STATUS CONFERENCE

BEFORE THE

ENERGY RESOURCES CONSERVATION AND DEVELOPMENT

COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the:	)	
	)	
Application for Certification	)	Docket No.
for the Hidden Hills Solar	)	11-AFC-02
Electric Generating System	)	
_____	)	

California Energy Commission
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CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

MONDAY, JULY 9, 2012

1:00 p.m.

Reported by:
John Cota
Contract No. 170-09-002

COMMITTEE MEMBERS PRESENT

Karen Douglas, Presiding Member

Carla Peterman, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Kenneth Celli, Hearing Officer

Galen Lemei, Advisor to Commissioner Douglas

Eileen Allen, Commissioners' Technical Adviser

CEC STAFF PRESENT

Richard Ratliff, Staff Counsel

Kerry Willis, Staff Counsel

Mike Monasmith, Project Manager

OFFICE OF THE PUBLIC ADVISER

Jennifer Jennings, Public Adviser

APPLICANT

Jeff Harris, Attorney
Ellison, Schneider and Harris, LLP

Clay Jensen
Gary Kazio
Tracy Wheaton
Bradley Brownlow (via WebEx)
Christopher Moore (via WebEx)
BrightSource Energy

John Carrier
CH2MHill

Susan Strachan
Strachan Consulting, LLC

INTERVENORS

Lisa Belenky (via WebEx)
Center for Biological Diversity

Cindy MacDonald (via WebEx)

ALSO PRESENT

Dana Crom
Joshua Hart (via WebEx)
County of Inyo

Jim Stroh

Manuel Alvarez (via WebEx)
Southern California Edison

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P R O C E E D I N G S

1:13 p.m.

PRESIDING MEMBER DOUGLAS: Welcome to the Status Conference for the Hidden Hills Solar Energy Generating Systems Project. I'm Commissioner Karen Douglas. I'm the Presiding Member of this committee.

To my left is our Hearing Officer, Ken Celli and to his left is Carla Peterman, my fellow commissioner and the Associate Member of this committee.

To her left, Eileen Allen the technical advisor for Siting for all of the commissioners. And to my right is Galen Lemei, my advisor.

I'd like to welcome you all here today and I'd like to ask if this point for the parties to identify themselves beginning with the applicant.

MR. HARRIS: Hi. Jeff Harris on behalf of the applicant.

MR. JENSEN: Clay Jensen with BrightSource and I'll go ahead and introduce the rest of our team in the room since there are not many of us today.

Gary Kazio is my assistant project manager with BrightSource. John Carrier is with CH2MHill on behalf of the applicant and Tracy Wheaton also with BrightSource Energy on behalf of the applicant.

PRESIDING MEMBER DOUGLAS: Thank you. Oh, go

ahead.

MS. STRACHAN: This is Susan Strachan on behalf of the applicant.

PRESIDING MEMBER DOUGLAS: Thank you. Staff.

MR. RATLIFF: Dick Ratliff, Counsel for the staff. And with me is co-counsel Kerry Willis and the Project Manager, Mike Monasmith.

PRESIDING MEMBER DOUGLAS: Thank you. Let's see here. Intervenors. Jon Zellhoefer, are you on the line? Jon Zellhoefer?

(No response.)

All right. How about Center for Biological Diversity?

MS. BELENKY: Yes. This is Lisa Belenky with the Center for Biological Diversity. And I'll be on mute most of the time because my office is a little bit loud.

PRESIDING MEMBER DOUGLAS: Thank you. Jack Prichett, Old Spanish Trail Association?

(WebEx interference.)

HEARING OFFICER CELLI: Oh no, let me get that. That's call-in user number four. No, not yet. Okay. Any way, there. Peace has been restored.

MR. JENSEN: Here anyway (laughter).

HEARING OFFICER CELLI: If it were only that easy (laughter). Okay.

PRESIDING MEMBER DOUGLAS: All right. Well, thanks to the Hearing Officer for that.

So, Jack Prichett, Old Spanish Trail Association?

(No response.)

It doesn't sound like it, not yet. What about Cindy MacDonald?

MS. MACDONALD: Yes. Cindy MacDonald is here, intervenor.

PRESIDING MEMBER DOUGLAS: Thank you. Thanks for being here. Are there any representatives of public agencies present?

MS. CROM: Dana Crom, Deputy County Counsel on behalf of Inyo County.

PRESIDING MEMBER DOUGLAS: Thank you. Any other federal, state or local agencies?

(No response.)

All right. And the Public Advisor, Jennifer Jennings is in the back of the room. And with that I'll turn this over to the Hearing Officer.

HEARING OFFICER CELLI: Thank you, Commissioner Douglas. A little background. This status conference on the proposed Hidden Hills Solar Energy Generating -- I'm sorry, the Hidden Hills Solar Energy Generation Systems was scheduled in a notice dated April 18, 2012. I believe we have some copies of that notice out on the table in the

foyer.

The purpose of today's conference is to hear from the parties regarding the status of Hidden Hills Solar Energy Generation Systems' application for certification or what we call an AFC and to help resolve any procedural issues as well as to assess the scheduling of future events in this proceeding.

We will proceed as follows. First, we're going to provide the applicant an opportunity to summarize their view of the case status and scheduling, followed by staff, followed by intervenor Jon Zellhoefer if he shows up on the phone.

After that we will go to the Center for Biological Diversity which would be Lisa Belenky.

If Jack Prichett from Old Spanish Trail Association shows up on the phone he would go next.

And we would finally go with Cindy MacDonald. And that is the order in which people intervened in this case.

After that we will then provide an opportunity for general public comment.

In this case, staff published a, what we're going to be calling PSA, the Preliminary Staff Assessment on May 24, 2012 and what they call the Supplemental Staff Assessment. I don't know why it's not a Supplemental Preliminary Staff Assessment but, well maybe we'll find that

out. And that was as to Cultural only and that was published on June 15, 2012.

Staff combined its PSA and SSA comments. The comment periods were extended to July 23, 2012. And on June 25, 2012 the staff published its Schedule Update Memo to the Committee. And attached to that memo were emails that supported staff's extension of the comment period from the intervenors Cindy MacDonald and Lisa Belenky of Center for Biological Diversity as well as Inyo County Counsel, The Nature Conservancy and The Amargosa Conservancy.

On June 22, 2012 the Committee gave their assent to the extension which was requested on a motion by intervenor Cindy MacDonald.

The Committee would like to hear from all parties regarding the schedule delays and whether the unmitigable impacts that staff declared in Traffic, Land Use, Cultural Resources and Visual Resources sections have changed at all as well as the status of previously designated unresolved matters that were identified in Biological Resources, Socioeconomics, Worker Safety and Fire Protection and Transmission Safety Engineering.

So, two quick last points I'd like to raise. First, the applicant stated that they would apply for the General Plan Amendment within a week or two of last, the last status conference we had in June. And so the Committee

is interested in the progress of that application.

Also, I recall that Jack Prichett had concerns regarding the need for a reference to the Old Spanish Trail being recognized as a National Historic Trails Act trail in regard to the Old Spanish Trail. But I guess we'll hear from Mr. Prichett if he calls in and whether he's satisfied with the treatment of the Old Spanish Trail in the Cultural Resources section.

So with that let's hear, first with applicant, please go ahead.

MR. HARRIS: Good afternoon. Jeff Harris on behalf of the applicant. I appreciate the opportunity to be here again today for a status conference. I think it's an important part of the process here.

I actually want to start with, I think, what the good news is, which is, that I think most of the sections of the PSA and I think, definitely most of the sections of the PSA are the wholly uncontested or so lightly contested that they're not going to require any live witness testimony.

So there are no factual issues in dispute. And I think we can submit those on the paper. At least from the applicant's perspective. I understand the other parties may disagree.

And I can walk you through those sections if you'd like in a moment. And also through the, I guess it's nine

remaining sections that we're going to have some, we're going to have some further discussions on.

The nature of this process is that it over emphasizes the areas where we disagree. And I just want to flag that right at the beginning. I think that's an important thing.

We always quickly move past the areas where there's agreement with staff and the other parties. And in this case by my count there's, you know, 16 of the 27; so a full 60 percent of the issues in our view are in that first category if things that are not going to require live witness testimony. There may be some briefing on them. There may be some disagreement on wordsmithing of conditions but no factual disputes, so.

I think that's very good news. And I like where the case is in that position.

There is an emphasis on the negative. You know, why is that? And I think the answer is pretty obvious to everybody. It's because the stakes are quite high in those areas where we disagree.

At one extreme we could end up with the project not being approved. At the other, somewhere in the middle of that spectrum we could end up with an approval that would be unfinanceable or unbuildable or a project that we can move forward with.

And so, you know, I think the project -- or the process is what it is. It emphasizes the negative because of those, of those stakes if you will, so.

I just want to spend some time thanking the staff for their hard work and for what we felt were some productive workshops. You know, I'm not sure everybody feels the same way especially when you're in them (laughter). When it's 106 outside and Pahrump wherever you are. But we did feel that those were very useful activities if nothing else to give us a better idea of where the disagreements lie, so.

Hearing Officer, if you'd like, what I'd like to do is just go through the list of all topics and kind of give you where I think things are and then after that give you some general comments on where they are. And then, if you'd like we could go subject by subject thereafter. But I thought I'd give you the sort of the scorecard to start with and then --

HEARING OFFICER CELLI: You know, I would appreciate that. And let me just say that I have, probably should have put one of these together for everybody but I have a little matrix of all of the, essentially the table of contents subject matter from the PSA and I would be interested in that.

And then I had it broken out by intervenor or a

party. So, yes, please go ahead.

MR. HARRIS: Yeah, okay. And like I said, I'd like an opportunity to kind of run down the list and then we can talk about the specifics, so.

In the category of what we think are, more or less, good news, largely uncontested issues, you know, factual disputes have -- and I'll try to go slowly this time Hearing Officer.

HEARING OFFICER CELLI: Thank you.

MR. HARRIS: -- project description and executive summary and general conditions. And again, there'll be some wordsmithing particularly with general conditions but we don't see any need for live witnesses on those.

Those are kind of what I call general categories.

In the engineering assessment I have five sections in my power sheet that I think are in that first category starting with facility design and power plant efficiency, power plant reliability, transmission system engineering and geological and paleontological resources.

I can't believe I got that out right.

In terms of environmental assessment I've got an additional eight sections and I've sort of combined two. I'll explain that.

First being, air quality. And I've included within air quality, the greenhouse gas emissions discussion.

It's an appendix to the air quality section but it's a separate list on some tables.

Hazardous materials, noise and vibrations. I'll slow down. Public health, soil and water resources, now in this case staff sort of split that out between soil and surface hydrology and water resources as two separate sections rather than soil and water --

HEARING OFFICER CELLI: Yeah --

MR. HARRIS: -- so I used --

HEARING OFFICER CELLI: -- yeah --

MR. HARRIS: -- the old moniker. It should have been surface water. Is that right? The surface -- soil and surface water, I guess, is the, the staff section. The soil and surface hydrology is okay but water resources, which I think it's water supply. Right, yeah, it will be in the other category.

HEARING OFFICER CELLI: Okay.

MR. HARRIS: Unfortunately. Sorry for the confusion there. We actually have traffic and transportation as being in that category and we don't see in the PSA that staff had called that a significant effect there. I'm looking at Table 4. We can come back to that.

Transmission line safety and nuisance and then the final one in that category, waste management.

HEARING OFFICER CELLI: Okay.

MR. HARRIS: I counted those as 16 sections. Again, counting, you know, greenhouse gas and air quality as one, so.

In terms of the second category. And again, these are issues that we believe will either require either live witness testimony and/or briefing. Some of them will not require both. And I can talk about which ones, I think, are among those issue. But I have nine in that category.

And our overall goal, I think everybody's goal is to move as many of these categories from the second group up to the first group between now and the FSA.

But I have in those categories the following nine. Biological resources, and these are in alphabetical order I believe. Cultural resources, largely alphabetical order, I'll explain. Biological resources, cultural resources, land use as the third.

The fourth, socio, which I included in that, the environmental justice and the Aspen Studies within socio.

Fifth, visual resources, sixth, water supply, seventh, worker safety slash fire protection. And then the last two are out of alphabetical order but they're kind of in their own categories. Number eight is alternatives and number nine is growth inducing impacts.

So that, I think that's kind of the complete scorecard. If you'd like I can give you sort of our high-

level comments and then we can go through those various subjects if that's okay.

HEARING OFFICER CELLI: Thank you. Thank you app. Let's hear from staff. And thank you for your, the heads up on that memo.

MR. RATLIFF: Well, it's good news that have, I think, the same kinds of lists. Some of the areas that Jeff identified as being on the second list are ones that I have question marks about because I think we may see resolution of those in accord with things that have, are already in play.

For example, in worker safety and fire protection I think there is a negotiation going on that Mr. Harris could tell you more about perhaps if there's more to be said between the Inyo Fire District and the applicant over how the issues of fire protection will be resolved. So that's one that I just have a question mark beside.

And in the area of land use the applicant has now filed an application with the County, I understand, to try to seek changes in the County's ordinances that would make those ordinances ones that would conform to the project. So, that's one I would have a question about too.

The one thing that he did put on the list of issues that I think we're in agreement that I'm not entirely sure about is soils and surface water. And I may be wrong

but I think there were some outstanding discussions about ponding of water on the project site during flood conditions and how that would be resolved.

But, basically I think we're in agreement about the issues that we're in agreement about.

HEARING OFFICER CELLI: Excellent. Anything further?

MR. RATLIFF: Yes. I mean, do you want me to shoot off all the fireworks at once or are you (laughter) --

HEARING OFFICER CELLI: Well, you know, first of all, I want to thank you for just, it looks like there's been a lot of good progress, at least between applicant and staff. We'll hear from everyone else.

And I appreciate you using my little matrix anyway so that it makes it easy for me to see visually what, where the disputes might be.

Was there, I mean applicant first of all, did I cut you off by going to staff? Was there more that you wanted to say?

MR. HARRIS: Go ahead. It's your hearing so I want to follow along. I did have some general comments before we can go through each one of the topics.

However you want to proceed though Hearing Officer.

HEARING OFFICER CELLI: Okay. I mean, what I want

to know is just, what we're here to find out is what are the status of things? What things can we move? What can be done at this point? I'm glad to hear that there was a general plan amendment application filed. We're interested in hearing more about that.

But, you can just give us the big picture.

MR. HARRIS: Let me give you the big picture because, I was going to say Dick stole my thunder a little bit with the fireworks metaphor. It may not be the best answer but.

Yeah, I think there are a number of issues on that second list that we're also hoping can move on to the first category and not be subject to hearings, so.

But let me make just a couple of remarks sort of at the highest level about our review of the PSA. We hadn't had a chance to thoroughly review it last time we got together. And so we have a couple of general reactions and then I will march you through each one of those nine topics briefly and explain issues that I want to flag for you that may end up before you again.

I'm going to use that filter as to what we talk about, so.

One of the concerns that we have at the highest level is that we believe the PSA spends too much time focussing on Nevada or upon impacts upon the Nevada

environment.

When CEQA clearly says that those issues are exempt from CEQA where they're subject to a NEPA process.

And this is, you know, an intellectually difficult siting case. And I think I mentioned at one point I thought it was like a law school exam. You put it right on the border between two states and half of the linears are in Nevada or the -- it's complex but we have, I think, a very strong view on what CEQA does allow and doesn't allow in terms of what goes on in Nevada. And we can go through each one of these nine subject matters.

Most of the highly contested issues in biology and in cultural resources in particular, I want to flag those two, and to a lesser extent water resources, those three issues. Most of those issues deal with effects, potential effects in Nevada that are not a result of activities on the project site per se.

And we're going to be briefing those issues. Obviously we'll make general comments in each of our sections. But that is one that, I think, that we really may need the Committee to decide, you know, what, how broad that CEQA exemption applies, what the sovereign state of Nevada should be doing in terms of their review on this thing.

And generally just recognizing that there isn't a regulatory gap here. And I think that's what you see from

staff is an effort, a feeling that they have to fill a gap here. That somehow some of these impacts will not be looked at. And I just don't think that's the case.

I think CEQA contemplates exactly the law school exam. I talked about a case with a project on the border like this where it is subject to the NEPA process.

And that really is key here. There is a separate parallel NEPA process. This project is a connected action under NEPA to that process.

And so, intellectually I understand how that is a difficult thing to do. But that's one where we're definitely going to potentially be asking the Committee that step in on some of those issues and it does flow through pretty much all the subject matters that we're talking about today.

But the other kind of high level comment that we have is that the staff has been, and I think by their own terminology, very conservative in their analysis. And I guess I'd describe as sort of ultra conservative.

And it arises from the fact that we can't know the future with perfect clarity, you know. There's always going to be some uncertainty going forward on these projects. What will be the impacts over a long period of time?

You know, fortunately, CEQA doesn't require us to be clairvoyant. It does require that there be substantial

evidence in the record from which a reasonable decision make can make an informed decision.

It doesn't require you to be, you know, quote, very conservative to protect against unknown threats. And it doesn't require to look at issues as if, well we don't know so we have to assume.

And that is a very unfair characterization of staff's position and I'm doing it to make the point, obviously. But there's a feeling in a lot of these sections that staff has said essentially, well we're not really sure so we'd better be very conservative, require some mitigation and require some monitoring.

And in particular, in cultural and biology and the water resources areas. Those are three that we see as being significant.

So want to avoid that any impact is a potentially significant impact and focus really on the question of substantial evidence and what a reasonable decision maker such as yourself needs to be able to make a decision in this case.

In terms of specific subject matters, with biological resources at the first of the nine that we're talking about there is a lot of discussion about groundwater-dependent vegetation. There's a relation back to the water supply discussion. That all very much focusses

on a resource that is in Nevada. We think we have an obligation to demonstrate that the activities on site will not have an impact off site.

But this is where sort of the ultra conservative nature of the analysis is giving us trouble. And we're going to have a lot of discussion, I think, between now and the FSA with staff about just what does it mean, you know, our water use and how is that affecting a potential resource that's on the other side? I'll talk more about that when I talk about water resources.

So I just flagged first water-dependent vegetation. The second thing I'd flag in biology is the mitigation ratios for Desert Tortoise.

This is Desert Tortoise habitat in the sense that it is in the desert. We think it's a very degraded habitat. We think that the farther you move to the west away from the Nevada line, the less habitat that quality there is.

And to the extent that two Desert Tortoise were found on site they were found in that area near the border.

So we've, actually I think, had some pretty productive discussions with staff about what's the appropriate ratio. Is it one to one? Staff is saying, three to one for part, two to one for -- or one to one for another part.

We'd like our experts to give your staff some more

feedback on those ratios. And that goes a long way towards the whole discussion about overall mitigation obligations of the project and the quality of the habitat.

I don't think this is pristine habitat at all. If you look on Google Earth you'll notice the roads cut in there. I'm not sure that we offered this up as mitigation lands that the agencies would accept it.

So, we think the mitigation ratios ought to reflect that issue.

The third kind of higher level, again, is treatment of non-threatened endangered species as special status. And again, this is another sort of intellectually complex issue that we're going to ask the Committee to sort of take apart.

There is only one threatened or endangered species on the project site, that's the Desert Tortoise. It's the only one listed under California's CESA or the federal ESA law.

There are a bunch of different categories that the resource agencies have put in place like species of special concern, sensitive species, those kinds of categories.

But those are not ESA or CESA categories. And one of the concerns that we have is sort of the melding together, if you will, of those threatened endangered species issues with the other common species issues.

And we're going to spend a lot of time talking about those issues, in particular with special status plants as well.

Special status plants is a term of art that has been developed by the agencies. Again, it's not threatened or endangered. There are no threatened or endangered species on the project site. But there is a list of plants that's prepared by the California Native Plant Society and a division of CDFG of which I always forget the name.

But that list is put together over time. One of the things we'd like staff to do in the FSA is explain how that list is developed because I think that's really instructive. It really is a non-public process. It's a message board among botanists and biologists creating information back and forth and ultimately a decision made on ranking.

Those rankings then are used to determine whether a species is one that merits further mitigation or protection.

And that whole process happens sort of in a black box. And it has big impacts on the siting of this project and the siting of other projects in California.

And again, we think the staff and the applicant should have the right to understand exactly how that list is created in moving forward, so.

Desert washes, Mr. Ratliff mentioned briefly there's some issues there. I think we're going to be able to work through those. We're a little concerned about some of the discussions about impacts off the project site, again, in Nevada. And also the mitigation ratios of one to one there.

And then just kind of at the highest level on biology, there seems to be sort of this double or triple or quadruple counting of acres.

And the project site is 32 hundred and 77 acres of impacts. We're being asked to mitigate 3277 for Desert Tortoise. We're also being asked to mitigate 660 acres for Burrowing Owl which is that habitat. It's within the 3277. It's a subset.

The same for state waters. The same for special status plants and other plants. So there isn't a discussion of nesting of those criteria, of those various impacts. But it does start to feel like double, triple and quadruple counting of acreages that at the end of the day it's 3277 and not 3277-plus, so.

Those are issues that we're going to hopefully going to work through on biology with the staff.

Cultural resources is another section that we would commend further analysis. We're concerned about the nature and the scope of that analysis. It seems to be sort

of, I'd use the word unprecedented in terms of analysis.

In particular, looking at landscapes, at the graphic landscapes. And I had the PSA section up. I think I directed a figure number two which talks about the Saltscape Trail. That trail takes into consideration four western states; California, Nevada, Arizona and Utah.

And, you know, setting aside the CEQA being a California law issue to begin with, that's a scope of analysis that to me I've never had, I've never seen.

We're concerned about the nature of that analysis, the scope of the analysis and whether there's actually a historic resource at issue with those particular landscapes. And that's something that, I haven't seen in all my practice here at the Commission.

We're also concerned that much of that analysis is based on a confidential appendix that we haven't seen nor am I sure we should see or will see. That to me is a new precedent at the Commission and one that really is sort of a red flag.

I don't know how you deal with a confidential appendix as a basis for a finding under cultural resources. And it's new ground. I've never had to deal with that before. And anytime it's something new like that it gives me pause and concern. And so, we commend you to kind of look at that issue and figure out how fundamentally we can

test the staff's conclusions based on a document that is confidential.

I'll go through the last ones rather quickly because I think we can do that. No, I should ask Clay to speak on the third issue of land use.

You'd mentioned the general plan amendment and -- why don't you give kind of a quick update on where we are in that process.

MR. JENSEN: Sure. Again, Clay Jensen, BrightSource Energy. And I believe Mr. Ratliff pointed to the fact that we have, in fact, applied for a general plan overlay and a zoning overlay with Inyo County.

We've also fundamentally come to an agreement on terms of a reimbursement and processing agreement that goes to their Board tomorrow. So Ms. Crom can provide more detail on that.

But we are moving forward. We've got, we consider to be the applications are just now in. And we look forward to working with Inyo County on establishing a time line schedule for that process over the next few weeks. And look forward to getting fully engaged.

MR. HARRIS: This is one of the issues that we're actually hoping we'll be able to resolve. If we're not able to resolve it I actually don't think it will require live testimony because they are legal issues. I don't think

there's going to be a factual dispute. I'm willing to think about that some more but I think it may be an issue that ultimately is probably briefed regardless.

The fourth issue of socio-economic and environmental justice. I'll go through that one quickly. You know we are working to review those issues moving forward.

I actually don't know that we'll have to litigate this issue at all. There is an Aspen Report that everybody is going to get a chance to comment on that may be updated or revised based upon comments. But we found that to be very helpful, so.

HEARING OFFICER CELLI: Can you, just for everybody listening in, can you kind of give us the big picture of what the socio issues are right now. What are we talking about?

Is this taxation? I mean, what --

MR. HARRIS: That's a tough question so I'll let Clay answer it (laughter).

HEARING OFFICER CELLI: I don't want to, you know, I just want to make sure that we're all talking about the same thing.

MR. JENSEN: Sure. I'll be real brief. And Ms. Crom can weigh in here as well but. We continue to work with Inyo County on a variety of issues.

Inyo County has indicated at the workshop we had in Bishop that their goal is to focus on the revenue projections as stated by, as stated in the Aspen Report which I think for us, and we've had dialogue directly with Inyo County as well, is a healthy direction for this dialogue to go.

We've spent a lot of time talking about potential cost impacts or cost implications to the County as a result of the impacts of the project.

I think that the PSA addresses some of those concerns that were raised but perhaps not all of them that Inyo County was hopeful.

We're endeavoring and very hopeful that we'll enter an agreement between BrightSource and Inyo County directly to address any gaps that may be contained between the reports.

Again, we look forward to working through those issues but we have shifted the focus more to a revenue side description and we think that's, it gets us out of the weeds on some of the cost-related impacts.

So we look forward to having that dialogue. It hasn't started yet. The general plan application is now in. It goes to the Board tomorrow for adoption of the agreement.

Once that's settled, and we believe hopefully that'll go well tomorrow, we hope to be in engaged dialogue.

We have -- we're working through a draft term sheet.

So we're making some progress.

HEARING OFFICER CELLI: Thank you. I appreciate the clarification. Mr. Harris you still have the floor.

MR. HARRIS: Thank you. Visual resources, again I'll just kind of list some of the issues we're concerned about.

Methodology in this particular PSA is a little different than we've seen in previous Commission decisions. In particular, at one time, I think it was a 500 viewers were considered a high number of viewers. Under the staff's new matrix that number has moved from 500 to 50.

We're not really sure why that is. But we want to probe that issue some more and talk about the methodology in general.

We have some issues with some of the KOPs being located in Nevada. And again, this is sort of the larger California/Nevada CEQA issue that we talked about at the top. So I'll just go by that one pretty quickly.

In terms of the analysis though there's, BLM has visual criteria, their visual resource inventory and their visual resource management. We need to, I guess, remind folks first off, the project is not on federal land. I know this is being used as an analogy.

The surrounding federal lands are pretty high in

terms of that VRM system. They are three and four which are the categories that allow for the most uses, if you will.

But again, the project is not within the BLM areas. Those criteria do not apply looking, you know, out at BLM lands. You know, since we're standing on the edge of the BLM lands looking at the project site. That's not what that system was created for.

And so, we have some comments about the application of the BLM and Parks Service methodologies. And Mr. Wheatland from my office will be dealing more with those issues than I will. But there are some concerns there.

We do think this area is the right area for, from a visual perspective for a project. And in its comments on the PEIS for solar energy Inyo County had stated that private development lands in the Charleston view area south and west of Pahrump would be excellent lands on which to locate a solar production as well as support operations for solar development both in Inyo and Nevada.

So we feel like we're in the right place. And with the right criteria applied we might end up with a different result than where the staff is on these issues, so.

Water supply, this is another issue that is tied very closely to biology and cultural resources. One of the concerns that we have is that we don't feel like we're

getting credit for the one-to-one offset that we've agreed to.

A long time ago before this project, you know, was even close to a PSA stage that the company made a commitment to understanding, you know, to show its understanding of the importance of water in the desert.

And we've committed to go out and get a 140 acre feet a year of water rights, active water rights and retire those before the project moves forward.

There's a good argument that that should be the end of it. You know, we're going to be retiring 140 acre feet of water. The project will use a maximum of 140 acre feet of water which means in all likelihood it'll be much less than that every year.

So on an annual basis we feel like the basin is going to be net good, if you will. And that ought to be the end of the inquiry in some, you know, some view of things.

That we understand that we want to make sure that we don't have impacts on surrounding areas and Clay committed a long time ago to make sure that everybody in Charleston view that their wells were, that they were made whole. That if there were any problems with their wells as a result of the project operations that we would monitor for that and that if necessary we would take care of any issues, you know, doing, drilling wells deeper or what have you.

That was the initial commitment of the company. That's reflected in the document. And I think that's a good thing. But now what we are seeing is a really heavy emphasis on groundwater issues and the potential to affect Nevada groundwater which in turn affects Nevada Mesquite Bosque, it's not Bosque, Mesquite Scrub on BLM lands.

And that's, I think, really at the core of the disagreement between the staff and the applicant is on the nature and the scope of the analysis in terms of potential offsite impacts in Nevada.

We've done some modelling which we think is very conservative to show that the impacts from the project wells, the 140 acre feet will be onsite and not across the line and in Nevada. And this is one of those areas where I think, you know, an ultra conservative approach is being applied and that you really ought to look at potential impacts of the project and not have as some looking at what's going on across the border in Nevada.

The staff's proposal also has a shut down requirement for water. It literally requires the project to stop pumping if certain thresholds are met. And that will just make this project completely unfinanceable.

And so that for us will be something that I think is unprecedented to the Commission that we will want to make sure that we deal with and change it; especially given where

the project is and the other uses that can take place on this land.

And so, those are some important things that we're going to play forward. There is some understanding about the basin characteristics and California water law. But needless to say, this will be an important issue.

And we really do want to emphasize, you know, our start with one-to-one offset at the beginning and move forward from there.

Worker safety and fire protection, the next issue, pretty straight forward there. As Mr. Ratliff did mention we are talking to Southern Inyo Fire Protection District about reaching an agreement with them to figure out what kind of services they will need. That's moving forward. I'm not sure we'll need to have live witnesses on those issues if we get to where we want to get to and that's where we hope to be.

We think the analysis, the staff assessment is pretty good on those issues now but we can probably put these issues to bed with that agreement with Inyo Fire Protection District. And that's where we'd like to get it with that one.

Moving on to the kind of general topics of alternatives. We had kind of a long and semi-painful workshop on alternatives and other issues recently. And it

really just comes down to a couple of things that are actually more legal issues but they have real world ramifications for the project and may require some live testimony.

At the highest level there's kind of two or three things that we really want to see change between the PSA and the FSA. And that is, I guess greater attention paid to the applicant's basic project objectives.

CEQA requires that you look at a reasonable range of feasible alternatives to the project and the project site which will feasibly attain most of the basic objectives of the project.

And our contention is that while the applicant's basic objectives are not, you know, the end all be all, there is some independent analysis that has to be done by staff. But nevertheless, those really do frame up the nature and the scope of the alternatives analysis.

The section as we feel, and we're going to provide some case law citations, is critical of our objectives and suggests that they're too narrow. We think there's good case law on point that suggests that that's okay.

It makes sense that if you're objective is to build an aquarium in San Francisco that it be located on the water for example. There's a case on that but I over simplified it.

Another case where the objective was to expand a campus and not looking at offsite alternatives made sense there. And there's three or four other ones. And I don't want to bore you with the details but I think there's a spectrum here between adherence to the applicant's objectives and the staff or the lead agency going off and writing their own.

And we feel we've come too far down the spectrum towards an independent analysis that doesn't weight our objectives efficiently. And so we're going to be providing our written comments on that issue and hopefully see a little bit of change in the document between PSA and FSA.

A second issue in alternatives which is really unique to this project is the no project alternative. That's one that I think is unusual for this project and we had some discussion about this at the workshop.

But as it stands now there are 270 home sites out there that could be built today if the building permit was pulled. That's a significant change or difference than a project site that is undeveloped land, undeveloped public land.

We think that actually feeds into the no project alternative in that you have to look at what's reasonably foreseeable out there. And we believe it's reasonably foreseeable that you could have housing developments pull

those permits, maybe not all 270 of them but some portion of them, especially with the roads and the infrastructures out there.

That is most important in, I think, in the analysis of the no project alternative as it relates to, as to water use as one and biological resources and cultural resources which are three of the most contested issues in this case.

I think from a biological perspective it's substantially different if you assume a no project alternative of the project not being approved.

You have an opportunity for those lands to be developed without individual homeowners being required to go out and get one-to-one mitigation for their land. There wouldn't be any offsite mitigation.

The same thing with the rare plant issues, same thing with the desert washes, same thing with each one of these issues moving forward.

Now they would obviously have to adhere to existing laws. But you wouldn't have an individual homeowner being placed with those kinds of burdens. And so there wouldn't be the kind of mitigation we're talking about here.

That 270 residential units is a big, big difference in the no project alternative in this case. And

it's, again, intellectually difficult but one we thing that we all need to wrestle with.

HEARING OFFICER CELLI: Would you require them being built one at a time? So if a big developer came in and said, I want to build 270 homes, he'd be subject to the same sort of analysis as this project.

MR. HARRIS: That, yeah that's, those are two different, very different scenarios. Thank you for the question because you have the existing conditions out there now versus what would be kind of a master development, master community development out there.

That kind of master plan development community would require a CEQA analysis, be going through the same process.

But what we're talking about are the existing conditions on site. And I know Ms. Crom is going to have some comments on this issue.

But the baseline is what's reasonably foreseeable if, I'm using the word baseline here incorrectly.

HEARING OFFICER CELLI: Yeah, I know, project.

MR. HARRIS: The issue is, yeah, the no project alternative is what's reasonably foreseeable out there moving forward. And that is reasonably foreseeable that these could be developed.

And, you know, you start talking about water use

on the, what the 20 to 40 acres sites (conferring) 20 to 40 acre project sites, 270 of them. That's probably at least an acre foot or more. I think one acre foot, the two acre foot for a project of that size is not unreasonable even if you assume, you know, one-half an acre foot for 270 sites. That's 135 acre feet of water without any offset I would add as well.

So, from a no project alternative we think that's a really important issue for the Committee to take a look at and we'll talk to staff more and provide our comments on that.

We had some discussion with staff on a couple of the tables in terms of determining significance. Actually, I think we have a better understanding now where staff was going on, I think it's Appendix 2 of the alternatives sections where they lay out the various project alternatives.

And there are a couple of sections, particularly as it relates to the PV alternative and the trough alternative where we think the chart doesn't match up with the analysis in the PSA. Cultural resources in particular is one area where we don't see a difference at all between the Hidden Hills Project and those other technologies.

That's kind of a footnote. It's sort of sad to see that we're getting to the point now where we're going to

have to, you know, compete, competing renewable technologies as part of the alternatives analysis.

But I understand. My view on that representing PV developers and wind developers and other folks is we ought to have as much of every kind as we possibly can and not pit them against each other. But that's, that's more of a policy question. This is not a policy document obviously.

The last section is growth inducing impacts. We'll have legal comments on that. I don't believe there will be any public testimony or a need for any factual development on that issue. And it really does go to the question of what's reasonably foreseeable in growth inducing impacts which is actually more of a NEPA concept.

But I understand the desire to check that box. So we'll have comments on that section as well.

HEARING OFFICER CELLI: Thank you Mr. Harris.

Let me, I just want to check in right now with all of the people who are on the telephone. I want to see if Jon Zellhoefer -- so I'm going to unmute everybody.

(WebEx interference).

If you have your, I hear small children in the background. If you can mute your phone. I appreciate it.

Is Jon Zellhoefer on the phone? Jon are you there?

(No response.)

How about Jack Prichett from Old Spanish Trail Association? Jack are you there?

(No response.)

No. I'm missing someone. All right, so, okay.

I'm sorry for the interruption. I just want to, if these people come in I want them to be acknowledged. And if you're on the phone now and you don't wish to speak I'd appreciate it if you would mute the phone on your end so we don't have to hear your dogs barking, your other, you know, noise in the background.

A couple of things just before we move on. You were talking about purchase of offsets for water, the water rights. Are those, those are groundwater rights? Those are in Nevada aren't they? Okay. I just wanted to know.

MR. JENSEN: Yeah, that's correct. In Nevada, correct.

HEARING OFFICER CELLI: Because I wasn't aware of anything like that in California.

MR. HARRIS: They're up-gradient, if you will to, from the project site, so. There's a slight downhill gradient towards the project site.

HEARING OFFICER CELLI: You raised the issue of confidential. That's a real problem. And that, at this moment I have no answer. I don't know how to resolve it but I do have some experience with confidential documents sort

of coming in the record. But if they come in as confidential we really can't make a decision based on confidential information.

We've tried to do in camera in the past. It was a disaster. And so, anything the parties can do to get out of having the Committee have to deal with a confidential document would be greatly appreciated.

Because it's a thorny issue and it affects what happens to this decision later. So I want, I just want to raise that point that you made.

And then, I think that was, let me just look to see if there was anything else. Yeah, let's just, I'm just going to go around and then I'll ask my questions later.

But thank you very much for the clarification and the more in-depth analysis of the real status of what's going on.

Staff, anything in response to what the applicant said?

MR. RATLIFF: Well, unlike Mr. Harris I didn't save my or prepare my summations speech for the final hearing for today. But, I can't let all of these statements go completely unremarked upon.

But I'll start on a positive note. We've had three workshops since you last had us before you. And I thought those workshops were quite productive.

I think the more we get together the more we understand the issues that we have that are difficult to resolve and the ones that we can resolve.

And some of them, I think, we are going to resolve. And some remain difficult.

Going beyond that to the points that Mr. Harris makes I think he tripped through about 20 legal matters with which we have disagreement and I would say sometimes, profound disagreement and about 100 issues of evidentiary determination which you don't have the evidence on.

And you'll have to see the evidence before you make up your mind. And I'm not going to try to give you the evidence today. I don't think that would be productive.

But I will try to hit a few of the high points of what you just heard.

To begin with CEQA and the guidelines that implement them have a provision that says that CEQA does not apply to projects which are not in the state of California or parts of projects that are not in the state of California so long as those projects, those parts of projects or separate projects that are outside of the state will be covered by some other process of environmental analysis such as NEPA.

And we're very aware of this. The applicant made us aware of this from day one and we agree with them that

there is such a restriction; where it's not a restriction at least a lack of duty to do that kind of analysis.

And I think we are observing it in this case. But we absolutely disagree if, in fact, what we hear applicant now saying is that, a California project which has impacts on the other side of the border; and this project sits precisely on the border, that this statutory provision disallows the analysis of impacts from that California project on the other side of the border.

We don't think that that is within at all the black letter meaning of the law. And we have not precede it in the court.

And I would point out that the applicant apparently didn't believe it when they filed their AFC either because their AFC has plenty of environmental analysis on projects in Nevada.

It includes KOPs in Nevada. It includes discussion on the Pahrump Water Basin and any number of other things which suggest that, at least, someone on the applicant's side it occurred to them that maybe a California project that has impacts on Nevada, those impacts ought to be analyzed.

The second issue that I think I'd want to discuss is staff's so-called conservative analysis. I don't know if it's a conservative analysis. I think here we're talking

about water actually.

But, when we talk about water I think, when you talk about a conservative analysis whatever that means, I don't know what these terms mean in reality when you use them in this way but, I just remind you that CEQA if anything embodies the precautionary principle.

And one of the things that we're struggling with and I think the Commission will have to struggle with ultimately is we're making a decision here where there is going to be uncertainty.

And the uncertainty of the impact is one which I think is important and one which I think we would be remiss not to remark upon.

And in the, with the level of uncertainty that we have we simply are not convinced by what we've heard so far that there just simply isn't an issue about the impacts that this project will have on groundwater. We don't see that.

On the issue of Desert Tortoise habitat there's much that Mr. Harris said that I think we could agree with. To some extent the project habitat, I think he used the words, is not pristine or is degraded, it certainly is not pristine. We've never suggested that it was.

That doesn't mean that it isn't important desert habitat. It doesn't mean that it couldn't be better Desert Tortoise habitat nor does it mean that you don't compensate

for the impact of that habitat under the California Endangered Species Act which requires impact to species to be fully mitigated.

So we've, I think, made some progress in discussing that habitat. The applicant has told us that they are going to give us their evaluation of the habitat which will differ from ours. And we're very interested in that.

We've expressed openness to trying to understand to reach agreement about that. But we haven't seen it yet.

With regard to double counting, I think as I think was mentioned, we're mitigating for a number of different impacts. These are impacts to rare plants as well as Desert Tortoise and other species which the Department of Fish And Game has routinely required mitigation and which the Energy Commission and its cases has routinely required mitigation for at least 20 years.

And I don't think, I think it would be a real departure for us to say, well it's not listed under the California Endangered Species Act, we really don't care about mitigating for these issues. That may mean that you're, there's no requirement under the Endangered Species Act but there is still a requirement under CEQA that you address these issues. And that's why we're trying to address them.

Under the issue of cultural resources I think the term, unprecedented and confidential info, information, were two of the terms; the second one of which I think made an impression on the Committee. In some ways I think our ethnographic analysis in the PSA is unprecedented. And I would acknowledge that.

That doesn't mean it's wrong. It doesn't mean we shouldn't be doing them in areas where there is ethnographic significance to Native Americans. And that's what we've tried to do.

Some of that analysis is based on information which was given, I think, under the perception that it was confidential by Native Americans in discussing that with staff.

I've made it very clear to Mr. Harris that if staff is going to base its conclusions or its mitigation proposals on information, it will be information that has to be available to the applicant as matter of due process. We believe that's required and we intend to see that that happens.

We will either remove the kinds of analysis that we have from the FSA if it has to be confidential or at least, when I say confidential, at least if it cannot be revealed to the applicant because the applicant has a due process right to it.

But in any case I think these are resolvable issues. And I think they will be resolved. And so I think you should just wait and see how that plays out.

In terms of visual resources, I would emphasize the staff has not changed its analytic approach. And I don't think number of viewers is really going to be the question here about the impact of this project.

Secondarily, this reference to BLM's method, you're going to hear more about that when we do get to testimony. I think it's discussed reasonably well in the PSA. BLM does have management categories. Those are not reflective of impact to visual resources. Our discussion, I think, covers that.

And finally, with regard to alternatives, I mean I can't really pass by that easily. We don't, when it comes to alternatives have BrightSource say that the only place, the only alternative, there really is no alternative to our project. It has to be our technology in this place in this manner on this particular footprint.

If we did that we don't need to have an alternatives analysis at all. And, so I think we reject that. I think what we need actually if there's going to be legal sufficiency for whatever decision you make, particularly if you're going to approve this project; you need a robust alternatives analysis. And that's what we

intend to provide.

Is regards whatever San Francisco case, I assume that what they are talking about is the BCDC case. My recollection of that case is that it was very fact dependent on the nature of the project and its relationship to the water.

I don't think that, you know, I'll be interested to see what that case is and how it's being analyzed to show any actual relevance to the situation that we have here. And that's really about all I have to say about that.

HEARING OFFICER CELLI: Well, thank you very much. And you're absolutely right. It, I'm not prejudging but I've, at least, been through these facts at least once. And they are lots of indicia to lead us to believe that an override may very well be required in the end if this one is ever going to go.

And, in order to do that we would need a very robust alternatives analysis. So, I appreciate staff's diligence in that matter. And I appreciate the points that you made.

Before I go on to ask the intervenors, I just wanted to ask you Mr. Ratliff or Mr. Monasmith, are there any further workshops scheduled? Are we finished with workshops? Where are we at with that?

MR. RATLIFF: No, we have additional workshops

contemplated currently on the issue of what's been called solar flux which is the impact on birds from heat from the mirrors that is, well, an issue of concern let me put it for the power tower projects.

We have, right now we're waiting for an analysis that BrightSource is doing which will, I think, be indicative of, as I understand it, of the areas in which there is heat coming off the mirrors as well as coming off from the solar receptor as well which could be injurious to birds.

And we hope to have that I think in the last week of this month. And to workshop it in, I think, August 8th is the tentative plan for the workshop on that.

We also have some additional issues that I think might fruitfully benefit from additional workshops regarding rare plants for one thing, but also regarding other issues concerning wildlife resources that the Bureau of Land Management and the Department of Fish and Game are interested in.

And those are with regard not only to the Desert Tortoise but the other species of special concern such as Burrowing Owl and Kit Fox which are on the site.

HEARING OFFICER CELLI: Thank you. Now I'm going to, I need to unmute some people. So I'm going to ask if, Jon Zellhoefer are you on the line? Mr. Zellhoefer are you

on the telephone?

(No response.)

I'm not hearing anything. Then, Lisa Belenky from the Center for Biological Diversity?

MS. BELENKY: Yes.

HEARING OFFICER CELLI: Hi. We're just checking in with you now. We're on the status and any comments that you have --

MS. BELENKY: Yes.

HEARING OFFICER CELLI: -- on the previous comments you've heard from applicant and staff.

MS. BELENKY: Yes. Well, I have to say I too like Mr. Ratliff did not come to this prepared to make my final speech at the final hearing.

But there are several issues that have been brought up that the Center does disagree with. And just starting at the beginning I will try not to take too long.

We believe the project description is also somewhat disputed at this time. And that also keys into the question of alternatives et cetera. So it is an important thing to keep in mind that those are tied together.

HEARING OFFICER CELLI: Can you give me a little more specificity on that just so I know what you're talking about.

MS. BELENKY: Well I think it very much goes to

what Mr. Ratliff and Mr. Harris were both saying about the objectives of the applicant versus a description of the project that is more general so that you can have a range of alternatives. And so --

HEARING OFFICER CELLI: Okay. So the objectives.

MS. BELENKY: -- when you (audio dropped) -- yeah. So, it is an issue that may still be disputed and I believe in other similar projects we did continue to contest that through the process.

So, certainly, we agree with most of the other issues that have been raised. I believe that soil and surface hydrology, there still may be some significant questions there. So I believe that the Center would keep that on the contested list as well.

And mitigation issues in general, I think there are some significant questions that are still disputed there.

I did want to, as well, respond to a few things that the applicant raised which Mr. Ratliff mentioned as well. But certainly, the question of special status species and sensitive species, this is not the first time I've heard this raised before one of the committees, perhaps it will not be the last time. But I do not think it is a, I think it's a bit of a red herring.

And clearly, under California law, under CEQA and

the many other statutes, species including many of the special status plants are to be preserved. And we don't think, I think that is just sort of a tangent that for some reason the applicant has decided to go down.

In addition, and the question of how those lists are created et cetera. The question of mitigation and the so-called double or multiple counting, we actually from the Center's point of view have some very significant problems with nesting and limiting the mitigation too narrowly. While in a perfect world perhaps one could mitigate every acre with another acre that looks exactly like it; that is not exactly how the world works.

Also, connectivity of acreage makes a very big difference in mitigation and so it may, it is generally the case that mitigation needs to be far more than one to one in order to even provide any significant mitigation so that there's a net benefit to the species.

There's clearly losses. We need to ensure that the mitigation is sufficient to provide a net benefit otherwise you haven't actually mitigated for anything.

The, I was curious about the cultural resource although that is not something the Center has focussed on. We would say that we are happy to see a more in-depth evaluation of cultural resources given the mistakes that have been made in the past in other, in other projects

approved by the Committee where these issues were glossed over.

So we certainly want to see more in-depth there as well as with many other questions.

Another issue with that is certainly as concerned, for example, with Kit Fox that, you know, unprecedented new issues have arisen in other projects regarding Kit Fox and we need to take, I guess the term now everyone is using is a conservative approach. We need to take an approach that ensures that these issues are dealt with up front and not waiting until a disaster happens and then trying to repair the damage. That is not what CEQA contemplates and we really don't want to see that here.

As far as alternatives, I think that that will remain disputed. And the question of what's reasonably foreseeable in a no project world has to take into account a lot of questions as to why these homes (audio dropped) applied, for example, haven't been developed to date.

So, certainly, there may be reasonable to have more than one no project alternative.

The PV alternative we think is very important and we also it's important to keep in mind that these large-scale projects are not the only alternative for fulfilling our needs for renewable energy but what we'd like to see is in base and distributed energy take a much larger role and

be also considered as a full alternative.

So those are just sort of the highlights. I think there will be, remain disputed issues, contested issues that will need to go to hearing. From the Center's point of view certainly biological, water and alternatives, growth inducing impacts, soils and surface water.

HEARING OFFICER CELLI: Thank you Ms. Belenky. I just wanted to ask you one question. You were just talking about the mitigation or, you were talking about -- okay, time out, I'm drawing a blank. The last point you made was on what issue?

MS. BELENKY: The last point I made?

HEARING OFFICER CELLI: Yeah.

MS. BELENKY: Was on alternatives?

HEARING OFFICER CELLI: It was on alternatives (confers with Commissioner Peterman) distributed generation, thank you. Because as you were speaking I was thinking. And I haven't, I confess I haven't read the alternatives section yet but I was wondering, typically staff does touch upon distributed generation as an alternative. And I just wanted to know whether there was anything in the alternatives section as it stands in the PSA; did they avoid the topic or is it just insufficiently handled or what is your view on that?

MS. BELENKY: I have not had time to look at it

in-depth so I'm not going in -- I'm not going to give you an answer. The point is, I think what we want is not just that it's mentioned, we want it to be seriously considered and we would hope that the Committee and the Commission will start looking to these as true alternatives and alternatives aren't just to fulfill the CEQA requirement so that you have a bulletproof decision. That should not be, and in fact, that's an extremely cynical way of looking at alternatives.

Alternatives really should be things that are feasible and can avoid the impacts. And that's very much what we want the Commission, this Committee and the Commission to be focussed on; that there are other ways to go about fulfilling our needs for renewable energy.

HEARING OFFICER CELLI: All right. I appreciate that. I just wanted to make sure that I wasn't, there was an absence, if you were pointing out an absence of something and it wasn't in there then now would be the time to jump on it. So, okay. I thank you very much for that Ms. Belenky.

Did Jon Zellhoefer come on the line? Jon are you out there?

(No response.)

Or Jack Prichett, are you on the line?

(No response.)

Okay. I know I have Cindy MacDonald on the line. Cindy go ahead. You have the floor.

MS. MacDONALD: All right. Well, thank you very much. Well, I did not come prepared myself but I will just go off the top of my head based on the lead that the applicant went.

I have, the more I've studied this project and compared and cross referenced the data requests, the original AFC filed et cetera the more questions have arisen about it. And so, I guess on a topic-by-topic basis I'll try to hit some of the highlights that are of my concern now.

The first would be the project description that so far, and I'll include these in my comments, but there seems to be some real question about the actual amount of energy that this, the proposed project is, will actually make.

It's advertised as a 500 megawatt project. We did discuss this during the workshop last week. I got two different answers.

One, that that 500 megawatts would be generated per day, one that it would be generated per hour. So that's one of the issues I'm kind of concerned with.

In addition to the fact that in the boiler optimization plan the applicant is estimating about 3,000 full load hours a year which, as near as I can figure, works out about eight hours a day or -- anyway, those are, so the project description of what we're actually getting for our

resources is some concern to me.

With respect to air quality a couple of things that have really stood out. The first is the lack of any sort of PM 10, PM 2.5 limits on the operational portion of the project which, I'm sure everybody is very aware that fugitive dust and dust impacts in general are significant concern and so far I have not been able to secure any answers as to, will there be any limits in the permit to operate over the lifetime of the project and what the applicant and the CEC staff has developed to ensure that dust suppression is sufficient throughout the course of the operation.

I also think the current mitigation measure for that issue is to develop the dust control plan after the project is approved and I have been researching a variety of dust (audio dropped) methods which I'll include in my comments. But each of them have different kinds of impacts, possibly increased water use if they go with water trucks over the life of the project et cetera. So, that's one of the concerns that I have.

Another one is that (audio dropped) boiler optimization revision, the applicant went from 17 mirror washing machines in the near, far from tower zones; it's actually divided into two different zones for operation and that there's even questions about that, there's a lot of

information that I haven't been able to find regarding how that's going to be set up. But, even contradictory information but setting that aside, the applicant went from 17 mirror washing machines in the far from tower zones to 7 and based on the number of mirrors that are projected to be part of the operation it is not feasible that these mirrors will be cleaned within the time table that the applicant projects to clean these mirrors. And the mirrors are the critical part of the renewable energy source. So there's some questions there kind in terms of the air quality.

Either they're going to need a lot more mirror washing machines and those emissions need to be factored in or the mirrors are going to take a lot longer to clean. So air quality wise that's some of the things I have concerns about.

Biological resources I have a lot of concerns about some of which I'm really glad to see the workshop on the avian flux because there is a lot of migratory birds that go through this area. I will be presenting at least some of them through photos that we have taken over the years.

And I also wanted to mention that the applicant had said that the only threatened and endangered species involved in the project site was the Desert Tortoise and I wanted to remind everybody that there's a lot of eagles and

various raptors in the area.

So the birds are also protected as well as the eagles. I'd like to see that addressed more.

Let's see, cultural resources, again, there's (audio dropped) dispute. I don't have, I'm not in disagreement with that.

One other thing I would like to add is one of the, one of my submissions I showed a newspaper article that mentioned an Indian burial site that was within the area that was at the time the article was six years old and at the time it was already calling a 100 year old burial site. And that hasn't been addressed at all. So, obviously, I would like to see that put on the table because I think that's a pretty serious issue as well.

Growth inducing impacts, that's kind of tied in with an issue, a land use issue that I have significant concerns about. That being, proposed project is for 32 hundred and 27 acres. However, the applicant is, has secured the lease option to 10,000 acres or over two-thirds more acres than the proposed project site.

This fact is not dealt with at all by staff in the Preliminary Staff Assessment and there's only one mention of this connection in their fiscal and financial impact analysis which that acreage is of significant concern to Inyo County regarding revenue generation. But I have

concerns with respect to what kind of development can happen if the CEC has any jurisdiction over conditions of permit to, you know, perhaps prevent development, if there is concerns with, can the applicant access water rights from those additional acres.

There's also in the financial and fiscal impact analysis, there's also references that allude to the possibility of temporary working, worker housing that has not been explored yet. So hopefully I'm going to bring, I'm trying to bring that to attention. And staff can address that.

One of the issues that I heard the applicant discuss in kind of a large general issue has me very concerned is the jurisdictional issues that are going on with this particular project.

And I feel that the applicant is playing both sides against the middle in that they are trying very hard to limit, to limit this process of the CEQA equivalency process and the AFC process to very narrow parameters within California so that they can circumvent a lot of the potential impacts that will happen on the Nevada side.

One of these that stands out very clearly to me is the issue of the water, the jurisdictional water. And I don't know if anybody is aware of it but in Nevada and in the Pahrump, with the Pahrump Valley Aquifer you are

required to submit applications for water rights that have to be approved.

And the applicant clearly states in the executive summary that they are targeting the Pahrump Valley Water Basin for this project but they are not going to be, or apparent, I don't know if they are or not, but anyway, there's a lot of jurisdictional issues around here that I'm going to bring up and I have questions about because I know the CEC really doesn't have jurisdiction to deal with those. And I'm not sure which agency will.

Now a mention was made of BLM and NEPA but one of the things that I've noted is that it is unclear at this point in time to what extent BLM will analyze the proposed project because the applicant has continued to reference their involvement as only being with the gas line and the transmission line.

And so, I, while there's assurances that it will be analyzed as a complete project, I see nothing to indicate that BLM will actually be doing that.

The second issue along that line when they were bringing up the visual resource issue, they only used the Nevada BLM visual resource categories but there's also a lot of California land, Pahrump Valley wilderness and BLM land that's surrounds it on the California side and somehow the California BLM, I'm not aware of them being involved at all

in this process towards maybe what their visual resource classes are or their particular land use plans are through there. So jurisdictional issues is a significant concern to me.

The public health. There's an issue with Valley Fever with respect to our soil. It is been noted in Pahrump and has caused problems in Pahrump.

I found staff's, staff's way of dealing with this, their only recommendation that I saw was that various regulatory agencies have acknowledged during days of high winds residents can stay indoors. I don't find that a satisfactory or appropriate approach to the situation. And I especially don't think that it's applicable to visitors, recreational people in the area, perhaps Front Site which gets quite a few visitors annually, maybe Saint Teresa.

So, there's certain health implications with that that I don't think are being taken seriously enough.

The soil and surface water. At the workshop I brought this up. I have serious concerns and I have been making them since my first public comments regarding the ability of the site to even be suitable for the proposed project.

It's sitting at the bottom of an alluvial fan and a pretty good flood channel. We have flash flood signs that are out right along the border of the proposed project site.

The soil that we have in the preliminary geotechnical report they specifically stated that certain structures, they could not be allowed to stand in water. And when it gets wet that's a serious concern because things sink. And big things sink. And we're going to have at least a 170,000 mirrors that are sitting in this soil that may be impacted, that may -- anyway, I have a lot of concerns with the soils and surface water section which in the comments I'll try to illustrate better.

Traffic and transportation. Obviously, I have some issues with. I was quite surprised to hear the applicant say, we feel that they are all resolved.

Obviously, if the data is different in the AFC files versus what they're telling people in the workshops then they need to find a way to make that consistent, that data consistent.

At this point in time they've made no response to the requests for them to correct any errors that might be associated with the traffic. And so, I really can't comment much farther because I have two different stories about one traffic figure but, as I tried to point out, that that ripples out into a variety of impacts about the project that until the applicant chooses to address them there's really nothing that can be resolved about it.

Visual resources. I still have issues with the

lack of nighttime analysis that has been involved. I had found us a section in the AFC files that said that the mirrors were going to glow in the dark and those have not yet been addressed.

I also noticed that in the hazardous materials section the applicant has added thousands of batteries. So I'm not really sure what those batteries are for but at this point in time I'm not clear whether those mirrors are going to be lit up at night or not nor because the area is very remote it has a lot of, when the moon is full you can see very, very well; enough to walk anywhere on the desert floor without any help. And I'm not really sure what a 180,000, 90,000 mirrors are going to look like during full moon.

Waste management. The only thing that I could think of off of the top of my head is trying to find out, the applicant intends to use septic tanks and leach fields for the project. And Dana, I believe Dana Crom said she would get with me to see if an industrial facility can use the same domestic, domestic waste systems.

Water supply. Some serious issues regarding its (audio dropped) I mean there is limited data. Nobody disputes that. But the data that we do have show nothing but declining water levels, lack of recharge and there is some real questions of whether the basin can support or that water in that area can support the project over its

lifetime.

But of the mitigation measures that I have concerns with is staff has recommended that the applicant replace 163 acre feet a year to help offset the project impacts. However there is no mention of or definition of what, replace, means. If it's retiring the water rights there is no mention of retiring water rights. So I have concerns that by requiring the applicant to secure an additional 163 acre feet without putting the stipulation that they must retire it, that in essence it will grant the applicant 300 acre feet a year. So that's one issue.

The second issue as on a much more personal level is, as a well owner there is a significant amount of burden that is going to be placed on us if we want any protection. And staff has deemed that if we, whoever agrees to this, that will reduce the project's impacts to our water supply and to our wells to less than significant.

But it seems to me that the mitigation measures are shifting the burden of proof on to us. We have to sign up. We have to have the monitoring put on our wells. We have to allow the applicant on our property at will. We have to open our records and our books. We have to prove what we use, when we use it and for how long. And I don't really find that a satisfactory mitigation measure.

Not to mention, if you don't agree with it, can it

really be considered less than significant?

Facility design. I was absolutely, I can't tell you my disappointment at how that small that section was. I was really looking forward to some clear analytical detailed kind of outlines regarding what we're really looking at because of so much of the data being rather kind of obscure or even contradictory.

I was very disappointed in the PSA at how little information was available and how the majority of compliance was all determined that would happen after the project was approved.

And transmission system and engineering. There are contradictory information in both the applicant's boiler, the revised boiler optimization plan as well as staff's PSA. Both of them have the switchyard located on the California side of the border in some parts and both of them have the switchyard located on the Nevada side of the border. And so I'm not really sure what I'm looking at.

But why this is significant to me is the sulfur fluorohexide (sic), the SF_6 and the greenhouse gases associated with it have gone up about 400 pounds. Hello?

HEARING OFFICER CELLI: Yes. We can hear you.

MS. MACDONALD: Sorry, I'm getting a bunch of static. Anyway the sulfur fluorohexide has gone up about 400 pounds from the original AFC files and I can find no

data to support this increase. And so, I'm concerned that if the switchyard is moved over to the Nevada side of the border, can that or will that allow this additional increase in greenhouse gas production to be moved outside of the CEC assessment?

And then finally, alternatives. Obviously, I have been asking staff to look at the alternatives of using fuel cells given the fact that California's goal is to generate renewable energy and that these have the potential of generating the energy that the project would supply but with much less significant impacts.

I was very disappointed to see that merely two websites and a letter dated over a year ago were used to dismiss this. However, during the workshop, Jeanine Hinde who is doing the alternative section promised to go back, revisit it, take another look at it and so I guess we'll just have to wait and see what kind of, what kind of analysis she gives regarding that. So that may or may not still be on the table.

So I think that kind of covered most of the main topics.

HEARING OFFICER CELLI: Well --

MS. MACDONALD: Thank you.

HEARING OFFICER CELLI: -- Ms. MacDonald I want to thank you and before I, I'm going to turn to the County of

Inyo next, but before I do just want to say that it sounds to me like the parties are deeply engaged in a very robust discussion on all of these topics. And this sounds very productive to me. And I really want to thank all of the parties because clearly everybody is elbow deep in the issues that are going on. And this sounds very productive to me and I want to encourage you all and thank you all for your participation because this sounds like this is all good. This is very productive and I think that we, if you keep talking including these upcoming workshops a lot of things can be resolved.

You know, I understand some things will not, cannot be resolved and that's fine. But at least we can resolve that which can be. And I want to just say that I'm very impressed with everybody's really conscientious participation. So I want to thank you Ms. MacDonald and all the intervenors.

Mr. Zellhoefer or Mr. Prichett, are you out there on the phone?

(No response.)

Okay. Let's hear from Inyo County. Go ahead Ms. Crom.

MS. CROM: Thank you. I want to start by thanking staff and the applicant and everyone for making the trek to Bishop for the PSA workshop on June 27th. I know poor Mike

is still struggling with webex and it wasn't working as well as we had wanted but I think it was very productive and we certainly appreciated everybody coming over to our neck of the woods to obtain comments.

With respect to the County's comments I am not going to give you a closing statement. I'm not even going to pretend to give you a closing statement. We are gathering them right now and we will be submitting them in writing.

I will confirm that BrightSource did submit last week a request for a general plan overlay and a zoning reclassification overlay. Again, that will be going to the Board of Supervisors tomorrow along with a reimbursement contract conditioned upon me receiving a check tomorrow morning. So that's the third element that's missing before we can process that.

Once we have all three items and the Board has approved the agreement, we will begin processing that application and working with BrightSource and with counsel on that.

As for the problem sections as identified by the applicant the only additional section that we have comments on that could be problematic would be traffic and transportation. And is primarily the County's concern that if there will be no truck traffic on the west side of Old

Spanish Trail going along Highway 127 that we have some mechanism by which to enforce that. And that's something that I think we will be able to work out.

We, I share a lot of the comments made by Mr. Ratliff concerning the jurisdictional issues here and the, what has been criticized as the conservative approach that is taken by staff.

I will note that Inyo County when it comes to groundwater resources is probably the foremost expert in the state of California on monitoring those resources and protecting them and trying to weigh one party's desire to have those resources against the fragile environment from which they come.

And I would just simply say, I don't think a mitigation and monitoring plan is conservative and I would also suggest, or actually would indicate, that is would be mandated under Title 21 if Inyo County were licensing this project.

And again, we will be commenting in full on that.

With respect to alternatives, I have to admit, I was wrong. I will admit, Jeff, it's 170 parcels on the project site not 270. So I was incorrect. But there are 170 lots out on the project site.

I understand where Mr. Harris is going with this. I may not necessarily agree with him on the alternatives

analysis. But I would just note as I did last week that in order for those lots to be developed a building permit would be conditioned on the availability of a reliable water source.

So, for what's that worth, I'm sure we'll all be taking that into consideration when determining what could happen to this project.

I did want to address Cindy's question about septic tanks. And, Cindy, we did talk to the environmental health director and as long as the septic tank is just being used for employee or regular restrooms a septic tank is appropriate. It is not appropriate for disposal of industrial waste.

What I understand is the septic that is being proposed for this project would be basically for the employees' restroom and kitchen and what not would be. So it would be your regular household-type waste. And that would be appropriate.

And we have used that before, specifically on the Crystal Geyser Project in Lone Pine.

I will say in follow up to Ms. MacDonald's comments, and the County will be commenting on this, we did also take issue with what we considered to be the shift of the burden to the local well owners with respect to mitigation. And we will be proposing mitigation which puts

most of the burden on BrightSource as opposed to the local well owners.

Obviously, I am a well owner and if you asked me the depth of my well and how my well worked and how my pump worked, I couldn't tell you. I would have to call my well guy.

And so, a lot of the questions that are being asked, I think, may be outside the general knowledge of the local well owners. And it is incumbent on BrightSource as the project proponent to mitigate for any damages caused to those wells, not for the homeowners to prove that their wells have indeed affected by the pumping.

And then I too have a question about the switchyard. I don't believe that the question has been ultimately answered. And I don't know if BrightSource is prepared to answer it.

It does have a socio-economic impact to the County if the switchyard is moved to the state of Nevada. I think I've noted that before. So we will need an answer to that.

With respect to the socio-economic analysis BrightSource is correct in that the County is looking more at the analysis of the revenue streams into the County in light of the Aspen Report.

Preliminary discussions have occurred with the applicant to address, essentially, the sales and use tax.

It is very technical, sales and use tax in this either and the designation of the County as the point of sale for purposes of sale and use tax is not as simple as simply checking a form on a box. And so, I think there is a bit of analysis that needs to be done there and some detailed requirements that will need to be agreed to by BrightSource in order for the County to realize even a fraction of what Dr. McCann anticipates would be realized by the County. But at this point we are looking at the income stream as opposed disputing the actual fiscal impacts to the County so long as we can assume that the income stream is large enough to cover an, either, scenario; that presented by Dr. McCann or that presented by the County.

Obviously, if the analysis proves that Dr. McCann is incorrect and those revenues will not cover the County's anticipated impact costs then we will be revisiting the other issues.

So that's where I think we are with the County.

HEARING OFFICER CELLI: Thank you very much, very clear. And so, the take away here is the application process is open. There is obviously open communication between applicant and the County. And hopefully we'll -- I'm not sure, by the way, whether we're going to need, we probably will have to keep that status conference date in August. I think we said August, let me look at my notice, I

think it was August 16th if I'm not mistaken.

UNIDENTIFIED PHONE PARTICIPANT: The 16th, yes.

HEARING OFFICER CELLI: Which?

UNIDENTIFIED PHONE PARTICIPANT: The 16th.

HEARING OFFICER CELLI: The 16th. Okay, good. This is the million dollar question, is when is the FSA coming out because my expectation when we created that schedule was the FSA was coming out on August 1st. And if so, then that would moot out the need for a status conference afterwards because the next thing that would happen would be a prehearing conference.

So what is the status with the FSA, staff? Mr. Ratliff.

MR. RATLIFF: Well I think you've heard the kinds of issues that we're currently dealing with. Certain other pieces are going to happen that are important.

One is the pump test. We heard today that the applicant is going to conduct a new pump test given some of the criticisms it received over the first one.

HEARING OFFICER CELLI: Are you going to post a guard this time?

MR. RATLIFF: And there will be a solar flux analysis that I think is an important piece on the biological issue.

The applicant announced at the Pahrump workshop,

although we didn't, unfortunately, end up discussing that because we were discussing so many other things; that it will be, providing as you heard today, offsets, so called for water, meaning the purchase of water rights on the Nevada side of the border presumably for retirement in quantity enough to mitigate the overall basin impacts of the pumping that is going to occur at the project site.

The details of that have not, to my knowledge, been disclosed. We need to understand that.

One of the issues that has been raised about this concept is, are these going to be offsets of non-productive, currently non-productive wells that, in other words, are associated with projects that have long since been discontinued or would they be something, perhaps, different from that and does it matter, and if so, if it does matter, what do you do about that?

We haven't had that discussion yet. And I think that's one of the things that is important in trying to figure out what the mitigation would be.

We're also currently trying to agree on, and when I say, we, I mean, not just staff and the applicant but the biological agencies as well, on how Desert Tortoise relocation would occur and whether it's relocation or translocation meaning how far you move the tortoise. There seems to be general, I think, I mean I may be

oversimplifying general biological agreement, that the better habitat for the tortoise or the better thing for the tortoise at least, is to move them the shortest distance possible to the nearest habitat that's good which is in Nevada which creates certain concerns with regard to our sister agency Fish and Game which would not allow that without a permit, a separate permit, from their agency.

But, variations on this have been discussed which might avoid any formal, we might allow the tortoises to self deport as the term has been used.

And that's BrightSource's latest proposal. And I think the agencies may be all in agreement with that. But it's an issue we're still working out. I think we're getting close to maybe closure on that issue but I'm not sure yet.

But my overall point of all this and meandering discussion is that we have a great deal to accomplish in August to try to get an FSA.

HEARING OFFICER CELLI: Well let me ask you this. Let's zero in on a couple of things. Okay, so the pump test, is that scheduled now or do we know when that's going to happen?

MR. JENSEN: Yeah, the pump test I think may be being mischaracterized a bit. We haven't finalized our decision to do the pump test.

We're moving in a direction where we will likely do it. Staff has provided clear indication that it's not an obligation that they're asking for that to be redone because they're not sure what impact, if any, that will have on their analysis of the water. It gets into a really technical discussion that we won't get into now.

But in essence we feel compelled to redo the test for our own needs as it relates to our understanding of, you know, ultimately we had a pump test that was stopped short because of vandalism. And that's led to a lot of questions.

Unfortunately, we're convinced that we already know the outcome of the revised test. And I don't know that staff necessarily disagrees that we all agree that the likelihood is the outcomes is going to be exactly the same as the previous test that was performed; but just so we don't ever have to hear the word, vandalism, again, whether is our investors or other third-party entities that come into the process, we need to understand that.

So, but we did make it clear to staff at the last workshop that the revised test should not have a schedule impact as it relates to the issuance of the FSA because frankly I don't think there's anything that that test will reveal that would have an impact on the FSA.

Perhaps I'm incorrect on that statement but we are moving forward in aggressive fashion, again, not fully

committing to doing it today but the results of that could be received anywhere from two to four weeks from today.

And so, if there is information revealed that could have an impact in the FSA we're not sure how that plays into the process.

But we think that the study results we provided from the original EPT in our minds are conclusive and provide sufficient understanding of the elements of the aquifer that were, we feel that the FSA should move forward on that issue, that issue alone.

We don't think that the revised EPT test should be a reason for delay in the FSA.

HEARING OFFICER CELLI: And what's a, let's just assume hypothetically you are able to get the pump test done in two to four weeks, is there some lag between those results getting to staff? Is there some analysis that needs to elongate the process?

MR. JENSEN: Yeah. The last time around our consultants prepared a brief for the parties that they provided very quick feedback, mainly, verbally and a quick PowerPoint presentation. And then it was followed by a report, a full-documented report I believe two weeks after that fact.

But, we would be able to provide some immediate feedback. Again, I believe that the results of the report

are going to be in parallel to the previous -- so if there is some discrepancy that we identify, obviously, we would notify staff of the discrepancy and work closely in conjunction with the team.

But again, we expect it to chart and graph and follow the same pump curves that we had determined in our initial results. So if there is a discrepancy we will notify quickly. But we don't expect the outcome to be any different, substantially from the original test.

HEARING OFFICER CELLI: All right. So either you have same or similar results in which case the FSA comes out quickly because there's no real change there or else you have wildly different results and then we've got a real timing problem that would affect that I can see.

So, the results of the solar flux reports that's coming out, and when is that due, if we know?

MR. RATLIFF: Well, we heard that it would be delivered on the 23rd of July.

MR. JENSEN: That's correct. We've got some data that we're preparing now and we do anticipate along with the Rio Mesa Solar Project submitting additional information on July 23rd.

MR. RATLIFF: And that would be two weeks before the workshop that we anticipate.

HEARING OFFICER CELLI: Two weeks before. So that

would be, so two weeks after July 23rd would be a workshop which of course the Hearing Committee encourages.

But, I'm just quickly looking at the calendar.

MR. RATLIFF: If I could just add on the pump test?

HEARING OFFICER CELLI: Yes.

MR. RATLIFF: We are going to be discussing how the pump test would be done with the applicant on Friday. I think we'll be discussing certain parameters such as the depth of the monitoring wells and the duration which is also an important factor.

Obviously, this pump test is anticipated to be longer than the last one.

HEARING OFFICER CELLI: Uh-hum.

MR. HARRIS: If I could just add too. On both these issues, we see this as supplemental information. There's already a lot of information in the record on both these issues, the previous tests and all the aquifer characterizations.

We've kind of been put in a tough position here. You know, if we, if push came to shove and you said, we're not going to release the document unless you give us this result, we'd probably not do the test. But we don't think that's a good result for anybody moving forward.

On the solar flux issue, there is information in

the record already. I would, again, characterize what's coming on the 23rd as supplemental to that. There's the McCrary Study which everybody cites to, either loving or hating.

But at the end of the day there is that information on the operating solar towers. And there's also other information about real-world experience both at SEDC and other solar facilities.

And so I don't want to leave the impression that the Commission couldn't move forward without this information. But I think maybe we're better off with the supplemental.

HEARING OFFICER CELLI: Well, yeah. So, really what it looks to me like, you have a workshop on the 13th or so.

MS. BELENKY: Excuse me.

HEARING OFFICER CELLI: Is that someone on the phone?

MS. BELENKY: Sorry. This is Lisa Belenky. I'm not sure I understand exactly what was just said. And I would just like before we move on to make sure I understand that the applicant just said something about that they wouldn't provide the results of the pump test to the Commission.

HEARING OFFICER CELLI: Go ahead Mr. Harris.

MR. HARRIS: No. I'm sorry Lisa, that was unclear. If we were put in a black and white situation of saying, do another pump test or not in terms of delaying the schedule, we probably wouldn't do an additional pump test. It's that important that you guys all move forward.

I don't think we're being given that black and white choice here, so. I'm sorry if I confused you and maybe I didn't clear it up with that statement, but.

MS. BELENKY: Yeah, this is --

MR. HARRIS: If we do it --

MS. BELENKY: -- this actually --

MR. HARRIS: -- we will share it with you.

MS. BELENKY: -- this whole conversation is a little bit confusing. First of all, partly because there is no workshop yet scheduled. There was a date that was floated but I understand didn't work. And then, now I just heard today August 8th, unless I missed one of the notices.

MR. RATLIFF: I don't think it's been noticed yet.

HEARING OFFICER CELLI: Right. Go ahead Mr. Monasmith. You were going to say.

MR. MONASMITH: Yeah, Mike Monasmith, project manager. It hasn't been noticed yet. But the project manager for the Rio Mesa proceeding and I are moving forward with a joint workshop on August 8th and we've cleared that primarily with both teams. And I do believe, Lisa, that

Eileen had indicated that the 8th, Eileen Anderson, had indicated the 8th worked for her and probably for you as well.

So I hope that that still remains the case. If not, we will look at another date. We really want to make sure it's, that it's good with CBD before we move ahead.

That has not been noticed yet but we're close to the point.

MS. BELENKY: Okay. I'm just having a hard time understanding what it is we're talking about now. There's still some more information that needs to come in. Staff is saying that they would prefer to delay the FSA until after they get that information.

HEARING OFFICER CELLI: That's the --

MS. BELENKY: Is that correct?

HEARING OFFICER CELLI: -- gist of what we're talking about. What I'm trying to zero in on is, obviously there's a time delay. I'm trying to get a sense of how much of one that we're looking at. And I was approaching it by really kind of narrowing down, okay, if there's a pump test and there's a solar flux test or an analysis coming in on solar flux; given that information and everything else we've heard, what would be a reasonable new date or a target date for the FSA to be published?

And that's what this whole discussion is really

about Lisa. I'm trying to get a sense of when we can expect an FSA to come on.

MR. RATLIFF: And I, if I'd had, if I'd finished my statement I would have said that our hope is that we could finish the FSA, that would have conclusions in all the important areas by September 11th.

I think that's ambitious but that's our goal. And I would also note that in our discussion with the County, the County will be considering the Adoption Board nexus which would conform to the project, they would, it's my understanding that they're intending to use a complete FSA.

I mean Ms. Crom can address that. But we don't really want to put out a document that isn't complete if the County is going to be utilizing.

HEARING OFFICER CELLI: That seems reasonable to me. I wonder, Mr. Harris, this really, I'm sure the only party that cares that this went from August 1st to September 11th is the applicant right now. And I just want to hear from you on that topic.

MR. HARRIS: Okay. Well, you know, obviously that's concerning. That's a substantial slip from a document that was originally scheduled for March if I recall. So, you know, just my initial reaction is, really.

To Ms. Belenky's question, you know, I don't think the staff needs this information. And maybe the best way to

put this is, if it's get the FSA or get the information, we'll take the FSA.

We think there's benefit from having this additional information. So I'd like to see that moving forward.

In terms of what document Inyo uses, this is the first I've heard they've decided. I thought that was still undecided. I don't know if you have any view on that issue going forward.

But I do know that they can't do anything until they have an environmental document. So I understand, even with the application and the check and everything that they're going to be handcuffed until we can provide a pertinent environmental document, so.

HEARING OFFICER CELLI: So, again, this is not a perfect situation for the applicant but it's not death to the project or anything like that at this point? If I am correct.

MR. JENSEN: I understand what you're saying, yes. We'd prefer to be expedited or accelerated as much as possible. But the September 11th would not be death to the project.

HEARING OFFICER CELLI: Okay. Well, again, this is one of the reasons why I don't go crazy putting out a schedule every other week during this point in the AFC

processes because there are so many things that can change, unforeseen circumstances. So I'm not inclined to issue another scheduling order until the FSA, until have a clear indication that the FSA is coming off. And then we can put in the rest of the schedule at that time.

I did have some more questions (turning to Commissioners) did you have questions? (side consultation away from mic) That's a good point. Yes. It does sound like August 16th is going to remain as set for a status conference unless that's a problem and prevents workshops or something. You'll let me know.

So that would be the, that is a good point. We would leave that, I just had a couple of questions. FSA we're looking at right now September 11th. That's an easy date to remember.

I just was, I was reading the geopaleo section and I was thinking about a 750 foot tower. And I just wanted verification in my mind as I'm trying to overlay and imagine if there were a combination of all sorts of forces that would cause these towers to fall over, is there any structure that humans would be in that would be within the path? In other words, there's a radius, the tower could fall over and I wanted to know, is it going to fall over and hit a road, a building?

MR. HARRIS: Well I guess the first thing, I'll

let Clay answer on that. But the first thing we want to do is obviously reassure everybody who's listening that they will be built to seismic standards. And mankind has built tall things in the past and they have been able to withstand earthquakes. But, to your direct question, go ahead.

MR. JENSEN: The administrative offices which is where most of the operations and controls will take place will be in the common area which would be over 750, 780 feet away from the site or from the tower locations.

But there are power block equipment and maintenance and operation staff that would be at the base of the tower within a 750 foot radius of the project.

HEARING OFFICER CELLI: Okay. But it would stay in the footprint of the site.

MR. JENSEN: Yes. In no circumstance is the tower less than 750 feet away from the border of the project.

HEARING OFFICER CELLI: I just, I thought that but I just wanted verification on that. Okay. We've heard from all of the parties. Before I go to public comment is there anything else from applicant?

MR. HARRIS: I actually wanted to give my real summation speech which is, thank you for your approval (laughter). But let me say, in all seriousness, I didn't expect anybody else to have that kind of detailed list. But I do think this is part of the process.

We've got a very large document, you know, 11 hundred and 59 pages plus another 99 pages of cultural thereafter. We didn't have an opportunity to react to the Committee and that is obviously today.

Our philosophy, if that's not too strong a word, is to put everything out there on the table and litigate the hell out of it so we have a complete record and nobody gets blindsided.

And I think that's actually the Commission's philosophy as well is to get these issues on the table, have them set forth and also to avoid unfair surprise. If people have other issues they're holding back I'd like to hear them sooner or later. I know the Committee is going to require to put them out there in their testimony.

And I do actually think that we will dwindle that number from nine, number nine down quite a bit through discussions with staff and the other parties in the workshop processing.

So I don't intend to have a summation speech that looks anything like my diatribe today. So thank you for indulging me and having us put things on the table but this is very much in the middle of the process. And we look forward to solving these issues.

HEARING OFFICER CELLI: Thank you. Anything from staff?

MR. RATLIFF: No.

HEARING OFFICER CELLI: Thank you. Ms. Belenky, anything further?

MS. BELENKY: No, nothing further today. Thank you for your time.

HEARING OFFICER CELLI: Thank you. Ms. MacDonald anything further?

MS. MACDONALD: Yes. I'd kind of like to know if the applicant intends to address the questions regarding their traffic data at any time?

HEARING OFFICER CELLI: I'm going to look over to the applicant's table.

MR. HARRIS: Yes. We definitely do intend to answer. Her questions are complex because they involve more than one subject matter and they involve modelling assumptions.

And the reason they are complex is because we take very conservative modelling assumptions. And in air quality, for example, we assume a number of trucks that's higher than we ever anticipate seeing so that we get conservative results.

And so we have written one answer. We all took Excedrin, went and laid down for awhile and are working on writing another one. It's a pretty complex to explain exactly where all those things are but at the end of the day

it's the conservatism and the numbers that I think has caused the issues and the mislabelling of one key figure as a daily number that was actually a monthly number. But it's a 17 figure.

So we are working to unravel all that. I will say quite candidly that we have been sort of occupied with PSA comments. And we will get our attention back on that.

HEARING OFFICER CELLI: Thank you.

MS. MACDONALD: Do you have like a general idea? Will they be possibly ready prior to the close of the PSA comments? Or just, you know, I do appreciate the magnitude.

(Recorded message plays).

HEARING OFFICER CELLI: Hang on one second. That's from Martinez, there we go. Go ahead.

MS. MACDONALD: Okay. I want to acknowledge I appreciate the magnitude and I couldn't help but laugh about the headache because I have shared many a headaches on this subject myself. So, I do appreciate that but I still think that that information is very important and so do you have any idea when you might be able to start providing some explanations and/or data regarding that?

HEARING OFFICER CELLI: So the question from Ms. MacDonald is when do you think you could satisfy her question?

MR. HARRIS: Well, it's all about schedule. And

our PSA comments more than anything else. I think we can give her a good preliminary answer in probably about within 10 days.

HEARING OFFICER CELLI: Okay.

MR. HARRIS: And certainly by the workshop. What day is the workshop?

HEARING OFFICER CELLI: It's August 8th. That's about a month away.

MR. HARRIS: Yeah, right. Yes.

HEARING OFFICER CELLI: Okay. Anything further Ms. MacDonald?

MS. MACDONALD: No. Thank you very much.

HEARING OFFICER CELLI: Thank you very much. Anything further Inyo County Ms. Crom?

MS. CROM: Just to clarify on the issue of us using the FSA to process the application. That has been requested by the applicant. We are still looking at that inhouse.

However, if we're going to process based on the FSA obviously it needs to be as complete of an FSA as possible.

HEARING OFFICER CELLI: Certainly.

MS. CROM: So --

HEARING OFFICER CELLI: And we appreciate your flexibility.

MS. CROM: We haven't made a decision.

HEARING OFFICER CELLI: But that's great and I appreciate your participation in your actual consideration of expediting that process. That helps alot.

Let's go now to public comment. Ms. Jennings are there any members of the public? She's shaking her head in the negative. There is nobody from the public here today.

So we're going to go to the phone. I'm going to first go through the names of people who've actually identified themselves and then I'll ask for the call-in users. If someone, if there's a name I call out who's associated with staff or applicant just let me know.

So I've got Bill Christian. Mr. Christian did you -- oh, he's hung up. I'm assuming --

MR. CHRISTIAN: No, I have no comment at this point.

HEARING OFFICER CELLI: Oh, good. Thank you very much. It looked like you had hung up. Bradley Brownlow?

(No response.)

Okay. Christina Snow?

(No response.)

Jeanine Hinde (No response.)

Jeff Ogata I know is with the staff. Okay, Jim Stroh.

MR. STROH: No comment.

HEARING OFFICER CELLI: Thank you. Karen Parker?

(No response.)

Okay. Lisa DeCarlo is with staff. MaryLou Taylor?

(No response.)

Mike Conway?

(No response.)

Pierre Martinez is with staff. I have a Rose M. Did you wish to make a comment? Rose M or Rosem?

(No response.)

No? Okay. And then I have a person who identified themselves as "visitor." Did you wish to make a comment?

(No response.)

Okay. That being the case I'm going to go to the people who just called in and did not use a computer to identify themselves.

If you're on the telephone now and wish to make a public comment please just jump right in and we'll figure out who you are. Go ahead. Anyone who wishes to make a public comment please speak up.

(No response.)

Okay, hearing none at this time I will return the meeting back to Commissioner Douglas for adjournment.

PRESIDING MEMBER DOUGLAS: All right. Well,

again, I'd like to thank everybody for their participation and their preparation for the status conference. The Committee finds these status conferences really helpful and it's a good way for us to stay in a very up to date on concerns and on the status of issues and issue resolution.

Obviously, as we move through the process we'd also like to hear your input about the most helpful frequency of the status conferences so that we get what we need. But parties aren't, and hopefully you aren't spending a whole lot of time preparing for status conferences when you could be doing, you know, PSA comments or more analyses and so on.

And so there is a balance that we do need to strike here and I just wanted to invite your thoughts at the appropriate time on and welcome if there is a frequency issue that you want to raise. But from the Committee's point of view it's extremely helpful.

So again, thank you and with that we're adjourned.

(The Status Conference adjourned at 3:18 p.m.)

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CERTIFICATE OF REPORTER

I, JOHN COTA, an Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Status Conference; that I thereafter transcribed it.

I further certify that I am not of counsel or attorney for any of the parties to said conference or in any way interested in the outcome of said conference.

IN WITNESS WHEREOF, I have hereunto set my hand this 16th day of June, 2012.

JOHN COTA