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BUSINESS MEETING

BEFORE THE

CALIFORNIA ENERGY COMMISSION

In the Matter of:)
)
Business Meeting)
_____)

CALIFORNIA ENERGY COMMISSION

HEARING ROOM B

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

THURSDAY, OCTOBER 28, 2010

10:00 A.M.

Reported by:
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COMMISSIONERS PRESENT

Karen Douglas, Chair
James Boyd, Vice Chair
James D. Byron
Anthony Eggert

STAFF PRESENT

Jennifer Jennings, Public Advisor
Jonathan Blees, Counsel
Harriet Kallemeyn, Secretariat

John Sugar
Paul Kramer
Caryn Holmes
Christopher Meyer
Kristin Driscoll, Chief Counsel's Office

OTHERS PRESENT (* via WebEx)
(Interveners)

Ella Foley Gannon, Counsel to Tessera Solar
Felicia Bellows, V.P., Product Development, Tessera Solar
Loulena A. Miles, CURE
Joshua Basofin, Defenders of Wildlife
*Kevin Emmerich, Basin and Range Watch
Travis Ritchie, Sierra Club
*Bart Brizzee, Deputy County Counsel, San Bernardino County
Cynthia L. Burch, BNSF Railroad
Wayne Weierbach, Newberry Community Services District

PUBLIC:

Fred Stearn, Newberry Springs Realtor

I N D E X

	Page
Proceedings	5
Items	
1. Energy Efficiency And Conservation Block Grant Program Guidelines. Possible adoption of changes to the Energy Efficiency and Conservation Block Grant Program Guidelines to clarify conditions under which partnerships and individual jurisdictions may be reimbursed for expenses incurred before the execution of a funding award agreement.	5
2. Energy Efficiency And Conservation Block Grants. Possible approval of an Energy Commission resolution to revise grant agreement terms, as necessary, to clarify the conditions under which partnerships and individual jurisdictions may be reimbursed for expenses incurred before the execution of the grant agreement.	15
3. Calico Solar Project (08-AFC-13). Possible approval of the Presiding Member's Proposed Decision and possible Errata for the Calico Solar Project. The proposed project will be constructed on an approximate 4,613-acre site in San Bernardino County approximately 37 miles east of Barstow, on lands managed by the Bureau of Land Management.	17
4. Chief Counsel's Report:	97
a. California Communities Against Toxics et al v. South Coast Air Quality Management District (Los Angeles County Superior Court, BS124624);	
b. Western Riverside Council of Governments v. Department of General Services (Riverside County Superior Court RIC10005849);	
c. In the Matter of U.S. Department of Energy (High Level Waste Repository),(Atomic Safety Licensing Board, CAB-04, 63-001-HLW);	

I N D E X

Items	Page
4. Chief Counsel's Report (continued):	
d. Public Utilities Commission of California (Federal Energy Regulatory Commission, Docket No. EL10-64-000); and Southern California Edison Company, et al. (Federal Energy Regulatory Commission, Docket No. EL10 66 000).	
Adjournment	148
Certificate of Reporter	149

P R O C E E D I N G S

OCTOBER 28, 2010 10:08 A.M.

CHAIRMAN DOUGLAS: Good morning. Welcome to the California Energy Commission Business Meeting of October 28th, 2010.

Please join me in the Pledge.

(Whereupon, the Pledge of Allegiance was received in unison.)

CHAIRMAN DOUGLAS: Good morning. We'll begin with Item 1 on the agenda. Energy Efficiency And Conservation Block Grant Program Guidelines. We are waiting for John Sugar – we are waiting for the person who is going to present. We'll pause for a few minutes, but I wanted to get it started so people in the phone didn't wonder where we were. [Pause]

Possible adoption of changes to the Energy Efficiency and Conservation Block Grant Program Guidelines to clarify conditions under which partnerships and individual jurisdictions may be reimbursed for expenses incurred before the execution of a funding award agreement. Mr. Sugar.

MR. SUGAR: Thank you. Is this on? There we go, thank you. This is quite antique. Madam Chairman, Commissioners, I am John Sugar from Commission staff. In May, the Commission finished approving Energy Efficiency

and Conservation Block Grant Awards for 208 small jurisdictions and partnerships of small jurisdictions. For the grant recipients, complying with Federal requirements has made the application procedures, Commission approval, and the path to final contract execution slow and complicated. This entire process has been considerably more time consuming and labor intensive than either the Commission or local jurisdictions had anticipated.

Our existing Guidelines for the Block Grant Program allow the Commission to pay expenditures only after the contract is fully executed with the signatures of both parties. We're encountering two situations with some of these applications. The first involves partnerships in which one recipient is managing grant funds for a number of jurisdictions. These applicants developed information on multiple projects. In at least one case, the efforts required extensive staff time and travel to complete the grant application. The second situation involves individual jurisdictions, where the grant recipients began work after the Commission approved of the grant, but before the contract was fully signed and executed. These jurisdictions appear to have acted in good faith, they were under pressure to get projects going. The jurisdictions which moved quickly risked

having to pay for projects for which they had no internal resources. Denying payment for these expenses conflicts with the program goals of creating jobs and helping local jurisdictions save energy. The impacts of the Commission rejecting these expenses would range from staff lay-offs to local financial hardship.

In order to keep our program moving ahead in these situations, staff recommends that the Commission adopt the proposed guideline changes. These will allow reimbursing partnerships for legitimate expenses incurred in preparing their applications and satisfying Federal requirements, and reimbursing individual Grantees for legitimate project expenses incurred following Commission approval of the grants prior to their final execution. Thank you.

CHAIRMAN DOUGLAS: Thank you.

MR. BLEES [presumed]: And Chairman Douglas, if I could, I just wanted to make a comment on the record about the applicability of CEQA to the proposed revisions.

VICE CHAIR BOYD: You have to turn your mic off, so his mic will work, John.

MR. BLEES: Thank you. The California Energy Commission's Legal Office has considered the application of the California Environmental Quality Act to the

adoption of the proposed revisions to the Energy Efficiency and Conservation Block Grant Guidelines and find that the adoption of these revisions is exempt from CEQA because it is not a project subject to CEQA, pursuant to Title 14, California Code of Regulations Section 15378(b)(4) in that it relates to the creation of government funding mechanisms or other government fiscal activities which are not about any commitment to any specific project which may result in a potentially significant physical impact on the environment, and also because it falls within the so-called common sense exemption pursuant to Title 14 in the California Code of Regulations Section 15061(b)(3), which indicates that CEQA only applies to projects that have a significant effect on the environment, which is defined in Public Resources Code Section 21068 and in Title 14, California Code of Regulations Section 15382, as being a substantial or potentially substantial adverse change in the environment. Thank you.

CHAIRMAN DOUGLAS: Thank you. Could you turn your mic off, please? This is a really great way of making sure people don’t talk over each other. Commissioners, I wanted to say a few words on this topic. The Federal Stimulus Committee has thought long and hard about this item. We, the Commission, used to have a

practice of allowing work to begin at times before final execution of contracts, and tightening that up and requiring jurisdictions to wait until contracts were fully executed and signed by both parties was viewed by the Commission and certainly continues to be viewed by me as a good practice and an important practice, and something we should maintain. However, under these circumstances where local jurisdictions who, quite frankly, had the rules changed on them multiple times in the course of beginning and ending a grant application that took far longer and was more complex than any of them probably anticipated, in an environment where the pressure to move quickly and get projects on the ground, and get people working, was very very intense. I'm prepared to recommend and ask for your support for this item. I think that our practice of waiting for execution of contracts is a good practice, but in this case, there are some very compelling equity issues involved and I think we should go ahead and change the Guidelines to allow us to reimburse some of these legitimate costs.

COMMISSIONER EGGERT: So this is Commissioner Eggert. I just want to express my support for this item, as well. As Chair Douglas mentioned, the Stimulus Committee had considered this and taken in very good consult from our staff and legal division. I think,

particularly, this is specifically intended to address the local governments that are doing their best to try to establish these programs to develop energy efficiency activities within their jurisdictions, and especially in the time of challenged budgets, we're trying to be as helpful to them as possible, consistent with the mission of the Federal Stimulus Program, which is intended to maximize the energy savings and the benefits to California consumers. So, that's all.

VICE CHAIR BOYD: Having heard from the two members of the Committee who are recommending the item, I want to commend you for the effort you've made to look at this issue, and I want to commend you for the recommendation you are making today. And while, Madam Chair, I agree with your comments about we need to be concerned about relaxing existing rules and regulations, I want to put you and my fellow Commissioners on notice that I'm kind of looking at this as perhaps the beginning of a few other changes we might consider. I think I've observed during this whole process of dealing with the Economic Stimulus money and our own 118 program money, a government that is so risk adverse now that it is really hard to move at a time when we want to move money rapidly, first just to execute programs, but most importantly with Economic Stimulus, to stimulate the

economy and make jobs, and what have you. So, I really appreciate the recommendation you're making, but I do think we need to look at this as it applies to some of our other programs because those of us inside here are very frustrated day in and day out by our inability to move things for maybe honest concerns, but I think maybe we can work our way around some of those concerns and move things a little more rapidly, so I'm putting the Acting Deputy Director on notice that I would hope we look at some other areas, some of which you're intimately familiar with from your experience and research, and others that are of parallel interest in the 118 program, to see if we can come up with some exceptions and some streamlining that will help the people on the other end of the situation. I mean, we have rules that prohibit people from even spending their own money at their own risk on a project, in anticipation of receiving a grant from us. That is, if they spend that money, they're not allowed to claim it ever. Some of those things frustrated me somewhat, so let's hope we can address some of that. Thank you for providing me the opportunity and the excuse and the forum for putting this on the record.

CHAIRMAN DOUGLAS: Thank you, Commissioner Boyd, and I definitely hear and share some of your concerns, and it's always about balance between being

very careful with public funds and doing our job, which in the case of the Stimulus is to get money into the economy and stimulate the economy. Of course, the Stimulus Act itself contains those two contradictory or somewhat contradictory mandates, thou shalt move very very very quickly and stimulate the economy, thou shalt account for every penny of public funds, in new and very very very meticulous ways all the way through the chain of grantees and sub-grantees and contractors and subcontractors, to the very end of the life of this money. So, it's important that there is attention between those requirements, it's important we look at it, and, of course, we are planning to initiate a review of things that we could do better in our contracting process, and that's really from beginning to end. Our rules, the State's rules, are we practicing, are we up to best practices of the rest of the State, are there things we could do better? Are there areas where we might even recommend legislation? So, I really look forward to engaging in that. Commissioners, any other discussion on this item?

COMMISSIONER BYRON: Madam Chair, a couple of questions. I was fortunate to, I suppose, in that I didn't hear a lot of these concerns and complaints in my office, but I'm not surprised, and like Commissioner

Boyd, I'm glad that we're making these changes. But a couple of quick questions. Are we in complete compliance with all the Federal ARRA Block Grant requirements in making these changes?

MR. SUGAR: We've contacted the Department of Energy when these issues started to come up and, as far as they're concerned, from the mails we've received, these are appropriate uses of their funds.

COMMISSIONER BYRON: And were there other changes that may have been considered or actually should have been considered? Will we be seeing more changes, perhaps?

MR. SUGAR: The changes that we're bringing forward here allow for partnerships to be reimbursed for expenses that were incurred prior to Commission approval. We have a couple of situations where jurisdictions, where the individual jurisdictions, went ahead and began projects prior to Commission approval. They did work that was on their application and which was later approved, and we're still wrestling with those. Again, we face a situation where it appears they went ahead in good faith. We have not worked with them before, so they're not familiar with our – at least the Commission's – processes. And they had projects that, in one case, I believe an air-conditioner broke down that they were

planning to replace, and they're in a hot part of the State that required – they had to replace it. So, we're trying to determine whether we go along or not, with the Chief Counsel's Office, what the situation is there and whether we should come forward asking for the opportunity to reimburse them.

CHAIRMAN DOUGLAS: John, if I can – let me – and I think, Commissioner Byron, I believe it was an air-conditioner in a Senior Center, was that right?

MR. SUGAR: I believe –

CHAIRMAN DOUGLAS: And so it was the sort of decision, are we really going to tell them that they shouldn't replace an air-conditioner that broke down in a Senior Center because they hadn't fully executed their contract. That was one of the issues that came to our attention. And, John, maybe before I hand it back to Commissioner Byron, whose questions I've broken into, maybe you could remind us all how many local governments have signed agreements with the Energy Commission to execute projects?

MR. SUGAR: We have approximately 170 agreements signed. I had to turn to John Butler, who I guess is in our moving target.

COMMISSIONER BYRON: So that's 170 out of the 208 recipients?

MR. SUGAR: Out of the 208 recipients. And we anticipate getting the addition 38 in.

COMMISSIONER BYRON: One last question, Mr. Sugar. Why is it that we received this so late?

MR. SUGAR: My oversight.

COMMISSIONER BYRON: Okay, thank you.

VICE CHAIR BOYD: He just took the bullet.

MR. SUGAR: It's honestly there.

COMMISSIONER BYRON: And I'm feeling the pain. Okay, thank you. I would like to go ahead and move the item.

VICE CHAIR BOYD: Second.

CHAIRMAN DOUGLAS: All in favor?

(Ayes.)

VICE CHAIR BOYD: Did you hear all those, if we're only going to do one mic –

CHAIRMAN DOUGLAS: If there's a way to set up the system so we can have more than one or two microphones on if possible?

MR. KRAMER: No, I think there are two ways to set it up and you haven't set the wrong way.

CHAIRMAN DOUGLAS: All right, well, if we could set it the right way next time we have a business meeting, it would be great.

Item 2. Energy Efficiency And Conservation

Block Grants. Possible approval of an Energy Commission resolution to revise grant agreement terms, as necessary, to clarify the conditions under which partnerships and individual jurisdictions may be reimbursed for expenses incurred before the execution of the grant agreement. Mr. Sugar.

MR. SUGAR: Madam Chairman, Commissioners, I'm John Sugar with Commission staff again. In order to implement the Guideline changes that you've just approved, staff must amend existing agreements with local jurisdictions. If you approve this resolution, Commission staff will proceed to amend the agreements with the partnerships and individual jurisdictions that have been affected. If you do not approve this resolution, we will amend the agreements and will bring them individually to the Commission as they're drafted.

CHAIRMAN DOUGLAS: Thank you, Mr. Sugar. Questions or discussion, Commissioners? My recommendation would be that we give staff the discretion to move forward by amending this resolution, rather than hearing them one by one, but I would entertain going another way.

COMMISSIONER BYRON: So, it's amending a resolution, but, really, I think it's a resolution that amends the EECBG, program funding agreements. Is that

correct?

CHAIRMAN DOUGLAS: Yes.

VICE CHAIR BOYD: Hearing no discussion, I'll move approval.

COMMISSIONER EGGERT: Second.

CHAIRMAN DOUGLAS: We have a motion and second, all in favor?

(Ayes.)

The item is approved. Thank you, Mr. Sugar.

MR. SUGAR: Thank you.

CHAIRMAN DOUGLAS: Item 3. Calico Solar Project (08-AFC-13). Possible approval of the Presiding Member's Proposed Decision and possible Errata for the Calico Solar Project. Mr. Kramer.

MR. BLEES: Excuse me, Chairman Douglas, Kristin Driscoll and Jennifer Martin-Gallardo spearheaded the Chief Counsel's Office advice to the Calico Committee, so I'm going to ask them to come up here.

CHAIRMAN DOUGLAS: Thank you, Mr. Blees.

MR. KRAMER: Good morning. I'm Paul Kramer, Chief Hearing Officer and Hearing Officer for this Calico case. we are representing the Committee of Commissioner Eggert, Presiding, and Commissioner Byron, the Associate member. This is a solar Stirling engine project similar to the Imperial Valley Project that you heard about over

a month ago, same technology, same developers, same basic capital. They are currently proposing roughly a 664 megawatt project on approximately 4,600 acres. The local is about 37 miles east of the City of Barstow, just to the north of Highway Interstate 40 which heads out towards Needles. Unfortunately, the mouse isn't long enough, or the microphone cord, but the illustration we have up on the screen, and those of you who are at home who are using WebEx will see, as well, is a map of the project. When you look at the gray colored lines, you can see the various iterations of the project over time. It began as a roughly 850 megawatt project, which would have it going – there's a hatched area that is not apart, but it's private lands, but to the left or to the west of that, it went nearly to the top of the drawing, and then again on the east of the non-private area, it also went up nearly to the top of the drawing, and then quite a bit to the east, eventually coming back on a diagonal down towards the Interstate 40. That was about 8,000 acres, somewhere in that vicinity. One of the problems with that, that was discovered during the course of the case, was that that brought the project very near to the base of a mountain range, and the Federal Wildlife agencies and perhaps our own staff, as well, expressed a concern that that was going to cut off migration patterns for

various species, Big Horn Sheep being one of them, but even the Desert Tortoise, which is moving here as the main focus -– one of the main focuses -- along with the sheep, of the discussions in this case. So, the Applicant in their first iteration to try to reduce some of the effects that the project was causing brought the limits down. There is a gold line on the screen that is somewhat below the purple line, which was the original boundary. And that's basically what went to hearings, but the Committee, after considering the impacts and the effects of the project, decided that was too big a footprint and, in early September, we sent out an Order suggesting to the parties that they – I suppose primarily to the Applicant – but that they consider a further reduced footprint for the project, and that is what is before you today. They actually came up with about six options and the one that the Committee is recommending for your approval is actually kind of a hybrid of Options 5 and 6 from that map and came up with – again, of the 4,600 acre site, and allowed for the placement of about 26,540 of the power units, and they're called SunCatchers, I think you saw actual pictures of them the last time for Imperial Valley. And for those who haven't seen them, think of a very large satellite dish from the old days. Now, if you had that size disk addition, you

could pick up satellites probably on other galaxies, but back in the old days, if you did something like that. And so instead of concentrating on radio waves on a receiver, it concentrates the sun and heats a little Stirling solar engine that basically operates as just an engine and drives an electric generator. So, the way they're designed with this Applicant, they take about – they group 60 of those in a – I don't know if they call it a "pod" or what, and each of those groups can put out about 1.5 megawatts of power.

So, after the Applicants approved the new design, we had further hearings and produced a Presiding Member's Proposed Decision, and on September 25th, I believe, we have come back to you because there is some urgency, the Applicant is trying to qualify for a rebate of the Federal Investment Tax Credit which requires them to start construction by the end of the year. The project is in two phases, although it's really three. Phase I has two components, but it totals 1,876 acres, roughly. And Phase II is 2,737 additional acres. But the first part of phase I, what you'll see called in some of the conditions Phase IA, is about 250 acres and that is so the Applicant can get a start to meet the requirements to obtain the Investment Tax Credit Rebate, which would – it's a significant incentive for the

project and the developers.

So, because we are going as quickly as we can to bring this to you, you have before you today an Errata that you just received today, for which I apologize, but there is a lot to it and it has taken awhile working with the Legal Office and others to produce this for you. We will have a few additional thoughts and we will have to orally describe to you as additions to the Errata their – I think perhaps one exception there, it simply can be made by reference to the comments filed by the parties, and I don't believe there's any controversy. We tried to get the controversial issues addressed in the actual Errata that we provided for you. But, again, I apologize that this is going to be a little bit complicated, but it's a 4,000-acre project, it has a lot of issues, and a lot of parties raising issues, and there's probably no way to avoid that. So, with that, I'll turn it back to you, Madam Chair, and recommend that you next hear from the Applicant.

CHAIRMAN DOUGLAS: Thank you very much, Hearing Officer Kramer. Can we now hear from the Applicant?

MS. FOLEY GANNON: Good morning, Chairwoman and Commissioners. I'm Ella Foley Gannon and I'm counsel to the Applicant, Tessera Solar. With me to my left is Felicia Bellows, who is Vice President of Product

Development for Tessera Solar. We would first like to thank the Committee for all of their extremely hard work on this project. As Hearing Officer Kramer was just describing, this has been a complicated project, it has been a project that has gone through a evolution during the hearing process, which Mr. Kramer just described, to its reduction of the project. There has been an exhaustive and sometimes exhausting look at the issues that have been raised by all the parties, and the Committee has done certainly an extraordinary job, I think, of giving careful consideration, making sure that the difficult questions were considered and aired, and that all parties had an opportunity to weigh in on these difficult conditions. And I think, as you can see in this proposed decision, this Errata, those views have all been given careful consideration and have been responded to, and we think have been properly resolved. We'd also like to thank the staff, they also did an extraordinary job. And it's worth mentioning that there are a couple things that made this difficult – or complicated – process even a little more challenging, one is, obviously, there was budgetary constraints that you were facing, that staff was facing, and despite those, the staff, again, has worked incredibly hard to consider every issue and to provide their views and to really

thoughtfully present the issues for your consideration, for the Committee, and ultimately for your consideration. And also, there is the issue of the Stimulus funding, which as, Chairman, you described this morning, it's important to stimulate the economy, and to do that, it needs to get out there, it needs to be spent, and as Mr. Kramer just described, it requires the Applicant to be able to be on construction this year. So, that has added an urgency to this and to the timely look at considerations, but, again, the Committee needs to be commended for making sure that they're allowing us the opportunity to be before you today, to hopefully be able to allow it to qualify for this funding, while at the same time still making sure that all of the requirements of State law, CEQA, and Warren-Alquist Act, have been complied with.

In talking about the process that it's been going through, in the beginning of our evidentiary hearings in Barstow in August, Commissioner Eggert set forth, I think, very eloquently sort of the challenge that is before you, which is balancing the need for meeting the critical demand for clean renewable energy, and at the same time considering and balancing the environmental impacts that are associated with meeting this sort of unprecedented challenge. And that process,

again, has been ultimately about drawing the line, so where is the appropriate balance between how the impacts can be allowed and how much energy can be produced by this project. And many times, you know, we felt that the line could have been drawn someplace else. You've heard we had several different iterations and even since September brought in six different options to be considered. So, we thought that the line could have been someplace else, but we respect and understand the issues that drove the Committee to make the recommendation they made, and we are pleased that it is allowing us to have a project that we think is an important and viable project. And so we applaud all of those efforts.

I think you will hear this morning from some of the Interveners and, in the record, it certainly is reflected. There have been many issues that have been raised about process that has been executed here in considering these changes, and as to whether that process has met the requirements of State law, and we would offer the view that it clearly has. These changes that have been made during these evidentiary hearings have all been reductions. They've all been reductions in the size of the project, they've ultimately been reductions in the amount of energy that's going to be produced, and they have been reductions in the impacts that will occur as a

result of the project. And so, I'm sure you're very well aware, CEQA's provisions are designed to allow for you to have a full airing of all the environmental impacts so that you are aware of them before you make your decision, and to allow the public to understand what the consequences of your decision will be. And here the public has had a tremendous opportunity to be involved in the process and to air their views. That's, I'm sure you are aware, under CEQA there are requirements that there be 30 days public comment, the Draft Environmental document. Here, the staff assessment originally was available for 90 days – 91 days – for public comment. Under CEQA, there is no requirement that there be any evidentiary hearings; in this process, there were seven full days of evidentiary hearings, many going very late into the night, as you probably have heard. Parties don't have a right to participate directly – other parties don't have a right to participate directly in most proceedings before other agencies; here, you get full intervention rights. And many many parties took advantage of that and participated, and Interveners were allowed to present written testimony, they were allowed to present oral testimony, to question witnesses, and they exercised that right with great diligence. And, again, it led to a very thorough hearing of issues and

changes significant, changes to the project. There also was the 30-day comment period on the Proposed Decision, again, under CEQA, that is not required, so I think that in really considering the procedural objections that parties have raised to this, it is important to consider how your process has not only complied with the letter of the law, but has really complied with the intent of it, as well, again, to make sure that you are informed of the impacts and that the public has been allowed to participate in that.

There are a couple of issues, that specifically I would like to address just briefly, before you. As Mr. Kramer had pointed out, one of the major issues that has been associated with this project is the impacts of the Desert Tortoise, and there has been many issues raised about the Desert Tortoise Translocation Plan, which is a minimization measure which is required in the Proposed Decision, which is also a requirement of U.S. Fish and Wildlife Service's Biological Opinion, the Bureau of Land Management's Record of Decision, and CEFG would also require this. Essentially, it is to make sure that the Tortoises that are on the project site will not be directly impacted by the project and will be moved to an appropriate location. There has been issues raised, saying that that plan needs to be before you and before

the public before you can act on this project, and we don't think that is required, nor do we think that would be wise. The translocation plan as is shown in the evidence is something that continues to be an evolving document because it involves adaptive management. These are things that there's many different factors that are going to be taken into account. And over the life of the project, there may be further understandings about how this should be done, things may happen in surprising ways. Having it be a plan that meets performance standards, that ensures the protection of the Desert Tortoise, is an appropriate way to handle this issue. And we understand that the Interveners disagree with this approach, and that they disagree with the plan, but we think that, consistent with the determination by the U.S. Fish and Wildlife Service, by the Bureau of Land Management, recommendations by your staff, CEFG, you can disagree with them, and that is an appropriate approach to take, and we think it will minimize impacts to the Desert Tortoise to a less than significant level, as recommended by staff, and as concluded in the Proposed Decision.

The other issue which there has been considerable discussion over in the last week, several weeks, is the conditions relating to soils and water,

particularly relating to sedimentation and erosion that may happen as part of the project. Originally, the project did include a detention basin as part of the project, and when the project was reduced, and as a result of further evaluation which had been done – let me go back one second – initially it was proposed that there would be detention basins if they were needed, and the thought was we thought there were going to be detention basins, but there was always a provision that the hydrologic study would be completed, and that whatever was required in that hydrologic study to meet performance standards that were included in the Conditions of Certification would be implemented. In reducing the project site, the detention basins were taken out of the project design and the same study was required, and so that study is done and it has determined that, in order to meet the performance standards which are included in the Condition of Certification, detention basins are necessary, then that's what has to be done. So, it is not really a change, it is a change in the default where we think it's going to be. And, again, we think that the performance standards are a very appropriate way to handle this issue. In the hearings, there was evidence by a number of parties that said, you know, it's easy – not easy, but it is determinable to say what are the

standards that have to be met. And that's an appropriate way to make sure that these impacts are reduced to less than significant. The Errata that was distributed this morning reflects a number of changes to the soil and water conditions, most which appear to be consistent with discussions that we had with other parties at the hearing Tuesday and the workshop that we did after that. There is one condition, however, we had suggested on Monday in our comments on the PMPD, we had requested that the Committee allow a phasing approach to these new conditions. The new conditions contain a great deal of detail on the studies that need to be completed and have a rather long timeline. It is probably going to take – we've roughly sketched it out what it will take to comply with the soil and water conditions, it will probably take about four months to meet all of the pre-construction conditions. Meeting those conditions will mean that the project does not get under construction this year, and that will mean that the ARRA funding will not be obtained, and the Stimulus money will not be available. And we don't think that that is necessary to ensure that there are no significant impacts to hydrologic resources, to water quality.

In the Proposed Decision, the Committee had included plans to address the impacts to soils and water,

and we believe that those plans are appropriate, particularly for what has been called Phase IA. Phase 1A, we've also got 250 acres, it's essentially construction of the access road, as well as one of the pods, which will be the poles for 60 SunCatchers, not the SunCatchers themselves, but just installing the poles. Under the ARRA funding, you have to have made substantial progress on the construction, and we believe that having access roads, installing 60 foundations, will meet the DOE's requirements and will allow us to obtain the Stimulus funding which, again, is a very significant component of this project, in allowing this project to go forward. We think that the conditions that were included in the Proposed Decision are sufficient to protect water quality, particularly associated with the small phase of – the limited activities that would be included in Phase IA. We had submitted language which the committee has, and we would ask and urge that the Commission consider adding that condition to the soil and water condition so that the project can move forward. With that, again, we'd just like to thank you for your consideration of this project. We feel it's a good project, we think it's a project that is going to help California meet its needs, it's going to help reduce greenhouse gases, it's going to bring jobs and taxes to a part of the State

which has been severely impacted by the recession. And for all of these reasons, we ask that you approve the project. Thank you.

CHAIRMAN DOUGLAS: Thank you, Ms. Foley and we will take up your request after we hear from all parties. Can we hear from staff now, please?

MR. MEYER: Thank you and good morning, Chair Douglas, Commissioners. Christopher Meyer, Project Manager for staff on the Calico Solar Project. I just wanted to really thank the Committee for all the time. I know the Committee has put several thousand pages of staff analysis in front of them, besides everything else they had to look through, and we really appreciate the really carefully looking through and considering what staff had to say, and giving us some very constructive feedback on that, that we could respond to. So, staff really appreciate the time you put in to go over the work that we provided.

I'm sorry, I'm remiss in introducing my staff counsel who, except for a short vacation, has been at my side through this entire proceeding, and we have appreciated having Karen Holmes, Christine Hammond and Steve Adams, as well as Jerry Babula, all helping out on this project as needed, it's been nice to have them behind me – or, in front of me – at this point, I'm going

to turn it over to Karen for a few comments.

VICE CHAIR BOYD: Vacation? Vacation? Who allowed a vacation?

MS. HOLMES: Thank you. I think what might make most sense is for us to hold our comments until we hear what the further additions to the Errata are. We don't have a prepared opening statement along the lines of the Applicants. We are prepared to address certain issues that we think will be raised in the course of this proceeding, particularly with respect to these additional changes that Hearing Officer Kramer mentioned. So, I think with that, I'd rather not waste time talking in generalities and let the other parties speak, and then if the Commission would like to look back to the staff and hear our responses to specific issues, we'd be happy to do that at that time.

CHAIRMAN DOUGLAS: Thank you, Ms. Holmes. I am now going to the list of Interveners and see if they are in the room or on the phone to be able to speak, beginning with CURE. Is CURE in the room or on the phone? Please come forward.

MS. MILES: Good morning, Commissioners, Chairwoman. CURE remains very concerned about the Calico Solar Project. We feel that the Commission has not independently analyzed the feasibility, the

effectiveness, or the likelihood of success of the Applicant's last minute mitigation proposal to allow construction directly around hibernating Desert Tortoises that are in their burrows.

Six days ago, the Applicant provided a new Translocation Plan to the parties and the Commission in this proceeding. The plan is unprecedented because it proposes to allow the construction to occur directly around hibernating tortoises with approximately three square feet of open area extending from the outer edge of the burrow, and I'm talking specifically about what the Applicant's attorney referred to as Phase IA, so that would be in the first 250 acres of that project development, and my understanding is that includes the access road, that means service is complex, and putting 60 SunCatcher pedestals and vibrating them into the ground. And from our review of the Ivanpah, Abengoa, Genesis, Beacon, and Blythe Conditions of Certification regarding Desert Tortoise clearance surveys and construction, it is clear that the Commission has not recently licensed a project that would allow construction to occur adjacent to hibernating Desert Tortoises. Further, in the Calico proceeding, this proposal was never independently analyzed by staff in a document that was subject to public review. In fact, it could not have

been because this proposal has only been on the table Friday evening of last week by the Applicant in the Desert Tortoise Translocation Plan, and this was something that was not before the parties when we went to evidentiary hearings on the most recent 5.5 scenario for this project design. There are significant impacts associated with constructing right near Desert Tortoises in their burrows and, in fact, I brought a comment letter from our Biologist, Scott Cashen, relating to this and I apologize that we were only able to file it this morning, but this project has been moving quite quickly, so I did bring copies for everyone, and it is docketed electronically for on the service list and the Docket Office. So it's our position that, if the Commission goes forward and approves this project without analyzing the impacts associated with building right next to the Desert Tortoise burrows that are occupied, that the Commission will violate the State's requirements under CEQA.

My second point relates to CEQA's requirement that mitigation be effective and capable of implementation based on substantial evidence in the record. So, I am speaking specifically to the land purchase required in Bio-17, Conditions of Certification, which purports to mitigate for habitat loss on the

project site. The PMPD did not mitigate for loss of individual Desert Tortoises on the project site, and there is not substantial evidence in the record to show the purchase of land as compensatory mitigation is a defined feasible, effective, or capable implementation mitigation regime. And for example, we do not believe that there is evidence in the record to show that you can purchase off-site land and improve the carrying capacity on that land. The PMPD does not site to evidence to support conclusions that 10,000 plus acres of high quality Desert Tortoise habitat is available for purchase, that the enhancement actions are likely to mitigate impacts to Desert Tortoise, or that habitat purchase and enhancement is likely to increase the carrying capacity on land for Desert Tortoise. If the Commission fails to support its decision on substantial evidence that impacts to Desert Tortoises are mitigated and that the land mitigation is adequate, then the Commission would violate CEQA.

My third point relates to the requirement that the Commission analyze significant impacts from the implementation of mitigation. CEQA requires that all potential impacts be analyzed and significant impacts be mitigated, including impacts that are from the mitigation measures themselves when mitigation measures, themselves,

cause significant impacts, so these are the secondary or indirect impacts of the project. The PMPD failed to provide mitigation for impacts to Desert Tortoise habitat at the off-site Ord-Rodman Desert Wildlife Management Area, and this was an area that was established as basically a Tortoise reserve for their protection and long term survival of Desert Tortoises. And this Desert Wildlife Management Area is the Applicant's proposed receptor location for most of the tortoises that would need to be translocated from the Calico site. In order to move Tortoises to the Ord-Rodman, they would need to do disease testing of the receptor host population in this off-site Desert Wildlife Management Area and the Bureau of Land Management Biologist testified that approximately 100 Desert Tortoises would have to be handled and disease tested in the off-site area, if any tortoises are moved from the Calico Project site to the Ord-Rodman Desert Wildlife Area. So this is really to get a sense of how many tortoises off-site are diseased and to make sure you're not moving a tortoise into an area where you have a diseased tortoise. However, there are impacts associated with handling and disease testing tortoises, and there is certainly evidence in the record that it could result in harm and mortality to tortoises. And staff testified that if – originally, they testified

that approximately 50 percent of the tortoises handled off-site could die as a result of that handling. Moreover, if more than five percent test positive for a disease in this off-site area, a different translocation receptor location would have to be found, and disease testing, handling and disturbance would start all over again in a new location, so, again, we're talking about potentially another 100 tortoises that would need to be tested. The PMPD fails to accurately establish the magnitude of the significant indirect impacts to Desert Tortoises in these off-site preserves as a result of project development. If the Commission licenses the project without identifying the receptor sites and the significant impacts to the receptor populations, this Commission will violate CEQA. The Commission also must have independent judgment in making its decision. The Commission's publicly noticed Environmental Review document must reply to the independent judgment of the Energy Commission. And Commission proposes in this document to rely upon the guidance of the U.S. Fish and Wildlife Service, and Fish and Game, and BLM, in determining adequate mitigation, and especially in establishing the performance standards for impacts to Desert Tortoise. The Commission certainly is within its right to consider the opinions of these agencies, but

must exercise its independent judgment and waive the evidence and expert testimony of the agencies before the Commission issues its decision, so it is not sufficient for the Commission to assume that the impacts will be mitigated to a level that is less than significant when the staff has not analyzed the Desert Tortoise Translocation Plan or the Biological Opinion that was filed by the Applicant last Friday evening.

The Committee's Proposed Decision violates CEQA's requirement that the project have a stable, finite, and accurate project description, and of course this has been held repeatedly by the courts that a stable project description is in indispensable prerequisite to an informative and legally sufficient environmental analysis. A project description that omits integral parts of the project may result in an environmental review document that fails to disclose all of the impacts of the project. And there have been a number of changes that have resulted since the original project was proposed, certainly not all of them have been bad, in fact, and we applaud the Committee's efforts to make this project a smaller project and to reduce impacts to Desert Tortoise, and we recognize that there has been a lot of impacts that have been reduced as a result of pulling the project site down from the Cady Mountains; however, we

don’t believe that all of the changes have resulted in just a reduction of significant impacts. An example of that is the new proposal that they would need to put tortoises in the Ord-Rodman Desert Wildlife Management Area, that was not a part of the initial staff assessment that was circulated for the 91 days. And we feel that that type of information would need to be circulated to the public because that is evidence of new significant impacts.

Other changes are the detention basins have been removed, or potentially – the Applicant has proposed to remove them – that there are treated road services that were analyzed as pervious, completely pervious surfaces, and we’re talking about probably around 200 miles of roads that it’s actually clear that those are not impervious surfaces, that they’re more impervious than was assumed. Additionally, it is mentioned the project will rely on off-site locations. Finally, the project will require transmission upgrades that are part of a whole other project under CEQA, that are to date unidentified. Commission staff failed to analyze many of the significant impacts associated with a 67-mile Lugo-to-Piscah transmission line, an additional Piscah substation with 100 acres of disturbance in a location that has not been disclosed, and other transmission

upgrades that are all required in order for this power to be brought to market from this project site. For example, in the 67-mile Lugo-to-Piscah transmission line, we know that 10 miles of that line will be in an unknown location, it is not just rated up during a log in existing transmission corridor. Although the PMPD expressly recognizes that this upgrade is a part of the whole of the project, it does not consistently analyze the environmental impacts of this upgrade. And if you look at the cultural resources section, there is an analysis of the impacts of this upgrade and in the biological section there is not, however, the PMPD Errata states that the mitigation for impacts from the transmission line are widely known and understood. And I'm sorry, but it's not a proper CEQA analysis to just assume that these impacts will be widely understood in the mitigation, and that's why the agencies don't have to analyze it. And I can tell you that I've calculated the amount of acreage associated with the transmission, that is just at the Lugo transmission upgrade, and it's roughly equivalent to the acreage from the initially proposed project, which I believe was 13 square miles, so it is a significant amount of land that will be disturbed, it is land that was not ever subject to a CEQA analysis previously because the transmission line was

built prior to CEQA, and the parts that would be putting the re-conductor line into. And additionally, that transmission line is going to go straight through the Ord-Rodman Desert Wildlife Management Area, as well as the Yucca range, an area of critical environmental concern, so it's not just in our view the impacts and mitigation is widely known and understood, I think there will be a lot of challenges associated with building this transmission line, a quite significant environmental impacts.

My final point is related to the California Endangered Species Act. The Desert Tortoise is listed as critical – I'm sorry – is threatened under the California Endangered Species Act, and therefore impacts to the Desert Tortoise must be fully mitigated in accordance with California Department of Fish and Game Guidelines. Under these Guidelines, a permit may only be issued if the Applicant will minimize and fully mitigate the impacts authorized under the permit. All required measures must be capable of successful implementation. The Commission lacks any evidence to support a conclusion that its impacts to Desert Tortoise will be fully mitigated as is required by CEQA, as per my comments earlier today. In fact, the evidence in the evidentiary record clearly shows otherwise. And my comments are four

copies, so I will put them right up front. Thank you.

CHAIRMAN DOUGLAS: Thank you, Ms. Miles and we'll look forward to getting what you're handing out right now. Have you concluded your comments?

MS. MILES: Yes, yes.

CHAIRMAN DOUGLAS: All right, so I will move on and ask the Defenders of Wildlife if you are present. Please come forward.

MR. BASOFIN: Thank you. Joshua Basofin on behalf of the Defenders. I haven't prepared a statement today, but I will just say that I share the concerns of my colleagues at CURE. And we thank the Commission for their efforts to minimize the impacts of this project, particularly on Desert Tortoises. There are still many concerns that remain. The fact is, this project just isn't in the right location, and we have done quite a bit to minimize the impacts from the various configurations that have developed, but what we need to be doing is doing solar smart from the start, and that means finding sites that are preferably on private degraded land, land that was previously used for agriculture, that was mined, that has had significant disturbance. And at this site, we have essentially the opposite of that. We have a site that had in its original footprint significant Desert Tortoises, of 200 if you look at the early versions of

the Staff Assessment. It is an important Desert Tortoise connectivity area, it connects several different populations, it provides movement corridors, there is a Big Horn population, a dozen [sic] Big Horn Sheep population that is one of the largest in the State, about 300 individual Big Horn Sheep reside in the Cady Mountains above this project. And although the draw-down of the northern boundary of the project in the recent configuration alleviated the impacts to the potential foraging contact for this Big Horn just below the base of the mountain, there are significant concerns, still, that the current configuration impacts the movement corridor, the north-south movement corridor for the project. The project is also part of the range of the Penstemon albomarginalis, the white-margined beardtongue, which is a Class B-1 CMPS plant, it is extremely rare, it has a last population in California in the Piscah region, and it is found on this site. So, this is a project that has a site that is not smart from the start. It's not a place where we want to be siting large scale solar utilities. And although there have been significant efforts on the part of the Committee, and we appreciate those efforts to alleviate some of those impacts, and they are significant, you know, a 45 percent reduction in acreage is significant. But my next point is really that

we've rushed through this process, and although the staff has, I think, done a heroic job of assessing some of the impacts of the project, we just haven't had enough time and we don't have enough data. Some of the data gaps that currently exist are that the Translocation Plan is still in draft form. It's still evolving. We still don't know what it's going to look like in the end. We don't know where the receiving sites for the translocated Desert Tortoises are going to be. We don't have parameters like disease testing and forage on the receiving sites to understand how successful that translocation will ultimately be in the end. We don't have an analysis of the north-south migratory corridors for the Big Horn and the Desert Tortoise. There is evidence in the record, and I won't rehash the record here, but there is some evidence that there could be an important migratory corridor underneath the railroad and through the culverts, underneath I-40, that's important for disbursal and genetic variability for these species. This project would entail significant fragmentation of habitat. As I mentioned, it's an important area for the Desert Tortoise, and it would fragment that habitat. We still don't have an Avian Protection Plan. And as CURE mentioned, we have a significant deferring mitigation that we still don't know what it's going to look like.

So, I'll keep my comments brief. As I said, I think the record at least would – defend or submit into the record as complete in this case, but we do still have some significant concerns.

CHAIRMAN DOUGLAS: Thank you. I would now like to ask Basin and Range Watch, are you here or on the phone? Basin and Range Watch?

MR. EMMERICH: Can you hear us?

CHAIRMAN DOUGLAS: We sure can.

MR. EMMERICH: I'm having trouble hearing you. You've been having phone problems for the past three days. But you can hear me?

CHAIRMAN DOUGLAS: We can actually hear you very well and I'm aware of some of the problems we've had in the past few days, so glad that you're able to speak to us. We can hear you loud and clear.

MR. EMMERICH: Okay, thank you. My name is Kevin Emmerich. I'm with a group called Basin and Range Watch, we are a small group of volunteers and a network of people. We are primarily concerned with preserving the ecological integrity of our Desert Southwest. We're concerned with preserving the open spaces. We're concerned with the people that would be affected by large energy projects that would have a very large impact. The Calico Project has definitely been a concern for us.

We've been following it for a while. As you all know, it's been immersed in a quagmire of unresolved issues. It is almost amusing to us that we keep hearing that they're having another evidentiary hearing, another workshop, like workshop after workshop, hearing after hearing, and it's very obvious that you're having a lot of problems resolving all of these issues. In fact, we've actually had an off-the-record CEC employee come up to us and admit to us that this project should have never been cited where is it right now, but we're kind of stuck with it right now, so we have some problems here. First of all, when I hear the Applicant ask for Federal funding, and I hear the CEC say, "Well, we have to accommodate the Applicant so they can get a ARRA grant, or Federal funding before the end of the year," I think that places a very unfair burden on the taxpayers not only for Federal funding, but for the fact that it is our public land that is being irresponsibly managed here. As far as the issues go, there are several of them. You know, the other Interveners have gone into many many details, and I'm not going to go into extreme details on these issues, but I would like to mention some of the things that concern us.

As far as biological resources go, this is tragic, this is an old growth desert, and you can

reconfigure this project all you want, you're still going to remove, what, 4,600 acres of old growth Mojave Desert habitat. This habitat includes a herd of Big Horn Sheep in the Cady Mountains, which is about 300. We do know that Big Horn Sheep consistently use [inaudible] for forage. It's very obvious that this is an important linkage zone and connectivity zone for the Big Horn. Mojave fringe-toed lizards – nobody is mentioning that, but that is a species of special concern. You are basically with this new configuration going to remove the entire habitat to the population of Mojave fringe-toed lizards located on the project site. And I haven't really seen much of any kind of good mitigation plan. You're supposed to buy land, maybe it's 1:1 or 3:1, we still don't know where that plan is. You haven't convinced us that you've mitigated any kind of sand flow that's going to maintain habitat for the species, nor have you convinced us that you've maintained any connectivity from this sand dune to the other sand areas that these species, as a native population, might migrate to. As Defenders mentioned, it's an important habitat for the white-margined beardtongue. You know, we're really not getting a lot of information about what are mirror – with the Applicant, because things like mirror watching, they're all over the place, and the amount of

water they're going to use. So we aren't really convinced that you know how much water is going to be used for this project and whether you even have that much water. For Desert Tortoise, the Fish and Wildlife Service is now saying that 50 percent of all Desert Tortoise that are relocated and translocated and have a mortality so that the 50 percent mortality in the host population, as well as the 50 percent mortality in the recipient population, due to things like preservation and carrying capacity, and whatnot. Look at Ivanpah, that was just approved, there was a lot of political momentum behind that, it was very difficult to expect any of the agencies to deny that application. The Applicant for that project, BrightSource, said there would be 36 on the entire site, but they are clearing the Phase I portion of that project and they have already found 27. A lot of these are just along the fence line and along the construction laid out area. I think they are going to go way past 36, in fact, one of their biologists actually told us there is probably about 140 Desert Tortoise on that site. Approval of this project for the Calico Project will indicate possibly a similar situation and contributes to the extinction of this species. Do we really want to do that? I'm learning a lot about the water issues and the flood issues from the BNSF Railroad

and finding those quite interesting. It sounds to me like you don't really have a plan to mitigate those very well, and it looks to me that possibly you might just litigate over that, and quite honestly, you would deserve it. But the thing is, if you do get litigated on that, think about how much tax dollars are going to go into the litigation. Again, is it really a good idea to approve this project? For the landowner, Mr. Jackson, I don't think you've ever resolved your access issues in getting to his land. Every time that's been brought up, there's been an avalanche of bureaucracy and I just haven't seen anything happen. I'll just conclude this by saying that you do have an opportunity right now to show that not all of these large energy projects are going to get approved. You have an opportunity to show that this is not a political agenda, that you are listening to us. We are asking you to deny this project in the name of preserving the desert, in the name of listening to popular public opinion.

CHAIRMAN DOUGLAS: Thank you, Mr. Emmerich. Sierra Club, are you here? Please come forward.

MR. RITCHIE: I'm Travis Ritchie with the Sierra Club. Commissioners, thank you for giving us the opportunity today to speak to you about this project. As I believe you know, the Sierra Club is strongly in favor

of renewable energy resources, it's one of our primary goals. We think it's a vital component of the effort to move ourselves off of energy sources that produce greenhouse gases that lead to climate change, that lead to the local air pollution problems. It's one of our primary campaigns for the Sierra Club. And frankly, in California, we're moving forward with converting thousands upon thousands of acres from the desert, off the pristine areas of the desert, to industrial power plants. And for many of those sites – for most of those sites – Sierra Club has not opposed that construction. This site, however, is different. And Sierra Club strongly opposes the Calico site. There are many reasons for this, some of my other colleagues have gone into them. To sum up, it's the wrong site for a project like this, it's too important a resource, the biological resources that will be sacrificed here are vast, they are very very important to the ecology of the Mojave Desert and they cannot be replaced. And they're extremely fragile, so they cannot be mitigated against, particularly with the mitigation measures that have been proposed in this project. The map behind you, I think, is interesting. It's hard still for me, and I've been working on this project for some time now, it's huge, that's 4,000 acres, over 4,000 acres behind you, which is

a vast vast project, and most of that area is completely undisturbed desert land. And the information in the record and the information that people have talked about, and people know that when you disturb desert habitat, it's permanent, even if this project is for 30 years and then there's clean-up that goes in afterwards, that desert will never return to what we've seen. The disturbances that we've seen in the desert from past disturbed areas – our history doesn't go back far enough to see that area be recovered. There are areas from World War II that you can still see the road marks from where these bases and training areas were. The desert doesn't recover in a way that potentially other ecosystems recover. So, when we put this project here, when we develop this massive 4,000 acre project, it's a permanent sacrifice of all these resources, and each of those resources – and Defenders of Wildlife and CURE went through the specific resources, each of them are extremely important and extremely vital, they are very rare, and we're never going to get them back. Now, the Applicant has professed that mitigation measures are adequate to reduce the impacts to that to below significant levels, and we do very strongly commend the Committee for pulling the program down and reducing some of the very significant impacts in the northern area.

But, again, it's not enough. And we don't believe that the mitigation measures are adequate. We don't believe that the record demonstrates that those mitigation measures are either feasible or accurate, and I would respectfully disagree with the Applicant's intention that there are clear performance standards and criteria for implementing these mitigation measures. I think that most of them, as part of this process, this very rushed process, have been kicked down the road. Many of these mitigation measures, we've simply said we will address later, we will look at later, and we will assume that we can fix these things later. And not only do we not have record to support that conclusion, the record shows that we probably won't be able to fix these measures later. And so if you consider this project, I hope that you will understand, this Commission right now has an opportunity to create a legacy of clean renewable energy in the State of California. California is already a leader in this effort and will continue to be a leader. What's happened in the past couple years with the fast tracking of these solar projects is unprecedented, and in many ways, I believe, it's extremely admirable that the Commission has taken the lead on moving these projects forward. However, I'm extremely concerned that future generations will look back at this period and they will look back at

the folly of rushing some of these projects through for what are essentially artificial deadlines, they're external political deadlines, and I realize that they have real practical economic effects in many circumstances, but they are artificial, they are external, we don't need to be rushing these tens of thousands of acres on pristine lands right now. We can stop, particularly with a project like this where we've identified the massive impacts that will happen. And we can re-site these projects, we can reconfigure these projects, not just by redrawing the lines within the existing footprint, but by really finding places where it's appropriate to put massive solar projects in the desert like this. And in doing that, we cannot only develop this amazing resource that California has the opportunity to provide to its people, we can also protect other amazing resources which are the diversity of biological resources that the desert provides. Those are important resources, they are public resources, and we can do this in a way that doesn't pit those two things against each other in a lose-lose battle. We can do it in a way where both of those resources are developed and protected. So, Sierra Club respectfully with this project recommends that you deny the approval and recommends that you do not develop this project. Thank

you.

CHAIRMAN DOUGLAS: Thank you. Society for the Conservation of Bighorn Sheep. Are you on the phone? Society for the Conservation of Bighorn Sheep? If they do reappear, I'll call it again after we've gone through the Interveners. Bart Brizzee, San Bernardino County.

MR. BRIZZEE: Yes, Bart Brizzee, Deputy County Counsel, San Bernardino County. Madam Chair, members of the Commission, on behalf of the County, I appreciate the opportunity to provide comment. We appreciate the time and effort of staff, the Committee, given the time constraints on the project, that we especially want to express thanks that at least a portion of the hearings were held in the County, although we know that was a great inconvenience to staff and others. The implications of the County of San Bernardino, which is the site of a number of these large solar generation projects is significant. In addition to the vast amounts of acreage taken up by the projects themselves, there are additional plots of private land that are required to be purchased and set aside as biological mitigation. No economic activities will be allowed on these lands, effectively, forever. We calculate that there are approximately 140,000 acres of potential Desert Tortoise habitat held in private unincorporated lands under County

jurisdiction. Between just this project and the Ivanpah project, which has already been referenced, in excess of of 20,000 acres will be set aside. I calculate that this is more than 31 square miles. The desert is vast, but it is not limitless. The private property within the desert is even more limited. More solar projects are in various stages of approval that will take up additional acreage if similar mitigation requirements are imposed. Just this week, we learned of the approval in Nevada of the Silver State North Project, a photovoltaic project in the Ivanpah Valley, immediately north of Primm. We understand that this project did not require any land acquisition by the Applicant, but a payment in something of the range of $2 million for biological mitigation, and that appears to be based on 1:1 acreage calculation. This is contrasted with 2:1 land acquisition requirement imposed on Ivanpah by this Commission at the behest of California Fish and Game, and the similar mitigation requirement that is imposed on this project. We believe the project is in the same geographic area and recovery in it should be similarly treated in California in its component counties. It should not be put at a competitive disadvantage. The county encourages the Commission to continue working with the BLM and the State Federal Resource Agencies to moderate these private land

acquisition requirements in lieu of other species mitigation measures. And we also encourage the inclusion in these discussions of this and other counties similarly affected. Thank you. That concludes my comments.

CHAIRMAN DOUGLAS: Thank you, Mr. Brizzee. Is Patrick Jackson in the room or on the phone? Patrick Jackson? We will call Patrick Jackson's name again after we get through the list. Newberry Community Services District? BNSF Railroad?

MS. BURCH: Good morning, Commissioners. Mr. Kramer, is it possible to put our exhibits on the --

HEARING OFFICER KRAMER: Do you have a –

MS. BURCH: The BNSF Railroad has been actively involved in this process for about the last four months when we learned about the extent of this project next to the main line railroad. Let me just explain that this is the artery of being a railroad that goes along this piece of the desert, it goes to the Ports of Los Angeles, Long Beach, all the way to Chicago, and beyond, and it's five miles of track, and the proposed project, because if you look at the map up there, the proposed project is going to be both north and south of the main line. There were several issues – there are 10-11 miles of project, five miles of railroad. The number of issues that we identified early on, we took to the Applicant and

negotiated to the extent we could, through the resolution, we were successful in several areas of important issues. They have to do with the hydrogen lines, the transmission line locations, interference with ability to communicate with the trains in our sequence, and those issues. Those we have an agreement on, and those agreements were stipulated to on the record in the equipment to the project design, and they have been put into the conditions. And as of September 3rd, we thought we had resolved all but one very very important issue, which we called the [inaudible] [1:24] issue. So, let me talk about that for a moment. We have tremendous concern about the safety and the interference with real operations of 26,000 solar dishes on both sides of the track, for 10 or so miles, and brought our experts from within the railroad and a neuro-scientist from outside the railroad, in an effort to explain what the issues were, and they involved the ability of the engineer to see the signal, and to have adequate [inaudible]. Let me talk about that. If you can turn around, there are significant changes in elevations on the track in this area, it curves as you can see, as it goes through the site. There are two sets of signals, there are two crossings, there are six radius that deal with flood control underneath the railroad lines that are over 100

years old. So, we have a concern that all those Catchers, all those little dots that you see north and south, will cause flash blindness, will interfere with the ability of the engineers to process what they're seeing and not be distracted, from the ability to see the train signal. If an engineer cannot see the rain signal, under the Code of Operations, which was submitted, it is not yet part of this record, we asked that it be, we have to stop the train. If you stop the train at grades like that and curves like that, we can cause a derailment, we will stop the system, there will be major issues here with respect to interference with our operations and the flow of goods and interstate commerce. So, we have tremendous concerns about this. We asked that a study be done and, at the time we raised this issue in early July, when we first learned of it, we were told that the staff was working on a report on this issue. However, by August 9th, they had not been able to complete it. They asked us for information and then said they just couldn't get that piece done, and they submitted what they had done. What they had done is a study that was performed at Sandia Lab, where they took one Catcher and analyzed its impact on the ability of a person who comes in contact with it. That conclusion, that if you're within 223 feet of the SunCatcher, it can cause visual damage.

Based on that, that alone, they concluded that you had to have a setback of 223 feet or more, that was the minimum, and they actually recommended 300 feet back in August for that setback, for motors on the roadways, the general public, and for the railroad trains. The problem with that is that it wasn't actually calculated from the rail lines elevations and it wasn't calculated to consider all these other distractions, what we call the "Waldo Effect" when you're trying to find the signal and there are these halos of discs all around you, all around the area you're trying to define the signal. So we requested a site specific study be performed that would analyze the safety of these operations vis a vis the rail line. It has not been performed, there are no standards in the documents on the conditions to address this issue, and there wouldn't be an ability to establish standards because no study was done, for which you could do railroad standards, so this is a major, unmitigated, and serious impact on the BNSF Railroad. And I would just add that there is a proposal that Applicant work with us as a condition to put on our signals and to change with the kind of technology we have in our signals, the kind of lighting. I've heard expert testimony explain that neither of those would deal with these issues, so there is no evidence in the record to support that mitigation

measure, and the law is that we actually control the decisions as to what is safe on the railroad. So we submit that issue on the record and it was unresolved and, I believe, unresolvable based upon the statements and the studies that were performed for this. And I would also note that the Applicant performed no studies on this, submitted no evidence to the CEC. The other major outstanding issue here is with respect to soils and water. And we have worked very hard and so has the Commission, Commissioner Eggert, Commissioner Byron, and staff, with us on this issue, but we have – if you look at that map, you can see on our map better than on the other map, the alluvial fan and the watersheds that come across the northern part of the site, and the southern part, okay? What the evidence states, what the findings are, that those watersheds drain right across to the Southwest and then into [inaudible] [1:30], railroad. The Applicant actually had done significant work on this. Up to September 3rd, it has over a thousand pages of reports, it had proposed, I believe, at least six alternatives, all alternatives based upon this report required detention and debris basins and retention basins, to be basically placed throughout the site. We had struck – however, we were concerned that they might not be in the right places for the railroad bridges, that

had been constructed and had been operating without incident for 100 years, to ensure that the water, it's velocity and its location where it entered the right of way, would still be consistent with our system. The Applicant agreed with us that we had a concern and that they would find a hydrology study for us to confirm that the plans they had would, in fact, protect the right of way. So we thought that had been put to rest, we were satisfied with that approach prior to September 3rd, however, once the Order came out September 3rd reducing – I wanted to mention one other thing – and the FEIS that came out from BLM, I believe even in the DEIS, they stated that, if you had a reduced footprint, you'd have to move the detention basins and the debris basins down with the reduced footprint. And one of the alternatives evaluated both in your document and with the BLM just 2,000 acre project. So, in any of those scenarios, you had significant amount of basins, and they covered about 600 acres of land. So the first thing that was eliminated by the Applicant on September 7th were all the debris and detention basins, and I believe now what we have are some detention basins for the maintenance facility, and that's it. That's it. We do not believe that there is any record to support approving this project without the detention and debris basins. We

believe there is substantial evidence, and the only evidence in this record says that the project has to have these basins in. And our concern is that, although staff has been good enough to hear us and leave that in as something to be considered in the future, the fact is that the amount of megawatts being contemplated for this facility, if you look at the density of the SunCatchers that are being proposed, and this is a drawing submitted by the Applicant, to ensure what their plan is of development on these acres, there is no room for 600 acres of basins. We also believe that the conclusion of many adequate study on glare and glint could very well conclude that there needs to be further setbacks for certain areas where SunCatchers shouldn't be placed, and those areas at this point would be – there is no room for them within the megawatts that are considered. Now, what we do notice that you did put into the Errata, although we haven't had adequate time to digest all of it, but we do know that you put in a provision that says that there could be a decrease down to a certain number of megawatts for the debris basin issue, but that's only one issue and we do not believe it adequately reflects the amount of acreage that will be needed to address the amount of basins needed for the project if the evidence previously developed is relied on. So those are two major areas of

focus for us. We worked very hard, as I alluded to, by the Applicant and staff, to revise the soil and water conditions to try and address the issues that we think are critical, given that the Applicant is now requesting that these basins be deleted and detention debris basins be deleted. There are a number of reports that were always required in the soil and water conditions. We requested one additional one because -- it's called the Infiltration Report – because we do not believe that there's been adequate understanding of what the amount of impermeability is to be dealt with by these basins and of flow. That's been put in, but with the exception of that one report, everything else is going to be part of it all along. There is an Order, however, that needs to be followed for you to have the basic information you need to develop the next slate of reports, and in the workshop that concluded late on Tuesday, we said we had to get back from experts a list of what those are and what order they should be in, and I just would like to put those in the record since there's been no opportunity since Tuesday to do that. The plans call for a topographical survey and a geology survey. We believe that those first two surveys need to be completed and they can be performed and approved together. Once you have that information, you can perform this Infiltration Report

that we've asked to be performed next, which is now, I believe, Soil and Water 13. After that, the next report you would do would be the hydrology report and we believe that, again, that should be reviewed and approved before you go to the next steps. The next steps include the Scour Analysis and the Pole Stability Report. Both of those, we think, can be developed and approved together, and they then inform what is called the Design Plan, which require Soil and Water 8, which is the first [inaudible] [1:36:41] under Soils and Water 8. Once you've had that plan, you know where you're going to put the Catchers and you can then develop a strong water control and flood protection design, that's the step at which you will know where everything goes to protect the impact of the Catchers and the facilities both onsite and offsite. You want to protect the facilities onsite because that actually does affect the off-site, as well. After that, after the storm water control flood protection design, the next document that would be finalized, and these are all things that should be considered in developing the DESCP, and we believe that should be the next step and it should be approved before you move on. There are a number of reports that you can develop at that point in time, up to your preconstruction period, within the Decommissioning Plan, the Groundwater

Monitoring Plan, the Construction Slip, the Industrial Slip, the Waste Conservation and Alternative Water Supply Plan. So we request that there be a correction in the Soil and Water Conditions to put these in their right order and require the approval of the development, in that order. I'm not quite sure how to do that in this process because of how rapidly it is moving, but we all talked about this with staff, the BNSF, all the other Interveners that were present on Tuesday, and the Applicant, and it does need to be taken care of. That would bring me, then, to IA. We learned that, I guess it was Friday, if not Monday, that the Applicant is considering requesting that they've read this project now up into a 1A, that would mean that these reports somehow get shortened and because, again, no detail, I can't tell you what that means. What I would stress, that we do not believe that you can develop the location of the SunCatchers, the locations of the Basins, the locations of the upgrade separation, and the other crossing, unless you know what these other project features are going to be. And so we would have to address that when we know what they're talking about and what we oppose at this point, we think they need to be completely done, they can't be broken up in pieces, and into an adequate job. So, we would ask you to consider that. Last, but not

least, since we've not had any real time and there's not a redline of the changes, is a Motion for Reconsideration at this point the only way to make changes or request changes in this process?

CHAIRMAN DOUGLAS: Once the Commission makes the decision, the Motion for Reconsideration, if you'd like to bring one, would be appropriate, but not at this time because we don't –

MS. BURCH: No, I'm saying, assuming that you act today and we haven't had time to really review the comment on the changes that are in – we got it at 9:15 and we couldn't even [inaudible] in 30 minutes, what – is there any other mechanism for changes? Like, for instance, to correct the schedule of the plans, how can we do those things?

CHAIRMAN DOUGLAS: Well, there is an amendment process and a compliance process, there's a possibility, but I think I'd like to put your mind at ease and say that, because we got the Errata so late, and because of the complexity of the issues, my plan is to hear parties, hear public comment, and take a brief recess so that – a recess and a lunch break – and most likely a brief Executive Session, and I'll describe that when we get through this, so that everyone will have an opportunity to closely read the Errata. All right, I'm going to go

back to Interveners who did not respond, they may not, in fact, be on the phone, but just in case – Society for the Conservation of Bighorn Sheep, Patrick Jackson, and Newberry Community Service District, are representatives from any of these organizations on the phone today? Before we go to public comment, I'd like to ask if BLM has a representative on the phone and, if so, would you like to say anything? I have a note that Chris Huntley may be on the phone?

MR. HUNTLEY: No, this is Chris Huntley, Biological Staff.

CHAIRMAN DOUGLAS: Oh, sorry. Thanks, okay, so we don't have BLM on the phone. Is there anyone from Fish and Game on the phone. All right, what about the Regional Water Quality Control Board? No. All right, at this – Newberry. I'm sorry –

MR. WEIERBACH: This is Wayne Weierbach with the Newberry Community Services District. For some reason I'm put on a list of [inaudible] [1:42:39] are now able to comment?

CHAIRMAN DOUGLAS: I'm glad you are able to comment. You're an Intervener, please make your comments or your statement.

MR. WEIRBACH: Well, the comment we'd like to make is we'd like to emphasize the fact that, in the

event of the need for emergency services to this project, outlying community of which Newberry Community Services District will operate the Newberry [inaudible], we would probably be one of the first additional resources, that member in the County that would be relied on to provide services, and mitigation to the financial impact this would have does in fact need to be addressed, and I just wanted to emphasize that.

CHAIRMAN DOUGLAS: Thank you.

MR. WEIRBACH: Okay, thank you.

CHAIRMAN DOUGLAS: Is there any public comment in the room at this time? All right, I will go to public comment on the phone, but I also am reminded it might be informative to the public, and certainly will be to us, if we ask staff counsel, you had held back and not wanted to speak until you heard the other parties, to make a brief response, and I wanted to see if the Commissioners had questions for the Applicant. And so, if you're hanging on the phone for public comment, if you could please indulge us a little longer, we'll get to you.

MS. HOLMES: Thank you. I think I'll make just two brief comments, first with respect to the proposed changes to the PMPD. We, too, have not had the opportunity, and so it's a little difficult for us to weigh in on it at this point. We did note that some of

the recommendations that we had made in our filing with respect to the soil and water conditions, I'm not certain about the other sections, so hopefully if we see anything that causes us concern, we'll have the opportunity to return to this after lunch.

Finally, with respect to the phasing proposal, staff had the opportunity to discuss this with the Regional Board, who does not have the concern about phasing, and as long as the phasing proposal is consistent with the Record of Decision, I think that staff doesn't have any concerns about it.

CHAIRMAN DOUGLAS: Thank you. Commissioners, any questions you'd like to ask before we wrap up with public comment and recess? Or would you like to hear public comment? All right, is there anybody on the phone who would like to speak at this time?

MR. STEARN: Fred Stearn, Newberry Springs.

CHAIRMAN DOUGLAS: Please go ahead.

MR. STEARN: Good morning, Commissioners. I'm a real estate agent in Newberry Springs and I've submitted along with some other landowners in the area all sorts of comments into the State and Federal documents regarding significant – or potentially significant impacts on the private landowners up there and impacts that are required under the [inaudible] of

CEQA, including noise, visual, drainage, hydrogen gas hazards, glint and glare, aesthetics, and access. And those people might live with all the negative impacts, [inaudible] access, and there is just the no response for review that I can see in either Federal or State, CEC reports on those objections and complaints. I wondered, and I would wonder if there might be a condition you could put on the project if you do approve it, if it survives, if you might require the Applicant to require – there are about 80 private landowners and they're going to be land mined by this project if it goes ahead as proposed, if you could require that any bridge built over the railroad right of way would allow those 80 property owners, the owners of those 80 properties, some of them are multiple parcels, some are one owner, but there ought to be some requirement that would guarantee access into that area north of the railroad tracks for these people. I think that concludes my remarks and I thank you very much.

CHAIRMAN DOUGLAS: Thank you for speaking today. Is there anybody else on the phone? Is there any other public comment on the phone right now? There doesn't appear to be. So, let's see, Commissioners, the Bagley-Keene Act allows the Commission to deliberate in closed session on an adjudicative decision and, in

addition, in light of some of the legal questions and controversies raised by some parties, we certainly have the ability to consult with our Chief Counsel's Office. So, what I would like to recommend is that we recess the Business Meeting, reset an Executive Session, a closed session, for 1:00 p.m., if the Commissioner schedules allow, and then we come back here at a time certain, say, 2:00 or 2:15. Does that sound agreeable to you? All right, so, Commissioner.

COMMISSIONER WEISENMILLER: That sounds good. There are a couple of clarifying questions I had which might –

CHAIRMAN DOUGLAS: Absolutely, please.

COMMISSIONER WEISENMILLER: So, the first question for the staff is, Applicant has submitted today significant reasons to certainly [inaudible] [1:49:15]. Has the staff had an opportunity to review those proposals and, so, do you have any comments on this?

MS. HOLMES: I'm aware of two submittals by the Applicant, one was proposed changes to soil and water, one through 13 or 14. We worked with the Applicant and with BNSF and with CURE on those on Tuesday in our workshop, and what was served on all the parties reflects staff's and everybody else's response to those. I think the specific changes that you are referring to is the

change they were discussing earlier this morning regarding phasing and, as I just said, assuming that there's no conflict with the Record of Decision, our conversations with the Regional Board, and our own review of our responsibilities indicate that the phasing proposal can work.

HEARING OFFICER KRAMER: If I can add, the Committee did modify somewhat what was said on Tuesday afternoon, so it's not quite the same, it was basically changing time issues, but there was some tweaking of what the parties gave us.

VICE CHAIR BOYD: If I might, a question of either staff or Mr. Kramer, to what extent does this document that was just referenced speak to any of the issues that were brought to our attention today?

MS. HOLMES: What we tried to – I don't know which document you're referring to –

CHAIRMAN DOUGLAS: The Soil and Water.

VICE CHAIR BOYD: Soil and Water –

MS. HOLMES: The document that was filed after Tuesday, or the document that Mr. Kramer brought?

VICE CHAIR BOYD: The document handed out to us this morning.

MS. HOLMES: BRF [ph.], I can't speak to that.

VICE CHAIR BOYD: No.

MS. HOLMES: My understanding is that the soil and water proposal for phasing that the Applicant has made, staff has indicated, again, as long as there's no concerns or conflict with the Record of Decision, we don't have a problem with it. Burlington and Northern Santa Fe has indicated in their comments earlier this morning that they believe it's inappropriate for the reasons that Ms. Burch expressed, I think it was one of the last items she discussed.

HEARING OFFICER KRAMER: And this was first given to the parties on Monday, the document we are referring to.

VICE CHAIR BOYD: Thank you.

COMMISSIONER WEISENMILLER: So, I had a question for the Applicant. Under the Federal Cash Grant Program it has to be a project with substantial construction to be eligible, and as I understand it, typically the PPAs for projects have lower prices if you get a cash grant and higher prices if you don't get the cash grant, but not getting into the PPAs for this particular case, there are two ways to comply with the substantial construction, one of them is the [inaudible] [1:52:11] five percent test, and the other is the continuous construction aspect. Obviously, there have been Treasury – there have been better rulings, but

information posted on what that means, so in terms of – it looks like a June, then it's July and the subsequent September, potentially additional ones coming, but you've chosen to go with continuous construction – or construction, which I understand they are now going for continuous. The final question is, obviously, some of the issues in this case will be easier if you are going with the five percent test, State [inaudible], so I just wanted to understand whether there is any potential for the Applicant to do that.

MS. BELLOWS: On this one, there is no potential to do that simply because we did not plan on that. The regulations in regard to that are a bit unclear and we felt much more comfortable being able to move forward on their construction as a means of meeting the grant. In addition, this is no secret, we made clear to the Committee in the past, is that our DOE financing has not come in yet, they are in the process, and this is one means of us doing this, using our own equity funds as similar rate.

COMMISSIONER WEISENMILLER: Excuse me, by "DOE financing," are you referring to a loan guarantee?

MS. BELLOWS: Yes.

COMMISSIONER WEISENMILLER: Thank you.

CHAIRMAN DOUGLAS: Other questions?

COMMISSIONER EGGERT: So, I guess this is a question for the Chair, in terms of sequencing, I'm wondering, do you think it would be useful to address some of the questions that came up during the parties' comments this morning? Or should we –

CHAIRMAN DOUGLAS: I think that, if anything that you think would be helpful for deliberation, we should discuss and get out now, particularly if you have questions of any of the parties.

COMMISSIONER EGGERT: Okay. I do have a few I think would be useful. I think there have been a number of questions that relate – well, actually, okay, let me start with this. I think there have been a number of questions relating to the process, and given those comments that have come in, well, prior to this hearing, I did ask the legal office to take a look at the process, whether or not the Committee is following all of the proper procedures and notifications and timing for public comment as it relates to our statutory requirements of the Warren-Alquist Act, and I wonder if maybe they would be willing to make a statement based on their findings.

MS. DRISCOLL: This is Kristin Driscoll from the Chief Counsel's Office. We believe that the Commission has followed all of the procedures required under both the Warren-Alquist Act and the California

Environmental Quality Act. The Warren-Alquist Act requires a 30-day comment period on the PMPD and has no requirements for a similar public comment period on any revised Staff Assessment. This is consistent with the Act, itself, which requires a reasonable opportunity for public comments through a public hearing process. Also under CEQA, this Commission has a certified regulatory program through its Power Plant Certification process that uses a document as a substitute for an EIR. This substitute EIR does contain a description of the project and the agency's findings regarding any environmental impacts. The PMPD is the only document that includes the agencies, and not just staff, which is a party to this proceeding. The agencies' findings are environmental impacts, therefore that document is the document necessary for a CEQA 30-day comment period, if one applies through the CEQA process, and it doesn't already apply through the Warren-Alquist Act process. We also believe the parties and the public have had very reasonable opportunity to comment, both written and oral comments at public hearings, and throughout this process, and have contributed to the development of the PMPD. Therefore, we believe that this process has complied with both the Warren-Alquist Act and CEQA.

CHAIRMAN DOUGLAS: Commissioner, obviously

we'll have ample opportunity to dig in to Chief Counsel with following questions with them, but I think that the compelling need right now is to get information from parties [inaudible] before the last session.

COMMISSIONER EGGERT: Absolutely. So, I guess this is a question that could go to either the Hearing Officer, the Applicant, or the staff, probably this first one would go to the staff. There have been some claims about specifically the ability to comply with CEQA given the lack of a Desert Tortoise translocation plan or a final translocation plan that has had the benefit of public review, or even a staff review. And also, I'll blow in there some specific claims that the mitigation does not properly account for the off-site impacts to Desert Tortoise from the translocation, itself. This was something I did notice was addressed in the Errata, but I thought maybe Mr. Kramer would want to elaborate on that.

HEARING OFFICER KRAMER: Well, on the question of having the plan before us, the approach the Decision is taking, because there is not a plan, is to have a condition that describes the standards, and these are Federal standards from the U.S. Fish and Wildlife Service that come from their Desert Tortoise protection or recovery office, you know, we're going to the source, the people who are primarily responsible in this country at

the Federal level for taking care of the Desert Tortoise. We have a condition, I believe it's BIO-19, is that right – I think it's 17, yes, that requires the translocation plant, when it is produced, comply with the standards that are in the guidance referred to by me from that office. There was a point there in our hearings where the expert witness for CURE and Sierra Club, Mr. Cashen, spent some time explaining and, if you will, complaining that we were not complying with those very guidelines, so, among other things, we made sure that we wrapped those into the condition. But when you don't have the final document, in some ways it's part policy matter, and there probably are some legal aspects, as well, but this is not the only place in this Decision and the current approach to this project where we are setting performance standards and leaving it to the skilled staffers from four State and Federal agencies, Department of Fish and Game, Energy Commission, Fish and Wildlife Service, and DOM to then apply those standards to the document. If people are not satisfied with the decision they make, they can – there are appellate mechanisms in our compliance process and you can appeal a determination that the plan was adequate, for instance. But what you're doing is, rather than micromanaging that with yourselves as Commissioners, you're setting the ground

rules and sending it off to the staff to do the work, so it's not an unusual way to do business. You could go the other way, but obviously you will be doing that for a little while here because the plan only arrived very recently. There was, of course, a draft plan that was – I don't think it's fair to say roundly criticized by many people in the earlier parts of this proceeding, but it was sent back for more work and now it's available. As far as the off-site impacts, for the impacts that the locations where the tortoises are going to be relocated, or "translocated" is the term, until recently, it was pretty speculative to try to decide that a particular site was going to be a candidate. Nobody has thus far really complained about more than the fact that the tortoises in those relocation areas might suffer by the introduction of new tortoises, either healthy tortoises that could out-compete them for the available food and shelter, or diseased tortoises that give them disease. But the decision, and I think more clearly after the work done on the language a little bit in the Errata, is meant to convey the message that the Commission believes that in providing the habitat mitigation and the habitat enhancement, that we are both mitigating for the loss of habitat on the project site because it's fenced off, tortoises are not going to be able to go there anymore,

and we are also mitigating for the predicted fact or expectation that some of the tortoises that are translocated are going to die, and some of the tortoises in the translocation are going to die, and then there's a third, Fish and Wildlife Service wants a control group to be monitored and tested, and that includes taking their blood to check for disease, and attaching a radio to some of them, and that's going to cause some of them to be stressed out, as well. So, we think we've taken care of all those impacts. If there are some other kind of impact on these sites that we're not really sure we know exactly where they are, well, at this point, it seems speculative to try to figure out what those effects might be and, again, I don't think anybody has been trying to focus our attention on impacts other than those to the tortoises in those areas.

COMMISSIONER EGGERT: Thank you. I guess if any of the other folks who want to make a comment on that or –

MS. FOLEY-GANNON: Yes, I concur with Mr. Kramer's discussion and I would also draw your attention to the fact that the complaint is that these direct impacts haven't been looked at. We heard hours of testimony on this issue. This was discussed at great length, both in written testimony and my testimony, and

in cross examination of the witnesses. So, again, I think this is one of those issues where the Interveners disagree and, as Mr. Kramer has also pointed out, the other agencies have looked at this issue and the U.S. Fish and Wildlife Service found it appropriate to issue a biological opinion, which considers all of the impacts associated with the project, as well as the Translocation Plan. Fish and Game weighed in on this issue, the Bureau of Land Management has issued a Record of Decision and the Right of Way Grant, which considered this issue. So, there are a number of agencies with considerable expertise dealing with these resources, who have looked at this issue, and they have made a determination, and we think it's appropriate that the PMPD came to a similar conclusion and made a similar recommendation. We recognize that other parties disagree, I'm sure it's not unusual we are receiving some disagreement, and you have to resolve those disagreements. So, we think that issue has been aired and you will make a conclusion there has been a recommendation in front of you.

CHAIRMAN DOUGLAS: Other parties?

MS. MILES: At this point –

CHAIRMAN DOUGLAS: If you could identify yourself, please?

MS. MILES: Sure, this is Loulena Miles with

CURE. At this point, it is not speculative what would be in the Desert Tortoise Translocation Plan because that is the document that was docketed last week, however, the staff – to my understanding, the staff has not fully analyzed that document, and we would recommend that the staff do analyze that and provide an analysis that is a publicly available document. Also, we wanted to say that we don't believe the performance standards that were laid out from U.S. Fish and Wildlife Service can be met by this Desert Tortoise Translocation Plan, and for reasons that we submitted in testimony from Scott Cashen in prior hearings, for example, one of the performance standards, I believe, is that you would have a piece of land for off-site mitigation that is the same size as the project site, and the two off-site Desert Tortoise translocation receptor areas were not equivalent, also that there would be a continuity of area between project site and these off-site lands, and that there isn't actually continuity in that. I can't actually recall all of the issues off the top of my head, but there were a number of additional issues that we felt the performance standards could not be met based on what has been provided by the Desert Tortoise Translocation Plan, and that leaves us with a lot of concern about is there going to be a judgment call as to which performance standards will get met and which

ones won't, and they are actually considered guidelines by the U.S. Fish and Wildlife Service, rather than required measures. And so it isn't clear to us exactly what the mitigation would have to meet, what the standard really is. And I do want to draw your attention to the Biological Opinion that was filed by the U.S. Fish and Wildlife Service. The Applicant submitted it also last Friday, and in that document it concluded that they did not feel that the impacts would be fully mitigated to Desert Tortoise, based on the record before them in this proceeding. And I drew out the page to that – no, I'm sorry, not in my most recent comment, but in comments we submitted on the PMPD, and I submitted an excerpt from the biological opinion that stated that. And it might actually be also referenced in Scott Cashen's comments that we submitted this morning.

COMMISSIONER EGGERT: Anything from staff on the two issues?

MR. MEYER: I know we covered that.

COMMISSIONER EGGERT: I think probably another item of significance that has come up in these discussions is the issue of the adequacy of assessing the downstream impacts to the transmission activities and, again, I would ask if any of the staff – again, this is something that did get called out in the Errata.

HEARING OFFICER KRAMER: Why me? Well –

MS. HOLMES: I don't care, either one of us.

HEARING OFFICER KRAMER: The last 10 miles is one of the transmission lines – the route has not been picked, as I understand it, so you – the kinds of things that you analyze are specific to where transmission towers are going to be located, and without that knowledge, you're simply stuck. But it's not – this is not something the Commission approves, this is beyond the point of first interconnection, so the Commission's job is to analyze what is known about the transmission connection at the time it makes its decision, and then that's as far as you can go. But the next agency is probably the PUC that is going to have to approve the natural route and all the design specifications. They're subject to CEQA and they're going to have to conduct their own analysis, and one of the things I'll be recommending to you later is that you find that the transmission upgrades will be under the jurisdiction of another agency, and that agency can and should apply the appropriate mitigation to any impacts it finds from that project.

MS. HOLMES: I would just like to add one – I think staff is very concerned with the concept that somehow the Energy Commission is required – or could be

required – to wait until another agency with jurisdiction on that other aspect of the project acts. Staff and the other parties did their best to find out what we could about those downstream impacts, to analyze them to the extent that we could, we identified the types of mitigation measures that could mitigate some of the impacts that we identified, and as Mr. Kramer pointed out, the next step belongs to PUC, they will be reviewing the proposal by the utility to build the line, and one would presume that they would start with the analysis that the Commission has of this. But I think that a concept that the Commission is somehow required to wait for the PUC to act before it can approve a project is dangerous, and it is not necessary.

COMMISSIONER EGGERT: I guess a few more if that's okay. Well, actually, while this on my mind, this is probably more of a request, the soil and water was an area that we did start a tremendous amount of time and effort on because of the legitimate concerns of the BNSF and their properties, they said this is an extremely active rail corridor, a train every 15 minutes, or something like that, and so we did want to include the appropriate level of protection. I guess, between now and when we reconvene, what might be useful to know is, as the Committee had put forth in the Errata, the

revisions to soil and water, I think what the idea is, or the attempts, was to try and make it reasonable in terms of the length of time that it might require to actually conduct the analysis, and there are no real dates in there that do say within, you know, a certain number of days, and I guess if that was something that adds up to four months, I would ask that maybe you try to recalculate that to see if that is actually the case. And then I guess I would also ask BNSF also to take another look at the proposal from the Applicant on IA, which I think we have taken at least a preliminary look at with the rest of the Commission and we'll need some time to digest that to see whether or not there would be any potential flexibility that allows for earlier work to be conducted. And I think the other is that there have been some mentions of the corridor activities and there is sort of the issue associated with the East/West corridor for different species in the North to South, and again, I'll ask either our Hearing Officer if he wants to add anything to the record on that, or the staff to address some of the points, that you come up. And actually, just to prelude this, it wasn't an explicit direction from the Committee in terms of the reduction of acreage, though it was certainly recognized by the Committee that the reduction in the project acreage from

the Cady Mountains would provide a substantial increase in the east to west corridor movement, a potential for the species of concerns, that was something that had been brought up, was that there were some pitch points leading up to the mountain range and the expectation that that would be significantly remediated from the east to west direction. But, go ahead.

HEARING OFFICER KRAMER: Okay, well, just to note, and this is already in the record, but that there was a dialogue on August 5th at the Evidentiary Hearing, largely between Mr. Otahal, the Biologist from BLM, and myself, and I'll just let people go back to the transcript to look at that, but one of the things Mr. Otahal was saying in my reading of this discussion was that the east to west corridor was much more important than the north to south was, especially with regard to this project, because – I'm sorry I can't bring the map up quickly, but basically what I took from what he said was that there are limitations having to do with the highway, the freeway, and there are only certain places where there are, I guess, suitable sites, culverts, that go under it for things like the sheep, I suppose – sheep would probably jump the road, but – but for the tortoises. And some other practical details about the way things are laid out, meaning that they're not a party

– it kind of gets to the western third of the project, kind of lines up with some of the best ways to get across the highway on that side, and then he also was implying that, on the eastern side, if they go around the edge of the property, that's another good place to get that point of view through the railroad, as well. So its bottom line seemed to be, and that is something the Committee took notice of, is that the north to south routes in the vicinity of the project were just thought to evaporate and nothing to get real excited about, as opposed to the east to west routes.

COMMISSIONER EGGERT: So, I think, Chair, looking for some guidance here, I do have a few additional questions, but I think some of them may be addressed just specifically to counsel in closed session, so I would –

CHAIRMAN DOUGLAS: Well, let's save those for counsel, then, and let's let everybody – before we break, oh, I'm sorry, Commissioner Boyd.

VICE CHAIR BOYD: Well, I'd like to ask a quick question and maybe make a comment. Well, I'll save the comment for later. Some of my questions have been answered. But I just wonder if the Applicant, or even Mr. Kramer, but particularly the Applicant, didn't help by responding to the concerns raised primarily by the

railroad, but even Basin and Range Watch brought up the flood issue, drainage issues, the alluvial fan, the debris retention basins, and the lack of studies, as alleged by BNSF with regard to the geographical and typological surveys needed to address that, and their concern that there is a serious situation. Do you have any comments that can help me understand this, your perspective on this? Oops.

MS. FOLEY-GANNON: Give me the mic and I can respond. The evolution of the process, and it is true, some of the information that the Applicant has been considering with regard to these issues is not in the record, and it’s not before you, and I can get to the end of this, but that’s what we think the performance standards are necessary for, to ensure that there is not a significant impact. But what has happened is, during the project design, initially there was the determination that there would be these detention basins that would be at the northern edge of the project, so you know, near the basin of the mountain. And when the engineers were looking at this, they made a determination that that is going to be primarily helping reduce maintenance issues of what was going to have to be done on the site, and that without those basins, you’re going to have to go through and there’s going to have to be a lot more clean-

up that's going to have to be done around the SunCatchers, themselves, and so it was looked at as two different ways, one is that, if it was necessary to control that flooding, to do that. But what we thought was primarily going to be needed for was for actually making it easier for maintenance on the site. In looking at it, when the construction engineering team who is looking at it went further, they came back and they said, "We actually don't think these detention basins are going to be necessary." We were already very far along in this process and we didn't want to change the project, and so we were going to maintain those detention basins. There were discussions that there would be a study that was going to be done and what was necessary would be implemented. At that point, we were anticipating that the study was going to show that the detention basins weren't going to be necessary, and we wouldn't need to install them. Again, they were in the northern part of the site so that would not have affected the lay-out of the larger project at all, it just would -- there would have been detention basins installed in that portion of the site. We, in response to the requests to reduce the project, obviously were also looking for ways to be able to maximize the energy generation that could happen with the project. We had also had hired an expert who had –

who was Dr. Chang, who had worked for Tessera Solar on the Imperial Valley Solar Project. Dr. Chang had actually first been a consultant for the U.S. Army Corps of Engineers, and he is a recognized expert in erosion and sedimentation issues and has worked extensively in the desert environment, so he had been involved in Imperial Valley, so we asked him to take a look at the site and say what his recommendations were, and his recommendations were that the detention basins weren't necessary. His report has been criticized by BNSF and several of the other Interveners, and we recognize that there needs to be further studies done to make a final determination, but we think – we anticipate that the answer is going to be we don't need the detention basins. But we have agreed and we are committed to doing whatever is necessary to meet the performance standards. And you will see in this Errata and in the Proposed Decision, many of the performance standards aren't directed exactly at those issues, it's saying "you can do no harm to the railroad." And we have to have reports that show that. And that's the only way we are going to be able to move forward, so we think their issues can be addressed, they will be addressed, again, we anticipate it's not going to require detention basins, but if it does, they will be installed.

VICE CHAIR BOYD: Thank you.

COMMISSIONER WEISENMILLER: Just a follow-up question with Paul Kramer. Early on, you foreshadowed that there might be additional corrections to the Errata? I thought it might, thinking through the matter, it might be useful to provide at least some signals there other than, you know, grammatical changes and clean-up.

HEARING OFFICER KRAMER: Yeah, both parties, staff and the Applicant, proposed some new language to deal with the donated lands question and so we're going to adopt those changes to the extent that they're consistent. And at our last hearing, nobody had any problems with that. And then, the changes that staff is proposing with the cultural resources and other changes to land use. And traffic and transportation, socioeconomics, we have a clarification of staff of a couple things, but also from the Applicant about – they say confirmation of some of the add-on jobs and how much money is going to be spent, and when you have a project that downsizes, you want to make sure that those years are still good and you're using them as a justification in Part 3 overrides. So we have that. And a small change to noise from the Applicant, we have – I think we've got all the soil and water changes – well, actually, we still need to hear positions. And changes

to bringing those land use provisions, we'll harmonize those, a visual resource change, a minor one, and to the override findings, just some of the numbers. And I'll note that, I don't know if I said it earlier, but we did recognize in the Errata now that, you know, now that it's been clearly brought to our attention that the detention basin issue might lower the output, that we said that it could go lower and we could still override. Based on what the Applicant said at the last – in the conference, we think the threshold is as low as 100 megawatts lower, somebody thinks it's going to go possibly even lower than that, it would be good to let us know so that the Commission can consider now if they are willing to go even lower than that.

COMMISSIONER BYRON: Wasn't there one other issue, Mr. Kramer, about the Federal protection of the wildlife corridor?

HEARING OFFICER KRAMER: No, that is already talked about in generic findings and there's no impact, especially with the explanation I made a few minutes ago, I think there's enough in the record to explain to a review in court what the rationale was.

CHAIRMAN DOUGLAS: Other questions.

COMMISSIONER BYRON: Madam Chair, I think one that I think will be helpful to us in Committee, in

Executive Session. First of all, I think the Interveners did an excellent job in their expressing their high level of concerns about retrying the case, and I don't think it's really necessary for us to do that in the business meeting – in this deliberation. I believe the Executive Session will help with counsel and Mr. Kramer and the Committee to be able to answer and address most, if not all of the concerns that have been raised, except I think there is one unifying concern that Commissioner Weisenmiller got into somewhat, and so I'm going to turn to the Applicant and just ask if they can address this briefly and it's the issue of why it's important to consider for approval of this project today. We've had some explanation around that, but if you'd go a little bit further with regard to satisfying this Commission's interest in your ability to correctly interpret and satisfy the ARRA requirements, that's one question. And the second, I think, that's going to be crucial to the Commission is, have you also considered a new schedule of time for potential Petition of Reconsideration, and any potential litigation for the Supreme Court in your schedule.

MS. FOLEY-GANNON: I'll ask Ms. Bellows to answer the funding questions. With regard to the schedule, the schedule is very tight, there's no doubt.

There is not a lot of extra time, so if there was a Supreme Court litigation that was accepted and that the Court enjoined any action on the project, bearing a hearing on such a petition, it would preclude construction this year, there is no doubt. We don't think that that would happen, we don't think that – we think, first off, it would be very questionable whether the Supreme Court would accept a petition to consider an appeal on this process, we think, again, this has been a very very thorough process. We think that the decision that is proposed for you is completely supported by the record. It's a chance. There is a possibility that that could happen, and that could preclude construction this year, there is no doubt. But, again, when we're looking at this, we think that you have done, as I said earlier in the exhaustive look at these issues, and you have the record, and we feel highly confident that it is supported.

MS. BELLOWS: In terms of ARRA, you know, as I mentioned before, we are most definitely counting on that. There is a huge difference for the project in terms of being able to begin construction in 2010 and if there aren't grant [ph.], not. Obviously, from an equity shareholder's perspective, being able to obtain almost 30 percent coming back at you over time as you bring out

[inaudible] technologies case where you bring on the megawatts, [inaudible], it really drives down the costs. And you know, you mentioned, Commissioner, you mentioned earlier about PPA, our PPA is with Edison, Edison is here today, they are one of the toughest movers and shakers I've ever had to deal with, I had to negotiate a PPA with them. And, you know, the utility stance and your stance generally is that financing risk is the developer's risk, not the utility's risk. And I certainly can tell you it's not a PPA, but we'll just leave it at that.

CHAIRMAN DOUGLAS: Other questions? Oh, Ms. Public Advisor?

MS. JENNINGS: Yes, Chair Douglas, may I ask a question before you adjourn?

CHAIRMAN DOUGLAS: Please.

MS. JENNINGS: I did reach Mr. Jackson, he had an emergency this morning, he may be able to participate this afternoon, and I was wondering if you would be willing to entertain his brief comments at that time?

CHAIRMAN DOUGLAS: Absolutely. So what I think we'll do in terms of more comment from the parties this afternoon is we'll hear from Mr. Jackson, we'll ask other parties to speak just to the Errata, and any changes that there may or may not be in their positions by view of having the opportunity to study the Errata and having an

opportunity to talk potentially over lunch if there's anything that you have to talk about with other parties that might involve outstanding issues. But we'll ask parties to limit the scope of the second round of comments this afternoon to those two topics since we've heard from you thoroughly this morning.

I'd like to ask Mr. Blees to give us a brief Chief Counsel's Report in case there are any other items that we would want to cover in Executive Session.

MR. BLEES: Thank you, Chairman Douglas and Commissioners. Yes, in addition to the deliberation on the Calico matter, that the Chairman has already indicated to request a closed session to discuss Item 4(b) and also to discuss potential exposure to litigation on another matter. And I would suggest we combine the consideration of all three of those items.

CHAIRMAN DOUGLAS: Thank you, Mr. Blees. And finally, before we do that, Mr. Kramer, are you intending to produce a draft of the Errata with some of the revisions we discussed by a time certain today? Or this afternoon?

HEARING OFFICER KRAMER: Well, no, I'm going to be otherwise occupied, so –

CHAIRMAN DOUGLAS: So, when –

HEARING OFFICER KRAMER: Well, if we describe

them, I think we can just incorporate them into the Final Decision. Because once the Commission decides, my office takes all those changes and produces a new version of the Decision that incorporates them.

CHAIRMAN DOUGLAS: All right, so I guess what I would ask you to do is to have a clear list and we'll go over it, too, but parties have had at least a summary of what those items would be.

HEARING OFFICER KRAMER: Right, and they are all by reference to comments that were filed earlier and the parties – and could be discussed and, again, to a degree on Tuesday.

CHAIRMAN DOUGLAS: All right.

COMMISSIONER EGGERT: I think I would maybe just add, I think, though, in terms of in the interest of clarity, it's probably worth at least specifically calling out those areas that are matched with – so in other words, on the staff's comments, we've modified, as you said, the soil and water, but we're incorporating by reference some of the others. I think, just having that very clearly laid out would be helpful.

HEARING OFFICER KRAMER: Okay, I'll see if I can do a quick – maybe a list.

CHAIRMAN DOUGLAS: That would be really helpful. All right, so it's about twenty to one, let's

start Executive Session at 1:10 in my office, and we'll plan on recessing the Business Meeting until 2:15 – 2:30. So we'll see all of you – many of you – back at 2:30. And we'll go now to Executive Session.

(Off the record at 12:43 p.m.)

(Back on the record at 2:47 p.m.)

CHAIRMAN DOUGLAS: Welcome back, everybody. I think before we begin, we're going to hear from a member of the public or –

MS. JENNINGS: Yeah, Mr. Jackson, if he is available on the line.

CHAIRMAN DOUGLAS: Mr. Jackson, are you available?

MS. JENNINGS: He wasn't sure he'd be able to.

CHAIRMAN DOUGLAS: Well, if he contacts you, let us know?

MS. JENNINGS: Yes.

CHAIRMAN DOUGLAS: Wayne Weierbach, Newberry Community Services District, are you on?

HEARING OFFICER KRAMER: He spoke.

CHAIRMAN DOUGLAS: Oh, he spoke. I'm sorry. Is there anybody on the phone who is an Intervener who has not had an opportunity to speak today? All right, we'll start by, Mr. Weierbach, you'll have an opportunity to speak to the Errata in a moment. I think the best way

to start is to have Mr. Kramer, if you are prepared, to read through the list of changes to the Errata so that everybody hears this list again before they comment on the Errata.

HEARING OFFICER KRAMER: Okay, these will be in addition to what is in the Errata. I consider all of these to be – unless somebody corrects me later – and that's the purpose of this exercise, to be pretty much just typos and minor changes that nobody had real issue with. Let's begin with the Applicant's original comments. These are the ones that were served before the Committee conference on October 27th. So, they've numbered their suggestions, so number 5, which relates to the project description, that was just suggesting – or just clarifying that the control building was going to be in the substation, if not adjacent to it, that's a minor factual clarification. Number 8, air quality, was giving some of the California Commission standard data. Number 9 was eliminating the typo where ozone appeared in there for some reason and said that it should not. Number 10, Public Health, updates some of the Commission estimates for the diesel fueled engines that would be used probably – perhaps during construction and also perhaps during operation. Number 12 was in biology, we're skipping – at our meeting, we had to skip number 11, our staff argued

that they were skipping that, and we agreed – number 12 in biology is discussing the noise levels. Number 13 is asking that monitoring of the Tortoise fences be on, or fences, in general, be on a weekly, rather than a daily basis – actually, that is the Desert Tortoise fences. Number 14 in soil and water, postpones the design of the sanitary waste septic system until Phase I be – the argument is that they're not going to be trying to use that system any sooner, so there's no reason to advance the design. And to be clear, again, these are all changes that the community is recommending to be made, unless somebody objects and convinces – by now it will be the full Commission – to do something to the contrary. Number 16 was withdrawn by the Applicant. Number 17, cultural resources, just a clarification about the fact that there might be other protective rules for human remains that are found, and it refers to those. Number 18 in land use discusses the – the required lands and it has some data about where they are. And number 19 recommends deletion of two – or rather one – paragraph, and this is actually appropriate because of the new information. The paragraph that would be deleted was tentatively concluding that there would be a LORS violation. And with the new information, now the Committee is concluding that the use of the LWCF and

required lands, the donated and acquired lands, is consistent with the Federal policy, based on the new information we received. So number 20 under land use basically rewrites a paragraph that is thought to be somewhat confusing, that concludes against the staff's recommendation that there is a significant cumulative impact due to the loss of agricultural and range lands, so the Committee did not accept staff's proposed conclusion that there wasn't a significant cumulative impact. This is basically a rewrite to avoid any confusion, but that's what we meant. There are a few places, and I don't know that we'll catch them all on these, but we will be vocally looking to make sure that we've updated in all the proper places the acreage, which should be 4,613 acres, that is number 21 under land use, there's one example of that. Number 22, we are not adopting, because that is suggesting that it's not necessary for the Commission to test to see whether that Federal policy about fire lines has been satisfied. And while we don't enforce the policy because we do a LORS examination of State, local and Federal rules, I think we asked the question, so we're not adopting that one. Number 23 in land use is more description of – oh, here we are, Land and Water Conservation Fund, that's the acronym, and it's more description of the donated lands

and the LWCF lands relating to this project, just – I have the same order of information. And then, number 24 is the socioeconomic section, and that's updating the data for the construction employee estimates, basically just saying that, even though the output of the project is going down, the number of employees is going to remain the same as was previously predicted. Number 25 is visual and staff the other day said they were okay with that. This is reducing the setback from Item 4 a little bit – increasing? I'll let the Applicant explain that.

MS. FOLEY-GANNON: Vision, it was articulated in the PMPD, required in addition from the setback from Item 4, you would just do 223 feet, also a setback from the pipeline, and because this is a condition, there is an underground pipeline which runs through this other portion of the site, and so this is just for moving that requirement and consistent with the analysis taking 223 feet setback from the highway.

HEARING OFFICER KRAMER: Okay, so it was removing the setback on the setback. Okay, 26 is in the overrides section, and it's just updating the megawatt estimate for the project. Twenty-seven in overrides is providing some additional information about the economic benefits that would come if the project were to do taxes and other expenditures. And then, finally, 28 is the

exhibit list and that will be updated both to indicate the dates when the various documents were accepted or admitted into evidence, and adding one or two final documents to add to the list that were either in the last Evidentiary Hearing, or at the subsequent meetings. So, on the staff side, up until about page – if you're following along – page 25 of the staff comments, those were incorporated or were not incorporated as appropriate. There were a couple in there that were just gratuitous rewrites of the change in the meaning and we decided we would not bother with that. Barbara Boxer, I guess, motivated that. But the first comment that is not yet in the Errata is the staff numbers – not with paragraph numbers, but with the topic and page number in the topics section, so, for instance, the first is Soil and Water, Page 33, and that is clarifying the status of some of the stormwater flows on the site, that they're considered waters of the State by the Mojave Regional Water Quality Control Board and subject to regulation, just a factual bit of information for us. Soil and Water, Page 34, there are two of those, the first is just clarifying that the water flows come from discharge into the Bios, the next, Page 34, is making a minor change to Condition of Soil and Water 7. Soil and Water, Page 37, makes some minor changes to the narrative there.

Actually, I'm sorry, the previous one was not making a change to the condition, it was making a change to a description of what the Commission achieved. Soil and Water, Page 44, is an amendment to the Soil and Water 7 and, since this was published, the parties have produced a whole new separate, that ignores this proposal, and go with what is published in the Errata. Then, we go to Coastal Resources, Page 45 through 46, some more historical information clarifying that the status of this Route 66 in the Mojave trails national monument, just a bit of factual detail. Cultural, Page 81 is amendments to a condition called Cultural 6, it appears to be mostly about the form of providing information and the timing of some activities and these are largely research activities. Land Use, page 2, is adding back an inadvertently deleted description of the threshold of significance for cumulative impacts from the land use discussion. Land Use, Page 4, clarifies that the water pipeline and the well – it doesn't mention the well, but that's part of it – are actually on private land that is subject to the jurisdiction of San Bernardino County, and then all the other property that is part of the project is subject to the BLM – BLM lands. The second Land Use, Page 4, again is clarifying the status of the LWCF lands. The third Land Use, Page 4, describes the phases in terms

of Phase I from 1,876 acre phase, and Phase II, the 2,737 acres, and also there was some – I guess it's a transposition that I must have started on early, there are also a lot of cases in the Decision potentially where, instead of saying that there will be 26,540 Stirling energy units, the number 26,450, a quick transposition slipped in, so we will replace those in this particular case and make a global search to make sure we catch all that. Land Use, Page 5, again corrects the acreage. Land Use, Page 6, does the same thing, as does Land Use, Page 11, Land Use, Page 12, it is again clarifying the status of the pipeline, that it is on County jurisdiction land, not BLM land, and draws the conclusion that the project would be consistent with the – I believe it would be the zoning ordinance in this context of the various agencies. The second Land Use, 12, is again describing the donated and acquired lands issue, and that the BLM is, by virtue of their approving the project, is indicating that the policy that we were concerned about has been satisfied. Transportation, Page 3, and there are a few here, are adding the name of a product that is used to seal the roads, I believe, it is called "SOLitrack." [Inaudible] And then that same product is mentioned in both Change Transfers, the first transportation on page 11, and the second transportation

on page 11 changes the deadline from 60 to 30 calendar days. So, in the Socioeconomics, there are changes at pages 1, 3 and 4, that – let's see, page 1 clarifies the construction period is going to be 41 months, it was listed there as 44, that is a problem I noticed in trying to write this, there were a couple different estimates in various places, including the Staff Analysis and, I believe, some of the Applicant's, but they apparently settled on 41 months, so that is – and then page 3 is correcting a spelling error, page 4 is, again, the time of the construction period is 41 months – almost done – Noise and Vibration, 9-10, they are eliminating the ability to have noisy construction outside the 7:00 a.m. to 7:00 p.m. timeframe.

MS. FOLEY-GANNON: As staff had commented, it's actually just putting an alternative need for – that the CPM could confirm when construction would be allowed outside at those hours.

HEARING OFFICER KRAMER: Okay. Noise 6 eliminates a provision that was recommended for deletion earlier, somehow it just didn't get deleted, and appears to authorize the San Bernardino County Government to issue a variance for construction and, of course, the Commission is in charge of those matters. And then we have one final condition that I believe is consistent

with what CURE had proposed in their comments, a change to the Golden Eagle habitat, the conversation habitat specification evaluation, and I'm told that the recommendation is that we adopt a version of the language that is contained in the October 25th additional comments that were filed by the Applicant, so that's to Condition Bio 20, okay, Bio 20, and it is contained at the bottom of page 12 of the Applicant's comments. Basically, the change is to – first of all, they're correcting acreage, and then to specify that, if habitat – okay, this is about allowing Desert Tortoise habitat to also qualify as Golden Eagle Habitat, in other words, don't credit for the habitat, so this paragraph is specifying when that would be appropriate and one of the changes is to make it clear that there has to be foraging habitat, but it also has to be within a home range of a Golden Eagle, so that if you put it somewhere where you know it is not expected to use it, that's not going to get you qualified. And those are the changes that, due to the press of time, I could not fully incorporate into the Errata, but the Committee has recommended that those be adopted.

CHAIRMAN DOUGLAS: Thank you, Mr. Kramer. I would like to ask now Applicant, then staff, and then Interveners, to raise any issues particular to the Errata, changes to the Errata.

MS. FOLEY-GANNON: Thank you. Our main concern with the Errata is related to the timing in the Soil and Water conditions, and we did take the opportunity of the break to go through it and to try to determine how we think it could work. We think that the Committee did make some changes which were helpful, but you're still seeing that this is a minimum of three months because, in Soils and Water 12 and 13, are predicates that both have 30 days, and actually down to four weeks to submit the DS&T under 1, which also has to have 30 days, so that's a minimum of 90 days. And I would also just like to explain that, in our proposed revision, we are still requiring the same plans for Phase IA, the difference is that, as has been discussed this morning, of setting up the sequential approach of having to have one thing submitted to the CPM, as well as BNSF, and possibly other parties will review before you can go to the next step. The Applicant has been working very hard in anticipation and hope that this will come about today to get things done and teed up, and into staff, and being reviewed by the CPM, responding to those comments, so that as soon as approval from this Board, we would be able to move forward. The Pre-Construction Department – most all of these reports have been submitted to CPM, they haven't been submitted to other parties because that wasn't part

of it before, so a number of these, again, there was a Draft DESCP, which is what is required, Soils and Water I, which has already been submitted to staff, and comments will be given back, and that's being reworked. So, you know, we recognize and we don't object to having other parties involved in the later planning for IB and 2, but in order to allow the project to move forward, that's our main concern.

CHAIRMAN DOUGLAS: Okay, so that is the only issue you are raising with the Errata?

MS. FOLEY-GANNON: That is correct.

CHAIRMAN DOUGLAS: All right, staff?

COMMISSIONER EGGERT: I want to ask a follow-on. So, this is a question for the Applicant. So, given, again, the timing concerns, does the proposal that you have provided for the Phase IA suggest revisions, or, I guess they would be additions, to soil and water conditions that provide for basically something to be done for the purposes of that phase? Does that address that concern?

MS. FOLEY-GANNON: Yes. In the work that is already being done by the Applicant and that's been submitted to staff for comments. We could meet the requirements of what was in the PMPD and these proposed Phase I requirements for the project and be able to move

forward this year. We anticipate that we could if that would allow us to do that. And one further point that I would like to raise is that, in the earlier conditions, in the early iterations of the project, it was never anticipated that the detention basins would be put in until Phase IB. So, even when it was a larger project, if there was anticipating installing detention basins, that was never going to be part of Phase IA, so we don't think this really is a substantive change and, again, we would just ask that you consider along that timing.

CHAIRMAN DOUGLAS: Thank you. Staff?

MS. HOLMES: Are you looking for comments on the Errata? Is that –

CHAIRMAN DOUGLAS: Yes.

MS. HOLMES: Okay. We did not go through them line by line, we didn't have enough time, we also didn't go through the verifications. It looks to me as though most of the recommendations that staff had made, some in conjunction with the Applicant, some in conjunction with BNSF, were made in the Errata. I have to say that we don't fully understand the implication of the timing changes. There were some instances where there were changes to timing, and I believe there were at least one or two instances where a timing submittal was moved from the verifications to the conditions, and I don't think

this is necessarily a problem, but we are a little bit confused, given how all the timing is going to work. We had some thought amongst ourselves, both with the Applicant and the BNSF in trying to come up with a timeline so we could understand exactly when documents get submitted relative to one another, but we have not had time to complete that process. So, I think, in large, we're quite comfortable with the changes to the PMPD that weren't included in the Errata. Oh, Mr. Meyer, who will be the Compliance Project Manager, has pointed out, of particularly importance to him, which I had forgotten about, in Soil and Water 3, there is a reference toward the end of the Conditions of providing documentation to the CEC and that does need to be changed to the CPM. Minor point for me, but I think it's important for the people working on Compliance.

CHAIRMAN DOUGLAS: Could you please turn your mic off – for the moment?

MS. HOLMES: I'd be happy to turn it off for a long time.

HEARING OFFICER KRAMER: Okay, that reminds me of one more clarification. I think it's Soil and Water 2, right at the beginning of the Condition that refers to a bunch of appendices that were a part of – anyway, it referred to, I think, three or four appendices and,

rather than try and put those into the Decision, hopefully we will do –- unless a party objects – and it might be Mr. Meyer, he might be the person most inconvenienced -- which is simply refer to him by reference to the staff assessment, because that is where they reside, by Exhibit number, and then people can go look it up that way, but we will be adding just a few words to make sure that they're incorporated, at least by reference. Now, if somebody wants to argue strongly that we should print them in the Decision, we can, but it's probably 50 or 60 pages.

COMMISSIONER EGGERT: So, just to clarify, Mr. Kramer, this is in the Verification for Soil and Water 2, "upgrading no later than 60 days prior to wastewater or stormwater discharge [inaudible], the BNSF and the CPM and copies to LRWQCD, demonstrating [inaudible]. " Is that –

HEARING OFFICER KRAMER: Yes, except they're first mentioned in the first – well, second line of the main part of Soil and Water 2, so I think I'll put it there.

MR. MEYER: Speaking as Compliance – potential future Compliance Project Manager – I have no problem with that.

CHAIRMAN DOUGLAS: Thank you, Mr. Meyer. Let

me just clarify, does staff have additional comments on Applicant's Phasing request? Or was your articulation of some confusion not being put out of context?

MS. HOLMES: We have not finished mapping out the dates on which all of the different documents, reports, and studies would be filed, which we had hoped to do. My comments did not go to the Applicant's phasing proposal, but to the fact that the Errata that Mr. Kramer passed out this morning contained additional timing changes. So, to the extent that we thought we were getting going on having a road map, if you will, we're going to have to go back and take a second look at that. As I said, I don't anticipate a problem, I'm just pointing out that we're still not certain exactly what the roadmap looks like in terms of the findings. I would imagine that the Applicant may actually have a better idea at this point than we do.

COMMISSIONER EGGERT: Actually, if I just might follow-up on that, but I think the question was, has your opinion changed about the proposal from the Applicant on Phase IA?

MS. HOLMES: No. We don't anticipate a problem from the staff's perspective in addressing a phased proposal for purposes of soil and water – compliance with the soil and water conditions.

MS. FOLEY-GANNON: And just to clarify, we did look through this line by line over lunch and, again, with the phasing, these are timeframes that we believe we can accommodate, we can work with.

CHAIRMAN DOUGLAS: Thank you, so any additional comments? Are there any other parties who would like to speak about the Errata, any issues, concerns, questions about the Errata? Please.

MS. BURCH: We were not able to – this is BNSF, Cynthia Burch – we were not able to completely go through the Errata, but there are a few things that we do think need to be corrected, for sure. On the first amendment performance standard on Soil and Water 8, which is on page 34 of the Errata, there is a designation of what the existing – how we'll understand what the existing condition baseline is, if you will. And that is the wrong document, so – it's the wrong document, and we have not had an opportunity to verify any document and, because this is so important to determine what is a changing conditions, we think it's very important that we get that right. So, we drafted language that says "project construction and operations shall not alter either the existing watershed or sub-watershed boundaries below the very structures within the BNSF right of way. The existing watershed and sub-watershed boundaries shall

be depicted on a map which shall be provided to BNSF for its approval before it is submitted to the CPM for final approval." I can't think of anything better to do than where we are.

COMMISSIONER EGGERT: Does that replace 1A?

MS. BURCH: It will replace IA. And I could provide that in writing to Mr. Kramer. Would you like me to re-read it or – the concept is clear.

HEARING OFFICER KRAMER: Mostly deletions.

MS. BURCH: Yes, exactly, and provides for something to be developed that is accurate. We would specifically like to ask that the scour analysis and whole foundation reports which are provided for in Soil and Water 3 be moved up so that they're completed and approved prior to the approval of the DESCT because we believe the information of the reports is needed to reach a conclusion on DESCP. The current recess 30 days prior to construction, which would be too great for its inclusion.

CHAIRMAN DOUGLAS: Let me just ask if staff, Mr. Kramer, or Applicant have any response to that request.

MS. FOLEY-GANNON: The first request, we would suggest review and comment, rather than review an approval by BNSF, but otherwise we don't have any

objection. The second request, having the full foundation report done prior, we don't have an objection to.

HEARING OFFICER KRAMER: How best to make that change? Is it Timing Requirement and Verification? So, it would be 30 days prior to –

MS. BURCH: I'm sorry?

COMMISSIONER EGGERT: So, the question is what are you requesting, that it be linked to – you had said that 30 days prior to construction was too far away to –

MS. BURCH: Oh, the Scour Analysis?

COMMISSIONER EGGERT: Yeah.

MS. BURCH: How about that it be submitted for approval 60 days prior to finalization of the DESCP? That would allow [inaudible] [37:20].

MS. FOLEY-GANNON: We do not object to 30 days, but we do object to 60 days.

COMMISSIONER EGGERT: How about [inaudible]?

MS. FOLEY-GANNON: We can accept that.

CHAIRMAN DOUGLAS: Staff, any comment on that?

MS. HOLMES: The only comment I would make is that we agree it should be review and comments and approval by BNSF. The timing issue, again, if it is not a problem for the Applicant, I don't think that we have a problem. I would point out that we do have a draft of

the DESCP, so to the extent that this is opposing requirements that documents be submitted, I don't know quite exactly – prior to the DESCP, I don't know exactly how this is going to work out in practice. That's just for informational purposes, we already have a number of the draft plans for this.

MS. FOLEY-GANNON: And, again, that is why we are requesting for Phase IA to not be subject to these requirements, that would address that issue, and we recognize there may be some redundancy, but, again, we're willing to accept that to address their concerns.

COMMISSIONER EGGERT: As I understand, part of BNSF's interest here is that – you have received a DESCP?

MS. BURCH: We have received no documents, not the topographic survey, the geotechnical report, there is no infiltration report yet, there has been no hydrology report/study approved. These are all items that we are suggesting and we think there is good engineering and scientific basis for these to be done sequentially, approved sequentially, there are answers and assumptions and conclusions integrated into the next document, and then you keep moving forward. And we're very concerned to hear that a DESCP is under review by staff with these prior steps having not been reviewed, as those who attended the evidentiary hearings will know that we found

numerous errors in every piece of information we were given.

CHAIRMAN DOUGLAS: If there is no other discussion on this item, do you have other discussions?

MS. BURCH: I do have – again, I apologize, I just couldn't get through all of this, but those are the major – and soil and water. I do have an objection to one of the requests for an Errata that is being proposed, and that is that the evidentiary record closed on this matter repeatedly, but it really was supposed to have closed, I believe it was last Monday, and the only item that was reopened for evidence at that time was with respect to a BLM decision and we did not object to that, we understood the importance of that decision, but we saw that, in the comments submitted by Applicant, they proposed to – at the requirement of the Commission – to provide an update on information that was then not subjected to any ability to cross examine, and I think it is critical information that goes to the validity of the overriding considerations, and so we should have been given an opportunity for at least cross examination to get to the basis of their claims with regard to how many jobs and how much money and how much taxes, and there's been no opportunity to look at that information. I believe it is Errata 24, Mr. Kramer? I'm not even sure,

it's either 24 or 27, but it's information that goes to overriding considerations.

HEARING OFFICER KRAMER: Let me ask the Applicant, I believe that it's not new information to the record, but it's new information that is being clarified in the Decision. I was reminded that Felicia's testimony for the 5-15 contained all of that in there. The first time I looked, I couldn't find it, but it was – so it is not new at this point.

MS. BURCH: So, then, I'm confused. Why were they updated? Why is it called "updated information?"

HEARING OFFICER KRAMER: Well, maybe that's just imprecision on my part, but it's one thing to have it in a piece of evidence and it's another thing to do that in the written Decision, and that's what this process is, it's an update of that Decision to be precise. But let's have the Applicant confirmed that.

MS. FOLEY-GANNON: There was testimony that was offered on 5.5, I don't have the date, that was the testimony that was after the project Response to the September 3rd Order, in which the consideration of the project came out, is actually in testimony that was provided by Datwell [ph.] who is an expert in the socioeconomics issues and he made the predictions and the calculations about this, and this was providing further

description of it, as you said, that the numbers were actually in his testimony. The testimony that was submitted was all attachments in Ms. Bellows' testimony, but it was actually his conclusions that were presented.

CHAIRMAN DOUGLAS: All right, anything else?

MS. BURCH: No, thank you.

CHAIRMAN DOUGLAS: Thank you. Other parties who would like to comment on the Errata, raise questions? Are there any parties on the phone who want to ask questions or make comments on the Errata? All right, seeing no takers to that offer, if there are questions or discussion?

MS. KALLEMEYN: Chairman Douglas?

CHAIRMAN DOUGLAS: Yes.

MS. KALLEMEYN: I was under the impression that the callers' lines are open so that they could comment.

CHAIRMAN DOUGLAS: Is the line open now? All right, I am sorry, is there anybody on the phone who would like to comment about the Errata? Is there anyone on the phone who didn't have an opportunity to comment on the project this morning and who is on the phone this afternoon who would like to comment on the project? All right, thank you. All right, Commissioners.

COMMISSIONER EGGERT: So, I think – I'm not exactly sure what the proper sequence is here to propose

this, but I think there is an opportunity to consider, at least for the purposes of our decision, the ability of phasing a project, there is a suggestion that we replace the Applicant's first soil and water condition to be consistent with the performance criteria that have been agreed to by the various parties, including at least what we believe to be agreement by the various parties, but I do have a handout that describes that, if this is the proper time to do that. This basically closes, perhaps, one of the remaining stray items that will allow for that to be properly considered. And I'm willing to share that. This is actually prepared by our able counsel. It is coming around, so you'll have it in front of you.

MS. DRISCOLL: This is Kristin Driscoll from the Chief Counsel's Office. I'll just give a brief description of the change, as opposed to reading it. Applicant proposed a soil and water [quote] "XX", which is supposed to be a number at some point, this would allow the Drainage, Erosion and Sedimentation Control Plan to proceed for Phase IA only. I recommended a change that includes the performance standards from Soil and Water 1 and incorporating them into the Soil and Water XX, as it is called right now. These performance standards ensure that the BNSF Railway is protected from sedimentation and storm water increase in runoff, and it

ensures that water quality and soil resources of the project site, as well as linear features for the project site are protected from drainage, erosion, and sediment.

HEARING OFFICER KRAMER: That replaces the first eight and a half lines of subparagraph (a), correct? So it's all on page 1 of the Applicant's suggested revisions to Surface Soil and Water Conditions. And if we could give that a number, it would be – 16, Soil and Water 16.

MS. FOLEY-GANNON: The Applicant has no objection to that. We would support that change.

CHAIRMAN DOUGLAS: Staff?

MS. HOLMES: I'm trying to understand how it's different from, once again – is the only difference between this and what the Applicant submitted the inclusion of the linear features and the specific reference to other structures of adjacent properties?

MS. DRISCOLL: It just makes it the same as Soil and Water 1, basically, there's no other difference.

MS. HOLMES: Thank you.

CHAIRMAN DOUGLAS: All right, if there are no more suggestions or comments on the Errata, Commissioners, comments on the overall project. There are a lot of people who stayed with us through the morning and afternoon.

VICE CHAIR BOYD: Well, first, I want to thank counsel for reflecting something we talked about with regard to conforming the performance standards that we just finished discussing, I certainly agree with that. Secondly, I want to concur in Ms. Holmes' comments about not subjecting submissions to BNSF to approval, but rather, comment. Even before she commented, I said to myself in my mind when I heard that, we don't delegate our responsibilities for approval of this, so I think that is appropriate. And I guess, in sum, I would say that I will confess to having quite a few concerns and issues in my mind when I came to this hearing today, heavily reliant upon the Committee, though, in terms of the incredible hours and effort they put into this subject, and having set a precedent that I hope is never repeated again here at the Commission in terms of the wee hours of the morning, which you were willing to meet, certainly it will never be followed by this Commissioner. I would fall asleep on you all before – in any event, I did have a lot of concerns, answers to those concerns have been, in my mind, elicited through the clarifications and discussions that have taken place since we started this morning. I will confess to still being concerned about a lot of issues, but I am primarily persuaded by the benefit of this project to California as

a whole, to Californians, to their health, to the climate, to even criteria air pollutants, outweighing any of the concern that I had in my mind about some of the other impacts. And some people in this room know I spent time in Fish and Game and a lot of years at the Air Resources Agency, and I have a lot of concerns for our environment. But I do think, in the aggregate, I'm prepared to support the approval of the project as it has been discussed and modified throughout the course of this discussion. But I will say that this approval, on my part, is predicated upon a fair understanding of the performance standards and looking at the project manager who will become the manager of said performance. There's a lot of teeth in this and we intend that those performance standards be adhered to because there is criteria around these performance standards that speak very strongly to the Applicant about what the status of their project will be or won't be if they don't adhere to and meet the criteria and the timelines that are there. And I think, with those safeguards, I am comfortable enough to join the members of the Committee who are recommending this project in supporting the project today.

CHAIRMAN DOUGLAS: Thank you, Commissioner Boyd. Other points?

COMMISSIONER EGGERT: So, let's see, I think I'd like to make a number of comments prior to a vote, and then, if you'll allow me, maybe a few afterwards. Just to kind of go through, I think we've talked at the beginning of this about the history of this project, but I want to call out a number of, I think, significant items just for everybody to be aware of. This was a Application for Certification that was submitted in December of 2008, it was deemed data adequate in May of 2009. There has been a lot of discussions about the significant number of evidentiary hearings, there was a pre-hearing conference July 30th of 2010, evidentiary hearings on August 4th, 5th, 6th, 18th, 25th and a final hearing on September 20th, which I will allow should probably be 20th and 21st, given that we did go well beyond the midnight hour. In addition to the evidentiary hearings, both the Commission and the BLM had held a number of workshops, joint issues resolution, alternatives, identification, data response workshops, the dates are all in the Errata of September 16th, April 16th, December 22nd, August 24th, September 9th, both here and in Barstow and, of course, the purpose of all of this was to provide the Interveners, the members of the community, government agencies, the opportunity to obtain information about the project, participate in the

process, contribute expert testimony and input to try to make it a better project. My estimate is that there were at least 50 hours of evidentiary hearings and many many more in the form of workshops. Certainly, being rather new to this Commission, I can honestly say I've never participated in a more open, inclusive, transparent, comprehensive and, as some have mentioned, exhaustive process. As has also been mentioned, the committee did, on September 3rd, direct that the parties explore reduced size alternatives to the proposal primarily because of the impacts to the high quality Desert Tortoise habitat at the northern portion of the project. The effort that was undertaken by the parties, in particular the staff, in evaluating the proposals that came from the Applicant, I think, was nothing short of heroic. The staff was able to fully analyze and then recommend a hybrid scenario which is called 5.5, that was eventually adopted by the Committee in the PMPD. This reduced acreage by any measure dramatically reduces the impact of the biological resources using the US Fish and Wildlife Service formulas, which I understand there is some dispute on their accuracy, the number of tortoises estimated on the site went from 189 down to 22. This is a greater than 80 percent reduction in impacts estimated. This acreage reduction came at a cost, it reduced the project output

by about 190 megawatts, which is basically a reduction in our ability to meet our renewables goals, our environmental energy goals, but the Committee felt that cost was justified because of the dramatic reduction in biological impacts. It also increased the ability for migration of habitat corridors. But I really think that, I mean, this to me was sort of what CEQA and the Warren-Alquist Act is all about, it's basically providing this open process to receive expert testimony, to allow for the Committee to take that under consideration, and participate in making for a better project. Almost done. In terms of the benefits, again, these have been mentioned, up to 660 megawatts, which will allow us to meet our renewables goals. One thing that didn't come up in our discussion today is an interesting aspect of this technology is that it doesn't use steam generation to produce power, so water consumption is one of the lowest of all of the solar thermal technologies. This one uses about 36 acre feet per year, which for desert environments, we all know is a significant issue. We've talked to the employment numbers. And then I think, finally, I do want to spend just a second on the other benefit, which is greenhouse gas emissions. I think, you know, we've heard about how this project is being rushed to meet ARRA deadlines, and I think clearly the benefit

that the project stands to receive Federal dollars is a benefit, but, for me personally, I think what's motivated me to really take on this process is climate change. I think we know – at least, I feel confident that if we don't address climate change, if we don't address the emissions that are associated with fossil fuel consumption, the opportunity for significant economic hardship for our local and global economies, sea level rise, threatened coastal infrastructure, wildfires, disrupted changes from sedimentation, rising temperatures exacerbating air pollution, and threatening the same desert ecosystems that we're all trying to protect, you know, these aren't really an abstraction of some model, these are changes that we're seeing today, and if we don't act urgently and responsibly, we will not meet our goals, and this is not just an issue for California, this requires the rest of the country joining us and other parts of the world, as well, and I think there are a lot of naysayers out there that will claim – and are claiming – that renewable generation is too hard, it's too expensive, it faces too many institutional barriers to be successful. And I think we have an opportunity today to show that you can responsibly site renewable energy in California. I recognize that there are still remaining impacts and I think – I wish that were not the case. I

know we've got a number of activities underway to try to pick better sites, so that we don't face the challenges that we faced in this project, and I look forward to those processes actually delivering. But for all this, I urge you to vote yes for this project.

CHAIRMAN DOUGLAS: Thank you, Commissioner Eggert. Commissioner Byron.

COMMISSIONER BYRON: Thank you, Madam Chair. Commissioners, this project has – there has been a number of significant changes in this proposed project over the last number of months. I believe that those changes have made the project significantly better, as Commissioner Eggert has summarized in his comments. And I think the Applicant should be commended for the responsiveness to the direction of the Committee. But the project improvements have certainly not been easy for all the parties involved and the staff. But I have to say that your participation has benefited this project significantly. I believe the Presiding Member has driven this process towards a much better outcome, sometimes under a grueling and demanding schedule, and this project, if built, will make a significant contribution to moving California towards renewable power, while minimizing impacts and improving the environment. Now, the parties, predominantly our Interveners concentrate on

various issues of extreme importance to them and to a number of Californians, and we spend most of our time – we spent most of our time in hearings and certainly today listening and evaluating those issues. But there are a number of beneficial aspects to a renewable project such as this one that oftentimes are never even mentioned in the record. Commissioner Eggert mentioned climate change, some of the economic values, etc. Included in my evaluation is that this project saves human lives. Incremental early death due to carbon-based fuel, the burning of carbon-based fuel in this state is still at about 9,000 people per year. There are other health effects, of course, as well. This project displaces burning carbon fuel, or, I should say, “fossil fuel.” And this makes an a measurable improvement on the impact on human health, as well as addressing a number of significant environment, social and economic issues that we’ve considered in our evaluation. Reducing the use of fossil fuels means less drilling, mining, and potential damage to other ecosystems, reduced injury and loss of human lives from these industries, and possibly less likelihood of an occasion catastrophic accident. California imports almost all of its fossil fuel, some of it in-country, but most of it from foreign countries. The sun is an in-state sustainable renewable fuel. And,

of course, it can always be argued, and I would agree, that improvements can be made to all projects. There is no perfect project, even if it's a renewable project. However, in addition to considering the environmental impacts of an application, this Commission is charged with balancing all the issues associated with electrical generation, including its associated benefits. For that reason, this application with its carefully constructed Conditions of Certification, and the necessary overrides, I believe, should be approved and I also recommend it to you for your yes vote.

CHAIRMAN DOUGLAS: Thank you, Commissioner Byron. Commissioner Weisenmiller.

COMMISSIONER WEISENMILLER: Yes, I have a few comments. I think, as Commissioner Byron indicated, I think, as we have been marching through these projects, we've been looking for the perfect project, and none of them are perfect. This one, I don't think anyone described this one as perfect on our list of projects. It may well be one of the more marginal ones. But I think, again, part of what we're doing here is trying to balance factors. In terms of my thinking, obviously one of my primary concerns is climate change and, to address climate change, we really have to reduce fossil fuel use, reduce greenhouse gas emissions, and renewables are one

of the ways to do that. Obviously, in the loading order, energy efficiency is above that, but we need renewables. As you look at CARB's plan for reducing greenhouse gas emissions, you'll get the PUC's LTP, we need renewables, we need every project we can get, as long as we can deal with the basic mitigation. But I think in terms of this very important push for renewables, along with our climate change, we have to deal with the reality of the economic recession in California. We need jobs, we need investment, and this project will provide 400-700 jobs during construction, 700 is the peak, 400 is the average, it will have 182 operating jobs and, again, this is in San Bernardino which, I think, now has around a 15 percent unemployment rate, and that's one of the areas that has been hit very hard by the collapse of our housing industry. So, I think in terms of dealing with both our climate challenge and our economic challenges, this is an important component. I think, obviously, environmental values are important to me, I'm on the Commission as a Scientist, and I think I very much appreciate what the Committee did in its ruling on the original project. It would have been very very hard for me to support the original configuration, so I think that was a very very critical step. I also appreciate the time and energy that the Committee has put into making

this a better project, and making it an acceptable project. I think Commissioner Eggert has been remarkable in terms of how much he has drilled down to this and the level of detail and the sort of thoroughness of trying to take this process and to make it acceptable, I mean, certainly well beyond what I think Applicants should expect from us, you know, and I guess I am also not volunteering for setting any records on how these things go. And I certainly appreciate the Intervener contribution here and, you know, reading the pleadings, I mean, certainly, among others, the Sierra Club pleading at the stage, it was very very well written, it really crystallized issues very clearly. I think in terms of – I really would also like to indicate my appreciation to the Applicant to work with the staff and work with the Interveners to get a better project, and certainly I've been in litigation where, for some reason, Applicants draw the line and pretend they don't have problems, and at the end you have to flush the project. So, again, I certainly appreciate that willingness to roll up your sleeves, be here all hours, day and night, both the Interveners, the Applicant, and the Committee, to try to get a better project. And I think it's already been remarked, I think that's one of the beauties of our functional program process here and the public

participation process is that the projects, as they evolve, although it can sometimes be confusing to track this evolution, certainly they come out hopefully better than when they came in. Having said all that, we are facing extraordinary times now, but I think we do have to look at the lessons learned this year of our siting process, we are certainly starting the formal process, I encourage everyone in this room to participate in lessons learned, and certainly one of the key lessons from our perspective is location, location. You know, as we looked at the spectrum of projects, we’ve looked at the projects that have been easier, where the decisions would be easier, and then ones where the locations had been very well chosen, and the ones that were more difficult is where the location turned out to have problems. I mean, hopefully, moving forward through the DRECP, we can give the Applicants a much better opportunity to pick the right sites. But, again, unfortunately that process is going to take us a couple years, but it’s important we get that right. I think, in terms of just sort of wrapping up, I think also in terms of looking forward, I would certainly concur with Commissioner Boyd, one of the things that makes me comfortable with the project is that we not only have a very vigorous compliance program in terms of conditions, but, by God, we’re going to have a

very vigorous enforcement program for those conditions, and it's very clear for this Applicant, or any Applicants, even though you have a phenomenal rush to try to meet with the deadlines, if necessary, we will shut down work to make sure that you're in fact in compliance. It is important to try to get those programs, but at the end of the day, the conditions we are very very serious, and certainly as head of the Siting Policy Committee, as staff will tell you, it is sort of a bi-weekly exercise to know what is going on in compliance and are we on top of that. So, again, certainly wish the Applicant good luck on trying to deal with the Federal conditions, I still think it would be a lot easier for you if you could go for the five percent safe harbor, that from the stand of construction, who knows? You may end up there, yet. But, again, I realize this is a starting point for you in many respects, you're moving forward with the end game and, again, it wasn't necessarily an easy decision, but I think, as Commissioner Eggert said, we've gotten to the right conclusion.

CHAIRMAN DOUGLAS: Thank you, Commissioner Weisenmiller. Briefly, I'll make a few comments, as well. I've quite closely watched this proceeding and with some concern, and sometimes, frankly, with a lot of concern, also sometimes with some real pride, and I was

tremendously impressed with the Committee when it made a very unambiguous statement that the configuration that was proposed was not a configuration that the Committee was prepared to recommend to the Commission. And I suppose some of my pleasure in that was knowing that I had a Committee that was going to bring me something back it believed it could approve, the Commission could approve, based on minimizing the impacts to Desert Tortoise, Bighorn Sheep, and other species. The Committee action dramatically reduced those environmental impacts and it took this project from one in which I don't think I could ever have brought myself to the "yes" position on, to one in which I certainly am in support of. It is clear, I think we've all learned, the Commission has learned, and I know Applicants have certainly experienced that some sites are easier than others to permit, and it's absolutely in the interest of the State that we encourage Applicants and push Applicants, and continue pushing to go to the sites with fewer impacts in the first place, so we don't have to do as much mitigation, and Mr. Brizzee will be satisfied that we are out buying less mitigation land because there are fewer impacts in the first place. That's where we need to go. I think the next round of projects, not across the board because we had some in the low impact

category, but the next round of projects has to learn from this round, it has to bring us projects that don't require Commissioners to spend days and days and days and evidentiary hearing on impacts that might be avoided with different project proposals. And, at the same time, I've got to recognize that the Applicant has been flexible and did accept the direction of the Committee and worked very hard when it got the direction of the Committee to put together a proposal or a project that I think does pass the test, it does pass the test for me. So, I will also be in support of this project. I just really wanted to mark, at least for me, and at least for the Committee, and Commissioner Weisenmiller, Commissioner Boyd, they made similar remarks, that somewhere between where Calico was before the Committee took its action and where it is now is a line that I definitely looked at and contemplated, and didn't think I wanted to cross. The climate imperative, the imperative of the renewable energy, the imperative to jump start our economy and get jobs, the fact that this first round of projects is in some ways a learning experience for all of us, one of my friends in the environmental community, who I spoke to some time ago, just implored me, "Think of these almost as pilot projects. Think of these as the first wave, and learn, and don't necessarily accept what you accept

today, in the future." And I think that, in the lessons learned process that Commissioner Weisenmiller and I and the rest of the Commission will be embarking in, these are concepts that we will very much want to talk about. But all of us said that the Applicant did a great job, got the message, and really drilled down the project, the Committee worked tremendously hard in helping make that happen. The Interveners had a huge impact on this project, and so you are not completely satisfied, I know that from the comments today, but I also know that you recognize how much this project has changed. So, thank you for your engagement in this project. That concludes my comments. I would entertain a motion.

COMMISSIONER EGGERT: If I may, Madam Chair, and you will excuse me because I think this might be a rather long motion. I want to make sure I get it right. But I think I can use some shorthand and Mr. Kramer can help me out. But, I am moving that we approve the Calico Solar Project with the addition of the Errata that was provided this morning, and with the additions that Mr. Kramer read into the record, as well as the proposed condition from the Applicant for Soil and Water 16, with the edits that were provided, that align the performance criteria with Soil and Water 1, and I think that, Mr. Kramer, did I miss anything?

HEARING OFFICER KRAMER: The change to Condition Soil and Water 8, subparagraph (1)(a) that Ms. Burch read, with the further change that she would not have read, that participation of the railroad would be to comment, rather than to –

CHAIRMAN DOUGLAS: Approve.

HEARING OFFICER KRAMER: -- concur, yes. And Condition Soil and Water 3, the verification, it is at least 30 days prior to finalization of the DSCEP, rather than prior to construction.

COMMISSIONER EGGERT: Thank you, Mr. Kramer, and again, yes, with those additions and particularly with the clarification that we received from the BNSF, and the modification for comment, and I think with that, that is a motion for approval.

CHAIRMAN DOUGLAS: Is there a second?

COMMISSIONER BYRON: Second.

CHAIRMAN DOUGLAS: All in favor?

(Ayes.)

The project is approved. Thank you. And, Commissioner Eggert, you wanted to make some comments after.

COMMISSIONER EGGERT: Yeah, if I could. I realize that some people are anxiously awaiting to go to see a baseball game, so I will be brief. I did want to

take the time to thank a couple of folks. This has been, as has been mentioned, a very very long process. I think my significant other would attest that I spent more time with the parties than going on dates with her over the last several months, including late nights, which I will stop on that note. I want to thank my fellow Commissioner Byron who really, I think, taught me a tremendous amount about how to run a proper hearing and participate in the hearing process. I think, without his guidance and counsel, this would have been much much more challenging, so I feel like I've learned just a tremendous amount from him on this project. I want to thank the advisors that we had for this project, which would include Lorraine White, certainly, Commissioner Byron's advisor, Kristie Chu, as well as Laurie ten Hope provided a lot of extremely valuable advice and input, as well as Joe Boyer, actually, for a portion of the project. I want to thank all of the staff, the CEC staff, as I mentioned, some of their work was incredibly heroic just in terms of the volume of analysis that they undertook and the time period that they undertook, and especially as it related to the Committee's Order, I think, you know, I can't even express how impressed I was with the level of analysis that they undertook for the revised project proposal, and really did a top notch job.

I want to thank all the Interveners and, again, got to know them extremely well – Californian Union for Reliable Energy, Defenders of Wildlife, Basin and Range Watch, Sierra Club, Society for Conservation of Bighorn Sheep, the County of San Bernardino, Patrick Jackson, Newberry Community Service District, and particularly BNSF, I think they showed themselves to be quite a formidable Intervener and, in particular, contributed as an Intervener that did have a legitimate and strong self-interest in making sure that their assets were protected, and especially assets that contribute a significant amount to the economic vitality of the State and goods movement corridors within the State, I want to express my appreciation for their contributions, as well. And, as I said, the other parties, in particular, as they contribute the expert testimony, that really did help guide this project and guide the Committee in their decisions that ended up in the final project description. And then, finally, I want to thank the Applicant, I think as this has been very very challenging, and they stuck with it, you know, with each challenge and each setback, they came with proposed solutions and really did their part in adapting to sort of the ever-changing challenges that were put before them. So, I think I'll stop there so we can make the first inning, for those who actually

might be going to the game, can avoid some of the traffic, perhaps. And, again, thank you all very much.

CHAIRMAN DOUGLAS: Thank you, Commissioner Eggert. And thank you for your especially hard work on this project because it was very impressive to see how much you got in and how thorough you reviewed all of these issues.

COMMISSIONER EGGERT: And actually, as I looked up, I realized that I did forget one extremely important – and I apologize – the Legal Office and, in particular, Ms. [inaudible] and Ms. Driscoll, and Mr. Blees provided a lot of excellent counsel, as well, especially towards the end of the project. Oh, and extremely important, is a person who has gotten the least amount of sleep throughout this process, Mr. Kramer, who has done an incredibly good job being the Hearing Officer and guiding this whole process along. I mean, it really is Mr. Kramer's show once we do the niceties of the introductions, that he takes over and we get to work and actually get things done, so I appreciate all that.

HEARING OFFICER KRAMER: I'm going to give you back to your significant other's approval.

COMMISSIONER BYRON: Madam Chair, if I may, just one sentence, our new Commission certainly has demonstrated new standards of performance, some of which

no one else will ever be able to duplicate, I think, on this Commission, some of which no one will ever want to duplicate, very well done, Commissioner Eggert.

VICE CHAIR BOYD: I want to join that, but I do want to say that, now that he has proven his capacity for work, let us not forget that in his assignments in the future.

MS. BELLOWS: We'd like to take a moment to say thank you, too. And, I'm tired, I don't really care about your baseball team! So, with that said, we are very excited to be a part of what's going on right now in California, in America, and seeing a very active renewable market, and to participate here is just an amazing thing, very personally, for me. Keep in mind that the Calico Project has been underway since 2004-2005, so it's an amazing day for Stirling Energy Systems, and I thank you very much for that. The other things to keep in mind, you know, we talked about all the contributions the project is making to the renewable goals here. I think a project of this size is something to be proud of for all of us, all of the contributors, Interveners, as well as everyone who contributed. There are a number of people that we need to say thank you to, so I have a laundry list here, but first, of course, I'm going to say thank you to the Hearing Officer. Also, I

thank the Committee, you know, you guys were with us the entire time and we appreciate that, and obviously the decisions you put in front of us to make and changes you inspired us to make were tough, but we did it. And you know, as we talked about before, the project is a stronger project today for those changes, and I appreciate that. So, in terms of people I want to thank here at the CEC is Terry O'Brien, I don't know if he's here anymore, he gave up on us, but he did an awful [sic] job with his staff – awesome job! I have to say awesome because he changed our tire on the side last night, so, definitely not "awful." Christopher Meyer, you were amazing and really looking forward to working with you as our Compliance Manager, as well as the other members of the staff who worked with us through this process and who also will continue with us and help us through meeting the compliance conditions as we move forward. Also, the Court Reporter, particularly that night we were there until 4:30, amazing, what can you say? BLM, I think you've seen and we've said before what an amazing job they did for us, Jen Stobaugh, the crowd at Barstow, I mean, you could not have done it without Chris Otahal, without Rich Rotte, without Jean Shearer, and Nickie and everyone else involved, also the Desert District, Jim Abbot, just an amazing job on their part and support.

Fish and Wildlife, Ashleigh Amedee, really, I appreciated all the guidance from them in terms of, you know, what to do with this site on the Desert Tortoise issues, and how to deal with things, and all the different conference calls around that were amazing, and very cooperative, and we were able to get things done with them. Same thing with Fish and Game, Kevin Hunting, Scott Flint, who has met with you, Becky Jones, Tonya Moore, all of them have been active participants with us, and we really appreciate the work that they put in on this. And again, the project is stronger for their participation. The DOI, Steve Black and Janea Scott, the Governor's Office, Michael Picker and Manal Yamout, very helpful for us, and our clients, our one client on this project, Edison, from the DPA side, a lot of support from them starting with Stu Hemphill, Mike Marelli, Dan Chase, Cathy Mendoza, just to name a few, and on the transmission side working through the LGIA issues with us, with Jill Horswell and Gordon Brown, who really did help us bring this project home in a very fast fashion. On our team, in fact, a sad thing about these projects is, when you're through permitting, you kind of have to bring in your team and reorganize a little bit, so I know I worked with you on those 10:30 phone calls to talk about client issues, but I'll try to figure it out. So, first, I want to thank

Sean. You know, I came into this from Latin America, Sean, and he walked me through what a PPA in California should look like, what an LGIA should look like, and explained to me what CAISO was, and I could not have done it without Sean in doing that. And obviously you were part and parcel of this, anyway, and you were behind my back and beside me the whole way. Lori Jones, Irene James, both very active parts in this process, very active members in the compliance process now, working with you, my engineers, Bob Bile, Bob Geesie, and Mike Kanahalbe, you know, I have to give them credit, every time I've come back from Sacramento, they've seen me round the corner, they get up, they go the drafting table, they draw out the plans, and say, "All right, what happened?" And they're always willing to answer my questions, "Why not?" "Well, can't you do it this way?" They did an amazing job. URS, everyone there, amazing job, you guys were fantastic. And, Angela, anyone that can keep up with me and speed of e-mails, you're my kind of gal. So, Theresa, Desert Tortoise expert who really got us through this, Angela, Corinne, Darin, everyone on the team was an amazing contributor for us – Ella, you know, what can I say? Cameron, Julie, and all the others that helped us at Bingham, thank you so much. Bob Therkelson, who explained to me when I first came on

board what on earth the CEC process was, and I don't think I really understood it. Thank goodness, I do now. And also, Alan Thompson, you were amazing in helping us through this and giving us your sage wisdom on different points of where things were going, so we appreciate that. So, again, thank you very much. It's been an amazing process and I do think that, as a result of all the [inaudible] [1:30:11], we have a much stronger project and I feel better and very good about this project.

CHAIRMAN DOUGLAS: Well, thank you. I am going to quickly adjourn the meeting so some of you can get to your baseball game, and others can get to our next meetings. So, thank you.

(Whereupon, at 4:12 p.m., the business meeting was adjourned.)

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