovery of  
5 sufficient amount of water to not only be used by  
6 the project, but also an equal or greater amount  
7 of water made available back to Bakers Farm for  
8 agricultural uses does create the kind of  
9 mitigation to the potential impact to California's  
10 critical water situation that we were looking for  
11 in the PMPD.

12 In addition, the information with  
13 respect to the initial term and the provisions for  
14 the termination of the agreement and the final  
15 term at 15 years of the agreement also address the  
16 Committee's concerns that were expressed in the  
17 PMPD about the potential that there was -- that  
18 there was the potential that for a life of the  
19 term allocation or allotment or vesting of the use  
20 of high-quality California waters was potentially  
21 problematic given our very dicey water situation  
22 that's at least anticipated in the future.

23 So I think those have gone a long way to  
24 allaying the Committee's concerns. And based upon  
25 the information we have before us, it will be the

1 Committee's recommendation to include the Baker  
2 Farms' filter backwash water with the conditions  
3 that we have before us. They'll be re-numbered,  
4 but it's the soil-and-water-4, the soil-and-water-  
5 8, soil-and-water-9, with a few revisions about  
6 availability for agricultural use and cause the  
7 filters to be installed, as well as soil-and-  
8 water-10. And we'll get that out publicly as soon  
9 as we can.

10 We also want to thank the staff for its  
11 assistance in trying to craft language that is  
12 typically found by the Committees from the staff.  
13 We understood that this was not something you were  
14 agreeing to substantively as you went forward.  
15 But it's important and valuable to know that the  
16 Committee appreciates your cooperation in trying  
17 to get language that would at least suffice for  
18 what the applicant has proposed, and to the extent  
19 it could meet the needs of our compliance unit.

20 And so, I think that does it. Is there  
21 any comment or information from anybody else?

22 MR. THOMPSON: Everybody on our side of  
23 the table wants to thank you all very much. And  
24 both of you enjoy your retirement from the  
25 Commission.

1 (Laughter.)

2 HEARING OFFICER SHEAN: Well, that next  
3 couple of days are going to be spent revising this  
4 PMPD --

5 (Laughter.)

6 ASSOCIATE MEMBER GEESMAN: Talk to us  
7 after the 16th.

8 HEARING OFFICER SHEAN: Right. With  
9 that, thank you very much. The hearing is  
10 concluded.

11 (Whereupon, at 2:26 p.m., the hearing  
12 was adjourned.)

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## CERTIFICATE OF REPORTER

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

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

IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of January, 2008.

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