HEARING - MOTION TO COMPEL

BEFORE THE

CALIFORNIA ENERGY RESOURCES CONSERVATION

AND DEVELOPMENT COMMISSION

In the Matter of:	)
	)
Application for Certification for The Carrizo Energy Solar Farm by Carrizo Energy, LLC	) Docket No. 07-AFC-8
	)

CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

MONDAY, NOVEMBER 17, 2008

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Peter Petty
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COMMITTEE MEMBERS PRESENT

Jackalyne Pfannenstiel, Presiding Member

Jeffrey Byron, Associate Member (via teleconference)

HEARING OFFICER AND ADVISORS

Gary Fay, Hearing Officer

Kristy Chew, Advisor

Tim Tutt, Advisor

STAFF AND CONSULTANTS PRESENT

John Kessler, Project Manager

Michael Doughton, Senior Staff Counsel

Brian McCullough

APPLICANT

Jane Luckhardt, Attorney
Downey Brand Attorneys, LLP

Perry Fontana
Sara Temple
Carrizo Energy
Ausra

Patrick J. Mock
Theresa Miller
Robert K. Scott
Angela Leiba
Kristen E. Walker
URS Corporation

Eric LaBolle
University of California Davis

INTERVENORS

Tanya A. Gulesserian, Attorney
Adams, Broadwell, Joseph and Cardozo
representing California Unions for Reliable Energy

ALSO PRESENT

Robin Bell (via teleconference)
Carrizo Alliance for Responsible Energy

Babak Naficy (via teleconference)
Environmental Center of San Luis Obispo

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

2 9:04 a.m.

3 PRESIDING MEMBER PFANNENSTIEL: Good

4 morning. I'm Jackie Pfannenstiel; I'm the Chair

5 of the Energy Commission and the Presiding

6 Commissioner on the proceeding, the certification

7 of Carrizo Energy Solar Farm. And my Associate

8 Commissioner, Jeff Byron, I understand is on the

9 phone. Jeff, are you there?

10 ASSOCIATE MEMBER BYRON: Yes. Good

11 morning, Chairman. I'm joining by phone. I'm

12 sorry for the background noise; I'll keep it on

13 mute.

14 PRESIDING MEMBER PFANNENSTIEL: Thank

15 you. Why don't I turn this over, then, to Hearing

16 Officer Fay to walk us through today's proceeding.

17 HEARING OFFICER FAY: Okay, thank you,

18 Madam Chair. I am Gary Fay; I'm the Hearing

19 Officer for the Carrizo case.

20 And today's event is a hearing on the

21 motion to compel answers to data request that was

22 filed by the California Unions for Reliable

23 Energy, known as CURE.

24 And I would just like to take

25 appearances for the sake of the hearing. We do

1 have Associate Committee Member, Commissioner Jeff
2 Byron on the line. And I'll note that his
3 Advisor, Kristy Chew, is to my right. And I'd
4 like to hear from the parties. Applicant, Ms.
5 Luckhardt.
6 MS. LUCKHARDT: My name is Jane
7 Luckhardt from Downey Brand. I'm here on behalf
8 of Ausra. And then would you like me to introduce
9 everyone else who is here or --
10 HEARING OFFICER FAY: That would be
11 helpful.
12 MS. LUCKHARDT: Okay. I'll start, going
13 to my left, Pat Mock. He's a biological resources
14 expert. Beyond Pat is Theresa Miller; she's also
15 a biological resources expert. After Theresa is
16 Bob Scott for water resources. And Eric LaBolle,
17 DR. LaBOLLE: LaBolle.
18 MS. LUCKHARDT: LaBolle, thank you, I
19 usually screw that up. And then behind me is
20 Angela Leiba from URS. And Kristen Walker from
21 URS. And beyond them is Sara Temple from Ausra,
22 and Perry Fontana from Ausra.
23 HEARING OFFICER FAY: All right, thank
24 you. And for the staff?
25 MR. DOUGHTON: This is Michael Doughton

1 from the Legal Office of the Energy Commission for
2 staff. And with me today are the Project Manager,
3 John Kessler; and also Brian McCullough, who
4 handles biological resource issues.
5 HEARING OFFICER FAY: All right. And
6 from CURE.
7 MS. GULESSERIAN: Good morning. Tanya
8 Gulesserian on behalf of California Unions for
9 Reliable Energy.
10 HEARING OFFICER FAY: Thank you. And
11 any members of the public here that would like to
12 be identified? It's not necessary. You can save
13 your comments till a later time, if you'd like.
14 MS. BELL: Yes, this is Robin Bell; I'm
15 a local resident and representing Carrizo Alliance
16 for Responsible Energy.
17 HEARING OFFICER FAY: Thank you, Ms.
18 Bell. Anybody else on the line?
19 Okay. What we would like to ask people
20 to do, the people that are joining us by phone, is
21 to use their mute button if at all possible. Or
22 be sure that there's little or no background
23 noise, since this is an open line and all the
24 static will be introduced into the hearing. It
25 will make it difficult to hear.

1 As I mentioned, the hearing today is
2 regarding CURE's motion to compel answers. And we
3 will also, after hearing argument on that matter,
4 discuss schedule delays in the case.
5 We have CURE, the intervenor, and
6 they've been in the case for some time. And then
7 we also had a petition to intervene filed by John
8 Burch for the traditional -- he's the traditional
9 counsel lead for the Salinan Tribe. And his
10 petition to intervene was granted November 13th.
11 We also received on November 14th a
12 petition to intervene from the Environmental
13 Center of San Luis Obispo, represented by Babak
14 Naficy. And we have that under advisement.
15 I'd like to also mention that the
16 Environmental Center of San Luis Obispo also filed
17 comments on the motion to compel. And since they
18 are not yet a party we will consider those
19 comments.
20 And today we received -- or yesterday we
21 received comments from John Ruskovich commenting
22 on the subjects of the data request that were in
23 the motion to compel. That was docketed today by
24 John Kessler. And it addressed wildlife matters
25 and water quality matters; it had a few appended

1 photographs.
2 MS. LUCKHARDT: I would ask that if
3 you've got extra copies, it looks like John may
4 have some extra copies, we have not yet seen --
5 HEARING OFFICER FAY: Okay, let's take a
6 moment --
7 MS. LUCKHARDT: -- Mr. Ruskovich's
8 document.
9 HEARING OFFICER FAY: -- and ask Mr.
10 Kessler to serve those on the parties.
11 I'll ask if there are any other
12 preliminary matters before we begin on the motion.
13 All right, hearing none, we'll turn to
14 CURE, because they're the moving party. And I
15 think what we'd like to do is just take it item by
16 item, since we want to be sure to understand the
17 positions of the respective parties. So, would
18 you like to begin?
19 MS. GULESSERIAN: Okay, thank you.
20 Tanya Gulesserian on behalf of CURE. Thank you,
21 Commissioner Pfannenstiel and Byron, for providing
22 us the opportunity to present our motion to compel
23 responses to data requests.
24 Ausra proposes to build a 177 megawatt
25 solar power plant on a total impact -- direct

1 impact area of 1020 acres. There is a 640-acre
2 project site and a 380-acre construction laydown
3 area for manufacturing building, other buildings
4 and some permanent facilities which remain unclear
5 to CURE at this time.
6 The project involves 195 solar
7 concentrating lines that concentrate solar energy
8 on pipes in 195 56-foot-tall elevated receivers.
9 Then there are the steel drum steam turbine
10 generators, air cooled condensers and other
11 infrastructure.
12 There's also a new switchyard and so far
13 what we've seen, if required, reconductoring of a
14 75-mile transmission line.
15 On June 13th and September 5th, CURE
16 submitted data requests to the applicant. In
17 response to the first set in June, the applicant
18 repeatedly stated that analyses would be
19 forthcoming in an updated biological report to be
20 filed in the fourth quarter of 2008.
21 The applicant responded to other data
22 requests, did not respond to others, and then
23 ultimately objected to some data requests in
24 response to the second set.
25 We have an updated biological report

1 that was filed just in October. And it does not
2 include the analysis that was going to be set
3 forth in that report according to the original
4 responses.
5 The applicant is now saying that the
6 requested analysis from the first set of data
7 requests is not relevant.
8 All of the information requested by CURE
9 is relevant. It relates to the direct, indirect
10 and cumulative impacts from the project on the
11 feasibility of alternatives and mitigation
12 measures under the California Environmental
13 Quality Act. Much of the requested information
14 also relates to findings that the Commission makes
15 under the Warren Alquist Act.
16 Without the requested information CURE
17 and other interested members of the public will be
18 unable to exercise their right to fully
19 participate in the proceeding and to analyze the
20 impacts from the project.
21 The Commission would also be denied the
22 right to have necessary information to have a full
23 and proper evaluation of the project.
24 So we are requesting an order directing
25 the applicant to provide information in responses

1 to data requests regarding increased raptor
2 predation, bird collisions, avian mortality from
3 heat, impacts to endangered California condor,
4 impacts to western spadefoot toad, and nine
5 special status species identified by the
6 California Department of Fish and Game, each of
7 which I'm prepared to discuss now.
8 HEARING OFFICER FAY: Okay. Before you
9 start, I just want to clarify something. I
10 believe Carrizo objected to a response on data
11 request 47. And I don't think CURE included that
12 in their motion to compel. And I just wanted to
13 clarify where we are on that particular data
14 request.
15 MS. GULESSERIAN: That is right. That
16 is not included in our motion to compel because we
17 believe that -- or we felt satisfied, at least for
18 the time, that subsequent to their objections
19 there was a filing. And I believe, if I can take
20 a moment to identify it -- there was a filing
21 seeking consultation, expedited consultation with
22 the Fish and Wildlife Service that had several
23 documents attached to it.
24 HEARING OFFICER FAY: So CURE is
25 satisfied at this point?

1 MS. GULESSERIAN: At this point CURE is
2 satisfied, yes.
3 HEARING OFFICER FAY: All right. Did
4 you want to provide any specificity regarding data
5 requests 36 through 38 that pertain to the raptor
6 predation and bird collision, other than what
7 you've already filed?
8 MS. GULESSERIAN: Yes, thank you. The
9 data requests 36 through 38 request information
10 related to raptor predation and bird collisions
11 associated with the project structures.
12 The project structures on the site
13 involve concentrating energy on 56-foot-high
14 receivers. Each receiver concentrates the
15 sunlight for ten rows of reflectors, which ar 1268
16 feet by 90 feet each. The project contains 195
17 10-reflector rows. So there are 195 56-foot-tall
18 receivers.
19 Each of the 195 56-foot-tall receiver
20 structures is composed of multiple cables, wires
21 and other components and carries ten pipes.
22 There's also a system of pipes above the entire
23 solar field for washing the mirrors.
24 According to the application 19 species
25 of birds were observed, or their sign was

1 detected, within the 1020 acres of the project
2 site study area.
3 Several other species known to hunt
4 onsite identified by Department of Fish and Game
5 have not yet been documented by the applicant.
6 The AFC recognizes that these receivers
7 may be used as perching sites for songbirds and
8 raptors.
9 We submitted evidence that there is
10 mortality resulting from birds striking manmade
11 structures. Examples are windmills, buildings,
12 towers. We have an example of another solar
13 facility. And other manmade elevated structures.
14 This is well documented in the science literature.
15 However, that application fails to
16 analyze the impacts to birds from raptor predation
17 and bird collisions. So we requested impacts from
18 raptor predation and bird collisions, and we asked
19 for studies that would support the application's
20 conclusion that the project receivers and other
21 structures would not present a substantial
22 collision hazard to birds.
23 The information is relevant to the
24 Commission's duty under CEQA to analyze
25 potentially significant impacts. It's also

1 relevant to Fish and Game code sections that do
2 not allow take of birds of prey or migratory
3 nongame birds.
4 The response to the data requests
5 submitted in the first round of data requests said
6 that raptor and bird collisions will be -- raptor
7 predation and bird collisions would be addressed
8 in the updated biological report upon completion
9 in the fourth quarter.
10 The updated report served on October
11 10th does not contain an analysis of raptor
12 predation and bird collisions.
13 In its response to this motion the
14 applicant cited its response to a CEC data request
15 on raptor predation. That there are increased
16 perching sites, increased foraging opportunities,
17 but no special status insects, rodents or lizards;
18 and the density of prey populations is low.
19 However, the October biological report
20 does not address special status species identified
21 by Fish and Game such as the Kern primrose sphinx
22 moth and coast horned lizard. And does not
23 identify a high density of insects including --
24 and does identify, excuse me, a high density of
25 insects, including 16,300 grasshoppers in one day.

1 With regard to the collisions, the
2 response to the motion only distinguishes an avian
3 mortality study that we provided, as an example,
4 of a facility that has bird collisions. And they
5 attempt to distinguish it by saying it's a ten
6 megawatt facility and only has one tower. As if
7 the 177 megawatt facility with 195 56-foot-high
8 towers would have less impacts. And there was no
9 data provided in response.
10 Therefore, we believe that an analysis
11 of raptor predation and bird collisions is
12 relevant to the project's impacts, and an analysis
13 with supporting data and supporting studies should
14 be provided in this proceeding.
15 HEARING OFFICER FAY: Okay. Section
16 1716(b) of regs, I know you counsel are familiar
17 with this, says any party may request from the
18 applicant any information that's reasonably
19 available to the applicant and relevant, and
20 reasonably necessary to any decision on the AFC.
21 So the question that the Committee wants
22 to focus on is this reasonably available to the
23 applicant, and is it relevant to the decision we
24 have to make.
25 Applicant is not required to provide

every conceivable thing that commenters ask. CEQA does not require that. And so we really are left with a situation of judgment where we have to decide what is necessary to make a competent decision on this.

Can you give us a little bit of feeling as to why the responses already in the record regarding the raptor predation and bird collision is not adequate? Applicant alleges that there's no record of raptors over the site. And finds that your citation to the one solar study is not relevant because it's a completely different configuration.

MS. GULESSERIAN: Sure. We are not asking -- we definitely want to be reasonable in this proceeding. We don't want -- we're not asking the applicant to provide every conceivable analysis of every conceivable species that exist in California.

We're asking for a narrow set of information and analysis with respect to the project's physical structure and the impacts on and regarding bird species in this area. So it's a narrowly tailored data request with respect to raptor predation and bird collisions that we

1 believe is relevant and narrow.
2 We also provided evidence into the data
3 request background that explains the physical
4 structures of the facility, the species that were
5 observed in the site -- around the site that are
6 in the application.
7 Other bird species identified by
8 California Fish and Game in a March letter that
9 has been submitted and docketed in this
10 proceeding, that have not yet been analyzed.
11 We also provided a very thorough list of
12 studies that the U.S. Fish and Wildlife Service
13 Office of Migratory Bird Management provides,
14 explaining how bird kills occur at towers and
15 other human-made structures. And that is part of
16 our background explanation of why it is relevant
17 and why there is existing information out there
18 that could be used to do an analysis for this
19 case.
20 We also provided an example of a solar
21 facility, which we believe is helpful in
22 understanding that bird collisions from solar
23 facilities do occur, even for a facility that is
24 only 10 megawatts with one structure, with one
25 elevated receiver.

HEARING OFFICER FAY: How is a solar facility different than any other structure in the world in terms of, you know, bird collision mortality?

MS. GULESSERIAN: How is it different than other structures?

HEARING OFFICER FAY: Yeah, I mean is it relevant that it's a solar structure as opposed to just a structure of the same height as the proposed project?

MS. GULESSERIAN: Well, I believe that the structures, themselves, are probably similar to structures at other industrial facilities. There may be structures of the same height, same width with guy wires and cables.

Although, on the other hand, it could also be different from other facilities in that some other data requests that we have posed with respect to bird mortality from the concentrated heat at solar facilities.

So while the other studies, there are studies that have been well documented showing bird collisions with elevated structures, and this facility would be similar to those, this facility is also different in that it is a solar facility

with concentrated heat. So it could be similar in some respects and unique, and present unique impacts in other respects.

PRESIDING MEMBER PFANNENSTIEL: Is there a sense that the information that you're requesting is, in fact, reasonably available? I mean where -- you say that you want the applicant to do studies. Are there studies already done that you want into the record? Or would it be a matter of undertaking a new study to do this?

MS. GULESSERIAN: Let's see. We have asked for an evaluation -- we didn't ask for a specific study, new study -- we asked for an evaluation of increased predation from elevated structures, elevated perches on the threatened and endangered species. And we asked for recommendations on mitigation measures to reduce any impacts.

We also asked for a discussion of bird collisions. We didn't ask for a new study. Particularly on migratory birds, the proposed receiver structures and other structures onsite compared to existing literature.

So we would take a review of existing literature, which we provided a site where there

are -- sorry I didn't bring it with me today -- about 20-plus different studies documenting bird collisions with structures. And we'd be happy to provide that list in hard copy.

PRESIDING MEMBER PFANNENSTIEL: Your position is that the studies that are needed are, in fact, reasonably available, and so the applicant needs only to review them and offer some discussion on them? Is that what you're --

MS. GULESSERIAN: Yes, thank you.

PRESIDING MEMBER PFANNENSTIEL: Thank you.

HEARING OFFICER FAY: Okay, anything further, Ms. Gulesserian?

MS. GULESSERIAN: On data request 36 through 38, no.

HEARING OFFICER FAY: Okay. Ms. Luckhardt, do you want to respond? I think it's more helpful for the Committee to sort of break things down this way so we can address each of the concerns.

MS. LUCKHARDT: Okay, that's fine. I'm not sure exactly where to start because there was an initial kind of general statement that CURE made to begin. And so I guess in response to the

1 general statement, you know, I would point out
2 that this project is a solar project on an
3 existing agricultural field that is tilled at
4 least three times a year. And so we're not
5 talking about a pristine area, a landscape that
6 has not been touched or hasn't been used.
7 We're looking at a lot of solar projects
8 and, you know, for a solar project to find a site
9 that is already disturbed is a very important
10 feature. And it's something that we need to keep
11 in mind as we are looking at how much additional
12 biological resource evaluation this project should
13 be asked to do.
14 I would also like to note that this
15 project, because it is thermal solar, uses about a
16 third of the land area as a photovoltaic
17 installation. So, we're talking about a solar
18 installation from a biological perspective that
19 uses very little ground area.
20 Now, you heard earlier about the
21 discussion of the laydown area. Actually there's
22 nothing that will be left in the laydown area.
23 So, the laydown area will be returned to its
24 previous farming use.
25 And so it's the 640 acres of the main

1 plant site that will be disturbed initially and
2 remain disturbed. And that's what we're talking
3 about, this 640 acres.
4 I would also like to note that this
5 project, because there are also questions about
6 wells and water impact, is proposed as a dry
7 cooling solar installation. That is a significant
8 mitigation measure already on behalf of this
9 project, to use dry cooling and not wet cooling.
10 There are other projects that proposed wet cooling
11 on solar.
12 HEARING OFFICER FAY: What is the water
13 use once it's in operation?
14 MS. LUCKHARDT: 20.8 acrefeet per year.
15 And there's a lot of kind of confusion
16 in the way that some of the responses are framed.
17 There are a lot of comments, and I guess I'll go
18 into this more later, but this project is located
19 in an area called California Valley. And it's in
20 the disturbed agricultural area.
21 There are a lot of comments about the
22 Carissa Plain and the monument. Those are located
23 in areas that are located in areas that are not
24 disturbed. And so it is important to keep that
25 distinction in mind.

1 And there was one other comment that was
2 made earlier; it was about reconductoring. Since
3 the Morro Bay Power Plant repower has dropped out
4 of the California ISO queue there will be no
5 reconductoring required for this project. There's
6 plenty of capacity on the existing lines. That
7 line comes from Morro Bay that goes right next to
8 the site.
9 So those were just a couple of
10 clarifications that I thought were important.
11 And then turning to the specific
12 comments, although one more thing, these specific
13 requests, I mean earlier Ms. Gulesserian commented
14 that her responses were relevant and -- or her
15 requests were relevant and narrow.
16 We hardly see it that way. And we would
17 like to note that this is CURE's second set of
18 data requests that they are asking at this point.
19 This is not the first, this is the second.
20 We responded to the first set and did
21 provide responses to most of the questions in the
22 second set. So we are not just objecting to, or
23 Aura's not just objecting to every request that is
24 being made. If we believe that the requests are
25 relevant and it's reasonable, we are providing

1 responses.
2 In this instance in the requests that
3 are here we do not believe that the information is
4 relevant, is necessary or reasonably necessary for
5 this case. And therefore we objected to those
6 requests.
7 Now turning to data request 36. The
8 predator issue was actually addressed way back in
9 data response 12 to staff's data request, where we
10 talked about purchasing sites. And so that
11 request was actually responded to quite awhile
12 ago.
13 And I would like to note that in this
14 project there have been quite a few -- there's
15 been a lot of material filed. We have not only
16 responded to staff's data responses, and most of
17 CURE's data responses, but we have also provided
18 detailed responses to comments and questions made
19 by members of the public, agencies, during
20 workshops. All the workshops are transcribed.
21 And following the workshops Ausra
22 provides a very detailed response to all the
23 questions and issues that are presented in the
24 workshops. So there has been a tremendous amount
25 of material filed in this case.

1 In addition, this project has done two
2 years of studies out on the site, biological
3 resources studies. Studies were done in 2007, as
4 well as through 2008. And the studies in 2008
5 confirmed the findings of the studies of 2007.
6 The total field effort has involved 3266
7 hours onsite and in the surrounding area. There
8 has been just a tremendous amount of work done on
9 this project. And this is a disturbed ag field.
10 So we strongly feel that additional information on
11 biology is not necessary or reasonable at this
12 point.
13 HEARING OFFICER FAY: Ms. Luckhardt, let
14 me --
15 MS. LUCKHARDT: Go ahead.
16 HEARING OFFICER FAY: -- just interrupt
17 you for a second. We've got sort of two concepts
18 here. One is the immediate project in terms of
19 raptor predation and bird collision.
20 But the other thing that the Committee
21 has to be interested in is the cumulative impact
22 of this project in conjunction with possibly two
23 other very large solar projects. As you said,
24 this is a third of the size of the others. So
25 we're going to be dealing with large geographic

1 impacts, even without getting into what the
2 structures contain.
3 So I think the Committee's going to be
4 very interested in the cumulative impacts. And it
5 just seems intuitively that when we're dealing
6 with avian species that they're particularly
7 receptive to that, because they do travel over a
8 wide range, perhaps the range of all three of
9 these projects.
10 MS. LUCKHARDT: Well, I think it's
11 important when evaluating the species that we're
12 talking about here to keep in mind what has
13 actually been found and been seen on this
14 location.
15 And I would just like to note, although
16 our project, solar thermal, takes approximately a
17 third of the acreage as photovoltaic, the
18 OptiSolar project is 9.5 sections. So it is quite
19 a bit larger. We're almost a tenth of OptiSolar's
20 project. And I don't believe that SunPower has
21 yet filed, so I don't know that we have a final
22 size of impact on SunPower's project.
23 But it's also important to note that
24 when evaluating cumulative impacts you have to
25 look at the cumulative impact. And then this

1 project's contribution to that cumulative impact.
2 And in some instances, due to the
3 location of the Carrizo project, that it is not
4 contributing to the cumulative impacts on species
5 such as tule elk, that are impacted. And there is
6 some telemetry data that shows that they, in fact,
7 have, on the OptiSolar site. There's no data that
8 shows that they even cross over the Ausra site.
9 And so there are some situations where
10 there are cumulative impacts to which the Carrizo
11 project does not contribute, or its contribution
12 is very small. And the project is proposing
13 mitigation on nearby lands that could be used in
14 combination with mitigation from other projects
15 should the combined efforts of the county and the
16 Energy Commission work towards establishing
17 corridors for wildlife.
18 But as far as this project goes, the
19 only species that even passes through the area
20 from a corridor perspective is the prong horn.
21 And we are providing sections adjacent so that
22 prong horn can continue in the direction it goes.
23 Now, whether it will continue to go that
24 way because of OptiSolar is another question. But
25 as far as Ausra providing its contribution to the

1 mitigation required, we believe that we have
2 proposed mitigation that is fully adequate for
3 that issue.
4 So, we are very aware of the cumulative
5 impacts. We understand the concern, But I think
6 we also need to keep in mind the relative impact
7 of this project in comparison to the others, and
8 its contribution to the cumulative impact, which,
9 in many instances, is very very small.
10 Okay, so --
11 HEARING OFFICER FAY: Thanks. Sorry to
12 interrupt you, go ahead.
13 MS. LUCKHARDT: No, that's all right.
14 Please, anytime. It's my job to answer your
15 questions.
16 So, in talking about the question on
17 predation, we actually have answered this question
18 before. It was an error on our part that we did
19 not direct CURE to the correct location initially.
20 But we did provide them with the location which is
21 data response 12, which was filed on -- or
22 somewhere near -- February 26, 2008. So that was
23 filed quite awhile ago.
24 We understand that they have a concern
25 with predation. This would be more of a concern

1 if there were species that the fox or similar
2 species might actually be eating that we're
3 concerned about.
4 The species of lizards and other things
5 that are -- ground squirrels that are in the area
6 are not protected, are not threatened, the ones
7 that we have found onsite. And therefore they
8 don't pose a concern at this point because the
9 things that the fox and such would be eating are
10 not limited in number.
11 In addition, they would be, because of
12 the way the coverage of the site with the solar
13 field, you're not going to have a lot of predation
14 onsite, we don't believe, because the site will be
15 covered with the solar panels. They are elevated,
16 but we're not anticipating growing, you know, a
17 lot of grass underneath to attract species.
18 HEARING OFFICER FAY: So that would not
19 be an attractive environment to the prey species?
20 MS. LUCKHARDT: Right.
21 HEARING OFFICER FAY: Whether or not
22 they were protected.
23 MS. LUCKHARDT: Right, right. And then
24 as we talk about moving on to 37 and 38, and
25 talking about bird collisions, you know, bird

1 collisions have been a greater concern in areas
2 such as the Altamont where you've got flyways.
3 They are of greater concern in areas such as the
4 location that was cited by CURE, which is Solar
5 One.
6 We note that the height of the tower for
7 Solar One is 86 meters, which is approximately 283
8 feet, 283.8, according to my engineers. And so
9 this is quite a bit taller than what we're talking
10 about on the receiver height here.
11 You know, I remember there were concerns
12 about this in discussing the existing stacks on
13 the existing Morro Bay Power Plant, which are in
14 the range of 300, 350 feet, if I'm recalling
15 correctly. So we have -- we're talking about much
16 larger structures.
17 In addition, the location around Solar
18 One has features that are attractive to water
19 fowl. It has evaporation ponds, and it's near
20 other features like that that attract water fowl.
21 Whereas in this area it is very dry, especially in
22 the area of California Valley, where the project
23 is. And so there aren't species that are
24 attracted here that would have -- that we would be
25 concerned about from a collision perspective.

1 And then we'll go into, I'm sure, as we
2 go through the data requests 56 through 64, the
3 specific species that CURE has asked for
4 additional analysis.
5 But that's why we're not concerned, and
6 we feel that it's not necessary to do additional
7 analysis on bird collisions or on the predators
8 than we've already done, predation from landing on
9 the structures, themselves.
10 Now, there was one other comment that
11 was made, and I'm sure we'll go into this in more
12 detail later, by CURE, regarding, well, this is a
13 solar facility and it's concentrating solar.
14 Well, the study, in fact, that CURE
15 referenced shows Solar One's configuration. And
16 Solar One's configuration is -- and this is out of
17 that study -- is a set of mirrors in a circle
18 around a single tower. And so all of the sun and
19 the heat is concentrated onto a single tower.
20 Whereas in Ausra's design there are rows
21 of mirrors that go up to collectors. And then
22 another row going up to another collector. And
23 then another row going up to another collector.
24 It is a low-temperature solar technology; it's not
25 a high-temperature solar technology. It is

1 completely black and white from solar technologies
2 go, as far as bird injuries from the heat.
3 The temperatures are not hot enough to
4 burn a bird's feathers if it flies through the
5 solar field. In fact, there are pictures from
6 Australia of birds flying around. And, in fact,
7 birds standing on the top of the collectors, which
8 I'm happy to pass around to anyone who's
9 interested in seeing birds sitting on top of the
10 collectors.
11 But here's a picture from Australia.
12 It's not the exact same configuration, but it
13 is -- and they can literally stand on the top of
14 the collectors. Because the top collector is
15 separated from the pipes that run underneath that
16 hold the heat and hold the heated water and steam.
17 So it is not -- the top portion where the bird is,
18 is actually not hot.
19 And so this is a very different
20 technology. And we're not -- Ausra has not
21 experienced birds, any kind of thermal injury from
22 the installation in Australia, the installation in
23 Bakersfield at Camberlina is relatively new. They
24 haven't, you know, seen anything as far as bird
25 injury there, as well. But that is relatively

1 new.

2 HEARING OFFICER FAY: Thank you. Mr.

3 Doughton, do you have any comments from the

4 staff's perspective at this point? I'm going to

5 be coming to you each time.

6 MR. DOUGHTON: Sure. Yeah, I would

7 defer to Mr. McCullough on that point. He has

8 looked at these data requests.

9 MR. McCULLOUGH: Good morning. And so

10 staff, regarding CURE's data requests, the

11 applicant has responded, as was noted by Ms.

12 Luckhardt, to the threat from increased predation

13 due to raptors perching on the project site.

14 It was characterized as there were no

15 special status mammal species. However, the

16 biological surveys did notice, did find on the

17 site the McKittrick pocket mouse, which may be a

18 California species of special concern, as all

19 subspecies of that particular type of pocket mouse

20 may be listed as California species of special

21 concern on the 1986 list. This is according to

22 communication with staff at the Department of Fish

23 and Game.

24 DR. MOCK: The only subspecies of that

25 species listed on -- this is Pat Mock with URS.

1 The only subspecies of that species is --
2 ASSOCIATE MEMBER BYRON: Whoever's
3 speaking, could you please come closer to the
4 microphone?
5 HEARING OFFICER FAY: And there's two
6 different systems here. One is for the court
7 reporter, those are the large mikes. But the
8 telephone pickup is the small mike, much like a
9 computer mouse. And if you miss one you're not
10 recorded in the transcript; if you miss the other,
11 nobody online, including the second Commissioner,
12 can hear you.
13 Please go ahead.
14 DR. MOCK: Okay, this is Pat Mock with
15 URS. The only subspecies of this species of
16 rodent that actually occurs on the species of
17 special concern is the Salinas pocket mouse. And
18 that species only occurs in Salinas Valley.
19 The McKittrick pocket mouse is a
20 separate subspecies; it has not been evaluated as
21 a species of special concern in any formal
22 document that we've been able to obtain from Fish
23 and Game, and therefore it can't be considered a
24 species of special concern.
25 MR. McCULLOUGH: The staff would like to

1 discuss CURE's other data requests. The collision
2 risk posed by the receiver structures and the
3 necessity for studies to support the conclusion
4 that the project will not pose a collision risk.
5 The staff concurs with CURE that these
6 are still potentially unknown impacts, and staff
7 is working with the Department of Fish and Game
8 and U.S. Fish and Wildlife Service to further
9 characterize the potential collision risk posed by
10 these structures.
11 HEARING OFFICER FAY: How does staff
12 create parameters for analyzing collision risk?
13 Is it height and width, or complexity of
14 structure? What -- can you give us some idea?
15 MR. McCULLOUGH: The main focus is
16 actually the sensitivity of the species. And
17 there are special status raptors who do forage in
18 the project area. And specifically, and this is
19 getting to CURE's data request 51 and 52 regarding
20 California condor.
21 HEARING OFFICER FAY: Okay, we're not
22 quite into that yet.
23 MR. McCULLOUGH: Right, well, that --
24 HEARING OFFICER FAY: I'm just asking a
25 general question but, okay.

1 MR. McCULLOUGH: Sure. And so assessing
2 the collision risk is species dependent, if that
3 makes any sense.
4 HEARING OFFICER FAY: Okay, so it's more
5 species dependent than it is the design of the
6 facility?
7 MR. McCULLOUGH: Although there are
8 design features that could potentially mitigate
9 some of the collision risk. The use of bird
10 flight diverters to mark guy wires and, again,
11 also getting to the actual size of the facility
12 and height of the facility, given the bird's
13 patterns of flight behavior.
14 HEARING OFFICER FAY: All right, thank
15 you. All right, let's move to 00
16 PRESIDING MEMBER PFANNENSTIEL: May I
17 just ask, when will this information be -- you
18 said that this is being prepared now. When will
19 this be introduced?
20 MR. McCULLOUGH: Probably in between the
21 preliminary staff analysis and the final staff
22 analysis. Unfortunately, the U.S. Fish and
23 Wildlife Service office that deals specifically
24 with the condor hasn't -- we're still in
25 discussion with them.

PRESIDING MEMBER PFANNENSTIEL: And the work that will come in will be responsive, I mean, done for a different reason, but will end up being responsive to the data requests 36, 37, 38?

MR. McCULLOUGH: I believe so.

HEARING OFFICER FAY: But you do anticipate that will be in the FSA?

MR. McCULLOUGH: I do.

HEARING OFFICER FAY: And it is your analysis of Fish and Wildlife data, is that what we're waiting on?

MR. McCULLOUGH: We're actually waiting on the data, itself.

HEARING OFFICER FAY: So you will just pass the data through --

MR. McCULLOUGH: Correct.

HEARING OFFICER FAY: -- that Fish and Wildlife Service is developing?

MR. McCULLOUGH: Including their expert opinions.

HEARING OFFICER FAY: And this is limited to the question of collision?

MR. McCULLOUGH: Correct. Hearing Officer Fay, also it would get -- and again I apologize for jumping the gun -- it would get to

1 the potential for impacts from loss of foraging
2 habitat, as well.
3 HEARING OFFICER FAY: Okay. Well, I
4 think that is part of the raptor predation, if I
5 understand it correctly. If there's not foraging
6 habitat, then there's less risk of raptor
7 predation, is that correct?
8 MR. McCULLOUGH: Yes.
9 HEARING OFFICER FAY: Anything further?
10 MR. McCULLOUGH: No, thank you.
11 HEARING OFFICER FAY: All right. Let's
12 shift to the questions regarding the condor, then,
13 51 through 52.
14 MS. LUCKHARDT: Okay, before we shift
15 there, I guess I'd just like to express a concern
16 that we have. Here today is the first time we
17 have heard of this effort between staff and U.S.
18 Fish and Wildlife Service regarding the condor.
19 This is being developed completely
20 without any input on our part. You know, we've
21 done our analysis, we've answered data responses,
22 but this is only one area.
23 We've also heard about a potential
24 corridor study, you know, but we haven't seen any
25 protocol, any parameters, or anything that would

1 describe how a study would be done. We've been
2 offered no opportunity to comment on that.
3 And this raises concerns to us, that
4 things are just going to show up, new studies, new
5 analysis between staff and other agencies that we
6 have had no opportunity for input or comment. And
7 just have it appear.
8 And so, you know, I just want to express
9 our concern on this. Because all of a sudden
10 we're going to get this stuff, it sounds like, in
11 the FSA. And we'll be seeing it for the first
12 time then. You know, we don't want to hold up the
13 process, so we're not asking to hold the PSA
14 waiting for new analysis to be done. But it is of
15 a concern.
16 HEARING OFFICER FAY: Of course, in the
17 normal course of things applicant -- we anticipate
18 applicant will file their testimony after
19 publication of the FSA. And other parties will
20 then, in turn, file their testimony. All this
21 before we go to hearings, at which time applicant
22 would be able to cross-examine the experts who put
23 forth that testimony in the FSA.
24 So, I think you will have time to
25 respond, and that may address your concerns. But

it's noted.

MS. LUCKHARDT: Yeah, I mean whatever we do, an air quality study or anything like that, we almost always run the protocol by staff. And they comment on that before we even do it.

You know, there's been an awful lot of comment on this study protocol for biological resources from both Fish and Game, Fish and Wildlife and the Energy Commission of what species to study, when to do it, how often to do it. There have been meetings and calls. And then, you know, final agreement on the study effort. Because we were doing, yet, a second year of biological studies, which you don't normally do. It was of great, great concern to us.

And so, you know, when we go out and do these things we often get a lot of feedback. And so to us it is a concern that this would be happening without any sort of input.

We're also concerned that the agencies may base their opinion on these new studies that don't have an existing protocol. And so then does that, using this new kind of -- a brand new modeling protocol perhaps, that no one has ever seen and it hasn't been tested, as the basis for

1 their opinion in this case gives us great concern.
2 And I'll move off that.
3 HEARING OFFICER FAY: When you were
4 doing the two years of studies, was there no
5 discussion among the agencies of looking at
6 habitat corridors?
7 MS. LUCKHARDT: No, because this project
8 alone doesn't impact a habitat corridor.
9 HEARING OFFICER FAY: So this has
10 developed since proposals for the other two solar
11 projects --
12 MS. LUCKHARDT: I believe it is in
13 direct response to OptiSolar's proposal, which
14 impacts nine and a half sections, and a whole
15 portion of the valley, California Valley.
16 HEARING OFFICER FAY: Okay. All right.
17 MR. KESSLER: Hearing Officer Fay, can
18 we respond, please?
19 HEARING OFFICER FAY: All right.
20 MR. KESSLER: We want to be clear that
21 the process, this habitat corridor, may be a new
22 process to the Energy Commission, but it's one
23 that we feel is relevant and necessary for this
24 project in looking at the cumulative effects,
25 direct and cumulative effects of this, as well as

1 the two PV projects.
2 There are other areas where this type of
3 corridor modeling has been applied and
4 successfully used. And we're bringing on board a
5 specialist in that arena.
6 The reason we don't have the protocol,
7 or we've made available to the parties and anyone
8 who's requested it, or we've distributed copies to
9 them, copies of previous studies and research,
10 writeups on this subject, just so they could get
11 onboard with it.
12 We've invited the applicant, as well as
13 the two PV developers, to participate in this
14 process. The first concept of that process was to
15 hold it as a public meeting in the Carissa Plains.
16 And all three applicants chose not to participate.
17 So instead of that we held just an
18 agency meeting in San Luis Obispo County --
19 HEARING OFFICER FAY: Just a what
20 meeting?
21 MR. KESSLER: An agency meeting, --
22 HEARING OFFICER FAY: Um-hum.
23 MR. KESSLER: -- which included San Luis
24 Obispo County, Fish and Game, Fish and Wildlife,
25 and ourselves. And so we are still generating the

1 protocol and the process that we will undertake,
2 the scope of those studies. And as that
3 information is developed we will make it available
4 to all.
5 But I don't think it's accurate to say
6 that the applicant didn't have the opportunity to
7 participate in this process.
8 MS. LUCKHARDT: And I think there's a
9 lot more to that story, as Mr. Kessler's well
10 aware, in that, you know, we were going to
11 participate, but for the other projects not being
12 going to participate. And so we didn't feel it
13 was appropriate to have the smallest of the three
14 projects the only one present at a meeting of this
15 sort where the impact is really being driven by
16 the larger projects.
17 So, you know, -- and I do understand Mr.
18 Kessler gave us that opportunity. But we didn't
19 feel that the opportunity was appropriate, given
20 that the larger projects would not be in
21 attendance at that event.
22 I'd also like to note that the studies
23 and information that Mr. Kessler's referring to
24 are corridor studies that have been done only on
25 undeveloped land, and in hillsides, and with

1 different types of terrain. What we're talking
2 about here is developed ag land.
3 And we are concerned about whether that
4 is an appropriate application of the previous
5 modeling effort that's been done.
6 MR. DOUGHTON: And I would just chime in
7 on behalf of staff to say that my perception this
8 project involves novel technology and ideas. So
9 I'm not personally surprised that some of these
10 issues are coming up and we're discussing them
11 now. It seems to me it's in the normal course, if
12 there is a normal course, for this type of
13 project.
14 HEARING OFFICER FAY: The Committee
15 obviously has to be sensitive to the rights of all
16 the parties in this proceeding. And that is, I
17 suppose you could use the term somewhat threatened
18 by these later projects that come in that will
19 clearly create a -- cumulatively create a large
20 impact. Although they weren't before us when this
21 was initially filed.
22 So, we need to get the information we
23 can, but have to be fair to all the parties in
24 this case, and not ask them to wait around for the
25 later-developing information.

1 I think at this point we can direct
2 staff to include in the PSA a map that makes very
3 clear what the geography is of these projects so
4 that the reader can understand approximate
5 distances and relative sizes.
6 MS. GULESSERIAN: I'd like to make a
7 point of clarification.
8 HEARING OFFICER FAY: Yes.
9 MS. GULESSERIAN: There is a statement
10 made that the revised studies and surveys were a
11 result of the other application being filed by
12 Topaz Solar Farm, that's the other project in the
13 area. That is not completely correct.
14 When we first filed our data requests
15 their response was that the issues would be
16 addressed in updated biological report in the
17 fourth quarter. At that time the application had
18 not been deemed complete in San Luis Obispo
19 County.
20 So, --
21 HEARING OFFICER FAY: Which application?
22 MS. GULESSERIAN: The application for
23 the adjacent solar power plant.
24 HEARING OFFICER FAY: Okay.
25 MS. GULESSERIAN: It was in April that

1 Energy Commission Staff wrote a letter to the
2 applicant describing the needed biological surveys
3 required for this project site. In April that
4 application had not been filed at San Luis Obispo
5 County.
6 So, it's not a result of only cumulative
7 impacts from the project, but it's also the
8 project, itself.
9 MS. LUCKHARDT: I guess I would just
10 clarify that when we're talking about the result
11 of the other projects, we're talking about
12 corridor studies. That's what we're referring to
13 when we talk about the need and the corridor study
14 mapping and analysis that staff is talking about.
15 That is in direct response to the other projects.
16 Doing a biological assessment of the
17 site is required and standard.
18 HEARING OFFICER FAY: All right. I'd
19 like to move on to questions about the condor,
20 impacts to the condor. Ms. Gulesserian, would you
21 like to proceed.
22 MS. GULESSERIAN: Yes.
23 HEARING OFFICER FAY: Data requests 51
24 and 52, I believe.
25 MS. GULESSERIAN: The California condor

is an endangered species under the state and federal Endangered Species Act. Since the 1970s there have been great efforts to bring back and restore the California condor population through captive breeding and release programs. The existence of key foraging habitats is crucial to the efforts.

According to the 1996 recovery plan for the California condor, the principal foraging regions for the California condor include the Carissa Plain. It is known that California condors will travel up to 150 miles per day for food. And in 1996 two California condors were released 50 miles from the project site.

The California condors are also found in the Carissa Plain National Monument ten miles from the project site. Thus, California condors may forage on the project site and in the surrounding areas, and will likely use the foraging habitat as the population continues to grow, as was intended by the recovery plan.

HEARING OFFICER FAY: But if the diameter -- if the range, by definition, could include the site for this project, isn't there an effect of -- if applicant is correct, it's less

1 attractive, if it doesn't attract prey, whether
2 protected species or not; and if it doesn't
3 attract anything that the condor would be drawn
4 to, do we need to be constrained that it's within
5 the condor's range?
6 MS. GULESSERIAN: The project site is in
7 an area that is foraging, would be foraging
8 habitat for the California condor. We were just
9 talking about how its a wildlife movement
10 corridor. California condor forage on carcasses
11 of mammals, the prong horn and tule elk are large
12 mammals that move through this valley, and would
13 provide a source of food for the California
14 condor.
15 HEARING OFFICER FAY: And what would be
16 the problem for the condor if this site was not
17 attractive and the condor was feeding on adjacent
18 land? I mean, how does the project potentially
19 threaten the condor?
20 MS. GULESSERIAN: It's range is reduced.
21 HEARING OFFICER FAY: By the acreage of
22 the --
23 MS. GULESSERIAN: By the acreage lost.
24 It's feeding within 150, according to the recovery
25 plan, feeds within 150 miles of a release site.

1 And when you take foraging habitat out of that
2 range, then it's reduced.
3 PRESIDING MEMBER PFANNENSTIEL: So
4 you're just saying that by the 640 acres of the
5 project that its foraging area within its flying
6 radius would be reduced by that much?
7 MS. GULESSERIAN: Right. And then we
8 have the cumulative impacts from the loss of
9 foraging habitat from the other -- all other
10 development in the area.
11 HEARING OFFICER FAY: So, on that
12 theory, any development, any sort of unnatural
13 development within the habit would have a similar
14 impact on a condor?
15 MS. GULESSERIAN: Yes, different
16 projects would have different impacts on
17 California condor, which should be evaluated on a
18 case-by-base basis.
19 HEARING OFFICER FAY: I mean, but a
20 parking lot would be the same --
21 MS. GULESSERIAN: Um-hum.
22 HEARING OFFICER FAY: Okay, I just want
23 to understand. All right, sorry, go ahead.
24 MS. GULESSERIAN: Thank you. We asked
25 for an analysis of project in cumulative impacts

1 on foraging habitat and restoration of the condor
2 population.
3 The applicant's biological reports, we
4 believe, are inconsistent. The September -- some
5 early reports say, as we pointed out in our
6 motion, condors may fly over the site. The
7 response to the motion says, well, a more recent
8 report says it does not fly over the site.
9 Just look at two very recent biological
10 reports submitted by the applicant, September 10th
11 biological assessment to the Fish and Wildlife
12 Service says condors may fly over the site. And
13 then October 10th, a biological report says it
14 does not fly over the site. But it doesn't
15 explain where they do fly.
16 So the responses say -- and then
17 response with respect to what foraging habitat
18 there is, the responses say the opportunity to
19 forage is limited. The biological report claims
20 that there's no foraging habitat. And then the
21 response to the motion states that foraging
22 opportunities are rare.
23 So, there hasn't been a clear,
24 comprehensive analysis of the foraging habitat,
25 the location of the condors, the evidence where

1 the condors are flying. There's some reference to
2 telemetry data that is not provided.
3 INN addition, the project will be
4 immediately causing the loss of -- permanent loss
5 of 640 acres and temporary loss of 1020.
6 The project will also increase roadkill
7 rates and change wildlife movement through the
8 valley. The wildlife, again, as potential food
9 sources for the condor. And increase in roadkill
10 rates would potentially provide increased food for
11 the condor --
12 HEARING OFFICER FAY: So the roadkill
13 argument is just based on an increase in traffic
14 from the project?
15 MS. GULESSERIAN: That is what causes
16 increased roadkill from this project.
17 HEARING OFFICER FAY: Okay, and is that
18 during the operation phase, or are you concerned
19 about just the construction phase?
20 MS. GULESSERIAN: That's a good
21 question. I do not have the information on the
22 roadkill frequency and duration through
23 construction, through operation of the project.
24 But that would be very helpful on that list, to
25 have, especially in a California condor impact

1 analysis assessment.
2 So, to sum up, I mean we believe that
3 both the project and cumulative impacts on
4 California condor should be analyzed for this
5 project since condors have been planned to use the
6 area in order to recover the species.
7 HEARING OFFICER FAY: The entire
8 California Valley? Or just the natural --
9 MS. GULESSERIAN: The Carissa Plain is
10 identified as one of the few areas that could
11 provide for the recovery of the species.
12 PRESIDING MEMBER PFANNENSTIEL: And this
13 is specifically in the condor recovery plan as
14 adopted by whom?
15 MS. GULESSERIAN: The United States Fish
16 and Wildlife Service.
17 HEARING OFFICER FAY: And do they
18 distinguish any portions of the Carissa Plain, or
19 just the entire Carissa Plain?
20 MS. GULESSERIAN: I don't have that
21 information at this time. That would be helpful
22 in an impact analysis.
23 HEARING OFFICER FAY: Okay. Anything
24 further on the condors?
25 MS. GULESSERIAN: No, thank you.

1 HEARING OFFICER FAY: Okay. Ms.
2 Luckhardt.
3 MS. LUCKHARDT: Yes, I think that --
4 HEARING OFFICER FAY: I'm sorry, no
5 questions?
6 MS. LUCKHARDT: -- the way this was
7 phrased and the way it's stated is very consistent
8 with the way CURE's conducted themselves so far.
9 It would be helpful if we had that information.
10 You know, this is a fishing expedition
11 to analyze yet another species. There's telemetry
12 data to show that the condor uses the hills, and
13 they fly over the hills on each side of the
14 valley.
15 There is no data to show that the condor
16 uses the agricultural, disturbed agricultural
17 lands. Yes, the recovery plan does mention the
18 Carissa Plain; it mentions the monument as the
19 area where the condor is.
20 This is again, it's just more and more
21 requests for more information on species that are
22 not impacted by this project.
23 At some point enough is enough as far as
24 analyzing yet another species that doesn't use the
25 site. And there is no information to indicate

that it will. A condor, yes, a condor can fly a very long distance. May a condor at some point in its life, somewhere in the lifetime of this project, fly over the site? It could. But they don't, on the whole. They go where their food is. Their food is in the hills. It's in undisturbed land, it's not on disturbed ag lands.

You know, the comment about, well, it'd be nice to have some more information on roadkill. We did provide some information on roadkill. And roadkill is actually primarily a concern in the evening hours. And since this is a solar project, we don't have a lot of night operation. There will be some night repair things that happen, but there's not going to be a lot of traffic at night.

HEARING OFFICER FAY: So there's not 24-hour crews at the project?

MS. LUCKHARDT: Well, there will be some maintenance that's done at night, but it's not going to be the volumes of traffic that you see at other times for something that would be running 24 hours a day.

HEARING OFFICER FAY: You have to realize we're used to gas-first projects, and they don't really respond to the clock the way that

1 solar projects do.
2 MS. LUCKHARDT: No, no, that's right.
3 That's right. So it's a new era for all of us.
4 And then, you know, there was a comment
5 about changing wildlife movement through the
6 valley. Again, you know, when we're looking at
7 changing wildlife movement through the valley,
8 that's not a result of this project. So we really
9 need to keep in mind the impact of this project,
10 you know.
11 And then there was this just blanket
12 statement that this would be foraging habitat.
13 It's not foraging habitat for the condor. The
14 condor uses areas that are not disturbed like
15 this. This is ag land. It's heavily disturbed.
16 So, it's a complete, you know, these
17 just blanket statements are actually quite
18 incorrect, such as, you know, the Carissa Plain,
19 just this general statement about the Carissa
20 Plain is in the recovery plan. It's the monument.
21 It's not California Valley where the ag land is.
22 HEARING OFFICER FAY: And that's the
23 official designation from U.S. Fish and Wildlife,
24 it's the monument.
25 MS. LUCKHARDT: It's the monument.

1 HEARING OFFICER FAY: Anything more?
2 MS. LUCKHARDT: No. I think that's all.
3 HEARING OFFICER FAY: Staff.
4 MR. DOUGHTON: Yes. Go ahead, Brian.
5 MR. McCULLOUGH: Staff would like to
6 note that in conversations with the Department of
7 Fish and Game, the Department of Fish and Game has
8 commented on the potential for condors to be
9 encouraged to move northward. And including the
10 establishment of a bait station in the LaPanza
11 Hills, which are to the west of the project area.
12 Part of the Fish and Game's explanation
13 was that this is designed to help increase the
14 range of the condor such that the condor could
15 respond more robustly in any sort of potential
16 climate change scenarios.
17 Staff has mentioned that we are still
18 working with U.S. Fish and Wildlife Service and
19 the Department of Fish and Game to get more
20 information regarding the potential for increased
21 condor activity in the area. Frankly, it's still
22 unknown.
23 HEARING OFFICER FAY: So, to the
24 extent -- well, what will be your guideline for
25 gathering information and presenting information

1 regarding the condor on this project?
2 MR. McCULLOUGH: There is both the
3 combination of the potential loss of foraging
4 habitat, even though this area is disturbed ag
5 land, cattle do graze on the area, on especially
6 the laydown area. And staff did note extensive
7 bones from a dead cow that could, you know,
8 potentially provide food for condor.
9 HEARING OFFICER FAY: Applicant
10 responded that their rancher, you know, cleans up
11 carcasses. Is this a mitigation technique? Does
12 that reduce the risk to the condor?
13 MR. McCULLOUGH: It would. And the
14 potential impacts to the condor, I believe, could
15 be mitigated. But those mitigation measures, such
16 as removal of carcasses and removal of roadkill
17 carcasses are still under development.
18 MS. GULESSERIAN: May I respond very
19 quickly?
20 HEARING OFFICER FAY: Yes.
21 MS. GULESSERIAN: CURE is absolutely not
22 on a fishing expedition. We have narrowly focused
23 our data requests on particular species that are
24 threatened, endangered, species of special concern
25 that are known to either use the site or use the

1 surrounding areas according to the agencies,
2 California Fish and Game and United States Fish
3 and Wildlife Service.
4 We believe that the California condor,
5 we've provided enough of a basis to show that the
6 California condor may be impacted by this project.
7 The recovery plan has placed the condor 50 miles
8 from the project site.
9 As the Commission Staff mentioned, the
10 recovery plan sited these condors so that they
11 would use the Carissa Plain, which provides
12 foraging habitat for the species, that the species
13 could recover and get off of the list.
14 There is mention in the recovery plan of
15 having the condor move northward from its release
16 sites, which includes the project area. So we
17 believe it's relevant and that there should be an
18 analysis in this proceeding. Thank you.
19 HEARING OFFICER FAY: Okay, are you
20 disputing that the recovery plan notes the Carissa
21 Monument as opposed to the Carissa Plain?
22 MS. GULESSERIAN: There is -- yes.
23 There is discussion in the recovery plan that the
24 intent was to move the condor, to provide the
25 greater valley as foraging habitat. And it was

1 specifically sited near the valley because of the
2 confluence of factors that could help recover this
3 species.
4 You also reminded me of another point I
5 wanted to raise. And that is that the condor uses
6 the hills. I mean there is discussion in the
7 recovery plan that says a majority of important
8 foraging areas were on private cattle grazing
9 lands. That's because California condors have
10 traditionally fed on dead livestock.
11 As you mentioned, there was discussion
12 from the applicant that this landowner removes
13 dead livestock, although we've seen evidence of
14 dead livestock on the property. That is actually
15 contrary to the recommendations of the recovery
16 plan that where they urge landowners to actually
17 leave dead livestock to provide an important food
18 source.
19 Regardless, the agricultural lands and
20 the cattle grazing lands do provide foraging
21 habitat for the condor.
22 HEARING OFFICER FAY: All right. Now,
23 I'd like to move to arguments about data requests
24 53 and 54 about the spadefoot toad.
25 MS. GULESSERIAN: Thank you. The

1 western spadefoot toad is listed as a California
2 species of special concern. Western spadefoot
3 toads are terrestrial species. They live in
4 grasslands and in burrows up to three feet deep.
5 And then they enter temporary pools and
6 intermittent streams to forage and breed.
7 According to the California National
8 Diversity database in 1991 a spadefoot toad
9 breeding site was located downstream from the
10 project site. According to California Department
11 of Fish and Game in March 2008 the creek and the
12 construction laydown area appear to provide
13 seasonal pools suitable for the spadefoot toad
14 breeding. The areas upland of the creek and the
15 construction laydown area appear to provide
16 uplands suitable for burrowing.
17 Surveys should be conducted and soil
18 compaction in the proposed construction laydown
19 area and permanent parking area. May reduce
20 burrowing potential and directly affect toads
21 already burrowed on site.
22 We asked for a survey of western
23 spadefoot toad during the rainy season, and for
24 the results. And a survey of the spadefoot toad's
25 upland areas from the creek to determine potential

1 impacts to upland burrowing habitat.
2 The applicant responded that there's no
3 suitable habitat and surveys are not necessary.
4 HEARING OFFICER FAY: What's involved in
5 the time for an adequate survey of the spadefoot
6 toad?
7 MS. GULESSERIAN: I don't know the
8 survey protocol --
9 HEARING OFFICER FAY: Staff?
10 MS. GULESSERIAN: -- for spadefoot toad.
11 HEARING OFFICER FAY: -- what would the
12 protocol suggest? Is this a seasonal survey that
13 could only be done --
14 MR. McCULLOUGH: It is. Water needs to
15 be present, I believe.
16 HEARING OFFICER FAY: Okay, so if you
17 miss say the window of this winter, you're talking
18 about a whole other year?
19 MR. McCULLOUGH: Correct. Or if this
20 winter there is no rainfall event that actually
21 results in ponding in the creek on the
22 construction laydown area, then this year, you
23 know, no survey could get done --
24 HEARING OFFICER FAY: Okay. One of our
25 commenters --

1 MR. McCULLOUGH: -- just because --
2 HEARING OFFICER FAY: -- said that he's
3 had several years where he could not produce a
4 natural barley crop because things have been so
5 dry. So, that could affect whether a survey could
6 even be done, correct?
7 MR. McCULLOUGH: Correct. And would
8 potentially feed into the applicant's statement
9 that no potential habitat exists onsite.
10 The known occurrence of spadefoot toad
11 is approximately eight miles to the southeast,
12 along that same creek. But in a sort of a larger
13 pool next to a drainage culvert as it goes
14 underneath the road.
15 And so in that area there is persistent
16 water and consistent pond in most years. And so
17 spadefoot live there.
18 HEARING OFFICER FAY: So, the closest --
19 it's your view that the closest habitat is
20 artificial habitat?
21 MR. McCULLOUGH: Well, that is a known
22 occurrence. And while in exceptional rainfall
23 years there may be ponding on the construction
24 laydown area, the applicant's surveys didn't
25 indicate any wetland plant species. And I think

1 I'd also like to refer to the applicant's
2 biological consultants regarding some of the
3 surveys they did in this past rainy season.
4 HEARING OFFICER FAY: We'll definitely
5 get to that. Anything further on the spadefoot
6 toads, Ms. Gulesserian?
7 MS. GULESSERIAN: Yeah, --
8 HEARING OFFICER FAY: I interrupted you.
9 MS. GULESSERIAN: Yeah, that's okay.
10 Let me look at where I was at here.
11 Okay. So in March 2008 the California
12 Department of Fish and Game identified the creek
13 and the upland habitat of the creek as having
14 suitable habitat for the western spadefoot toad.
15 Therefore, we believe that there is
16 evidence, according to responsible agency, that
17 such habitat would exist in the area.
18 There's also ample evidence in the
19 literature that the activities proposed on the
20 project site, such as the activities surrounding
21 the creek, the crossings over the creek, the
22 fueling, the station that will be developed near
23 the creek could impact the creek both on the
24 project site and downstream of the project site.
25 Exposure to chemicals leads to the

1 decline and threatens the survival of the western
2 spadefoot toad. Leaks, spills from industrial
3 facilities harm waterways which can impact the
4 western spadefoot toad, both onsite and downstream
5 of the site.
6 So the project, there is evidence that
7 the project has a potential to contribute to the
8 decline of the western spadefoot toad. And we
9 requested an analysis of impact.
10 Thank you.
11 HEARING OFFICER FAY: Okay. Ms.
12 Luckhardt.
13 MS. LUCKHARDT: Okay, a couple of
14 things. First, the requested analysis is actually
15 a breeding survey; it's not just a request of an
16 analysis. In 53 she says, please conduct a
17 breeding survey. And, you know, 54 says please
18 conduct a survey in upland areas.
19 This site actually does not have habitat
20 for the western spadefoot toad. So conducting a
21 survey for the western spadefoot toad is
22 completely unnecessary and an unreasonable
23 request.
24 Although Fish and Game at first
25 identified it, we're not even sure if Fish and

1 Game had been out to the site when they wrote that
2 initial letter.
3 We worked with Fish and Game extensively
4 because they had concerns about the 2007 surveys,
5 to make sure that when we did the surveys in 2008
6 we covered all of the species they wanted us to
7 cover.
8 And we did it in a way they wanted the
9 biologists to do it. They had, you know,
10 including numbers of people, survey days, timing
11 of the days, temperature controls and all of those
12 issues were taken into account.
13 And California Department of Fish and
14 Game agreed that the western spadefoot toad
15 surveys were unnecessary because there was no
16 habitat present.
17 So although they did initially identify
18 it in their initial correspondence, in subsequent
19 analysis of the actual site, they agreed with
20 Ausra's biologist that there is no habitat for
21 western spadefoot toad in this location, either
22 the laydown area or the project site.
23 So, the request to conduct breeding
24 surveys and upland surveys is unreasonable in this
25 instance, because there is no habitat.

1 HEARING OFFICER FAY: And staff, did you
2 have anything further to add? We heard from you
3 on that.
4 MR. McCULLOUGH: Nothing further to add.
5 HEARING OFFICER FAY: Okay, good. Any
6 questions?
7 PRESIDING MEMBER PFANNENSTIEL: No.
8 HEARING OFFICER FAY: Okay. Let's move
9 on to data requests 56 through 64 that address
10 special status species.
11 (Pause.)
12 MS. GULESSERIAN: Thank you. Sorry.
13 According to California Department of Fish and
14 Game at least ten special status species are known
15 to utilize the project site or will likely utilize
16 the site, or utilize the area around the project
17 site that have not yet been addressed.
18 In our motion we only request an
19 explanation of how the applicant addressed nine of
20 these species. There was a discussion of one
21 other species, one of the kangaroo rats in the
22 updated biological report.
23 The species that we believe need to be
24 addressed, interestingly and poignantly, are a
25 bird species like the bald eagle. Pardon my

1 pronunciation, ferruginous hawk, golden eagle,
2 loggerhead shrike, mountain plover and then there
3 is the Oregon vesper sparrows. These are bird
4 species that have not yet been addressed.
5 Then there's also the San Joaquin whip
6 snake, primrose sphinx moth, coast California
7 horned lizard, the moth and lizard, both of which
8 would be food sources for bird species.
9 The applicant responded that they're not
10 required to survey and provide an impact analysis
11 for any conceivable species.
12 And, again, we're not asking for an
13 analysis of every conceivable species. We're only
14 requesting an explanation with regard to these
15 nine species identified by Fish and Game as known
16 to occur in the area, known to hunt in the area.
17 In exhibit 6 on page 11 it lists -- Fish
18 and Game lists the species that we're talking
19 about. And they have provided their notes on the
20 species' presence.
21 Bald eagle observed from near the site
22 in February 2008 by Fish and Game.
23 HEARING OFFICER FAY: But isn't -- sorry
24 to interrupt you, but isn't this the situation
25 where Fish and Game does a survey, a broad survey,

1 because they're concerned with the species over a
2 large area?
3 When an applicant comes in obviously
4 concerned about their site, and if they show
5 through their studies that none of the species
6 appear on the site, isn't that more specific than
7 the broader consideration that Fish and Game has
8 previously provided?
9 MS. GULESSERIAN: If the studies are
10 broad enough to include recognition of these
11 species, then if they actually said that they have
12 evaluated these species. But they say that
13 they've evaluated them and then the table that is
14 attached to their updated biological report
15 doesn't list any of these species.
16 So I'm trying to cross-reference this
17 list of species and then a statement that they've
18 been evaluated. And I look at the table and none
19 of them are listed there.
20 So, based on what my review of the
21 project, I have a table here of species that are
22 known to hunt onsite, not just Fish and Game
23 putting a letter out there that these species are
24 in the area. It says observed near site, known to
25 hunt onsite, known to be onsite, known to hunt

1 onsite, suitable nesting sites.
2 So they've specifically identified
3 whether it's onsite or observed near the area. In
4 addition, with the golden eagle there is a
5 reference to the golden eagle in an updated
6 biological report by the applicant. And it states
7 that golden eagle was observed in the area. And
8 that was the end of the analysis, just a note that
9 it was observed.
10 So, does that answer your question?
11 HEARING OFFICER FAY: Yeah. And what's
12 the table to which you're referring?
13 MS. GULESSERIAN: I'm referring to table
14 1 on a March 26, 2008 letter. And then --
15 HEARING OFFICER FAY: And that's from?
16 MS. GULESSERIAN: From the Department of
17 Fish and Game. And then I'm, you know, -- okay.
18 HEARING OFFICER FAY: Okay, --
19 MS. GULESSERIAN: Thank you.
20 HEARING OFFICER FAY: All right.
21 MS. GULESSERIAN: The applicant also
22 stated that it's not required to prove a negative.
23 The applicant also stated that it's only required
24 to provide an analysis of impacts to species that
25 actually use the site, and to existing recovery

1 plans or critical habitat designations within
2 which a particular site may fall.
3 Again, CURE isn't requesting a survey
4 for every conceivable species, only species that
5 have been identified to actually used the site.
6 In fact, if you bear with me a minute, --
7 (Pause.)
8 MS. GULESSERIAN: The data requests do
9 not ask for new surveys. They ask for an
10 explanation of how the applicant has addressed the
11 project's impacts to bald eagle, for example. So
12 these data requests do not ask for more surveys;
13 they just request explanations regarding the
14 project's impacts.
15 CEQA requires analysis of potentially
16 significant direct, indirect and cumulative
17 impacts. CEQA does not limit its analytical and
18 mitigation requirements to onsite species. An
19 evaluation of impacts must occur if there's a
20 potentially significant indirect impact to
21 species.
22 So, activities on the site that may
23 cause impacts around the project site would need
24 to be addressed.
25 Finally, -- well, I think that sums up

1 my comments on this one. Thank you. I can answer
2 questions.
3 HEARING OFFICER FAY: Ms. Luckhardt.
4 MS. LUCKHARDT: Okay. I would note
5 that, you know, CURE is relying on a table
6 presented by Fish and Game. And yet Fish and Game
7 was the very entity that we consulted with on
8 creating the survey protocol for 2008 surveys.
9 So, you know, we believe that we have
10 addressed the initial kind of list created by Fish
11 and Game. And so we don't believe that additional
12 work is to be done in any event on these.
13 And what I think for this particular
14 list of species, I could go through it all, but I
15 think it actually might be more productive to have
16 the biologists go through and talk about each of
17 the individual species and why we feel that
18 addressing them, -- addressing, of course, can
19 have a variety of meanings, one of which could be
20 mitigate for -- and also analyze, which we believe
21 is uncalled for, given that these species are not
22 onsite.
23 But, as opposed to having me go through
24 and repeat what they've told me, I'm going to go
25 ahead and have them describe, go through all the

1 species and talk about it.
2 PRESIDING MEMBER PFANNENSTIEL: I'm a
3 little confused, though, about the Department of
4 Fish and Game's role here.
5 On the one hand they have sent a letter
6 where they did identify these as species that
7 might occur in the area, is that what they said in
8 their letter? They might be --
9 MS. GULESSERIAN: They said they are
10 found onsite.
11 PRESIDING MEMBER PFANNENSTIEL: Are
12 found onsite.
13 And yet when you worked with them they
14 told you they're not onsite and so you don't need
15 to worry about them?
16 DR. MOCK: Pat Mock with URS. After our
17 2007 surveys this memo -- and we prepared the
18 AFC -- this memo from Fish and Game was generated
19 saying here's some additional list of species
20 we're concerned about. We would like you to
21 search for these species during your 2008 effort.
22 We've done that. These species were not
23 detected onsite or anywhere near the vicinity in
24 terms of at least the context of an impact
25 assessment.

1 And therefore we've concluded that
2 they're not relevant to the analysis.
3 HEARING OFFICER FAY: And when Fish and
4 Game told you that, it was essentially this table
5 that --
6 DR. MOCK: That was the basis of the
7 table.
8 HEARING OFFICER FAY: Okay.
9 DR. MOCK: But during our many many
10 thousands of hours worth of efforts none of these
11 species were detected with the exception of the
12 golden eagle, which we acknowledge in our reports
13 as being in the valley. We actually sighted them
14 on the northern end of the valley more toward the
15 northern end of the OptiSolar site, as well as the
16 very west end of the valley toward San Luis Obispo
17 and Paso Robles.
18 But we never saw the eagle actually fly
19 of the site. Okay. And we do address the eagle
20 in our report. We also address raptor foraging
21 habitat, which would cover all the other raptors
22 that might be on this list in terms of assessing
23 the issue of foraging habitat for birds of prey.
24 So rather than go specifically into a
25 specific species that might be flying over the

1 site, we talk about raptor foraging, as a guild,
2 as a foraging guild of a suite of species that
3 might use the site as a source of food. And we
4 address that issue specifically in our report.
5 HEARING OFFICER FAY: And has Fish and
6 Game given you any response?
7 DR. MOCK: I believe they agree with our
8 assessment in terms of raptor foraging habitat.
9 We conclude that it's a significant impact.
10 HEARING OFFICER FAY: They were
11 satisfied that the extent of your review --
12 DR. MOCK: We concluded 640 -- a loss of
13 640 acres of potential foraging habitat was a
14 regionally significant impact and deserves to be
15 mitigated for.
16 HEARING OFFICER FAY: And after you got
17 that input from Fish and Game, these were field
18 surveys done, correct?
19 DR. MOCK: Yes. We've done mammal
20 trapping and we did not detect any kangaroo rat on
21 the site. We have a total of four rodent species
22 that occur onsite, one of them being California's
23 ground squirrel, which is the most obvious rodent
24 detectable on the site. And then three other
25 small rodents that are only detectable through

traffic.

Ferruginous hawk is a wintering species. It doesn't breed anywhere near the site. It breeds farther north, and so it does occur in the project vicinity most likely, but we never detected it onsite.

Golden eagle, as I discussed previously, it occurs in the valley. It most likely nests somewhere in the hills, but could use the entire region within probably a 10,000-acre circle of its nest site as a potential area for foraging.

Loggerhead shrike is a fairly common species, although its density is low because it is a predatory species, as well. We did not detect it onsite. But we did detect it coming and going from where we were residing, maybe five miles away.

Mountain plover is a wintering species. That species is more likely distributed more south of the site, and are in the actual monument, and is not likely to use the active ag fields in any large extent.

San Joaquin whip snake, the suitable habitat is pretty limited in the California Valley. It is not likely to occur near the site.

1 We discussed the sphinx moth with Fish
2 and Wildlife Service and the BLM, who actually own
3 occupied habitat in the monument. And so far the
4 distribution of this specific sphinx moth is only
5 on the monument, itself, several tens of miles
6 away. And we did not find any indication of the
7 host plant that this species of sphinx moth
8 requires onsite, nor is the hydrologic conditions
9 suitable for it, as well, onsite.
10 Coast horned lizard is a fairly common
11 species that could potentially occur anywhere in
12 the valley, but we did not detect it during our
13 intensive surveys.
14 And the vesper sparrow, this is a
15 specific subspecies of vesper sparrow that breeds
16 up in Oregon and Washington, and maybe even more
17 southern -- northern areas of California. But
18 mostly in Oregon.
19 But it flies down during the winter and
20 intermingles with other subspecies of vesper
21 sparrow. So if we were to find a vesper sparrow,
22 we wouldn't know whether it was actually the
23 Oregon subspecies or not unless we actually
24 captured it and figured out whether it was or not.
25 But we did not find any vesper sparrows during our

efforts, and so we don't think that's an issue, as well.

And bald eagle. Bald eagle's interesting in that there's no suitable habitat for foraging for bald eagle. It associates with reservoirs and large lakes where it feeds on water fowl and fish. So it's not likely to be a significant resource area for the bald eagle in the center of an agricultural field.

HEARING OFFICER FAY: Okay. Anything further, Ms. Luckhardt?

ASSOCIATE MEMBER BYRON: Mr. Fay, could you identify the last speaker, please?

HEARING OFFICER FAY: Yes. Could you identify yourself?

DR. MOCK: Patrick Mock with URS.

HEARING OFFICER FAY: Anything further?

MS. LUCKHARDT: That's sufficient.

HEARING OFFICER FAY: Okay. And we'd like to ask if staff has any response.

MR. McCULLOUGH: This is Brian McCullough, biological resources, staff here at the Commission.

I would like to note that the Department of Fish and Game's letter of March 26th listing

these species, I believe, described them as known to be present on the site or in the area.

Staff has spoken with Department of Fish and Game Staff, as well as other biological resources staff here at the Commission who have observed several of the raptor species on or very nearby the project site. And so the potential does exist for the project to impact these species. And they will be addressed in our analysis.

HEARING OFFICER FAY: So you're basing --

ASSOCIATE MEMBER BYRON: I assume that was -- excuse me, this is Jeff Byron --

HEARING OFFICER FAY: Sure.

ASSOCIATE MEMBER BYRON: I assume it was staff responding. Can you also address the question that you have sufficient information at this time to make that analysis?

MR. McCULLOUGH: Through correspondence with the wildlife agencies.

HEARING OFFICER FAY: Does that mean you have enough now? Or you expect, by a certain time, you'll get enough?

MR. McCULLOUGH: Have enough now, I

1 believe.
2 HEARING OFFICER FAY: Okay, all right.
3 So is it staff's understanding that they will be
4 addressing the full range of species that CURE has
5 asked about in data requests 56 through 64?
6 MR. McCULLOUGH: Correct. Though, as
7 the applicant notes, there are species that no
8 suitable habitat exists onsite, such as the Kern
9 primrose sphinx moth. Botanical surveys did not
10 turn up any of the camissonia plant species that
11 are the host for this moth.
12 HEARING OFFICER FAY: Sure, but the --
13 and the question isn't, you know, what is the
14 detailed finding, --
15 MR. McCULLOUGH: Right.
16 HEARING OFFICER FAY: -- it's really, I
17 think, to have an explication of all the potential
18 species and how the project may or may not affect
19 them. And if there's no effect, then presumably
20 that's what you say.
21 MR. McCULLOUGH: Correct.
22 HEARING OFFICER FAY: But just to be
23 sure that there's no concern that something was
24 left unanswered.
25 MR. McCULLOUGH: While staff is

1 proceeding with its analysis, the record could
2 perhaps be strengthened regarding the information
3 that CURE has requested regarding some of these
4 species.
5 HEARING OFFICER FAY: Which ones?
6 MS. GULESSERIAN: Yeah.
7 MR. McCULLOUGH: Specifically bald
8 eagle, ferruginous hawk, golden eagle and the
9 loggerhead shrike and the vesper sparrow.
10 PRESIDING MEMBER PFANNENSTIEL: And
11 that's because based on your information, your
12 current information, those are, in fact, present
13 at the site?
14 MR. McCULLOUGH: Correct.
15 MS. LUCKHARDT: I'm just curious where
16 that's recorded. I mean we're looking at
17 California Natural Diversity database numbers;
18 we're looking at all kinds of information. We've
19 had folks out there days and days and days doing
20 surveys.
21 And all of a sudden we hear, oh, well,
22 no, we've actually seen them.
23 MR. McCULLOUGH: That's --
24 MS. LUCKHARDT: You know, --
25 MR. McCULLOUGH: -- and I --

1 MS. LUCKHARDT: For the first time we're
2 hearing this.
3 MR. McCULLOUGH: Well, and it is very
4 difficult to account for the knowledge and opinion
5 of experts who have spent time in the field if
6 that is not necessarily reflected or reported in
7 the Natural Diversity database.
8 HEARING OFFICER FAY: But that works
9 both ways. I mean, --
10 MR. McCULLOUGH: Yes.
11 HEARING OFFICER FAY: -- Fish and Game
12 experts, --
13 MR. McCULLOUGH: Yes.
14 HEARING OFFICER FAY: -- URS experts, I
15 mean --
16 MR. McCULLOUGH: As well as staff here
17 at the Commission who have seen ferruginous hawk
18 in the neighborhood of the project site.
19 HEARING OFFICER FAY: Okay, so it's
20 perfectly possible, is it not, that the URS
21 biologists could have been out there doing field
22 surveys at --
23 MR. McCULLOUGH: And, and --
24 HEARING OFFICER FAY: -- at a time that
25 there were none of these species present, so they

1 did not observe them --
2 MR. McCULLOUGH: Absolutely.
3 HEARING OFFICER FAY: Other staff from
4 other agencies at another time may have observed
5 them.
6 MR. McCULLOUGH: Correct, especially,
7 for example, some of the wintering species.
8 Biological surveys during the winter period were
9 limited in extent. And so the applicant's survey
10 efforts may not reflect the experience shared by
11 those who work in the area, such as the Fish and
12 Game Staff.
13 MS. LUCKHARDT: I guess our concern is
14 they haven't been documented; they haven't been
15 recorded. They're not anywhere where we can see
16 them. They weren't done as a part of a survey,
17 and they didn't even record them in the California
18 Natural Diversity database.
19 You know, it's just impossible for us,
20 at this point, to respond to issues like this when
21 they're brought up this way. That, well, oh, you
22 know, so-and-so saw it over here at one time. You
23 know, they didn't record it, they didn't document
24 it, they didn't provide any basis upon which we're
25 supposed to rely on in conducting our analysis.

1 I mean there has to be something, you
2 know, reasonable out there upon which we can base
3 our analysis. And, you know, --
4 HEARING OFFICER FAY: You based it on --
5 MS. LUCKHARDT: We based it on two years
6 of surveys.
7 HEARING OFFICER FAY: -- on meeting with
8 Fish and Game, saying here's what we plan to do,
9 is this all right with you, will this be enough,
10 and they said that looks like enough. And you
11 went and did it.
12 MS. LUCKHARDT: Well, and we searched
13 the California Natural Diversity database for
14 sightings and locations. And we had folks out
15 there for days on end. Were they there every
16 single day of every year, of course not.
17 But there are documentation avenues
18 available to people who are employees of Fish and
19 Game. You know, one would think would be capable
20 of recording this information. As opposed to
21 simply, you know, hearing about it here today for
22 the first time.
23 And not only that, Fish and Game asked
24 and requested that while we were doing our surveys
25 that we look for these species. So it wasn't just

a matter of oh, well, you know, we didn't see them. They were actually looking for them while they were out there.

These are many many hours of folks spent in the field doing this analysis.

HEARING OFFICER FAY: All right. I'd like to move on to the questions regarding bird mortality. Data requests 66 through 69.

MS. GULESSERIAN: Thank you. As we have talked about earlier, there is evidence that solar powered plants cause avian mortality from singeing of feathers, burning, -- and burning.

And the study that we've talked about recommends that future solar plants not be sited, as Jane mentioned, near open water. And also says not near agricultural fields. And we are in an agricultural area.

As a very important distinctions, as the applicant has pointed out, between the solar study that's been done and this project, and whether that helps us understand better the impacts from a solar project on bird species, is still unanswered.

Importantly, in that project, is a much smaller project with one tower; and this project

is 17 times larger with 195 56-foot tall towers. I also wanted to point out that there is a -- there's been some discussion that the tower at that other facility is much larger than this one.

However, there are other structures on this project site that are even taller than the 56-foot tall receivers, such as the air cooled condenser, which is -- I lost my cite since earlier today, but about 156 feet tall, or 150 -- 15 feet --

MS. LUCKHARDT: That's the --

MS. GULESSERIAN: -- feet tall.

MS. LUCKHARDT: -- air cooled condenser.

MS. GULESSERIAN: Air cooled condenser, thank you.

We requested a discussion of bird mortality from concentrated heat generated by the reflectors, monitoring data from similar solar facilities, or development of a monitoring plan to analyze whether the heat will cause significant impacts to birds.

And if it is determined that significant impacts will occur, the proposed mitigation measures to avoid the impacts from the heat.

The response was that there's no known

1 bird mortality from concentrated heat generated by
2 the reflectors. Even though other projects have
3 had bird mortality. That the technology in this
4 case is proven safe. But there's no data provided
5 to support the response.
6 That workers at an Australian facility
7 have witnessed birds flying between mirrors on
8 numerous occasions. I don't know if this is --
9 HEARING OFFICER FAY: Yeah, we've got
10 all those arguments --
11 MS. GULESSERIAN: I don't -- we don't
12 have any data responding to that.
13 HEARING OFFICER FAY: How does the
14 applicant show that their project is not going to
15 hurt birds from heat, because that is proving a
16 negative, isn't it?
17 MS. GULESSERIAN: They say that their
18 technology is proven safe and that burns won't
19 occur in this case.
20 HEARING OFFICER FAY: So you just want
21 it addressed --
22 MS. GULESSERIAN: They should describe,
23 they should describe, what is the heat --
24 HEARING OFFICER FAY: Okay.
25 MS. GULESSERIAN: -- generated by --

1 HEARING OFFICER FAY: The kind of thing
2 we've heard --
3 MS. GULESSERIAN: Do an analysis. What
4 is the heat generated by the mirrors concentrating
5 solar on 56-foot-tall receivers. What is -- there
6 must be some analysis or data to support the
7 applicant's response that there's no known bird
8 mortality from the heat generated by this
9 technology.
10 The response to the motion is -- there
11 isn't any data supporting their response that
12 there's no bird mortality from the heat, yet
13 there's a study out there that describes how solar
14 power plants cause -- singe feathers and bird
15 mortality.
16 So we believe that there's evidence of a
17 potentially significant impact on birds from heat
18 generated by solar plants. And we think it should
19 be analyzed for this proceeding.
20 HEARING OFFICER FAY: Okay. Ms.
21 Luckhardt.
22 MS. LUCKHARDT: Yeah, and in fact, I've
23 heard this before because this argument comes up
24 on other projects, as well.
25 This is avian mortality at a solar

energy power plant. The study that she refers to is addressing one solar power plant. It's addressing --

HEARING OFFICER FAY: This is Solar One?

MS. LUCKHARDT: -- Solar One. And as we described earlier, the Solar One project is a high-temperature solar application. We're talking about a low-temperature solar application here.

We are talking about a solar application in which the mirrors concentrating on the receivers are much fewer than the number of mirrors that are concentrating on the Solar One facility.

On the Solar One facility all of the mirrors focus on one location. They're in a circle around that location. They all focus on one location. They all focus on the tower. The concentration levels are much much higher there.

To say that this study, just because there's a study of Solar One that shows an impact, to say well, then that means that using Ausra's patented technology that there will be an impact at Ausra's project, when the difference in temperature is great, is --

HEARING OFFICER FAY: Do you know what

1 the temperature is on the Ausra facility?
2 MS. LUCKHARDT: 300 --
3 HEARING OFFICER FAY: 300 surface
4 temperature?
5 MS. LUCKHARDT: 350 degrees Celsius.
6 But that's on the --
7 HEARING OFFICER FAY: Is it --
8 MS. LUCKHARDT: But that's on the
9 underside. If you look at the picture it's on the
10 underside of the receiver, okay. And that's not a
11 place where a bird can get. Because the receivers
12 wrap around the pipes. And they're insulated.
13 And the receiver, where you see the bird
14 sitting on that, or the covering over the
15 receiving pipes is separated from the pipes,
16 themselves. And that's why a bird can stand on
17 the top of the covering and not have an impact.
18 Also, the focal point is very specific
19 from all the mirrors on the pipes, themselves. So
20 if you're flying underneath the mirrors you're not
21 at the exact focal point. So you're not getting
22 the same temperature from the concentration of the
23 mirrors at a different place.
24 There's a lot of effort put into
25 focusing the energy onto the pipes, themselves, so

1 you take advantage of that. Because that's the
2 whole point, is to focus the solar energy on the
3 pipes.
4 And so, you know, the comparisons are
5 very different. In Solar One the heat sensing
6 material is exposed. In this instance the birds
7 can't get to the pipes, themselves, because
8 they're underneath the receiver.
9 And the anecdotal evidence that we've
10 provided from Australia is the evidence that's out
11 there for this technology. That's what we have.
12 And we don't have singed birds.
13 I think another thing that was pointed
14 out was that, well, this report says you shouldn't
15 do it near an active ag field. Well, I'd like to
16 know that the active ag field they talk about,
17 they say abandoned or active ag fields, is
18 alfalfa. This is alfalfa farming in the Mojave
19 Desert.
20 Alfalfa, in general, takes a lot of
21 water. But when you put it in a Mojave Desert,
22 you're using an awful lot of water. The
23 California Valley farming is dry farming for the
24 most part. There are some vineyards in other
25 areas, but around this project it's all dry

farming.

So there isn't this sitting water that would attract water fowl to the area like there is around Solar One. So we are talking about a very different situation.

To simply take an analysis that was done at Solar One and say, well, that applies to your project, therefore you should do an extensive analysis and provide all this additional information is essentially asking us to prove a negative, to prove that birds will not be injured by low-temperature solar technology.

HEARING OFFICER FAY: Okay. Anything from staff?

MR. McCULLOUGH: Staff does acknowledge that the Solar One study is reflective of very different technology operating at very different temperatures and solar intensities.

However, a calculation reflect -- I shouldn't use reflective in this context -- a calculation that could demonstrate the proportionally lower exposure of bird species, I guess, flying through the area, or flying through the receiver structures to increased temperatures and sunlight would be beneficial.

1 HEARING OFFICER FAY: Relative to Solar
2 One, or --
3 MR. McCULLOUGH: Just absolutely.
4 HEARING OFFICER FAY: Okay, temperature
5 estimates, exposure estimates.
6 MR. McCULLOUGH: Exactly. Staff did a
7 back-of-the-envelope calculation over the weekend,
8 completely rough. Some of the mortalities that
9 were shown at Solar One were when the site was
10 coming online they would focus a quarter of the
11 receivers -- they would focus the receivers on
12 four separate standby points.
13 And so a quarter of the mirrors of the
14 field were focused just on the small areas. And,
15 of course, insects and birds that flew into this
16 extremely concentrated solar radiation got
17 toasted.
18 The approximate concentration was about
19 250 times solar intensity. This is just very
20 rough. Based on the geometry of Ausra's, staff
21 can't speak to the accuracy of this calculation,
22 but that Ausra is looking at closer to 25 to 30
23 times solar intensity.
24 And so while there may still be risk, it
25 is perhaps of a different type. And a calculation

1 reflecting the potential for increased solar
2 radiation and air temperatures would be helpful in
3 assessing the impacts of the project on birds.
4 HEARING OFFICER FAY: Just curious. Is
5 25 times solar intensity, does that pose a risk to
6 birds?
7 MR. McCULLOUGH: I don't know. I --
8 HEARING OFFICER FAY: You don't know,
9 okay.
10 Like to move on to the questions
11 regarding water quality. Anytime, Ms. --
12 MS. GULESSERIAN: Yeah, regarding our
13 data requests on the springs in the project area.
14 The applicant, we no longer have any requests for
15 information with regard to data requests 73 and
16 74. The applicant provided some additional
17 information in their response to our motion, which
18 satisfies our request at this time.
19 HEARING OFFICER FAY: Okay, so as to
20 data requests 73 and 74, you withdraw your motion,
21 is that correct?
22 MS. GULESSERIAN: Yes, correct. Thank
23 you.
24 HEARING OFFICER FAY: Okay, how about
25 75?

1 MS. GULESSERIAN: With respect to data
2 request 75 and 76, we believe that -- we've
3 identified additional wells in the project area
4 that were easily identifiable through a Public
5 Records Act request to San Luis Obispo County.
6 And we asked for a revised list of wells within
7 the project vicinity, and a revised analysis to
8 include those wells that we identified --
9 HEARING OFFICER FAY: You cited three
10 additional wells that you discovered. And
11 applicant talks about modeling analysis; it sounds
12 like kind of an envelope approach. Can you tell
13 us the reason why that would not account for an
14 additional three or more wells, that it wouldn't
15 cover it?
16 MS. GULESSERIAN: The more wells there
17 are in a groundwater basin the more extraction
18 there is from the groundwater basin is occurring.
19 So, depending on the assumptions used, it could
20 change the hydrological analysis.
21 HEARING OFFICER FAY: But their modeling
22 could include three more wells, is that possible?
23 MS. GULESSERIAN: If they revise it to
24 include those wells?
25 HEARING OFFICER FAY: No. I mean based

on the assumptions they used. The question that occurred to me was has this basically been addressed because their survey was not well-for-well, it was a model survey. Does three more wells even matter.

MS. GULESSERIAN: Our hydrological consultant believes that they have not been adequately addressed in the report.

HEARING OFFICER FAY: Anything further?

MS. GULESSERIAN: No, thank you.

HEARING OFFICER FAY: Okay. Ms. Luckhardt.

MS. LUCKHARDT: Okay. Generally, we've done quite a bit of work out in the area to identify wells and well locations. It's a difficult task because well locations and well data is kept confidential.

CURE was able to get some additional information through a Public Records Act request. That's great. We didn't use that particular method.

We actually asked the county for information and asked other agencies for information. We also went door-to-door, knocking on people's doors asking them if they had a well

1 and where it was, and that type of information.
2 There was quite a bit of work done in
3 this area because this is a concern to the local
4 community. They are concerned about their wells.
5 They want to make sure that the use of water for
6 this project will not impact their wells and will
7 not impact their water supply.
8 As a result there's been a very
9 extensive analysis. We prepared one detailed
10 hydrology report. We received comments from
11 staff, comments from members of the public. We
12 were able to get some additional information from
13 members of the public.
14 We went out and tried to get additional
15 information from any other source that we could
16 find to locate wells. And prepared a second
17 hydrology and hydrological report, revised and
18 filed in September of this year.
19 And so there's been a very extensive
20 effort made to find well information because it is
21 not readily available from a government source
22 because of the confidential nature of that
23 information.
24 But to be sure that there weren't any
25 impacts for wells that were not identified, the

1 report contains sensitivity analysis. And as part
2 of that sensitivity analysis there was a higher
3 level of water use that was modeled. And the
4 impacts do not show a problem.
5 Adding these three wells would not
6 change the modeling results. But what I'll do is
7 I'll let the experts on this explain, you know,
8 what an impact of three wells would or would not
9 have on the modeling that's been done.
10 HEARING OFFICER FAY: Yeah, because I
11 think you can tell, my concern is do we already
12 have this information.
13 DR. LaBOLLE: Yes. The model, itself,
14 which includes an analysis of pumping at three
15 different levels over the course of this work.
16 During the first submission there was pumping at
17 roughly 4000 to 5000 acrefeet per year. And then
18 in the last submission there was pumping at two
19 levels, 900 acrefeet per year and 2500 acrefeet
20 per year.
21 And this pumping is distributed over the
22 region. The cells in the model are large enough
23 that they may encompass one or more wells. So by
24 varying the pumpage in general over the model, and
25 at specific sites that is encompassing or includes

1 the possibility of multiple wells that were not
2 identified, and the data would include that, that
3 were used in the model.
4 And all the analyses show very similar
5 results, which are minimal impacts in the deeper
6 aquifer offsite, almost non-measurable beyond the
7 property boundary.
8 And the more recent analyses that
9 account for the change in recharge show water
10 level rise, actually, in the upper aquifer.
11 That's because the pumping is in the deeper
12 aquifers and the project, itself, actually is
13 projected to increase recharge. So the water
14 levels actually rise on the site.
15 MS. LUCKHARDT: I guess I'd just like to
16 clarify that there are two aquifers in this
17 instance. The local residential wells pump from
18 the higher aquifer which has the better quality
19 water. The aquifer that's proposed to be used for
20 this project is a lower aquifer that has a lesser
21 quality water.
22 And that's when Eric was referring to
23 the two different aquifers and the impact on them,
24 we're pumping from -- the project proposes to pump
25 from the lower quality water in the lower aquifer.

1 Whereas all the wells are in the upper aquifer.
2 DR. LaBOLLE: That's correct.
3 HEARING OFFICER FAY: And what would the
4 recharge come from?
5 DR. LaBOLLE: That's offset, I think,
6 due to some of the routing of surface water
7 onsite. It changes the infiltration rates. You
8 have increased infiltration onsite, the potential
9 for that.
10 HEARING OFFICER FAY: To the shallow
11 aquifer?
12 DR. LaBOLLE: To the shallow aquifer.
13 And that actually offsets some infiltration
14 downstream. So that's actually where it could
15 come from in theory.
16 The downstream area would be distributed
17 throughout the remainder of the basin on the way
18 to the lake, and it's substantial enough length
19 that it doesn't really impact the groundwater
20 levels downstream measurably.
21 So the changes in groundwater level that
22 would be expected are limited to near the property
23 boundary, itself, and their rise in the upper
24 aquifer.
25 HEARING OFFICER FAY: Okay. Anything

1 further?
2 MS. LUCKHARDT: We're fine.
3 HEARING OFFICER FAY: Okay. Staff, do
4 you have any response?
5 MR. KESSLER: I'll just point out that -
6 - this is John Kessler and I'm filling in for Mark
7 Lindley, our water specialist, but we generally
8 agree with the applicant here that they modeled
9 approximately 86 wells. An additional three wells
10 we don't believe would realize any, in terms of
11 sensitivity of the model, any significant change.
12 We also believe their estimate of water
13 currently withdrawn from the area of over 2500
14 acrefeet is conservative. It is an estimate on
15 the high side. So, again, it's another factor of
16 safety in this case.
17 We look at, just to clarify Eric's
18 concept of the groundwater replenishment of
19 recharge, that the site will be graded in such it
20 has a matrix of these retention basins. And so
21 rain, as it occurs, will capture that and store
22 the runoff to the greatest extent within each of
23 those separate retention basins over basically the
24 entire solar field. That water will infiltrate
25 back and recharge the upper aquifer.

1 And we're concluding -- I can give you a
2 preview of our PSA, that it will be a net gain in
3 the upper aquifer in terms of the water storage.
4 And as he pointed out, that the project will draw
5 from the lower confined aquifer. And we don't see
6 any significant impact from that.
7 HEARING OFFICER FAY: All right. Well,
8 thank you. That, I believe, covers all of the
9 data requests contained in CURE's motion to compel
10 answers.
11 And I would like to move to a discussion
12 about our schedule situation, unless any parties
13 have any objections. Okay.
14 Just for background, the Committee
15 issued a scheduling order on February 4th. And it
16 set various dates. And just as a landmark the
17 preliminary staff assessment was set to be
18 issued -- and this is based on input from the
19 staff -- was set to be issued June 1st.
20 So, the latest assessment by the staff
21 was that it's likely to come out November 20th.
22 And that's almost a six-month delay.
23 So we just wanted to kind of understand
24 what the factors are that's been slowing down the
25 process.

1 Mr. Kessler, can you help us with that?
2 MR. KESSLER: I'd be glad to. We just
3 distributed a updated schedule for the project.
4 And what's highlighted are some of the key
5 contributors towards schedule.
6 You'll see that the applicant did look
7 at modifying its proposed project orientation and
8 some components of that in response to comments
9 that it heard from the public and the agencies.
10 And so we received that back on July 3rd of this
11 year.
12 That generated two additional rounds of
13 data requests, set three and four, from staff. We
14 also conducted another data response and issue
15 resolution workshop -- actually that should say
16 number two, my copy-and-pasting didn't work out
17 here -- on August 5th. That was actually the
18 second workshop.
19 And so over the course that included the
20 applicant updating their hydrogeology model and
21 providing that update to us.
22 The applicant included in their revised
23 project description the addition of a standby
24 generator power supply. So that caused the need
25 to have a revision to the San Luis Obispo County's

1 APCD's authority to construct. And that was
2 issued as of September 29. We talk about the PDOC
3 oftentimes, the preliminary determination of
4 compliance.
5 So those are the -- and I guess, again,
6 on October 10th we can look to the -- we received
7 the 2008 bio survey report update. We conducted
8 some additional noise survey data. We wanted some
9 additional hours of data collected in the field.
10 We received that on October 16th this year.
11 So all those factors are pieces of
12 information that have contributed to us having
13 what we feel is an adequate coverage of data that
14 we can complete our analysis and publish the FSA,
15 or excuse me, PSA, which we're scheduled to do by
16 this Thursday, November 20th.
17 And I'll note that we also conducted the
18 first wildlife coordination meeting with the
19 agencies as of October 2nd. The second is
20 scheduled for a date to be determined in early to
21 mid December.
22 HEARING OFFICER FAY: And that's a
23 followup to the first one?
24 MR. KESSLER: Yes.
25 HEARING OFFICER FAY: And has there been

1 new data since it's been gathered --
2 MR. KESSLER: What's occurred thus far
3 is that we have identified what -- and pulled
4 together the data that we have at hand. We have a
5 lot of that data provided in GIS format, which
6 allow us to properly show it's aerial extent and
7 distribution and provide the data in layers of any
8 combination that we desire.
9 We've also brought on, in the course of
10 bringing onboard our corridor modeling specialist.
11 So the next meeting is expected to take what we
12 really added up in the first meeting back on
13 October 2nd was confirming the objectives of the
14 agencies, and identifying what data we had in
15 hand, and what else we needed to proceed. And
16 what would be kind of a rough scope of the study.
17 And the next steps will be bringing that
18 to, hopefully, a product that actually identifies
19 a more detailed scope. And we have identified at
20 this point that Fish and Game, it looks like, will
21 perform the modeling for us. They're geared up to
22 do this, and have some experience, with some
23 oversight or mentoring from the corridor
24 specialist that the Energy Commission is bringing
25 on as additional staff.

1 HEARING OFFICER FAY: And will the PSA
2 describe the kind of analysis that's anticipated?
3 MR. KESSLER: Brian's here, he wrote the
4 section.
5 MR. McCULLOUGH: Biological resources
6 staff, Brian McCullough. Yes, it will.
7 HEARING OFFICER FAY: Okay. So just
8 reading the PSA we'll know what to look forward to
9 in terms of the FSA?
10 MR. McCULLOUGH: Exactly. The thrills
11 to come.
12 HEARING OFFICER FAY: Yeah. Good.
13 Okay. Thank you.
14 Ms. Luckhardt, would you like -- do you
15 have any response regarding the scheduling
16 situation?
17 MS. LUCKHARDT: Well, you know, as most
18 projects are concerned, the schedule has slipped
19 quite a bit. And we do acknowledge that we
20 provided some additional information and modified
21 the project based on comments from neighbors and
22 other things that came in to the project, which we
23 think improved it.
24 I do think it is -- I have to say,
25 having licensed gas-fired power plants, that I

1 find it somewhat difficult to understand how a
2 standby generator could hold up the PSA. But I do
3 understand it needs to be included in the air
4 section of the staff assessment.
5 And I would like to note that the staff
6 data request set for 113 through 134, if I'm
7 recalling correctly, and John can correct me if
8 I'm not, primarily address, and they may entirely
9 address, corridor issues.
10 And so it really has to do with -- it
11 has less to do with the information that was
12 provided on this project for this project's
13 impacts, and more to do with the -- resulting from
14 the OptiSolar proposal.
15 So what we're looking at is some
16 additional work that staff is conducting,
17 including the corridor analysis that they've just
18 described. Which really has to do with the
19 cumulative impacts analysis, and wasn't driven
20 simply by this project or this project's, you
21 know, not answering requests for additional
22 biological information.
23 And I guess I'd just like to take a
24 minute, when we're talking about additional
25 biological information, at some point we have to

have enough biological information to go forward with this project. We can always go out and collect more. You can always do another survey. You can always do another analysis. You can always look at another species.

At some point we have to say we have enough to make a decision. We have a reasonable amount of information on which to analyze the impacts of this project.

So, our concern is that as these other projects come in, as requests for additional information keep coming, that the project will stall and it will not move forward. And we're very concerned.

And as we look at solar projects throughout the state, I just have to repeat this is on disturbed ag land. It's permanent disturbance is one section, you know. And at some point we need to say we have enough to do an analysis and move forward.

And our concern is that given staff's workload, which we understand, but makes it difficult for everyone, and given the need to move this project forward, that we don't want this project to stall. We're looking forward to seeing

1 that PSA that John's talking about, on November
2 20th. And then we're looking forward to moving
3 the process along at that point.
4 HEARING OFFICER FAY: Thank you. CURE,
5 any response on the schedule?
6 MS. GULESSERIAN: Yes. I just wanted to
7 point out that there have been additional -- there
8 was a supplement to the application for
9 certification that was filed with additional
10 project components. And that was anticipated. It
11 was discussed in the summer and anticipated in
12 June, but the applicant didn't submit it till
13 July.
14 And so there are project revisions that
15 have occurred within the recent months that have
16 required new analysis. And that would be a reason
17 for the -- part of the reason for the delay.
18 We are doing our best to evaluate new
19 information as fast as possible. There is updated
20 biological reports just submitted in October.
21 We're looking at, you know, a letter from the air
22 district regarding emissions from the project,
23 considering its proximity to residences and a
24 school which is located 1400 feet from the project
25 site.

1 This project is -- it's very important
2 that this project, this solar project, be done
3 right, rather than hurried to completion. We
4 believe that the issues that are on the table that
5 we've been discussing are relevant and important
6 to making the project have as few impacts as
7 possible in the local community and set a good
8 precedent for the slew of projects, solar power
9 plants, that are coming down the pipeline.
10 So we should not rush through the first
11 project without regard to proper analysis of
12 impacts.
13 This location is not disturbed ag land,
14 not controversial location for the project. It's
15 a highly controversial location for a project.
16 The community has been involved more than I've
17 seen at every workshop that has been held.
18 And that has been a part of the reason
19 for the length of time that is required to do the
20 analysis. And the Commission has found in
21 previous cases that the degree of controversy of a
22 case, you know, definitely takes more time to
23 respond to members of the public. And this is
24 such a case.
25 There are residences that are being

1 surrounded by proposed solar power plants
2 including this one. And a school located very
3 close by.
4 As far as CURE is concerned, we are
5 evaluating all of these issues, and the new
6 information that's been submitted as efficiently
7 as we can. And we appreciate your time today on
8 our motion to compel. Thank you.
9 MR. KESSLER: Hearing Officer Fay, if I
10 can just clarify. My memory is starting to
11 daylight a little bit here. But back when we
12 submitted our data request set four to the
13 applicant, the perspective of reasonably
14 foreseeable projects was also evolving.
15 At the time the AFC was prepared there
16 wasn't much, if any, information about the
17 OptiSolar project and the SunPower project.
18 But at this point in the juncture in our
19 proceedings we learned that the OptiSolar project
20 was near to being filed with the county. And the
21 SunPower was expected to be filed later this year.
22 So, at that point we changed our
23 perspective in terms of cumulative impacts for the
24 project and the analysis the staff would need to
25 carry out. And we asked the applicant in that

1 data request set four for a broad set of technical
2 analysis, not just bio, but to look at the whole
3 gambit of our technical areas from the cumulative
4 perspective.
5 And, of course, they were limited to the
6 information they had at hand, too. We did have
7 some draft application information for OptiSolar
8 at the time, which they were able to utilize, as
9 well. We still don't have SunPower's details. We
10 have sketchy information.
11 So they did the best, I think,
12 reasonably possible job in terms of responding to
13 that. But we're still filling in some gaps with
14 that, and we'll be able to do more so in terms of
15 the FSA, once particularly we have the SunPower
16 application and we see the details of it, as well.
17 HEARING OFFICER FAY: And do you have an
18 estimate of when the SunPower application is going
19 to be filed?
20 MR. KESSLER: Well, the last I
21 communicated with the project developer, he
22 expected to file by the end of October. I don't
23 believe that's occurred yet. And so as we've seen
24 with some of the other projects like OptiSolar, we
25 heard next week for several months.

1 HEARING OFFICER FAY: But you do have
2 basic information --
3 MR. KESSLER: But I believe it'll be
4 this year.
5 HEARING OFFICER FAY: -- don't you? The
6 type of technology, the acreage involved?
7 MR. KESSLER: We do have that rough
8 information. And I would also characterize that
9 there was a number of factors contributing to, or
10 points of information we were looking for, and not
11 just the air permit from the county. But
12 certainly the bio survey, the updated hydrogeology
13 report, which all came within the same two- or
14 three-week timespan. All were points of necessary
15 information we needed to complete our analysis,
16 and bring what we felt was a reasonable product in
17 the PSA forward.
18 Thank you.
19 HEARING OFFICER FAY: Okay.
20 PRESIDING MEMBER PFANNENSTIEL: Now, I'd
21 just comment I'm disappointed that this has gone
22 on as long as it has. I can see this six-month
23 slippage so far.
24 But when you look at the schedule and
25 the events that have happened, you can sort of

1 understand why. Some of it is the fact that it's
2 a newer technology in that area.
3 I think that this concern with the
4 biological issues and the wildlife coordination
5 meetings clearly this is new to everybody, and we
6 need to go through it.
7 And then the issue about it being part
8 of many other solar projects that will be in that
9 area.
10 So I can understand it. I think it's a
11 shame and I'm hoping that we have learned enough
12 to be able to move forward somewhat more
13 expeditiously.
14 HEARING OFFICER FAY: Commissioner
15 Byron, did you want to say anything?
16 ASSOCIATE MEMBER BYRON: Please, I
17 apologize for the noise, the background noise.
18 Are we just about wrapping up then with regard
19 to --
20 HEARING OFFICER FAY: Just About. I'm
21 going to take a couple of comments, but I just
22 wondered if you --
23 ASSOCIATE MEMBER BYRON: Well, let me
24 say this. You know, Madam Chairman, I agree with
25 your comments. And, Gary, I -- Mr. Fay, I thank

1 you for conducting a very thorough accounting this
2 morning on this motion.
3 There's one issue I'd like to bring up
4 that has not been discussed today, that both the
5 intervenor and the applicant have raised in their
6 written comments, and that is this, another
7 potential reason for this additional data
8 requests, which I believe the applicant referred
9 to as a fishing expedition. Maybe it's better
10 referred to as an avian (inaudible) --
11 (Telephonic interference.)
12 ASSOCIATE MEMBER BYRON: -- you know,
13 alibi -- I was looking for some alliteration.
14 While I, of course, consider the motion by CURE on
15 its merits, this does stress the limits of
16 credibility to some extent when an attorney
17 representing a labor union is so focused on the
18 potential impact of a solar power plant on birds.
19 So, basically when on other projects for
20 which there's a -- labor agreement already in
21 existence, we haven't seen these kinds of
22 requests.
23 So, perhaps I'd ask one last question of
24 the applicant --
25 (Continuing telephonic interference.)

1 ASSOCIATE MEMBER BYRON: -- that you may
2 or may not feel is relevant, but since you both
3 brought it up in your documents, if Ausra had
4 entered into a labor agreement would CURE have
5 made these additional data requests?
6 MS. LUCKHARDT: I'm sorry, I didn't
7 catch all that. You might have to repeat that.
8 ASSOCIATE MEMBER BYRON: I'll repeat my
9 question. And that is if Ausra had entered into a
10 labor agreement would CURE have made all of these
11 additional data requests.
12 MS. LUCKHARDT: From our perspective we
13 don't believe that it would have. You know, I
14 think to get their perspective you might, you
15 know, might ask --
16 ASSOCIATE MEMBER BYRON: Yes. I'm
17 sorry, Ms. Luckhardt, that's actually who I was
18 looking for a response from, was from CURE.
19 MS. GULESSERIAN: Thank you for the
20 question. This project -- your question is if
21 Ausra had entered into a PLA would CURE have
22 entered -- submitted data requests. Okay.
23 CURE, as the Commission knows, has
24 participated in numerous proceedings. We've been
25 evaluating this project since we intervened.

1 The --

2 ASSOCIATE MEMBER BYRON: I'm well aware

3 of all of CURE's previous involvements in

4 applications before this Commission. I would just

5 appreciate a simple yes or no, if you could.

6 MS. GULESSERIAN: I can't answer the

7 question because I don't know, I can't -- it's a

8 little bit vague. But I can tell you that this

9 project is the precise type of project where CURE

10 has a very strong economic and environmental

11 interest in the outcome of the case.

12 And that is because we are concerned

13 that projects that move forward in the Carissa

14 Plain -- I mean there's three, there's three

15 projects currently moving forward. And if any one

16 of those projects moves forward without minimizing

17 its impacts on the care and capacity of this

18 state, then the other projects don't move forward.

19 If one project -- and that has both

20 environmental impacts and it has economic impacts

21 because future jobs will be lost with projects

22 that don't move forward.

23 So this particular case is very

24 important to CURE. And that is why we're

25 participating in this proceeding.

1 HEARING OFFICER FAY: Anything further,
2 Commissioner Byron?
3 ASSOCIATE MEMBER BYRON: No. Again,
4 thank you, Mr. Fay, for conduct a thorough
5 hearing. I've got answers to all the questions I
6 had coming into it.
7 HEARING OFFICER FAY: Okay, thank you.
8 Now, I'd like to ask if anybody's on the
9 line who would like to make a comment at this
10 time. Ms. Bell, are you there?
11 MS. BELL: Yes, I would. Or, yes, I am,
12 and yes, I would like to make a few comments.
13 HEARING OFFICER FAY: Go ahead.
14 MS. BELL: Okay. First of all, I took
15 some notes throughout this, and I just want to
16 address some general issues and statements that
17 have been said.
18 First of all, the project site, Ms.
19 Luckhardt had said was tilled three times a year
20 and is heavily disturbed. The project site has
21 not been tilled in at least three years, and is
22 currently not farmed, it is just grazed.
23 I'd also like it clear that it is not
24 California Valley. California Valley is a
25 subdivision of 2.5-acre parcels that's five miles

1 away. This area is the Carissa Plains and
2 referred to, our community there is referred to as
3 the Carissa Plains.
4 And Ms. Luckhardt also said that Ausra
5 had been very concerned about responding to public
6 questions. While it has responded to many of our
7 questions, we feel they have been dismissive on
8 several of them.
9 And we are very concerned about the
10 quality of their biological studies. Particularly
11 I can comment on the golden and bald eagles. I've
12 made -- probably in the last year I've made eight
13 to ten trips down Tracy Lane along the eastern
14 border of the project site.
15 And three of those times I have seen a
16 pair of golden eagles on the project site, myself.
17 On the ground, I assume they were eating.
18 And also on highway 58 approximately one
19 mile from the project site, the power poles that
20 are along the road are a regular perching site for
21 bald eagles. So the applicant's biological
22 consultant that says this is not a site for bald
23 eagles, I've seen them at least two dozen times in
24 the past year sitting on those telephone poles.
25 And many other residents can verify their

1 inhabitance of this area.
2 Let's see. I also am concerned about
3 Ms. Luckhardt's statements that this project alone
4 does not impact the migration corridors. Since
5 there has been no migration corridor study, I'm
6 wondering how she could make that comment.
7 Also, especially given that the
8 preliminary map published by the Energy Commission
9 show that the primary crossing of highway 58,
10 directly onto the project site, of the prong horn
11 antelope, that that's their major crossing at 58.
12 And if anyone was familiar with the area
13 they would understand that they cross there due to
14 the lack of residences and human inhabitance --
15 and it allows them to cross through the low level
16 of the valley. So I'm hoping that migration
17 corridor study will help clarify that.
18 And the public would like to be kept
19 apprised of how that migration corridor study is
20 proceeding. And we're glad to hear that it will
21 be covered in the PSA.
22 And I'm also -- we're very concerned
23 about the condor recovery. And am wondering if
24 the project site is a prime crossing for the prong
25 horn antelope and they are, in fact, food for the

1 condors, couldn't that possibly have an effect.
2 And I'd also like to disagree about the
3 well report studies. We feel that the applicant
4 did not invest very extensive research on wells.
5 For instance, they said they did a door-to-door
6 study. Well, many places have wells with no
7 homes. Perhaps something more adequately should
8 have been done as a mailer to landowners that
9 might have -- a questionnaire that could have been
10 filled out and returned.
11 Let's see, finally we'd just like to
12 state that we only have one time to do this right.
13 And this is our community. We're concerned about
14 our environment, our personal health and safety.
15 And there is no reason for any shortcuts to be
16 taken on this -- about getting this done in a
17 timely manner. We should be getting this done
18 right.
19 Thank you very much.
20 HEARING OFFICER FAY: Thank you, Ms.
21 Bell. Is any --
22 ASSOCIATE MEMBER BYRON: Mr. Fay, I
23 apologize for interrupting, but I need to get off
24 the phone. I'll go ahead and read the rest of the
25 transcript (inaudible). Thank you.

1 HEARING OFFICER FAY: Thank you.
2 MR. NAFICY: Mr. Fay.
3 HEARING OFFICER FAY: Yes.
4 MR. NAFICY: This is Babak Naficy; I've
5 been on the phone, unfortunately not from the very
6 beginning. I --
7 HEARING OFFICER FAY: Hello, and welcome
8 back to the Energy Commission.
9 MR. NAFICY: Thank you very much. And
10 so I'm not sure if everyone, since we sent it out
11 on Friday kind of late in the day, I'm not sure if
12 everyone has seen --
13 HEARING OFFICER FAY: Mr. Naficy, let me
14 just go over -- I think you missed my introductory
15 comments. We acknowledge receiving your petition
16 to intervene from the Environmental Center, and
17 also your arguments in support of CURE's motion to
18 compel, both of which were filed Friday.
19 And we're taking the petition under
20 advisement and we will be responding to it. We
21 normally wait ten days to see if there's any
22 objection. But we just sent one out yesterday for
23 the Salinan Tribe. And so you can anticipate
24 about a week and a half receiving a response on
25 that.

1 MR. NAFICY: I appreciate that, Mr. Fay.
2 And I do apologize for not being online at the
3 very beginning.
4 HEARING OFFICER FAY: Not a problem.
5 MR. NAFICY: I did just want to add very
6 briefly a couple of comments. I heard some
7 concerns about CURE's motivation and whether these
8 issues would have been raised.
9 Now, on behalf of ECOSLO, I do want to
10 express our disappointment in not having been able
11 to get involved in this case earlier. But I can
12 assure the Committee that ECOSLO is very much
13 concerned about these and other biological issues,
14 as well as other issues relating to water and air
15 and other environmental impacts.
16 And had we been able to participate
17 sooner, we probably would have raised similar, if
18 not the same, issues in the course of the data
19 request process.
20 As far as the substance of the issues, I
21 do sense that there is this misconception about
22 the quality of the habitat on the side relative to
23 say the Carissa Plain. I heard it mentioned that
24 well, this area has been grazed, whereas, you
25 know, it's not as pristine as the Carissa Plain,

1 itself.
2 The Carissa Plain, itself, actually has
3 been rather continuously grazed under the auspices
4 of the Fish and Wildlife Service, ostensibly to
5 protect and enhance the habitat for many many of
6 the endangered species that inhabit there.
7 So the idea of grazing as somehow being
8 incompatible with habitat values is simply not --
9 doesn't hold true in this area.
10 And I am also, I must admit, again, you
11 know, I have a, you know, rather steep learning
12 curve here, but I was surprised at how the
13 applicant's attorney was dismissive of the
14 potential environmental or biological value of
15 this creek that is at issue here.
16 But I was reviewing over the weekend
17 some of the letters that they had sent to the
18 Corps urging the Corps to find jurisdiction. And
19 as part of that, there was this really strong
20 emphasis on the potential biological value of
21 resources associated with the very creek now, that
22 they argued that shouldn't be surveyed for the
23 toad.
24 So, I just think that, you know, you
25 really have to -- you can't have different

1 analysis depending on the context. And so I do
2 support the need for further studies for the toad,
3 particularly; but, you know, generally the other
4 issues regarding many of the special concern
5 species that CURE has brought up.
6 I, myself, have frequently gone to
7 Carissa and driven through 58. And I've seen any
8 number of raptors there. And so I do believe that
9 it's sort of inconceivable that they don't use
10 this project area at least for foraging.
11 Having said all that, and in light of
12 the thorough discussion that already has taken
13 place, I will limit my comment. But I do want to
14 express ECOSLO's very sincere gratitude for your
15 consideration of its application. And the promise
16 that we would vigorously and actively participate,
17 and hopefully can -- the whole process could
18 benefit from that participation.
19 HEARING OFFICER FAY: Well, thank you,
20 Mr. Naficy. We appreciated your participation in
21 the Morro Bay case, and look forward to seeing you
22 in this case.
23 MR. NAFICY: Thank you.
24 HEARING OFFICER FAY: Thank you.
25 Anybody else on the line that wishes to make a

1 comment?

2 Okay. I don't see any manifestations of

3 anybody needing to say anything further, so I

4 think we've been here long enough. We are

5 adjourned.

6 (Whereupon, at 11:50 a.m., the hearing

7 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 25th day of November, 2008.

PETER PETTY