

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
for the Palmdale Hybrid) 08-AFC-9
Power Plant Project)
_____)

LARRY CHIMBOLE CULTURAL CENTER
38350 SIERRA HIGHWAY
PALMDALE, CALIFORNIA
WEDNESDAY, MARCH 2, 2011
10:01 A.M.

Reported and by:
Martha L. Nelson, CERT

APPEARANCES

COMMITTEE MEMBERS

Karen Douglas, Commissioner and Presiding Member

Jim Boyd, Vice Chair and Associate Member

HEARING OFFICER AND ADVISORS

Kenneth Celli, Hearing Officer

Paul Feist, Advisor to Commissioner Douglas

Tim Olson, Advisor to Commissioner Boyd

STAFF, CONSULTANTS AND STAFF WITNESSES

Lisa DeCarlo, Staff Counsel

Felicia Miller, Project Manager

APPLICANT

Michael Carroll, Attorney

Marc Campopiano, Attorney

Laurie Lile, City of Palmdale, Assistant City Manager

Thomas Bennett, Inland Energy, Inc.

INTERVENORS

Lisa Belenky, Center for Biological Diversity

Jane Williams, Desert Citizens Against Pollution

APPEARANCES (Continued)

ALSO PRESENT

PUBLIC SPEAKERS

Sharon Moulton, Representing Senator Sharon Runner
Isaac Barcelona, Representing Assemblyman Steve Knight
Marvin Crist, Lancaster City Council
Bret Banks, AVAQMD, Operations Manager
Erin Wilson, Department of Fish and Game
Joseph Yore
R. Lyle Talbot
Jason Caudle
Robina Suwol
Jim Ledford, City of Palmdale Mayor
Emmett Murrell
Virginia Stout
James McGuire
Ron Miller
Steve Chisolm
Jack Ehernberger
Nicole Parson (via telephone)
Steve Hofbauer

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EXHIBITS

<u>APPLICANT'S</u>	<u>MARKED</u>	<u>REC'D</u>
2, 23, 47, 87, 94, 128, 120, 122, and 133	13	*
20, 33, 43, 44, 46, 53, 56, 119, and 134	14	*
25 and 120	14	*
9, 13, 24, 32, 36, 38, 44, 124, 137, and 138.	14	*
5, 11, 44, 47, 53, 56, 58, 87, 102, 120, 123, 128, and 133	15	*
12 and 128	16	*
15, 39, 44, 50, 123, and 128	16	*
17, 27, 39, 46, 56, 100, 102, 110, 114, 121, 122, 127, and 139	17	*
28, 39, 44, 46, 47, 56, 71, 76, 96, 97, 103, 122, and 131	17	*
19, 29, 44, 46, 53, 56, 62, 64, 75, 89, 102, 135, and 121	18	*
22, 44, and 119	18	*
14, 35, 126, and 140		101
146		215
101		351

*All Applicant's marked exhibits were received into evidence.

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	<u>MARKED</u>	<u>REC'D</u>
<u>STAFF'S</u>		
300 thru 307	22	22
<u>INTERVENOR CBD'S</u>		
400 thru 403	25	25
<u>INTERVENOR DCAP'S</u>		
500 thru 503	28	28

1 like to thank Ms. Moulton for making my comments.

2 Assemblyman Knight is very supportive of this
3 project, always has been. And he also appreciates the due
4 diligence that the CEC has conducted. And we are very
5 confident that there will be no undue environmental impact
6 as a result of this project. And we wanted to come here and
7 show our support. Thank you.

8 HEARING OFFICER CELLI: Thank you very much.

9 We aren't started yet, folks, but we will in just
10 a moment. We are on the -- we were on the record for those
11 comments. Now we're going off the record until we begin.

12 (Off the record from 10:02 a.m., until 10:06 a.m.)

13 COMMISSIONER DOUGLAS: Good morning. Welcome to
14 the evidentiary hearing on the proposed Mariposa Energy --
15 on the proposed Palmdale Energy Project. The -- I am
16 Commissioner Karen Douglas. I'm the presiding member on
17 this case. To my immediate right is Commissioner Jim -- or
18 Vice Chair Jim Boyd. He's the associate member on this
19 case. And to his right is Commissioner Boyd's advisor, Tim
20 Olson. On my immediate left is my advisor, Paul Feist. And
21 on the far left of this table is the Hearing Officer, Ken
22 Celli.

23 At this point, I'd like to ask the parties to
24 identify themselves, beginning with the applicant.

25 MR. CARROLL: Good morning. Mike Carroll with

1 Latham and Watkins on behalf of the applicants. On my right
2 is my colleague, Mark Campopiano, also with Latham and
3 Watkins. On my left is Sara Head, the project manager with
4 AECOM, the environmental consulting firm retained by the
5 city to review the project. To -- to her left is Tom
6 Barnett, senior vice president with Inland Energy, the
7 developer retained by the city to develop the project. And
8 on his left is Laurie Lile, the assistant city manager with
9 the City of Palmdale, the applicant in this matter. And on
10 Ms. Lile's left is Mr. Williams, the city manager for the
11 City of Palmdale. Thank you.

12 COMMISSIONER DOUGLAS: Thank you, Mr. Carroll.
13 Staff?

14 MS. DE CARLO: Good morning, Commissioners. Lisa
15 DeCarlo, Energy Commission staff counsel. To my right is
16 Felicia Miller, Energy Commission, Project Manager.

17 HEARING OFFICER CELLI: The big mike.

18 MS. DE CARLO: Big mike. Okay. Good morning.
19 Lisa DeCarlo, Energy Commission staff counsel. To my right
20 is Felicia Miller, Energy Commission project manager
21 overseeing review of the Palmdale facility. And in the
22 audience we have various staff members that you'll meet as
23 they come to testify.

24 COMMISSIONER DOUGLAS: Thank you, Ms. DeCarlo.
25 Intervenors?

1 MS. BELENKY: Lisa Belenky for Intervenor, Center
2 for Biological Diversity.

3 MS. WILLIAMS: Jane Williams, Desert Citizens
4 Against Pollution, Intervenor.

5 COMMISSIONER DOUGLAS: Thank you. The -- the city
6 manager would like a moment to welcome everybody.

7 MR. WILLIAMS: Good morning. My name is Steve
8 Williams. I'm the city manager. I just want to welcome you
9 all here to the City of Palmdale this morning,
10 Commissioners, public Hearing Officer, as well as the
11 public. We've been working on this project for long time.
12 We've spent a lot of money on it. We're very excited about
13 it. I think the community is -- is behind this -- this
14 project, as you will hear today.

15 And we are -- are very excited that we're finally
16 here at this particular point. We've been, you know,
17 working on this project for about five years or so and, you
18 know, this is a very important milestone in this project.
19 And I just wanted to make sure everybody feels welcome. And
20 thank you very much for coming to Palmdale. Thanks.

21 COMMISSIONER DOUGLAS: Thank you. Thank you for
22 this welcome.

23 Is the -- let's see, the Public Advisor, Jennifer
24 Jennings is here. She's in the back of the room with her
25 hand up. And so she will work with members of the public

1 and help them understand the process and understand how to
2 engage with this process. So she's a great resource for
3 members of the public.

4 Are there any representatives of -- are there any
5 elected officials here today? If you wouldn't mind, if you
6 could identify yourself for the record. We appreciate it.

7 HEARING OFFICER CELLI: On the microphone,
8 everyone. We're taking a -- this is all being taken down by
9 a court reporter, so we need everybody to speak into a
10 microphone today. Go ahead, please.

11 MR. CRIST: Marvin Crist from the City of
12 Lancaster Council.

13 COMMISSIONER DOUGLAS: Thank you. Any other
14 elected officials in the room? Are there any members of --
15 other state or local government agencies here today?

16 MR. BANKS: I'm Bret Banks, operations manager for
17 the Antelope Valley Air Quality Management District. Also
18 with me is Karen Nowak, our district council; Alan De
19 Salvio, supervising engineer; and Chris Anderson, air
20 quality engineer.

21 COMMISSIONER DOUGLAS: Well, thank you. Thank you
22 for being here.

23 Any other representatives, please come forward.

24 MS. WILSON: Erin Wilson with the Department of
25 Fish and Game.

1 MR. CRIST: Again, Marvin Crist. I'm with the
2 Antelope Valley AQMD. I'm on the board.

3 COMMISSIONER DOUGLAS: Any other representatives
4 of state or local agencies? Any representatives of federal
5 government agencies here? All right.

6 Thank you for those -- for that, and I'll turn
7 this over to Hearing Officer Celli.

8 HEARING OFFICER CELLI: Thank you, Commissioner
9 Douglas.

10 Good morning everyone. Can you hear me okay?
11 Nodding heads? Good. Thanks. Good morning. This
12 evidentiary hearing is a formal adjudicatory proceeding to
13 receive evidence in the formal evidentiary record from the
14 parties. Only the parties who are the applicant, California
15 Energy Commission Staff and Intervenors may present evidence
16 for introduction into the formal evidentiary record which is
17 the only evidence upon which the commission may base its
18 decision under law.

19 The technical rules of evidence are generally
20 followed. However, any relevant noncumulative evidence may
21 be admitted if it is the sort of evidence -- if it is the
22 sort of evidence upon which responsible persons are
23 accustomed to rely in the conduct of serious affairs.

24 Testimony offered by the parties shall be under
25 oath. Each party has the right to present and cross-examine

1 witnesses, introduce exhibits and rebut evidence of another
2 party. Questions of relevance will be decided by the
3 committee. And by the way, when I'm talking about the
4 committee, this is the committee made up of two
5 commissioners, their advisors and the hearing advisor, which
6 are two of the five commissioners who will hear the decision
7 in full at the -- at the end of the proceedings. So
8 questions of relevance will be decided by the committee.
9 Hearsay evidence may be used to supplement or explain other
10 evidence but shall not be sufficient in itself to support a
11 finding.

12 The committee will rule on motions and objections.

13 The committee may take official notice of matters within
14 the Energy Commission's field of competence and of any fact
15 that may be judicially noticed by the California courts.

16 The official record of this proceeding includes
17 the sworn testimony of the parties' witnesses, the
18 reporter's transcript of the evidentiary hearing, the
19 exhibits received into evidence, briefs, pleadings, orders,
20 notices, and comments submitted by members of the public.

21 The -- and we will have a -- a -- at two o'clock
22 today we will take public comment. If you're a member of
23 the public and you want to know when we're going to do that,
24 that will be at two o'clock today.

25 The committee's decision will be based solely on

1 the record of competent evidence in order to determine
2 whether the project complies with applicable law.

3 Members of the public who are not parties are
4 welcome and invited to observe the proceedings. There will
5 also be an opportunity for the public to provide comment at
6 two o'clock today as I said. And depending on the number of
7 persons who wish to speak the committee may limit the time
8 allowed for each speaker. This public comment period is
9 intended to provide an opportunity for persons who attend
10 the hearing in person to address the committee. And we also
11 will have people on the telephone as well. We're using this
12 WebEx system.

13 It is not an opportunity, however, to present
14 written, recorded or documentary materials if you are member
15 of the public. Nevertheless, such materials may be docketed
16 and submitted to the Energy Commission for inclusion in the
17 administrative record.

18 Members of the public who wish to speak should
19 fill out a blue card provided by the Public Advisor who is
20 Jennifer Jennings. She's holding a blue card up in the back
21 of the room now. If you want to make a comment, if you want
22 us to call on you, you -- we ask that you fill out a blue
23 card. If you would prefer not to speak publicly but would
24 like to submit a written comment the blue card has a space
25 to do that as well.

1 Now the witness list in the exhibits list have
2 been distributed to the parties electronically and the
3 parties were asked to bring their copies for their use
4 today. We'll use these lists to organize the receipt of
5 evidence into the record. There are several uncontested
6 topics identified in the topic and witness list. None of
7 the parties has filed any objections to submittal of these
8 topics by declaration.

9 The way we're going to proceed today is first we
10 will allow the applicant to offer into evidence the relevant
11 sections of the AFC relevant supplements and testimony in
12 support of uncontested topics. Then we will ask staff to
13 offer those sections of the FSA and supplemental testimony
14 which constitutes Staff's testimony in support of the
15 uncontested topics. Finally, Intervenors will offer their
16 evidence of the uncontested topics in -- in to the record.
17 After taking in uncontested evidence the parties may offer
18 their list of exhibits as to contested topics into the
19 evidence. We will proceed through the uncontested topics at
20 this time. Applicant and Staff's project managers will be
21 sworn.

22 If I can have the project manager stand, please,
23 to be sworn.

24 MR. CARROLL: All witnesses that are planning to
25 testify today?

1 HEARING OFFICER CELLI: No, just your project
2 manager right now, if you have one.

3 Do you solemnly swear -- do you solemnly swear to
4 tell the truth, the whole truth and nothing but the truth
5 under penalty of perjury at this time? Please state your
6 name and spell it for the record into the microphone.

7 MS. DE CARLO: A quick clarification. Sorry, Mr.
8 Celli. We're -- Staff is not presenting our project
9 description as testimony. We -- it generally is not, in --
10 in terms of -- of staff's analysis --

11 HEARING OFFICER CELLI: You're asking that Ms.
12 Miller not be sworn?

13 MS. DE CARLO: We rely on the applicant to present
14 their -- their project description. We do not present it as
15 sworn testimony from staff.

16 HEARING OFFICER CELLI: Understood. Have a seat.
17 You know what I'm just going to have your witnesses sworn
18 all at once, at the same time. Just -- let's just go.
19 Okay.

20 The parties agree that the following topics set
21 forth in the application for certification in the final
22 staff analysis are undisputed and that evidence and
23 testimony on these topics shall be solely by declaration:
24 executive summary; the Project Description, apart from
25 adding a description of road paving in the project

1 description in the PMPD, as we had discussed at the pre-
2 hearing conference; Cultural Resources, apart from the
3 impacts of road paving, as we discussed at the pre-hearing
4 conference; Transmission Line Safety and Nuisance; Waste
5 Management; Facility Design; Geology and Paleontology; Land
6 Use, apart from the impacts from road paving; Power Plant
7 Efficiency; Power Plant Reliability; Noise and Vibration;
8 Socioeconomics; Traffic and Transportation, apart from the
9 impacts from road paving; Transmission System Engineering;
10 Visual Resources; and Worker Safety.

11 Now actually I want to deviate a little bit. I'm
12 going to start with the applicant and ask Mr. Carroll, do
13 you have any objection -- because what I'm thinking of doing
14 is accepting all of the documentary testimony that we've
15 received right now from everybody.

16 Do you have any objection to our doing that Mr.
17 Carroll?

18 MR. CARROLL: You're referring to all of the
19 documentary evidence that has been received on the non-
20 disputed topics?

21 HEARING OFFICER CELLI: On everything. What I'm
22 thinking of doing right now, if I can, is accepting the
23 entire evidentiary -- the exhibit list from all parties.
24 But I'm only going to do that if there's no objection from
25 the parties.

1 MR. CARROLL: No. We do have objections to
2 certain of the exhibits that have been proposed for
3 introduction by the intervenors.

4 HEARING OFFICER CELLI: All right. Now take a
5 minute and -- and think. Are we talking admissibility or
6 weight? Because if they're admissible they're coming in.

7 MR. CARROLL: I appreciate that. We have some
8 objections at -- as to their admissibility.

9 HEARING OFFICER CELLI: Got it. Okay. Then at
10 this time, Applicant, do you wish to move your evidence into
11 the record on undisputed topics only?

12 MR. CARROLL: Yes.

13 HEARING OFFICER CELLI: Okay. Your motion please.
14 And let me just say this, I'm going to rely on the
15 description of the evidence in the exhibit's list. So all I
16 really need to know is exhibit one, two, three, four, five,
17 six, seven --

18 MR. CARROLL: Very well.

19 HEARING OFFICER CELLI: -- or one through ten,
20 etcetera.

21 MR. CARROLL: Very well. At this time Applicant
22 moves the following exhibits under the topic of project
23 description: Exhibit Number 2, Exhibit Number 122, Exhibit
24 Number 47, Exhibit Number 87, Exhibit Number 128, Exhibit
25 Number 23, Exhibit Number 120, Exhibit Number 94, and

1 Exhibit Number 133.

2 HEARING OFFICER CELLI: Let me just -- under
3 project description, Exhibits 2, 122, 47, 87, 128, 23, 120,
4 94, and 133.

5 MR. CARROLL: Correct.

6 HEARING OFFICER CELLI: Okay. I'm not going to
7 ask if there's objections just to each section. I'm going
8 to get all of them in and then I'm going to ask if there's
9 an objection. So go ahead.

10 MR. CARROLL: Very well. Applicant offers the
11 following exhibits under the topic of cultural resource:
12 Exhibits Number 8, 31, 37, 39, 43, 44, 47, 48, 53, 54, 56,
13 59, 68, 102, 104, and 117.

14 HEARING OFFICER CELLI: That's 8 -- Exhibits
15 marked for identification as 8, 31, 37, 39, 43, 44, 47, 48,
16 53, 54, 56, 59, 68, 102, 104, and 117.

17 (Whereupon, Applicant's Exhibits 2, 122, 47, 87,
18 128, 23, 120, 94, and 133 were marked for
19 identification.)

20 MR. CARROLL: Correct. Under the topic of
21 transmission line safety and nuisance, Applicant offers
22 Exhibits 18 and 131.

23 HEARING OFFICER CELLI: 18 and 131 for
24 identification. Okay.

25 MR. CARROLL: Under the topic of waste management,

1 Applicant offers -- offers Exhibits 20, 33, 43, 44, 119, 46,
2 53, 56, and 134.

3 HEARING OFFICER CELLI: Okay. Exhibits marked for
4 identification under waste management are 20, 33, 43, 44,
5 119, 46, 53, 56, and 134.

6 (Whereupon, Applicant's Exhibits 20, 33, 43, 44,
7 119, 46, 53, 56, and 134 were marked for
8 identification.)

9 MR. CARROLL: Correct. Under the topic of
10 facility design, Applicant offers Exhibits 25 and 120.

11 HEARING OFFICER CELLI: 25 and 122 -- 120 -- 25
12 and 120 for -- for identification.

13 (Whereupon, Applicant's Exhibits 25 and 120 were
14 marked for identification.)

15 MR. CARROLL: Correct. Under geology and
16 paleontology, Applicant offers Exhibits 9, 24, 138, 13, 32,
17 36, 38, 124, 44, and 137.

18 HEARING OFFICER CELLI: Geology and paleontology,
19 Exhibits marked for identification as 9, 24, 138, 113, 32,
20 36, 38, 124, 44, and 137.

21 (Whereupon, Applicant's Exhibits 9, 24, 138, 13,
22 32, 36, 38, 124, 44, and 137 were marked for
23 identification.)

24 MR. CARROLL: One correction. That was Exhibit
25 13, not exhibit 113.

1 HEARING OFFICER CELLI: Got it, 13 not 113. Okay.
2 Land use?

3 MR. CARROLL: Under land use, Applicant offers
4 Exhibits 5, 123, 11, 44, 120, 47, 53, 56, 87, 102, and
5 133 -- I'm sorry -- and -- I'm sorry -- 58, and 128.

6 HEARING OFFICER CELLI: Okay. Exhibits marked for
7 identification under land use are Exhibits 5, 123, 11, 44,
8 120, 47, 53, 56, 87, 102, 133, 58, and 128.

9 (Whereupon, Applicant's Exhibits 5, 123, 11, 44,
10 120, 47, 53, 56, 87, 102, 133, 58, and 128 were
11 marked for identification.)

12 MR. CARROLL: Correct.

13 HEARING OFFICER CELLI: Okay. Power plant
14 efficiency?

15 MR. CARROLL: Applicant has no exhibits under that
16 topic area.

17 HEARING OFFICER CELLI: Power plant reliability.

18 MR. CARROLL: Applicant has no exhibits under that
19 topic area.

20 HEARING OFFICER CELLI: Noise and vibration?

21 MR. CARROLL: Applicant offers Exhibits 12 and
22 128.

23 HEARING OFFICER CELLI: One moment. I'm going to
24 ask people who are on the telephone to please mute your
25 phones at home because we're hearing some feedback from a

1 speaker on the phone.

2 Here's the thing that happens to you folks who are
3 on the phone, if you make noise I mute you. Sorry.

4 We were at noise.

5 MR. CARROLL: Literally.

6 HEARING OFFICER CELLI: Literally. Noise and
7 vibration.

8 MR. CARROLL: Exhibits 12 and 128.

9 HEARING OFFICER CELLI: Under noise, Exhibits
10 marked for identification as 12 and 128.

11 (Whereupon, Applicant's Exhibits 12 and 128 were
12 marked for identification.)

13 Socioeconomics?

14 MR. CARROLL: Under socioeconomics, Applicant
15 offers Exhibits 15, 39, 44, and 123, and 50, and 128.

16 HEARING OFFICER CELLI: I hope I got that.
17 Exhibits marked for identification under Socioeconomics is
18 15, 39, 44, 123, 50, and 128.

19 (Whereupon, Applicant's Exhibits 15, 39, 44, 123,
20 50, and 128 were marked for identification.)

21 MR. CARROLL: Correct.

22 HEARING OFFICER CELLI: Okay. Traffic and --
23 transportation.

24 MR. CARROLL: Under the topic of traffic and
25 transportation, Applicant offers Exhibits 17, 39, 46, 102,

1 139, 27, 100, 122, 56, 127, 110, 114, and 121.

2 HEARING OFFICER CELLI: Under traffic and
3 transportation, exhibits marked for identification as
4 Exhibits 17, 39, 46, 102, 139, 27, 100, 122, 56, 127, 110,
5 114, and 121.

6 (Whereupon, Applicant's Exhibits 17, 39, 46, 102,
7 139, 27, 100, 122, 56, 127, 110, 114, and 121 were
8 marked for identification.)

9 MR. CARROLL: Correct.

10 HEARING OFFICER CELLI: Next is transmission
11 systems engineering.

12 MR. CARROLL: Under the topic of transmission
13 system engineering, Applicant offers Exhibits 28, 39, 46,
14 47, 56, 71, 76, 96, 97, 103, and 122. And I'm sorry, there
15 are some additional exhibits under that topic.

16 HEARING OFFICER CELLI: Go ahead.

17 MR. CARROLL: 44 and 131.

18 HEARING OFFICER CELLI: So under Transmission
19 Systems Engineering. Exhibits marked for identification --
20 Exhibits 28, 39, 46, 47, 56, 71, 76, 96, 97, 103, 122, 44,
21 and 131.

22 (Whereupon, Applicant's Exhibits 28, 39, 46, 47,
23 56, 71, 76, 96, 97, 103, 122, 44, and 131 were
24 marked for identification.)

25 MR. CARROLL: Correct.

1 HEARING OFFICER CELLI: And visual resources?

2 MR. CARROLL: Under the topic of visual resources,
3 Applicant offers Exhibits 19, 39, 44, 46, 75, 89, 102, 135,
4 19, 53, 56, 62, 64, and 121.

5 HEARING OFFICER CELLI: Visual -- exhibits under
6 Visual Resources, Exhibits marked for identification as 19,
7 39, 44, 46, 75, 89, 102, 135, 19, 53, 56, 62, 64, and 121.

8 (Whereupon, Applicant's Exhibits 19, 39, 44, 46,
9 75, 89, 102, 135, 53, 56, 62, 64, and 121 were
10 marked for identification.)

11 MR. CARROLL: Correct.

12 HEARING OFFICER CELLI: Last we have worker
13 safety.

14 MR. CARROLL: Under the topic of worker safety,
15 Applicant offers exhibits 22, 44, and 119.

16 HEARING OFFICER CELLI: 22, 44, and 119 --

17 MR. CARROLL: Correct.

18 HEARING OFFICER CELLI: -- okay, are moved into
19 evidence.

20 (Whereupon, Applicant's Exhibits 22, 44, and 119
21 were marked for identification.)

22 HEARING OFFICER CELLI: Now Ladies and Gentlemen,
23 just so you understand what we're doing, these are the
24 undisputed topics. We had a prehearing conference
25 statement. The parties said we don't dispute these topics

1 and they're just moving these exhibits in. So we can take
2 care of that before we get to the contested topics.

3 Is there any objection from staff to these
4 exhibits being received into evidence?

5 MS. DE CARLO: Not to the applicant's, no.

6 HEARING OFFICER CELLI: Okay. Any objection from
7 Ms. Belenky on behalf of the Center for Biological
8 Diversity?

9 MS. BELENKY: Not to these. But as you noted in
10 your discussion at the beginning, we do think that the
11 project description remains incomplete.

12 HEARING OFFICER CELLI: Understood. But right now
13 I'm just -- I'm responding to a motion to move the evidence
14 in. And I'm just getting the undisputed in now.

15 Ms. Williams, for the Desert Citizens Against
16 Pollution, any objections?

17 MS. WILLIAMS: No. But again, we have the same
18 concerns about the project description. So we're hoping
19 that, Mr. Celli, you as the impeccable hearing officer that
20 you are is going to solve that problem somewhere down the
21 road.

22 HEARING OFFICER CELLI: Well, we intend to solve
23 it at least at the PMPD.

24 MS. WILLIAMS: All right. Thank you.

25 HEARING OFFICER CELLI: And then you'll be able to

1 comment on that too.

2 MS. WILLIAMS: Okay. Thanks.

3 HEARING OFFICER CELLI: If -- if I didn't do it
4 right. So thank you.

5 And just for the record my -- my name is
6 pronounced Celli. I know there's no H in it but it's
7 Italian, and so I -- I make -- I make people pronounce it
8 that way. So there being no objection the aforementioned
9 exhibits that we just walked through will be received into
10 evidence and are received.

11 (Whereupon, Applicant's Exhibits 5, 8, 9, 11, 12,
12 13, 15, 17, 18, 19, 20, 22, 24, 25, 27, 28, 31,
13 32, 33, 36, 37, 38, 39, 43, 44, 46, 47, 48, 50,
14 53, 54, 56, 58, 62, 64, 68, 71, 75, 76, 87, 96,
15 97, 100, 102, 103, 104, 110, 114, 117, 119, 120,
16 121, 122, 123, 124, 127, 128, 131, 133, 134, 135,
17 137, 138, and 139 were received into evidence.)

18 Now applicant, any motion as to the undisputed
19 topics?

20 MS. DE CARLO: Lisa DeCarlo, Energy Commission,
21 staff counsel. We would like to -- we would move to enter
22 into evidence all the testimony contained within our
23 identified Exhibits 300 through 306, as well as we have an
24 additional exhibit that we filed last week. We would like
25 that marked Exhibit 307.

1 HEARING OFFICER CELLI: 307. I need a -- I need a
2 description for 307 please.

3 MS. DE CARLO: Sure. And I have copies available
4 too if the commission -- the committee would like. It is
5 the joint stipulation of Energy Commission Staff and
6 Applicant regarding changes to the final staff assessment.

7 HEARING OFFICER CELLI: Are these just the
8 conditions of certification?

9 MS. DE CARLO: There are a few conditions of
10 certification that we -- discussed at our staff workshop.
11 And there's also a minor correction to some air quality
12 information that we provided in the FSA.

13 HEARING OFFICER CELLI: Okay. Is there any
14 objection by applicant to the admission of Exhibits 300
15 through 307?

16 MR. CARROLL: No objection from applicant.

17 HEARING OFFICER CELLI: Any objection from Lisa
18 Belenky, Center for Biological Diversity?

19 MS. BELENKY: No.

20 HEARING OFFICER CELLI: Lisa, I need you to really
21 speak into that mike.

22 MS. BELENKY: No.

23 HEARING OFFICER CELLI: Thank you. Any
24 objections, Ms. Williams?

25 MS. WILLIAMS: No. Thank you.

1 HEARING OFFICER CELLI: Thank you. Then Exhibits
2 300 through 307 are received into evidence.

3 (Whereupon, Staff's Exhibits 300 through 307 are
4 received into evidence.)

5 HEARING OFFICER CELLI: Next we have Center for
6 Biological Diversity. Did you have any evidence on any of
7 the undisputed topics to submit today?

8 MS. BELENKY: The Center submitted three -- three
9 documents, Exhibits 400, 401, and 402, which there's an
10 errata that includes the extra resume that was sent around
11 to everyone a few days ago.

12 HEARING OFFICER CELLI: Would that be 403 then?

13 MS. BELENKY: No. It's -- I called it the errata
14 to 402. I -- I don't mean to mess with your exhibit
15 numbers, but --

16 HEARING OFFICER CELLI: Well, I'm just -- first of
17 all, the applicant had mentioned that they were going to
18 object to some exhibits.

19 Are there -- is any objection to 400 through 402
20 from Applicant?

21 MR. CARROLL: Yes.

22 HEARING OFFICER CELLI: Which exhibit?

23 MR. CARROLL: Well -- so these are all exhibits
24 that I understand are being offered in connection with
25 disputed topics; is that correct?

1 HEARING OFFICER CELLI: Probably so. But I just
2 thought it while we're on it.

3 MR. CARROLL: Okay. One clarification. It -- it
4 was not clear to us whether Exhibit 400 was being introduced
5 as comment, which we have no objection to, or whether it was
6 being proffered as expert testimony, which we would object
7 to. That exhibit contains comments prepared by Ms. Phyllis
8 Fox, and there was no declaration included with the
9 submittal. And Ms. Fox has not been made available for
10 cross-examination.

11 And so with the clarification that Exhibit 400 is
12 being proposed for admission as comment I would have no
13 objection.

14 HEARING OFFICER CELLI: Response, Ms. Belenky?

15 MS. BELENKY: Exhibit 400 was already submitted to
16 the committee as comment. Exhibit 400 is also relied on by
17 Gregory Tholen and his expert testimony that we're going to
18 hear later today. So we were actually submitting it at this
19 point as part of the record, the evidentiary record.

20 HEARING OFFICER CELLI: I think that would go to
21 the weight of the document, not its admissibility, if it's
22 being relied on by -- by an expert. I think that the
23 committee would be interested in reading and seeing it and
24 give it the appropriate weight.

25 MR. CARROLL: We -- Applicant has no objection to

1 its -- to its admission as comment. To the extent that Mr.
2 Tholen is relying on comment to form his expert opinion,
3 that's his prerogative. But we think it's imperative that
4 the document be clearly identified as comment and not as
5 expert testimony.

6 HEARING OFFICER CELLI: Okay. One moment, we're
7 going to go off the record.

8 (Discussion off the record.)

9 HEARING OFFICER CELLI: We're back on the record.

10 And the ruling of the committee is that the Exhibits 400
11 through 402 would be received into evidence and that
12 exhibit -- so the objection is overruled. And the committee
13 would just notify Applicant that the committee is mindful
14 that an expert opinion needs to be -- have a foundation.
15 And if there is an inadequate foundation the opinion itself
16 might just be overlooked. So with that it will be received.
17 Objection noted.

18 MR. CARROLL: Thank you.

19 HEARING OFFICER CELLI: Staff, any objection to
20 400 through 402?

21 MS. DE CARLO: Well, we had the same objection
22 that the applicant had with regard to 400. We would note --

23 HEARING OFFICER CELLI: Same ruling.

24 MS. DE CARLO: Yeah. We would note that 401
25 doesn't really contain any testimony. It's simply argument

1 by CBD's counsel. So we would just have the same notation
2 for 401, that it be received as comment and not expert
3 witness testimony.

4 HEARING OFFICER CELLI: Understood. I -- folks,
5 the reason we had our pre-hearing conference is so everybody
6 knows what everybody has. And for the benefit of everyone
7 here, all of the parties have exchanged these exhibits
8 already. They've all seen what -- what each other has, and
9 so has the committee. And so with that, the committee needs
10 a complete record in order to make an adequate decision in
11 this case.

12 And so exhibits 400 through 401 and 402 will be
13 received into evidence, and -- and 403, which is the errata,
14 I'd like it to be marked as a separate exhibit just so we
15 can keep -- keep the documents straight. So that will be
16 errata to exhibit 402. So -- 400 through 403 are received.

17 (Whereupon, Intervenor CBD's Exhibits 400, 401,
18 402, and 403 are received into evidence.)

19 HEARING OFFICER CELLI: And now we're on to the
20 center -- Desert Citizens Against Pollution.

21 Ms. Williams, Exhibits 500 through 504, are you
22 going to move those documents into the record?

23 MS. WILLIAMS: At the prehearing conference we
24 talked about 500 through 505?

25 HEARING OFFICER CELLI: What was 505? I'm sorry.

1 MS. WILLIAMS: Actually, you know what, 503 and
2 504, no, you are correct.

3 HEARING OFFICER CELLI: Right. We had gone up to
4 502, and then we added --

5 MS. WILLIAMS: Yes.

6 HEARING OFFICER CELLI: -- 503 and 504.

7 MS. WILLIAMS: Added two more. Exactly. Yes.

8 HEARING OFFICER CELLI: Okay. Any objection,
9 Applicant?

10 MR. CARROLL: With respect to Exhibit 500, we have
11 the same comment that we had with respect to Exhibit 400.
12 It's not necessarily an objection to its admission but a
13 request for clarification that that document consists of
14 comments, not expert testimony. With respect -- we also
15 have objections to 501 and 502. Do you want me to get all
16 of the objections out?

17 HEARING OFFICER CELLI: Yeah. The -- the
18 objection to 500 is overruled. Let's hear 501.

19 MR. CARROLL: With respect to 501, we would object
20 based on relevancy and -- and lack of foundation. It's a
21 document that purports to be proposed action of an agency.
22 There really has been no foundation laid for the document,
23 and it's also very unclear to us what the relevancy of the
24 document is to these proceedings.

25 With respect to exhibit 502, we object to its

1 admission based on relevancy. It's a transcript from a
2 hearing in the East Shore matter, and it's unclear to us
3 what the relevancy of this document is to these proceedings.

4 We have no objections to Exhibits 503 and 504
5 being admitted.

6 HEARING OFFICER CELLI: Thank you. Just to
7 acknowledge that we started off with undisputed topics and
8 we've evolved into disputed topics. And I believe we
9 will -- the record will unfold and we will see what the
10 relevance is. So your objection is noted and preserved for
11 501 and 502. And we will overrule the objection without
12 prejudice to renewing the motion at a later time if --
13 relevancy is not shown.

14 I do want to say, Ms. Williams, that we have the
15 entire transcript of East Shore on our computers back in the
16 office, and we can take what's called official notice which
17 means that we don't really need to take it in as an exhibit
18 that you can haggle over. If we just take judicial notice
19 of our transcripts then it comes -- it's -- it's used by the
20 committee in forming the decision and we don't need to rely
21 on it. It's your call, whichever way you want to go.

22 MS. WILLIAMS: You know, listen, I had just
23 appended it to my comments so that it was clear from my
24 comments what I was relying upon, so that there was a nexus
25 between what I was saying in my comments and documents that

1 I put into the record. So whatever pleases the commission
2 is fine with me.

3 HEARING OFFICER CELLI: I'll -- I'll just leave it
4 as 502 and then we can address it later. So that means that
5 exhibits -- so Staff, do you have any objection -- any novel
6 objections for 500 through 504?

7 MS. DE CARLO: Just the same ones outlined by the
8 applicant.

9 HEARING OFFICER CELLI: So the objection is
10 preserved. But at this time without prejudice to, you know,
11 objecting again later if the record doesn't flesh it out,
12 those exhibits 500 through 504 will be received into
13 evidence.

14 (Whereupon, Intervenor DCAP's Exhibits 500, 501,
15 502, 503, and 504 were received into evidence.)

16 Now, folks, the following topics were considered
17 disputed at the prehearing conference and the committee will
18 receive evidence in the form of written and live testimony,
19 cross-examination, and documentary evidence. Now, unless
20 the parties are prepared to stipulate to testimony by
21 declaration, in case you were able to come to agreement on
22 anything in the interim between pre-hearing conference and
23 evidentiary hearing, those topics are: air quality;
24 alternatives, limited to the purpose and need discussion;
25 biological resources; cultural Resources, limited to issues

1 arising from road paving; hazardous materials, limited to
2 argument, no witnesses; land use, limited to issues arising
3 from road paving; project description, limited to adding a
4 description of road paving in the PMPD; public health; soil
5 and water resources, limited to the issue arising -- to
6 issues arising from road paving; and traffic and
7 transportation, limited to issues arising from road paving;
8 but there will be no witnesses on aviation.

9 So with that the plan that we discussed at the
10 pre-hearing conference today -- before about how we were
11 going to proceed today is that we will start with air
12 quality and public health -- one moment of -- we're going to
13 go off the record for one minute.

14 (Discussion off the record.)

15 HEARING OFFICER CELLI: Back on the record. So we
16 had initially talked about taking air quality and public
17 health and then breaking for lunch and then -- getting back
18 on the record for air quality and public health.

19 But what we're going to do is we'll just run
20 through air quality and public health all the way through
21 and not break for lunch, bearing in mind -- and I'm sorry I
22 didn't mention this at the prehearing conference -- but it
23 had slipped my mind that we had -- I just have to say,
24 you're so far away everybody -- but at -- I had -- when I
25 noticed this hearing, we noticed it for a two o'clock public

1 comment, and so we do have to break at two o'clock so that
2 will be the public comment time. So maybe what we'll do is
3 we'll sort of blur the line between public comment and lunch
4 and -- and try to kill those two birds with one stone.

5 And then we will have -- after that we're going to
6 take road paving issues, which is the umbrella under which
7 cultural, bio, land use, soil and water, traffic and
8 transportation, and growth inducing impacts are -- are
9 handled. After that we'll take -- well, hopefully after
10 that we'll take public comment. Road paving issues will
11 continue as needed. And then we will be doing alternatives.

12 We really need to work -- move with alacrity today
13 folks. We really -- in order for us to keep this thing on
14 track and to get all this evidence in today we need to keep
15 moving.

16 So with that I'm going to ask the applicant to
17 call your first witness. Now --

18 MS. BELENKY: Excuse me, but we had noticed this
19 for ten o'clock. So I need to call my expert so that he can
20 hear the rest of the air testimony.

21 HEARING OFFICER CELLI: Okay.

22 MS. BELENKY: Okay?

23 HEARING OFFICER CELLI: Go ahead.

24 MS. BELENKY: Okay. Thank you.

25 HEARING OFFICER CELLI: Do you want me to go off

1 the record, Ms. Belenky? Well, we'll just go off the
2 record. Right now I'm going to ask the applicant to go
3 ahead and -- actually there's no need to go off the record.

4 You can just go ahead and call your person. I'm staying on
5 the record.

6 I'm going to ask the applicant to call your first
7 panel on air quality so they can get themselves comfortable
8 over there. That's the panel. That's where the panel is
9 going to be sitting, over there in Siberia. And there's
10 only one microphone, which one of those microphones is just
11 the court reporter's microphone. The taller microphone is
12 the one that your witnesses are all going to have to share.

13 So with that why don't you go ahead and sit down, unless
14 you have some other idea.

15 MR. CARROLL: With respect to air quality and
16 public health, our quote unquote panel consists of a single
17 witness.

18 Is it the desire of the committee to have the
19 witnesses sit there or may the witnesses remain at the
20 table?

21 HEARING OFFICER CELLI: Actually, I'll let her
22 stay there so I don't have to --

23 MR. CARROLL: Okay.

24 HEARING OFFICER CELLI: -- throw my neck out.

25 And -- but I do need her to have that mike right on her --

1 MR. CARROLL: Right.

2 HEARING OFFICER CELLI: -- so that it's -- it's
3 clear. And at this time, I'm going to ask you to stand and
4 be sworn.

5 (Witness sworn.)

6 HEARING OFFICER CELLI: Please state your name.
7 Have a seat. State your name and spell it for the record,
8 please.

9 MS. HEAD: My name is Sara Head, S-a-r-a H-e-a-d.

10 HEARING OFFICER CELLI: Now Ladies and Gentlemen,
11 we've already received testimony from Ms. Head, and probably
12 rebuttal testimony, as well, if I'm not mistaken. But at
13 this time if there's -- if there was no -- the agreement we
14 kind of had at the prehearing conference was that there
15 would be no direct and we would probably launch right into
16 cross-examination, unless there's some clean-up direct
17 examination you need to do up front, Mr. Carroll.

18 MR. CARROLL: We -- we do have a -- some direct
19 examination that's responsive to testimony filed by the
20 intervenor. So we will not be repeating anything in the
21 previously filed declaration.

22 HEARING OFFICER CELLI: Thank you. Please
23 proceed.

24 MR. CARROLL: Thank you.

25 //

1 DIRECT EXAMINATION

2 MR. CARROLL: Ms. Head, could you please identify your
3 employer?

4 MS. HEAD: My employer is AECOM who is the
5 environmental consultant that was hired by the applicant to
6 perform the environmental analysis.

7 MR. CARROLL: And what was your role with respect
8 to the project?

9 MS. HEAD: I was the project manager for the
10 project with the oversight responsibility for all the
11 environmental analyses.

12 MR. CARROLL: Are your qualifications accurately
13 reflected in the resume contained in Appendix B of
14 Applicant's Prehearing Conference Statement filed in this
15 matter on January 12th, 2011?

16 MS. HEAD: Yes.

17 MR. CARROLL: And could you very briefly summarize
18 your qualifications?

19 MS. HEAD: Yes. I have a bachelors of science
20 degree in atmospheric sciences. I have --

21 HEARING OFFICER CELLI: I'm going to interrupt.

22 HEARING OFFICER CELLI: Okay.

23 HEARING OFFICER CELLI: Do we have her resume on
24 file?

25 MR. CARROLL: Yes, you do.

1 HEARING OFFICER CELLI: Then this would be
2 unnecessary.

3 MR. CARROLL: Okay.

4 HEARING OFFICER CELLI: Thank you.

5 MR. CARROLL: Approximately how many CEC
6 jurisdictional projects have -- have you been involved in,
7 Ms. Head?

8 MS. HEAD: About a dozen.

9 MR. CARROLL: At this time we would ask that the
10 witness be recognized as an expert in the technical
11 specialties identified in her previously filed testimony,
12 including air quality and biological resources.

13 HEARING OFFICER CELLI: Any objection,
14 Applicant -- I'm sorry, Staff?

15 MS. DE CARLO: Oh, no.

16 HEARING OFFICER CELLI: Any objection -- Ms.
17 Belenky has stepped out.

18 Any objection, Ms. Williams?

19 MS. WILLIAMS: No.

20 HEARING OFFICER CELLI: Thank you. Then the
21 committee will recognize the expertise of this witness.

22 MR. CARROLL: Thank you. Should -- should we --
23 would you like us to wait for Ms. Belenky to return before
24 we proceed or should we proceed?

25 HEARING OFFICER CELLI: You know something, I

1 think you need to proceed --

2 MR. CARROLL: Okay.

3 HEARING OFFICER CELLI: -- because we have to move
4 today. If people want to get up and go that's -- there's
5 nothing I can do about that.

6 MR. CARROLL: Thank you.

7 Ms. Head, you prepared declarations which have
8 been filed in this matter and identified as Applicant's
9 Exhibit Numbers 128 and 145, which describe the analysis
10 that you completed in connection with the project and, also,
11 which identify a number of additional exhibits that you're
12 sponsoring. I'm not going to ask you to repeat the
13 information containing the file declaration or the
14 identified exhibits. Instead, I want to focus on a certain
15 testimony filed by the intervenors in this matter upon which
16 you have not previously expressed reviews.

17 Before I get into the specifics of the testimony
18 and comments filed by the intervenors, I'd like to establish
19 your understanding of -- of two related concepts, those
20 being mitigation and emission offsets.

21 If you could, what -- what is your understanding
22 of those two concepts and the differences between the two?

23 MS. HEAD: Mitigation refers to a CEQA context
24 which refers to measures that are imposed to reduce and
25 otherwise significant environmental impact below a level of

1 significance. Emission offsets typically refers to
2 requirements under the Clean Air Act or local air district
3 regulations which require nonattainment emissions from new
4 or modified sources to be offset by the use of emission
5 reduction credits or similar measures to ensure that there
6 is no net increase in emissions.

7 MR. CARROLL: So generally speaking, mitigation is
8 used in a CEQA context and emission offsets is used in the
9 air quality regulatory context?

10 MS. HEAD: Yes.

11 MR. CARROLL: And what typically triggers the
12 requirement for mitigation?

13 MS. HEAD: Emissions of pollutants for which the
14 region is designated as nonattainment, meaning that the
15 region has not attained the ambient air quality standards
16 for that pollutant.

17 MR. CARROLL: And would that be the trigger for --
18 just to be clear -- for emission offsets or for mitigation?

19 MS. HEAD: I've lost my place. Yes.

20 MR. CARROLL: Let me -- let me -- let me just ask
21 the question again.

22 What -- what -- what would typically trigger the
23 requirement for -- for mitigation under CEQA?

24 MS. HEAD: It's a significant environmental
25 impact.

1 MR. CARROLL: And then what typically requires
2 the -- or what typically triggers the need for emission
3 offsets in -- in an air quality regulatory context?

4 MS. HEAD: Emissions in a nonattainment area that
5 are over the threshold for the requirement for offsets.

6 MR. CARROLL: And is it possible for one action to
7 produce both emission offsets and mitigation?

8 MS. HEAD: Yes. Frequently, providing emission
9 offsets also serve as mitigation under CEQA.

10 MR. CARROLL: You stated that mitigations
11 typically are required when a project would otherwise result
12 in a significant environmental impact. How does one
13 typically --

14 MS. BELENKY: Objection. I thought Ms. Head, is
15 it, was testifying as an expert on air quality, not on the
16 law, and that was a legal conclusion.

17 HEARING OFFICER CELLI: Sustained. Maybe you can
18 ask her a different way.

19 MR. CARROLL: Thank you.

20 How does one typically determine whether or not,
21 from a technical perspective, a project would result in a
22 significant environmental impact?

23 MS. HEAD: By comparing the impact of the project
24 to a significance threshold.

25 MR. CARROLL: And in your experience working on

1 CEC jurisdictional projects, what is the threshold of
2 significance that is used when evaluating emissions of a
3 criteria pollutant such as PM2.5?

4 MS. HEAD: In all of the cases that I've worked on
5 under the CEC the level of significance for PM2.5 has been
6 whether or not the project caused an exceedance of the --
7 ambient air quality standards.

8 MR. CARROLL: And how is that typically
9 determined?

10 MS. HEAD: Typically through modeling of the
11 project's emissions.

12 MR. CARROLL: So in other words, if modeling
13 demonstrates that a project will not result in an exceedance
14 of an ambient air quality standard would that project
15 typically be deemed to not have a significant impact on the
16 environment as a result of the emissions of that pollutant?

17 MS. HEAD: That's been the case in all of the
18 projects that I've worked on.

19 MR. CARROLL: And in your experience, once a
20 project has been deemed to not result in a significant
21 impact does that end the analysis of further mitigation?

22 MS. HEAD: Yes.

23 MR. CARROLL: Have you reviewed the testimony
24 prepared by Mr. Gregory Tholen on behalf of Center for
25 Biological Diversity and submitted on February 4th, 2011 and

1 marked as CBD as Exhibit 402?

2 MS. HEAD: Yes.

3 MR. CARROLL: As an initial matter, Mr. Tholen
4 asserts that PM2.5 emissions from the project may cause
5 exceedances of PM2.5 ambient air quality standards within
6 the Mojave Desert Air Basin, thereby resulting in a
7 significant air quality impact.

8 In your opinion, is Mr. Tholen correct about that
9 assertion?

10 MS. HEAD: No. In my opinion that is not correct.

11 Both the applicant and the staff modeled or reviewed the
12 modeling to determine that there were no -- that the project
13 would not cause or contribute to exceedances of the PM2.5
14 standards.

15 MR. CARROLL: And would you describe the modeling
16 analysis that was completed by the applicant and reviewed by
17 the staff as conservative?

18 MS. HEAD: Yes, I would.

19 MR. CARROLL: And -- and can you explain what you
20 mean by that?

21 MS. HEAD: It's conservative because it looks at
22 worst case meteorology and worst case emissions. It -- it
23 basically couples the conditions in the atmosphere that
24 cause maximum impacts and -- and assumes that the maximum
25 emissions will be operated concurrent with those conditions.

1 MR. CARROLL: And did the applicant complete
2 modeling of the project's PM2.5 emissions for both the
3 construction and the operational phases of the project?

4 MS. HEAD: Yes, we did.

5 MR. CARROLL: And did staff independently verify
6 that analysis in its final staff assessment for both
7 construction and operations?

8 MS. HEAD: Yes. It's my understanding that that's
9 how they completed the final staff assessment.

10 MR. CARROLL: And so even taking into
11 consideration the conservatism that you've just described is
12 it correct that the modeling demonstrates that the project
13 will not cause an exceedance of the PM2.5 air quality
14 standards, either during construction or operations?

15 MS. HEAD: That is correct.

16 MR. CARROLL: And so applying the analysis that
17 you provided in the background, the discussion that you
18 provided at the outset of your testimony, the project's 2.5
19 emissions would therefore not result in a significant
20 environmental impact?

21 MS. HEAD: That is my belief.

22 MR. CARROLL: And since the project does not
23 result in a significant environmental impact as a result of
24 its PM2.5 emissions, would it be appropriate to require
25 additional mitigation to address those emissions?

1 MS. HEAD: No, it would not be.

2 MR. CARROLL: And shifting from the -- the
3 mitigation concept to the offset concept, is the project
4 required to offset its PM2.5 emissions?

5 MS. HEAD: No, the project is not required to
6 offset its PM2.5 emissions.

7 MR. CARROLL: And why is that?

8 MS. HEAD: Because the project is located in an
9 attainment area for PM2.5 under both the state and federal
10 ambient air quality standards.

11 MR. CARROLL: So is it your testimony then that
12 the project is not required to either mitigate under CEQA or
13 offset under the applicable air quality regulations as PM2.5
14 emissions?

15 MS. HEAD: That is my understanding.

16 MR. CARROLL: Why not just provide PM2.5
17 emissions, even though they're not required by law or
18 regulation?

19 MS. HEAD: As a practical matter it's the --
20 because the Antelope Valley Air Quality Management District
21 is attainment for PM2.5. They haven't set up any kind of
22 banking mechanisms, and there really isn't any PM2.5 credits
23 officially available at this time.

24 Also it -- it's just helpful to have identified
25 standards and rules which one can determine significance

1 thresholds that are -- could be applied consistently from
2 case to case.

3 MR. CARROLL: Would it be possible to create PM2.5
4 emission offsets?

5 MS. HEAD: It -- it would be possible to create
6 them. For instance, there is a certain portion of PM2.5
7 that can be generated from road paving, but it would be
8 expensive and you would need to pave ten times the amount of
9 roads that were currently required to pave to provide our
10 PM10 offsets.

11 MR. CARROLL: And we're going to get into the --
12 the road paving on the later panel. But is it your
13 testimony that the road paving proposal that the applicant
14 has put forward to create its PM10 emission offsets also
15 results in some PM2.5 reductions?

16 MS. HEAD: Yes. Because PM2.5 is a subset of PM10
17 and the road paving does reduce some PM10 emissions, as
18 well.

19 MR. CARROLL: You just stated produces some PM10
20 emissions. Did you mean --

21 MS. HEAD: I'm sorry. Would -- would produce some
22 PM2.5 emissions, as well. Sorry.

23 MR. CARROLL: Thank you. Another claim made by
24 Mr. Tholen in his testimony is that both the applicant and
25 the staff failed to analyze the potential public health

1 impacts associated with the project's PM2.5 emissions.

2 Is Mr. Tholen correct in that assertion?

3 MS. HEAD: No, he is not.

4 MR. CARROLL: And could you please explain the
5 basis for your opinion that he is incorrect.

6 MS. HEAD: Ambient air quality standards are
7 designed to protect public health. So by reviewing impacts
8 against the ambient air quality standards, that's one way
9 that the project was analyzed.

10 MR. CARROLL: And so is it your testimony that
11 meeting the ambient air quality standards ensures that PM2.5
12 emissions from the project would -- would not therefore
13 result in an adverse public health impact?

14 MS. BELENKY: Objection. I'm -- I'm sorry. But
15 again, I understood that this witness was here for air
16 quality, not health impact. So if you are a health --
17 public health expert I would -- I would like to know that.
18 And if not, I would like this question reserved for the
19 public health expert.

20 HEARING OFFICER CELLI: Actually, objection
21 overruled, because we're kind of mixing the two. Remember
22 we talked about that. I was going to have air quality and
23 public health together.

24 MS. BELENKY: Well, we're mixing the two -- with
25 the two categories but we are not mixing up the experts. If

1 she is an expert in public health then I didn't hear that.

2 HEARING OFFICER CELLI: Are -- are you offering
3 this expert? I don't recall.

4 MR. CARROLL: Yes, we are. We -- we did not
5 provide a summary of her qualifications as respected. But
6 if one reviews her resume, which is on file, it does
7 identify both air quality and public health as areas of
8 expertise. And we had asked that she be recognized as an
9 expert in all of the areas identified in her resume.

10 HEARING OFFICER CELLI: Okay. Overruled. Go
11 ahead.

12 VICE CHAIR BOYD: Mr. Celli, if I might add, since
13 ambient air quality standards are predicated on public
14 health effects it's almost -- it's virtually impossible to
15 separate the discussion of ambient air quality standards and
16 the subject of public health, but you've already ruled. But
17 I just wanted to make that point.

18 HEARING OFFICER CELLI: So the objection is
19 overruled. Please proceed.

20 MR. CARROLL: Thank you. I'm -- I'm going to back
21 up at the risk of repeating a question, just -- just to make
22 sure.

23 So was it your testimony or your -- that your
24 expert opinion is that meeting the ambient air quality
25 standards for PM2.5 ensures that the project's emissions of

1 PM2.5 would not result in an adverse public health impact?

2 MS. HEAD: That is correct.

3 MR. CARROLL: And does the fact that the project
4 is not required to mitigate or otherwise offset its PM2.5
5 emissions, as you've explained already this morning, have
6 any bearing on the health risk analysis in your assessment
7 of whether or not the project's PM2.5 emissions would result
8 in an adverse public health impact?

9 MS. HEAD: No. The project impacts for PM2.5
10 emissions are below the health based ambient air quality
11 standards without offsets or mitigation.

12 In addition, I'll add that the public health risk
13 assessment that was completed for the applicant and verified
14 by the staff was also analyzed, the impacts of fine
15 particulates, such as diesel particulate matter and metals,
16 as well as other particulate and gaseous air toxic
17 emissions. The analysis was determined under very
18 conservative modeling assumptions that the project would not
19 cause a significant carcinogenic, which is cancer-causing
20 risk or chronic or acute health defects. The point of
21 maximum impact was well below, less than ten percent of the
22 established significance thresholds, using the standard
23 modeling approaches that are required by all the various
24 agencies.

25 The health risk analysis also evaluated the

1 impacts at sensitive receptors such as preschools, schools,
2 and daycare centers within three miles of the power plant
3 site. The impacts at all the sensitive receptors were all
4 less than one percent of the established significance
5 criteria. Any receptors such as schools beyond the three
6 miles would have even less impacts due to the project.

7 MR. CARROLL: And turning now from Mr. Tholen's
8 testimony to the comments that were prepared by Dr. Phyllis
9 Fox on behalf of CBD, again submitted on July 21st, 2010 and
10 included as part of exhibit 400, have you had a chance to
11 review those comments?

12 MS. HEAD: Yes, I have.

13 MR. CARROLL: And focusing just on those claims
14 made by Dr. Fox in the areas of air quality and public
15 health unrelated to the road paving, so that narrow set of
16 comments that -- that falls within that -- the categories of
17 air quality and public health but not road paving which
18 we're going to cover later, was there substantial overlap
19 between the testimony of Mr. Tholen and Dr. Fox's comment
20 letter?

21 MS. HEAD: Yes, for air quality and public health
22 issues. Mr. Tholen's testimony covered substantially the
23 same topics as Dr. Fox's comment letter. In fact, Mr.
24 Tholen relied quite a bit on Dr. Fox's comments in support
25 of his testimony.

1 MR. CARROLL: And does your analysis of Mr.
2 Tholen's testimony also apply to Dr. Fox's comments then?

3 MS. HEAD: Yes. In my expert opinion, the
4 deficiency I identified with Mr. Tholen's testimony would
5 apply equally to Dr. Fox's comments concerning air quality
6 and public health impacts.

7 MR. CARROLL: Thank you. We have no further
8 direct examination in this, and this witness is made
9 available for cross-examination.

10 HEARING OFFICER CELLI: Thank you, Mr. Carroll.
11 I'm going to turn to staff next.

12 MS. DE CARLO: A question for clarification
13 purposes. It was my understanding that -- that we would be
14 covering the road paving aspects of air quality and public
15 health with this panel. Now is that incorrect?

16 HEARING OFFICER CELLI: Well, I'm not calling your
17 witnesses right now. I'm just asking --

18 MS. DE CARLO: No. No. No. I know. I know.
19 But --

20 HEARING OFFICER CELLI: I'm going to -- yes.

21 MS. DE CARLO: -- Mr. Carroll has indicated that
22 they'll be covering road paving later.

23 HEARING OFFICER CELLI: Let's -- as a practical
24 matter, there's so much overlap between these areas that I
25 think that we're going to try to separate out the road

1 paving. But I -- I don't think we even did that. In our
2 order --

3 MS. DE CARLO: No. The -- the road paving panel
4 isn't indicating that air quality and public health will be
5 addressed at that time.

6 HEARING OFFICER CELLI: Right. So I guess you're
7 going to deal with the road paving aspects of air quality
8 and public health now during air quality and public health,
9 because the way we laid it out was rotating issues, was bio,
10 cultural, land use, soil and water, traffic and
11 transportation, and growth inducing impacts.

12 So now would be the time -- now, since you've
13 raised that, Ms. DeCarlo, does -- does that mean the
14 applicant would have more or different direct of this
15 witness?

16 MR. CARROLL: Yes.

17 HEARING OFFICER CELLI: I think I'm going to have
18 to allow that in order for us to get the most of our
19 morning. So let's -- let's go ahead with your further
20 questions.

21 I'm sorry, Staff, just hold off and we'll -- we'll
22 get the rest of the testimony from the applicant on
23 everything so that we can have it all out as it relates to
24 air quality and public health.

25 So please proceed.

1 MR. CARROLL: Thank you.

2 MS. HEAD: did your role on the project include
3 development of the proposal to pave roads to generate PM10
4 emission offsets?

5 MS. HEAD: Yes, it did.

6 MR. CARROLL: And was that proposal contained in
7 the application for certification?

8 MS. HEAD: Yes. The AFC that was submitted to the
9 Energy Commission in July 2008 included a proposal to pave
10 roads as the mechanism for creating PM10 emission credits.

11 MR. CARROLL: And could you briefly describe that
12 proposal?

13 MS. HEAD: The concept is pretty simple. Cars and
14 trucks traveling on unpaved roads generate a lot of PM10
15 emissions from -- in the form of fugitive dust. Paving the
16 roads greatly reduces the emissions on a permanent basis.

17 MR. CARROLL: And are you aware of other projects
18 that have proposed road paving as their PM10 emission offset
19 strategy?

20 MS. HEAD: Yes. I'm aware of several other
21 California Energy Commission approved projects which not
22 only proposed road paving, but did utilize this concept. As
23 an -- in addition, there is a rule in Maricopa County,
24 Arizona, that also allows use of generating PM10 offsets
25 through road paving.

1 MR. CARROLL: Are there generally accepted
2 methodologies for calculating the amount of reductions in
3 credits that can be generated through the paving of roads?

4 MS. HEAD: Yes. The generally accept methodology
5 is the use of a document called AP-42 which is EPA's
6 compilation of emission factors document. The quantity of
7 credits is generally determined by the physical makeup and
8 the traffic on the roads and the length of -- and the length
9 of the road is paved.

10 MR. CARROLL: And is that the methodology that the
11 applicant is proposing to utilize in connection with this
12 project?

13 MS. HEAD: Yes, it is.

14 MR. CARROLL: You testified earlier that you've
15 reviewed the comments provided by Dr. Phyllis Fox and that
16 part of CBD's Exhibit Number 400. Dr. Fox criticized the
17 credit generation methodology proposed to be utilized by the
18 applicant in the Antelope Valley AQMD in this case.

19 Do you agree with her comments on the proposed
20 credit generation methodology?

21 MS. HEAD: I disagree with Dr. Fox's comments.
22 Dr. Fox made several points in her comments, and -- and I'm
23 just going to touch on them briefly.

24 The theme throughout her comments is that the AP-
25 42 methodologies and the data required for the application

1 of the AP-42 equation is flawed. The methodologies in AP-42
2 and the data requirements for calculating emissions from
3 paved and unpaved roads are widely accepted methodologies
4 for determining credit generation.

5 As noted above, the methodologies have been used
6 and accepted for several CEC approved projects including the
7 Victorville II Hybrid, the Blythe Energy and High Desert
8 Power projects, and are the methodologies that would have
9 been used in Mojave Desert AQMD Rule 1406 -- which was
10 overturned for CEQA procedural issues and not based on the
11 methodology -- is the methodology used in the EPA approved
12 Maricopa County road paving credit rule, and has been
13 applied for credit generation for several EPA power projects
14 and one cement plant in Arizona.

15 Condition AQSC-19 requires that actual road dust
16 silt content and traffic data collected from the roads to be
17 paved be used rather than default values.

18 MR. CARROLL: Have you reviewed the CEC's analysis
19 of the potential environmental impacts associated with the
20 proposed road paving which was dated January 21st, 2011 and
21 marked as CEC Staff Exhibit 301 in this matter?

22 MS. HEAD: Yes.

23 MR. CARROLL: Is it your understanding that the
24 proposed conditions of certification that would apply to
25 construction of the other aspects of the projects would also

1 apply to the road paving?

2 MS. HEAD: Yes.

3 MR. CARROLL: In your opinion are the proposed
4 conditions of certification adequate and appropriate to
5 mitigate any potential impacts associated with the road
6 paving to below a level of significance?

7 MS. HEAD: Yes.

8 MR. CARROLL: And do you concur with the analysis
9 and conclusions reached by the staff in Exhibit 301 that
10 with implementation of the conditions of certification the
11 proposed paving of roads would not result in any unmitigated
12 adverse environmental impacts?

13 MS. HEAD: Yes.

14 MR. CARROLL: How many road segments were in the
15 initial list proposed by the applicant and reviewed by the
16 CEC staff?

17 MS. HEAD: We initially identified 11 road
18 segments. These are provided in Exhibits 56 and 76 in
19 response to concerns raised by the Antelope Valley
20 Conservancy at the CEC sponsored workshop on February 3rd,
21 and then subsequent written comments. The applicant has
22 removed from consideration the Barrel Springs Road segment
23 which is identified as segment number seven.

24 MR. CARROLL: And did you initially -- or did the
25 applicant initially identify more road segments than were

1 necessary to generate the quantity of PM10 emission offsets
2 needed for the project?

3 MS. HEAD: Yes. The list identified was a
4 preliminary list of candidate roads. And since we were
5 identifying it far in advance of the actually paving, and
6 since the final credit generation potential of the roads
7 would not be known until final analysis of the physical
8 makeup of the roads, we thought it prudent to identify more
9 candidate roads than we expected to need.

10 MR. CARROLL: And have you recently evaluated
11 further narrowing the list of perspective roads in -- in
12 addition to deleting the Barrel Springs Road segment, which
13 you've already mentioned?

14 MS. HEAD: Yes. And in addition to -- in response
15 to the concerns expressed by the two intervenors about
16 potential impacts from the paving of the roads, including
17 additional traffic generation and possible growth inducing
18 impacts, we took another look at the list of roads and have
19 narrowed it down to a preferred list of five road segments.

20 MR. CARROLL: And what criteria did you use in
21 coming up with the short list of what we're referring to
22 here as preferred roads?

23 MS. HEAD: The -- the top criteria was that they
24 provide sufficient -- that they provide sufficient credit
25 generation through the necessary amount of project emission

1 offsets.

2 We then looked at the potential for environmental
3 impacts including the growth inducing impacts from the
4 paving of the segments. While we believe, as the CEC staff
5 concluded in its analysis, that all 11 of the originally
6 identified segments could be paved without significant
7 adverse environmental impacts, it was the case that some
8 road segments had more potential impacts than others. We
9 therefore worked to narrow the list to those with the lowest
10 possibility of producing environmental impacts or growth
11 inducing impacts.

12 MR. CARROLL: And can you please identify the
13 short list of road segments by name?

14 MS. HEAD: Yes. The -- the CEC provided a table
15 which numbered the segments with numbers and the segments
16 that we're looking at now are: segment number two, which is
17 Avenue S-2; number four, which is 40th Street West; number
18 six which is Avenue S-6; number eight, which is Avenue T-10;
19 and number nine, which is West Avenue N-8. These five
20 segments are within the unincorporated portions of the
21 County of Los Angeles fairly adjacent to Palmdale. Segments
22 two, six and eight are in the vicinity of Little Rock,
23 California. And segments four and nine are located over to
24 the west of the -- of the power plant site.

25 MR. CARROLL: Having narrowed the list of

1 candidate roads did you undertake any further analysis to
2 confirm your previous conclusions that paving of these roads
3 would not result in significant adverse environmental
4 impacts?

5 MS. HEAD: Before we go there, can I ask for a
6 clarification? And the rest of this testimony starts to get
7 into biology and cultural impacts with the road paving. And
8 I -- I just want to know if you want us to continue or if we
9 should hold this for later?

10 HEARING OFFICER CELLI: Let's hold the bio, the
11 other. Let's stay -- right now let's just stay with air
12 quality and public health, related to air quality and public
13 health.

14 MS. HEAD: Okay.

15 HEARING OFFICER CELLI: Thanks for asking.

16 MR. CARROLL: Okay. So keeping your testimony
17 limited to air quality and public health at this point, did
18 you undertake any further analysis of the five preferred
19 road segments that you've just identified?

20 MS. HEAD: Yes. We did some further calculations
21 of the potential air quality emissions from -- that would be
22 caused by paving the roads. The potential criteria for air
23 pollutant emissions from road paving were estimated using
24 the Sacramento Metropolitan Air Quality Management
25 district's roadway construction emissions model which is

1 called Road Mod, version 6.3.2, from July 2009.

2 Road Mod quantifies emissions including fugitive
3 PM10 and PM2.5 road dust, vehicle exhaust and off-gas
4 emissions from grubbing and land clearing, grading and
5 excavation, drainage, utility subgrade, preparation, and
6 asphalt paving.

7 MR. CARROLL: And what assumptions did you make in
8 your analysis of the air emissions associated with the road
9 paving?

10 MS. HEAD: In addition to --

11 HEARING OFFICER CELLI: Excuse me. Can I just
12 ask, do we have written testimony as to this?

13 MR. CARROLL: No.

14 HEARING OFFICER CELLI: Okay. Go ahead.

15 MS. HEAD: In addition to the default assumptions
16 and emission factors used in Road Mod, we made some
17 following emissions estimations that the road construction
18 would occur in 2011, that the project type is new road
19 construction with predominant soil type of sand and gravel,
20 which is the most conservative of the three options provided
21 in the model, that the selected segments are graded dirt
22 roads and would not require grubbing, excavation, filling or
23 grading, and that the time required for the drainage
24 would -- for the 40 foot right-of-way is about two-and-a-
25 half months and three months for a mile of road within the

1 60 foot right-of-way, and construction would disturb a total
2 of 4.8 acres for a mile of road with 40 foot right-of-way
3 and 7.3 acres for a mile of road with the 60 foot right-of-
4 way.

5 Maximum acreage disturbed in one day was assumed
6 to be 25 percent of the total area, which is a default value
7 based on the URBEMIS 2007 model. No cut and fill will be
8 required, and that water trucks will be used to control
9 fugitive dust emissions, if needed.

10 MR. CARROLL: And what were the results of the
11 analysis that you completed?

12 MS. HEAD: The potential emissions from paving the
13 five preferred segments are relatively low and, of course,
14 temporary in nature. Three of the road segments, numbers
15 two, six and eight, are about one mile long. And the total
16 nitrogen oxide, carbon monoxide, halter organic compounds,
17 PM10, and PM2.5 emissions for the preparation in paving for
18 each of these segments would be about 0.8, 0.5, 0.1, 0.3,
19 and 0.1 tons, respectively.

20 Segment four is about half a mile, so its
21 emissions would be half these values. Segment 9 is about
22 1.5 miles long but would the right-of-way of the 60 feet.
23 So its emissions for these segments were calculated to be
24 1.4, 0.8, 0.2, 0.7, and 0.2 tons, respectively.

25 In her comments Dr. Fox estimated the PM10

1 emissions from road paving to be 15.4 tons per mile based on
2 a generic AP-42 construction emission factor which would be
3 77 tons of PM10 for these 5 segments. In contrast, our
4 estimate based on Road Mod, a model specifically developed
5 to address road paving, gives a total of 1.7 tons of PM10.

6 It may be not necessary to pave all five of these
7 roads in -- in order to obtain credit, so this could be a
8 conservative estimate.

9 MR. CARROLL: And how do the emissions that you
10 just identified compare to emissions that would result from
11 the construction of other project linear features such as
12 the water and waste water pipelines?

13 MS. HEAD: For a comparison, the Palmdale Hybrid
14 Power Project construction emissions are provided in FSA Air
15 Quality, table eight, which includes the emissions for
16 construction of the linear components. The road paving
17 emissions are similar in magnitude to the construction of
18 the potable water and waste water pipelines.

19 For instance, emissions from the potable water
20 pipeline were 0.7, 0.3 and 0.1 tons of NOx PM10 and PM2.5
21 respectively, which is about the same as the emissions for
22 segments two, four and six.

23 Emissions of these pollutants for the sanitary
24 water pipeline were slightly higher than segment nine, i.e.,
25 that is about 1.8, 0.9 and 0.3, respectively. Similar to

1 these pipeline construction emissions, road paving emissions
2 will be small, of short duration, and in addition would be
3 distant from other project construction activities.

4 MR. CARROLL: In your opinion do the staff
5 proposed conditions of certification mitigate the emissions
6 associated with the paving of the roads to the maximum
7 extent feasible?

8 MS. HEAD: Yes. The FSA concluded that with the
9 adoption of conditions of certification the emissions from
10 construction of the project, including the linears, would
11 not cause significant impacts. The relatively minor
12 emissions from the road paving would not change this
13 conclusion.

14 MR. CARROLL: And I assume that you agree with the
15 conclusions reached by the staff here?

16 MS. HEAD: Yes.

17 MR. CARROLL: Thank you.

18 We have no further questions of this witness at
19 this time.

20 HEARING OFFICER CELLI: Thank you, Mr. Carroll.
21 Now turning to Staff, any questions of this
22 witness.

23 MS. DE CARLO: No questions from Staff.

24 HEARING OFFICER CELLI: Thank you.

25 And now turning to Lisa Belenky, Center for

1 Biological Diversity, cross of this witness?

2 MS. BELENKY: Yes, I do. Thank you. We were
3 trying to get a plug here.

4 CROSS-EXAMINATION

5 MS. BELENKY: First, I just want to ask you a few
6 questions about your -- your new testimony this morning.
7 Sorry.

8 You testified that this area was in attainment for
9 both PM10 and PM2.5. But in the -- in the final staff
10 assessment under the state status it is nonattainment for
11 PM10 for both the annual and 24 hour, and unclassified for
12 PM10 in federal; is that correct?

13 MS. HEAD: I think you meant to say unclassified
14 for PM2.5, in which case that -- that is correct.

15 MS. BELENKY: Well, I'm reading from the FSA. You
16 said that they were all in attainment for PM2.5 and PM10.

17 MS. HEAD: I'm sorry if I misspoke. I believe I
18 was only speaking about PM2.5. PM10 I would agree is
19 nonattainment with the state's standards.

20 MS. BELENKY: Okay. But in the FSA it states that
21 the PM2.5 under the -- both the state and federal for the
22 annual is unclassified/attainment, not that it's solely
23 attainment; is that correct?

24 MS. HEAD: Yes, that's correct. I'm sorry if I
25 misspoke. But typically unclassified is treated as

1 attainment for purposes of -- of applicability of air
2 quality regulations.

3 MS. BELENKY: Okay. And the PM10, you're saying
4 you misspoke, it is nonattainment; is that correct?

5 MR. CARROLL: I -- I'm -- just -- I'm going to
6 object --

7 HEARING OFFICER CELLI: I --

8 MR. CARROLL: -- to lack of foundation of the
9 question, because I do not believe that Ms. Head testified
10 that the area was attainment for PM10, because I did not ask
11 her any question about the PM10 standard.

12 MS. BELENKY: Well, that is what you testified.

13 HEARING OFFICER CELLI: I thought your testimony
14 earlier was that she corrected herself and said that it
15 was --

16 MR. CARROLL: Well --

17 HEARING OFFICER CELLI: -- PM10 -- it was --

18 MR. CARROLL: I believe she said --

19 HEARING OFFICER CELLI: -- nonattainment.

20 MR. CARROLL: -- that if -- if -- if she misspoke
21 she's correcting herself. I don't think she misspoke.

22 But to cut to the chase, we completely agree with
23 the attainment designations contained -- contained in the
24 final staff assessment. So if there was anything stated to
25 the contrary, that was inadvertent. We concur with the

1 attainment designations identified in the final staff
2 assessment.

3 HEARING OFFICER CELLI: And just so there's a
4 record, is that your position, Ms. Head?

5 MS. BELENKY: Okay.

6 MS. HEAD: Yes, it is.

7 HEARING OFFICER CELLI: Okay. Go -- go ahead, Ms.
8 Belenky.

9 MS. BELENKY: I'm not being sure who's being asked
10 what.

11 My understanding is that the PM2.5 in the state is
12 in nonattainment. But I am unable to access the Internet
13 very well and so I can't find a document to that effect
14 right now. We can put this in the record after this
15 hearing, if necessary. I -- I think there may be some
16 confusion about the state standard.

17 HEARING OFFICER CELLI: First of all, would you
18 hold your mike straight --

19 MS. BELENKY: Oh, sorry.

20 HEARING OFFICER CELLI: -- at mouth level. There
21 you go. That's better.

22 MS. BELENKY: Okay.

23 HEARING OFFICER CELLI: Secondly, what was the
24 document you were trying to access?

25 MS. BELENKY: I'm trying to find the attainment

1 status that we -- that -- for 2.5, which I understand under
2 the state may be nonattainment, and Ms. Head testified she
3 thought it was in attainment. So --

4 HEARING OFFICER CELLI: Okay. Well let's move on.
5 Let's get to the next question.

6 MS. BELENKY: It's just that the staff assessment
7 says N/A, which I'm not sure what they mean by that.

8 MR. CARROLL: If I may, we do have witnesses from
9 the air district here. So perhaps at an appropriate time,
10 and this may be it, the air district could clarify the
11 attainment status --

12 MS. BELENKY: That would be great.

13 MR. CARROLL: -- for PM10 and PM2.5.

14 HEARING OFFICER CELLI: Let's do that when we --
15 they're -- these are -- we're talking about staff's
16 witnesses; right? So --

17 MS. DE CARLO: Yeah.

18 HEARING OFFICER CELLI: So let's hold off on that
19 question until you get the appropriate witness.

20 Go ahead, Ms. Belenky, of Ms. Head.

21 MS. BELENKY: Okay. I -- I just wanted to go back
22 over a few things you testified to this morning, and then I
23 have a set of questions.

24 You testified that the significance threshold for
25 2.5 should be in exceedance under the standards. Is that

1 correct -- that you testified to?

2 MS. HEAD: Yes, that's correct. That's what I
3 said.

4 MS. BELENKY: However, under -- under CEQA there
5 may be thresholds that -- that's the threshold under the
6 federal rule; is that correct?

7 MS. HEAD: Under CEQA there are typically a wide
8 range of significance thresholds defined. In some cases
9 their exceedance of the standard is typically one of the
10 thresholds. There can be other screening levels that are
11 defined that -- that one simply means that they need to do
12 additional analyses to determine the significance of the
13 project.

14 MS. BELENKY: Thank you. You also testified this
15 morning regarding road paving and whether it was mitigation
16 or an emission offset. And if I understood your testimony
17 correctly -- I'm just trying to make sure I understood what
18 you were saying -- you would say that in this case, it is
19 being used as both?

20 MS. HEAD: Yes. But only offsets are required for
21 PM10. Offsets are not required for PM2.5. So there's no
22 need to apply the portion of the credit that's available for
23 PM2.5 as an official offset. It's really only meant to be
24 some CEQA mitigation, although again, we don't believe that
25 any CEQA mitigation is required.

1 MS. BELENKY: Thank you. The -- the question of
2 whether the mitigation was required I -- I believe is a
3 question for the commission.

4 And can you explain for a minute, if you know, why
5 the California standards for PM10 and for PM2.5 are
6 different than the federal standards?

7 MS. HEAD: California has a different evaluation
8 process. In some cases California has opted to adopt
9 standards that are more stringent than the federal
10 standards. In some cases, actually the new federal
11 standards are more stringent than California. So they are
12 just a different process, and I'm speaking specifically
13 about the new one hour SO2 standard which is more stringent
14 than California's. In most cases California is equal to
15 or -- or more stringent than the federal standards.

16 MS. BELENKY: And would you say that that -- these
17 are based on California's concerns for public health, for
18 the most part?

19 MS. HEAD: I would not say that that the EPA does
20 not have concerns for public health. So I believe that all
21 standards are set with concerns for public health.

22 MS. BELENKY: And then you testified that the
23 sensitive receptors you did downstream three miles; is that
24 correct?

25 MS. HEAD: That's correct. Our -- our public

1 health -- health risk assessment was looked at, specific
2 receptors out to a radius of three miles from the power
3 plant site.

4 MS. BELENKY: And how was the three miles chosen
5 as a limit?

6 MS. HEAD: I believe that that's a typical
7 distance that's used for these types of analyses.

8 MS. BELENKY: So you didn't do any specific
9 modeling based on the actual wind, prevailing winds or so
10 forth in this area; is that correct?

11 MS. HEAD: No. But I -- I will point out that,
12 again, that this does look at -- at acute health effects
13 which are short-term health effects. Within three miles
14 almost all of the schools and -- and preschools are north
15 and northwest of the power plant site. So -- I -- you know,
16 typically the -- the maximum impacts would be closer to the
17 plant. The further out you go the -- the more dispersion
18 there is and the impacts would be reduced.

19 MS. BELENKY: And then I have another set of
20 questions but I just, again, wanted to clarify. At one
21 point you said that -- that the applicant intends to rely on
22 the AP-42 modeling for the road paving, but then you said
23 that emissions credit issue.

24 But then you said when you actually did the
25 modeling for -- for the construction, you did not rely on

1 the AP-42; is that correct?

2 MS. HEAD: We used the Road Mod model, which I
3 believe incorporates reasonable methodologies for
4 calculating PM10 and PM2.5 emissions. I couldn't say for
5 sure whether or not the Road Mod model relies on AP-42
6 equations or not. I'm unfortunately not that familiar with
7 that specific model.

8 MS. BELENKY: Meaning the AP-42 model --

9 MS. HEAD: I'm fairly familiar with --

10 MS. BELENKY: -- or the Road Mod? I'm confused.

11 MS. HEAD: -- AP-42, but I'm -- I'm not familiar
12 with whether or not air -- or Road Mod --

13 MS. BELENKY: Okay.

14 MS. HEAD: -- sorry, relies on AP-42 for its
15 equations. I believe that typically with a model like that
16 it takes different information and computes total emissions,
17 you know, based on typical road construction activity and
18 accepted emission factors. Whether or not those emission
19 factors that are embedded in the Road Mod model are AP-42 or
20 not --

21 MS. BELENKY: Okay.

22 MS. HEAD: -- I'm not certain.

23 HEARING OFFICER CELLI: Further cross, Ms.
24 Belenky?

25 MS. BELENKY: Yes. I'm sorry. I have a couple

1 more questions.

2 On the AP-42 model, which the applicant has
3 proposed to use as a calculation methodology for the road
4 paving offsets, assuming that those were approved, those
5 calculations require, and I believe that you actually went
6 over a bit of this in your testimony, they require
7 information about the traffic volume, the road composition
8 as far as silt, soil content, moisture content, etcetera.

9 None of that information appears in the FSA; is
10 that correct?

11 MS. HEAD: We did calculate the potential emission
12 credits based on default road silt factors. Those emission
13 calculations are provided in the exhibit that I identified,
14 which if you give me a second I'll find the number, and
15 that's in Exhibit 76 which was our -- I believe that that's
16 some of our response to data requests that were submitted
17 May 1st of 2009. That does provide a sample calculation of
18 the potential credit.

19 But then air -- as I mentioned in my testimony,
20 air quality condition AQSC-19 does require that we go back
21 out and obtain actual road dust, which we would do, and we
22 would regenerate the emissions credits based on that actual
23 data.

24 MS. BELENKY: And then you're familiar with this
25 area which, as I understand it, has soils that tend to be

1 quite loose and friable and are often -- there is already an
2 issue with wind; is that correct?

3 MR. CARROLL: I'm going to object to that
4 question. It sounded more like testimony than a question.

5 HEARING OFFICER CELLI: I -- I think the
6 question --

7 MS. BELENKY: The question is: Are you familiar
8 with the soils in this area?

9 HEARING OFFICER CELLI: There you go. Overruled.

10 MS. HEAD: To the extent that, you know, the --
11 the soils in this area are similar to other areas in the
12 high desert. As I mentioned, the Victorville II Hybrid
13 Power Plants is one of the other projects, and the High
14 Desert Power Plant or some of the other projects that
15 generated credits using road paving, I am familiar with
16 those soils because we did go out and do actual soil
17 testing.

18 And my recollection from those cases is that
19 the -- the silt content of the roads was in the same order
20 of magnitude as the default number. So I -- I don't have
21 any reason to believe that use of the default would be far
22 different from what the actual condition should be in this
23 area.

24 MS. BELENKY: And when you made these default
25 calculations did you also calculate dust that would -- that

1 could be blown onto the road by wind?

2 MS. HEAD: The -- the way you do the credit
3 calculation is that you make a calculation for an unpaved
4 road and then you also use the AP-42 equations to do the
5 calculation for a paved road. And -- and the paved road --
6 calculations do include a factor called silt loading which
7 is representative of the dust that's blown onto the road.
8 You get the credit that would be available by taking the
9 unpaved road emissions and subtracting the paved road
10 emissions so that those emissions are accounted for in the
11 amount of credit that's generated.

12 MS. BELENKY: But to date you only did that using
13 default estimates; is that correct?

14 MS. HEAD: That is correct.

15 MS. BELENKY: Thank you. Have you reviewed the
16 EPA's new rule on prevention of significant deterioration
17 for PM2.5?

18 MS. HEAD: Not extensively, but I am aware of the
19 regulation.

20 MS. BELENKY: Okay. Sorry. I had just a couple
21 other questions.

22 In the -- I think it was actually the pre-hearing
23 statement, staff added a provision to allow inter-pollutant
24 trading for these ERCs instead of the road paving.

25 Have -- have you on behalf of the applicant

1 calculated or provided any estimate of what kind of inter-
2 pollutant trading that would be?

3 MS. HEAD: I -- I can speculate that the only kind
4 of inter-pollutant trading that's allowed for PM10 credit
5 would be PM10 precursors which are nitrogen oxide and sulfur
6 oxide emissions. But I have not specifically looked at that
7 in this case, and I believe your question is best directed
8 to staff.

9 MS. BELENKY: On January -- I'm sorry, I just have
10 a couple more questions. On January 25th, the applicant
11 served on the parties a copy of their PSD application to the
12 EPA and the supplement. Did you help prepare that document?

13 MS. HEAD: I did.

14 MS. BELENKY: And to the best of your knowledge
15 has that application been deemed complete by the EPA?

16 MS. HEAD: No, it has not.

17 MS. BELENKY: In that document there's a section
18 called PM2.5 increment analysis which argues that the new
19 rule that I just mentioned would not apply. Now that the
20 rule has actually come into force and the application has
21 not been deemed complete would you change your analysis of
22 whether the rule applies?

23 MR. CARROLL: I'm going to object to that question
24 on the basis that it calls for a legal conclusion regarding
25 the capability of certain federal rules.

1 HEARING OFFICER CELLI: Sustained.

2 MS. BELENKY: That's fine. I understood Ms. Head
3 actually wrote that document. I can -- we can make our own
4 legal conclusions.

5 HEARING OFFICER CELLI: Put it in your brief.
6 Thanks.

7 MS. BELENKY: Yes.

8 Have you -- since the time you prepared the -- the
9 PSD application and supplement have you prepared or
10 submitted any PM2.5 increment analysis to the EPA on behalf
11 of the applicant?

12 MS. HEAD: No, we have not.

13 MS. BELENKY: Do you intend to provide such an
14 analysis to the EPA?

15 MS. HEAD: No, we do not. At this -- as far as I
16 know, EPA is fine with the PM2.5 analysis that we've already
17 submitted. We have seen nothing to the contrary on that
18 point.

19 MS. BELENKY: I just want to clarify, I was asking
20 about an increment analysis which is not actually contained
21 in the document.

22 MS. HEAD: Again, all of our PM2.5 analyses, we do
23 not intend to submit any further analysis regarding PM2.5 to
24 the EPA, and the EPA has not given us any comments on that
25 they have any further questions on the documents that we

1 submitted.

2 MS. BELENKY: I think that was all my questions on
3 air quality.

4 HEARING OFFICER CELLI: Thank you, Ms. Belenky.

5 Ms. Williams, now I have a concern because we
6 never received the pre-hearing conference statement from
7 you. You indicated that you were going to essentially
8 coordinate with CBD. And -- and I'm very mindful of the
9 clock today because we have to get a lot in. Do you have
10 questions for this witness?

11 MS. WILLIAMS: Yes.

12 HEARING OFFICER CELLI: Do you -- how many
13 questions do you have?

14 MS. WILLIAMS: Well, it would depend on the
15 answers to the questions; right?

16 HEARING OFFICER CELLI: But I'm talking about your
17 prepared questions right now.

18 MS. WILLIAMS: I probably have like eight -- eight
19 questions.

20 HEARING OFFICER CELLI: Okay. Do you think we can
21 get this done in -- let's see if we can do this in six
22 minutes or less, please.

23 Folks we need to move with alacrity.

24 MR. CARROLL: I just feel compelled on behalf of
25 the applicant to state that I want to ensure that the

1 intervenors are given every opportunity to ask whatever
2 questions they may have of our witnesses. And so I'd -- I'd
3 be concerned that any suggestion or any feeling on their
4 part, that they're being limited in that respect.

5 HEARING OFFICER CELLI: Well, I don't want to
6 limit. My concern is simply that -- that we move quickly.
7 And I want to make sure there's no duplication between CBD
8 and DCAP.

9 So I'm -- I'm going to allow some -- some more
10 cross-examination, but I'm just going to ask that it be new
11 territory, that we don't cover old ground that's already
12 been testified, please.

13 So with that, go ahead, Ms. Williams, cross-
14 examine of Ms. Head.

15 MS. WILLIAMS: Mr. Carroll, I appreciate that.
16 Because I feel as though the public's ability to participate
17 in this is being curtailed by --

18 HEARING OFFICER CELLI: It's not.

19 MS. WILLIAMS: -- let me finish -- by your
20 comments to me, by saying I have six minutes. Okay?

21 HEARING OFFICER CELLI: Well, I -- let's put it
22 this way --

23 MS. WILLIAMS: I -- I am the intervenor who lives
24 here. Okay?

25 HEARING OFFICER CELLI: Right. But you were also

1 supposed to put -- give us a prehearing conference to --
2 with your testimony, which we didn't get. So we're
3 extending the offer. I'm just asking you to move quickly.

4 MS. WILLIAMS: Which we -- we joined onto CBD's
5 because we have many of the same concerns. And Lisa and I
6 have carefully laid out which questions she's going ask and
7 which I'm going to ask. Okay?

8 HEARING OFFICER CELLI: Okay. Good. So let's --
9 let's hear your questions.

10 MS. WILLIAMS: So just -- and we did go over this
11 at the pre-hearing conference.

12 HEARING OFFICER CELLI: Okay. Let's -- let's get
13 moving along with this, please.

14 MS. WILLIAMS: Okay.

15 CROSS-EXAMINATION

16 MS. WILLIAMS: Ms. Head, you identified in your --
17 in the documents that you submitted into the record that you
18 are an air quality engineer?

19 MS. HEAD: No. Actually, I am a meteorologist,
20 atmospheric scientist --

21 MS. WILLIAMS: Right. So you're the --

22 MS. HEAD: -- not an engineer.

23 MS. WILLIAMS: You are a meteorologist,
24 atmospheric scientist?

25 MS. HEAD: Correct, by my degree.

1 MS. WILLIAMS: Right. So you are not an air
2 quality engineer?

3 MS. HEAD: I'm not an engineer. I do have a lot
4 of expertise in air quality impact assessments.

5 MS. WILLIAMS: Great. And nor are you a
6 toxicologist?

7 MS. HEAD: I did have some toxicology courses in
8 my studies in -- in getting an atmospheric sciences degree,
9 but I guess I wouldn't say that I'm necessarily an expert
10 toxicologist.

11 MS. WILLIAMS: Nor are you a medical doctor?

12 MS. HEAD: No, I am not.

13 MS. WILLIAMS: Okay. So I -- I make that really
14 clear because some of the -- the statements, some of the
15 prior statements that you've talked about actually did opine
16 on public health. And I -- I want to be clear that even the
17 national ambient air quality standards just recently have
18 changed for -- actually many of the pollutants that this
19 plant will emit and in fact, may change again. And that the
20 reason for those changes is because of the evolving science
21 around the impacts of pollution on public health.

22 MR. CARROLL: Is there a question coming?

23 HEARING OFFICER CELLI: Yeah.

24 MS. WILLIAMS: Yes.

25 HEARING OFFICER CELLI: So the question is?

1 MS. WILLIAMS: Okay. So my question is: Why did
2 you conclude that the -- the NAAQS itself for I'm assuming,
3 the federal NAAQS, right, should be the -- the standard for
4 PM2.5 rather than the -- the state standard?

5 MS. HEAD: Just as a clarification, we think that
6 the staff concluded that. We concur with the conclusion.
7 But in this -- in this case for PM2.5 there for 24-hour
8 impacts, there is only a federal ambient air quality
9 standard. There is not a California 24-hour ambient air
10 quality standard which is why we did not assess that.

11 We did assess the annual vote -- there's a vote
12 that California and the federal annual PM2.5 standard and
13 again, we were in compliance with that standard.

14 MS. WILLIAMS: Okay. So that's based on your
15 judgment with air modeling?

16 MS. HEAD: That's correct.

17 MS. WILLIAMS: Okay. Thank you. So -- and you
18 also testified previously that you -- you did a three mile
19 limit for sensitive receptors in the health risk assessment?

20 MS. HEAD: That's correct and that is contained in
21 our application for certification in the public health
22 section, which is 5.10 of the AFC. It does show a figure
23 and it does a long list of the receptors that we looked at.

24 MS. WILLIAMS: And the health risk assessment,
25 does it cover both criteria pollutants and toxic air

1 contaminants?

2 MS. HEAD: No. A health risk assessment is
3 specifically for carcinogenic and acute and chronic health
4 effects.

5 MS. WILLIAMS: For TACs or --

6 MS. HEAD: For TACs, yes.

7 MS. WILLIAMS: Right. So -- so just -- just so
8 just to be clear and recognizing again that you're an
9 atmospheric scientist. But the health risk assessment did
10 not identify what the health risks are from the increased
11 exposure in -- in the -- in the area from -- of the plant
12 for criteria air pollutants?

13 MS. HEAD: No. For that, because we have ambient
14 air quality standards, the analysis is done to compare to
15 those standards. I will say, the health risk assessment did
16 include looking at diesel particulate matter as one of the
17 TACs, which is -- diesel particulate matter is also very
18 fine, less than 2.5 micron in particulate.

19 MS. WILLIAMS: Right. And -- and diesel is
20 listed as a TAC?

21 MS. HEAD: Correct.

22 MS. WILLIAMS: And then in -- in the -- in the
23 submittal on the -- saying that PM10 precursors, NOx and
24 SOx, could be used as an inter-pollutant and inter-basin
25 trading, that could be a mitigation that would meet that the

1 requirements of CEQA, is there evidence in the record to
2 support that?

3 MS. HEAD: I don't believe that that -- that that
4 was the proposal. I think the proposal was that those could
5 be used as new source review offsets for PM10. And they're,
6 you know, it -- it's not necessarily in this record, but
7 that's a fairly well accepted methodology of using precursor
8 pollutants for new source review, offsets for meeting their
9 requirements under -- under the state and federal laws.

10 MS. WILLIAMS: So Ms. Head, you must be very
11 familiar with the requirements of the different air
12 districts in California?

13 MS. HEAD: I'm reasonably familiar with the
14 Antelope Valley Air Quality Management District and several
15 of the other districts in this area.

16 MS. WILLIAMS: Say, for instance, South Coast?

17 MS. HEAD: Yes.

18 MS. WILLIAMS: So does the -- do the rules for the
19 South Coast Air Quality Management District allow for this
20 inter-pollutant trading for NOx and SOx for PM10 precursors?

21 MR. CARROLL: I'm going to object on the basis of
22 relevancy.

23 HEARING OFFICER CELLI: What's the relevance?
24 Please state what the relevance is, Ms. Williams.

25 MS. WILLIAMS: Well, the relevance is, is that the

1 applicant is proposing in its latest submissions to be able
2 to use NOx and SOx as offsets. And as you know this -- this
3 issue of the offsets for the plant is really central to what
4 we're arguing about. That's why we're having a hearing.

5 MR. CARROLL: Okay. First of all, the applicant
6 didn't propose that. The applicant's proposed offset
7 strategies we've discussed is road paving. The staff
8 proposed -- for PM10. The staff proposed as an alternative
9 to road paving the utilization of inter-district offsets.

10 That notwithstanding, I still don't understand the
11 relevancy of what South Coast AQMD rules would allow since
12 this project is not located in the South Coast AQMD.

13 HEARING OFFICER CELLI: Go ahead, Ms. Williams.
14 If you can --

15 MS. WILLIAMS: Ms. Head just stated that this was
16 commonly done. Okay. But actually the only district I know
17 of that allows for inter-pollutant trading for PM10
18 precursors is the San Joaquin Basin. So I'm asking her
19 whether those inter-pollutant transfers are allowable in
20 South Coast, which is, as you know, right down there, and
21 this basin, the Antelope Valley Air Quality Management
22 basin, was going to be my next question.

23 HEARING OFFICER CELLI: That -- well, let's get to
24 the Antelope Valley one, and now it is relevant. So
25 let's -- let's her answer the question, if she knows.

1 MS. HEAD: Yeah. If my understanding is correct,
2 is -- is would Antelope Valley AQMD allow for use of
3 precursors for PM10 offsets, I believe that the answer is
4 yes, but I'll also say that the air district has a
5 representative here and that that question might be more
6 appropriate for him.

7 HEARING OFFICER CELLI: So you'll -- you can ask
8 that question of that witness as well, Ms. Williams.

9 MS. WILLIAMS: Ms. Head, were you -- were you
10 involved in the cumulative impacts analysis, the air
11 pollution portion of the cumulative impacts analysis?

12 MS. HEAD: I was.

13 MS. WILLIAMS: And so one of -- one of the things
14 I found extremely interesting in the cumulative impacts
15 analysis was that it said,

16 "Based on modeling experience that beyond six miles
17 there's no statistically considerate concentration
18 overlap for non-reactive pollutant concentrations
19 between two stationary emission sources."

20 And so the question is: Do you agree with that?

21 MR. CARROLL: Could you -- could provide a
22 citation to that one?

23 MS. WILLIAMS: 4.1-37.

24 MR. CARROLL: In what --

25 MS. WILLIAMS: In the FSA; 4.1-37 in the FSA.

1 MR. CARROLL: I would point out as an additional
2 matter, the FSA is not an applicant produced document. I
3 think --

4 MS. WILLIAMS: I didn't say that it was. I asked
5 her if she agreed with that statement.

6 MR. CARROLL: Okay. Just a moment while we look
7 at the statement.

8 MS. WILLIAMS: Okay. Thank you. I -- I intend to
9 ask staff the same question, just so you know.

10 MR. CARROLL: And can you just repeat where --
11 where is that?

12 MS. WILLIAMS: Okay.

13 "Based on staff's modeling experience beyond six miles
14 there is no statistically considerate concentration
15 overlap for non-reactive pollutant concentrations
16 between two stationary emission sources."

17 MR. CARROLL: What -- what is the heading of the
18 section that that sentence appears in?

19 MS. WILLIAMS: "Cumulative Impacts."

20 MR. CAMPOPIANO: "Localized Cumulative Impacts."

21 MR. CARROLL: "Localized Cumulative Impacts?"

22 MS. WILLIAMS: Yes.

23 MS. HEAD: I -- I guess I'd really rather not
24 comment on this without more analysis. I mean, this is, as
25 stated, Staff's opinion and their experience. I don't have

1 any -- nothing occurs to me that would dispute this
2 statement, but I guess I'm just not prepared to address it.

3 MS. WILLIAMS: So in the applicant's cumulative
4 analysis then what -- what would you consider the -- the
5 proper distance radius from the project?

6 MS. HEAD: We -- we prepared our analysis to be
7 consistent with other CEC siting cases that I'm aware of,
8 and the six mile radius is the typical radius that's used to
9 define cumulative sources for impact analyses. So I tend to
10 do what the agency wants me to do, and so I did look to six
11 miles as the proper area to look for cumulative analysis.

12 MS. WILLIAMS: Okay. So you in your -- in your
13 analysis you used the same radius. So whether you want to
14 agree with this or not it's what -- it's what you did based
15 on modeling experience, beyond six miles there's no
16 statistically considerate concentration overlap?

17 MS. HEAD: It seemed --

18 MS. WILLIAMS: -- or do you just use the six miles
19 because that's what Staff told you to do?

20 MS. HEAD: It seemed like a reasonable distance and --
21 and it did seem to be consistent with other analyses.

22 MS. WILLIAMS: Okay. So it's a reasonable
23 distance then, the six miles, to consider the concentration
24 overlap for non-reactive pollutants between two stationary
25 sources? All right. Thank you.

1 HEARING OFFICER CELLI: Any further cross, Ms.
2 Williams?

3 MS. WILLIAMS: Give me -- give me one second to
4 make sure that I -- I don't have further questions, if you
5 wouldn't mind.

6 HEARING OFFICER CELLI: Sure, go ahead.

7 MS. WILLIAMS: And then -- just -- just to make
8 sure that -- so that we don't have to come back to this
9 witness if we don't need to.

10 Ms. Head, were you involved at all in the -- in --
11 in looking -- again, I don't want to blur the lines between
12 your experience with meteorology and -- and air pollution,
13 and it does sort of roll in to some of this health stuff.
14 So I wanted to make sure that -- to ask you whether you were
15 involved in looking at sensitive receptors and the impacts
16 of the pollution on sensitive receptors for the -- that kind
17 of analysis that was in the FSA.

18 MS. HEAD: As I stated in my introductory
19 statements that not only am I an atmospheric scientist by
20 training, but I was also the AECOM project manager for the
21 preparation of the application for certification and for
22 this entire proceeding. So I do feel that I am familiar
23 with all of the analyses in the application for
24 certification, which would include the public health section
25 of the AFC.

1 MS. WILLIAMS: Uh-huh.

2 MS. HEAD: And so I did oversee the staff that
3 were preparing that and who went out and identified the
4 receptors to use in the analysis and looked at the
5 information that was evaluated.

6 MS. WILLIAMS: So you would be the appropriate
7 witness then for the applicant to discuss these public
8 health issues, or you are the witness that -- is there
9 another witness then that has more expertise on the public
10 health issues?

11 MR. CARROLL: This is the witness that's being
12 offered up today for cross-examination on both air quality
13 and public health.

14 MS. WILLIAMS: Okay. All right. Given that
15 then -- so -- and -- and I -- and I apologize to the -- the
16 hearing officer, but there are a number of questions
17 regarding public health that I would like to -- to ask this
18 witness then. Okay? Since she is the witness being offered
19 up on that.

20 HEARING OFFICER CELLI: Do you have -- how many
21 questions do you have, may I ask?

22 MS. WILLIAMS: Probably three.

23 HEARING OFFICER CELLI: Thank you. Go ahead.

24 MS. WILLIAMS: So do you -- do you know in -- what
25 you did is you took a look at this three mile impact area,

1 okay, even though for the cumulative impact analysis you
2 looked at a six mile radius. You said for your risk
3 assessment you used a three mile radius.

4 So within this three mile radius, do you know how
5 many schools there are?

6 MS. HEAD: Those are numbered in the AFC. I could
7 look that up. My recollection is -- is that within that
8 radius that there is, I don't know, on the order of a dozen
9 schools, and the same number of preschools, and the same
10 number of daycare centers.

11 MS. WILLIAMS: Okay. Do you know anything about
12 the health status of children going to those schools?

13 MS. HEAD: Not specifically.

14 MS. WILLIAMS: So you -- you don't know anything
15 about, say their asthma rates or their school absentee rates
16 due to respiratory illnesses or anything of that nature?

17 MS. HEAD: No.

18 MS. WILLIAMS: No. Okay.

19 MS. HEAD: No reason.

20 MS. WILLIAMS: And -- and did you look at -- can
21 you tell me if -- you know, how many elderly people live
22 in -- in the same area? Do you know how many people over
23 the age of 65 live in this area?

24 MS. HEAD: I do not.

25 MS. WILLIAMS: Okay. Do you know what the asthma

1 incidence is in these -- in this school? There's actually
2 two school districts here. Do you happen to know what the
3 asthma incidence rates are?

4 MR. CARROLL: I believe -- I'm going to object,
5 asked and answered. The witness has testified that she's
6 not familiar with the specific health condition of the
7 students in this school.

8 HEARING OFFICER CELLI: So do you know the answer
9 to this question, Ms. Head?

10 MS. HEAD: No.

11 HEARING OFFICER CELLI: Thank you. Go ahead.

12 MS. WILLIAMS: Do you -- okay. Do you know --
13 this is my last question.

14 Do you know what the demographics are of the
15 children that -- that are going to these schools in these --
16 in these school districts?

17 MR. CARROLL: I'm going to object based on
18 vagueness. Demographics in terms of what criteria?

19 MS. WILLIAMS: Do you know what the racial
20 demographic is of the children going to this school?

21 MS. HEAD: Not offhand. I -- I know that, you
22 know, we -- we did look at minority populations in -- in
23 terms of looking at the distribution of population. And in
24 general, I don't know specifically the school and these
25 children. But our public health assessment did provide

1 census track information on minority populations and
2 distribution.

3 MS. WILLIAMS: And do you recall what that was for
4 the -- this area that you looked at?

5 MS. HEAD: Not offhand. This is provided in the
6 Application for Certification, Section 5.10.

7 MS. WILLIAMS: Thank you for. That's all my
8 questions.

9 HEARING OFFICER CELLI: Thank you, Ms. Williams.
10 At this time if there's no redirect we would take
11 a motion on your evidence with regard to air quality and
12 public health.

13 MR. CARROLL: I do have some limited redirect.

14 HEARING OFFICER CELLI: Okay. Because we have to
15 do recross on that. So I -- I wonder if it's worth it,
16 since it's 12 noon and we haven't heard from Staff's
17 witnesses yet.

18 (Colloquy between commissioners.)

19 MR. CARROLL: I can say from applicant's
20 perspective that we've already presented the bulk of our
21 testimony. So I think there may be some overestimation of
22 what remains to be presented.

23 I feel it's necessary for all of the parties to be
24 provided an opportunity to make their case. This is a
25 project that has been under review for three years. This is

1 the one and only evidentiary hearing in the matter, and I
2 think every single party should have an opportunity to make
3 their case. So --

4 HEARING OFFICER CELLI: And we agree. I'm just --
5 I'm -- I'm trying to walk the line between keeping us on
6 track time-wise and getting all the evidence in. So if you
7 have some redirect let's -- let's do it. The questions need
8 to be limited to the scope of the redirect.

9 MR. CARROLL: Thank you.

10 REDIRECT EXAMINATION

11 MR. CARROLL: Ms. Head, I want to clarify a couple
12 of things. First with respect to the attainment status of
13 the region, it's a factual matter that anyone can look up.
14 But because a lot of your analysis is premised on the
15 attainment status I think it's important for the record to
16 be clear of your understanding of the attainment status. So
17 I'm going to break the question down.

18 With respect to PM10, what is your understanding
19 of the attainment status of the region within which the
20 project is located, the -- the state PM10 standard?

21 MS. HEAD: Nonattainment.

22 MR. CARROLL: And the federal PM10 standard?

23 MS. HEAD: Attainment. Let me -- let me look it
24 up. I don't want to make a mistake. Okay.

25 The -- in the FSA I do agree with table -- Air

1 Quality, Table 5, which says that the federal status for
2 PM10 is unclassified.

3 MR. CARROLL: And with respect to the state PM2.5
4 standard, what is your understanding of the attainment
5 status of the region?

6 MS. HEAD: The PM2.5 standard, the -- the annual
7 standard is unclassified attainment, and there is no 24-hour
8 standard.

9 MR. CARROLL: And with respect to the federal
10 PM2.5 standard, what is your understanding of the attainment
11 status of the region?

12 MS. HEAD: With respect to the annual federal
13 standard it's -- the attainment status is unclassified
14 attainment, and with respect to the 24-hour standard, it's
15 attainment.

16 MR. CARROLL: And with respect to whether or not
17 the applicable rules and regulations require offsets to be
18 provided and or mitigation for CEQA to provided, with
19 respect to PM10 is it your view that the project is required
20 to offset its PM10 emissions and, if so, why?

21 MS. HEAD: Yes. The project is required to offset
22 its PM10 emissions because it's over a threshold at over a
23 hundred tons per year. It's well over the threshold that
24 requires offsets within the Antelope Valley Air Quality
25 Management District as a nonattainment prudent.

1 MR. CARROLL: And with respect to PM2.5 is it your
2 view that PM2.5 offsets are not required?

3 MS. HEAD: Yes, that's correct. It's not required
4 because of the attainment status of the area that the air
5 quality regulations do not require offsets in that case.

6 MR. CARROLL: And again, referring to PM2.5, is it
7 your opinion that CEQA mitigation is not required in the
8 case of this project for PM2.5 emissions, specifically?

9 MS. HEAD: Yes. Because the ambient air quality
10 standards were provided as the appropriate CEQA thresholds
11 of significance. And since the project does not cause or
12 contribute to an exceedance of those standards then that
13 would be an insignificant impact and mitigation would not be
14 required.

15 MR. CARROLL: With respect to the analysis that
16 you did of the project's impacts going out to a three mile
17 radius, in that analysis did you conclude that any of the
18 sensitive receptors within the three mile radius would be
19 adversely impacted by the project?

20 MS. HEAD: No. The concentration is at the
21 sensitive receptors were extremely low, as I mentioned.
22 The -- the highest impact at all of the sensitive receptors
23 that were analyzed, which was over 150 sensitive receptors,
24 was less than 1 percent of the applicable threshold.

25 MR. CARROLL: And would you expect the results to

1 be any different had you gone out any further than three
2 miles?

3 MS. HEAD: No. I would expect any further from
4 three miles would actually be lower concentrations the
5 further from the plant.

6 MR. CARROLL: And I want to just clarify there was
7 some discussion about use of models that were used. It --
8 is it my -- am I correct in understanding that you utilized
9 Road Mod for purposes of determining emissions associated
10 with the action of paving the roads?

11 MS. HEAD: Yes. That's the only purpose that we
12 use Road Mod for.

13 MR. CARROLL: And am I also correct that you used
14 AP-42 for purposes of calculating the credits that will be
15 generated from the paving of the roads?

16 MS. HEAD: Yes, that's correct.

17 MR. CARROLL: And in terms of the CEQA
18 significance thresholds that you utilized, did you rely on
19 the federal standard only to the exclusion of the state
20 standard or in your analysis did you utilize both the state
21 and federal ambient air quality standards at the threshold
22 of significance for purposes of evaluating criteria air
23 pollutants?

24 MS. HEAD: Both the California and federal
25 standards were applied where available.

1 MR. CARROLL: And for purposes of conducting a
2 public health impact analysis, I'm assuming that you are not
3 establishing the appropriate thresholds for the protection
4 of public health but simply evaluating whether the project's
5 emissions meet or exceed those standards; is that correct?

6 MS. HEAD: Yes, that's correct. We used all of
7 the approved methodologies for such analyses and we
8 compared those to established CEQA levels of significance.

9 MR. CARROLL: And in conducting that analysis is
10 it necessary to understand the specific demographics of the
11 affected population or specifics with respect to their
12 health?

13 MS. HEAD: No, there is not. You know, one only
14 who would look at whether there was a disproportionate
15 impact to minority populations when there was an impact. In
16 our case there was no significant impact. And so a
17 comparison or a further look at the demographics was not
18 considered necessary.

19 MR. CARROLL: Thank you. No further redirect.

20 HEARING OFFICER CELLI: Re-cross by Staff?

21 MS. DE CARLO: None from Staff.

22 HEARING OFFICER CELLI: Recross by the Center for
23 Biological Diversity, Ms. Belenky?

24 MS. BELENKY: No.

25 HEARING OFFICER CELLI: Recross by Desert Citizens

1 Against Pollution, Ms. Williams?

2 MS. WILLIAMS: Just -- just one question.

3 RE-CROSS-EXAMINATION

4 MS. WILLIAMS: Isn't Road Mod designed to be used
5 for road construction impacts?

6 MS. HEAD: Yes, that's exactly right. That's why
7 we -- it's -- it's used for determining road construction
8 emissions. And that's exactly what we used it for, was to
9 determine what the emissions would be from paving these
10 roads.

11 MS. WILLIAMS: But -- but the roads produce
12 emissions as they're being used not just when they're being
13 constructed.

14 HEARING OFFICER CELLI: Is that a question?

15 MS. WILLIAMS: So --

16 MS. HEAD: Yeah. Let -- let me clarify. Again,
17 we wanted to calculate the emissions from constructing the
18 roads or paving the roads because Dr. Fox had included such
19 estimates in her comments which we felt were grossly
20 exaggerated. And so we wanted to provide what we thought
21 were the correct emissions for constructing and paving the
22 roads.

23 The actual emissions from driving on the roads is
24 what goes into the credit calculation. And again, we looked
25 at those emissions from driving on an unpaved surface and a

1 paved surface, subtracted out the future emissions from when
2 it is paved, and that is what results in the credit
3 generation.

4 MS. WILLIAMS: Okay. One of the things that --
5 okay. First, I -- actually a couple more questions then.

6 How -- how -- did you rely on AP 42 factors at all
7 then for the credit generation?

8 MS. HEAD: Again, we -- we solely relied on the
9 AP-42 emission factors for the credit generation. The Road
10 Mod was only relied upon for the road construction and
11 paving.

12 MS. WILLIAMS: And how old are those AP-42
13 factors?

14 MS. HEAD: AP-42 is -- is fairly constantly
15 updated and -- or, you know, periodically updated and we
16 used the current updated factors at the time we did the
17 calculations.

18 MS. WILLIAMS: So that sounds like you don't know.
19 Because, you know, some AP-42 factors are 40 or 50 years
20 old even though they --

21 MS. HEAD: Yeah, actually in the case of --0 of
22 unpaved roads and road pavings they -- they were updated not
23 too long ago. I don't remember the -- the specific year.
24 And -- and, in fact, Dr. Fox's comments mentioned some more
25 recent updates but for these particular factors they're --

1 they're not that old. They're I'd say less than five years
2 old.

3 MS. WILLIAMS: So is that -- is that in -- in the
4 docket then? What year? Was it the 2003 AP-42 factors or
5 2000? The 1999 or -- I'm -- I'm sorry.

6 MS. HEAD: Yes. That calculation is in
7 Applicant's Exhibit 76. If -- if you want I could look it
8 up for you.

9 HEARING OFFICER CELLI: Does that answer the
10 question?

11 MS. HEAD: Yeah. It is in the docket. It's in
12 Applicant's Exhibit 76.

13 HEARING OFFICER CELLI: Thank you.

14 MS. WILLIAMS: Thank you so much. That does
15 answer the question.

16 And then, Ms. Head, I wanted to -- I wanted to
17 clarify again -- I'm not asking her a question. But
18 there -- there does seem to be a great deal of -- of -- when
19 you mention risk you are talking about toxic air
20 contaminants; right? And I think there is a great deal of
21 confusion among the public, and including among public
22 agencies, about air pollution, and that is that air
23 pollution comes from two major bends, criteria air
24 pollutants and toxic air contaminants, and that risk
25 assessments are not done normally for criteria air

1 pollutants; right? They're done for toxic air contaminants.

2 But we seem to often sort of mix these terms, these risk
3 assessments or health impact assessments, sort of back and
4 forth.

5 And I just want to clarify for the members of
6 the -- of the audience that are here listening that risk is
7 solely about toxic air contaminants. And we need to be
8 clear on -- on what we're talking about.

9 MR. CARROLL: I'm going to object to the portions
10 of that statement that were the characterization of the
11 witness's testimony on the basis that I don't think it was
12 an accurate characterization of the witness's testimony.

13 HEARING OFFICER CELLI: Well, if it is we'll see
14 it in the transcript. So --

15 MS. WILLIAMS: Well, I'd like -- I'd --

16 HEARING OFFICER CELLI: Do you have any -- let me
17 ask you this, Ms. Williams, do you have any questions of Ms.
18 Head?

19 MS. WILLIAMS: Then, yes, I do. I'd like -- I'd
20 like her to --

21 HEARING OFFICER CELLI: I would -- you know, I've
22 just got to request that while I have the witness here you
23 ask the questions of the witness. Because what you were
24 just doing is what we call argument. That belongs in your
25 brief. Because you're going to write a brief at the end of

1 all of this evidence and you're going to make the legal
2 arguments that explains your position. But today we just
3 want to get the evidence into the record. So if you could
4 just ask her what other questions you need.

5 MS. WILLIAMS: Okay. Just to clarify this, all
6 right, Mr. Head, can you just clarify when you're talking
7 about risk assessments whether you're talking about TACs or
8 criteria pollutants?

9 MR. CARROLL: Objection. Vagueness. I mean, when
10 she's talking about --

11 HEARING OFFICER CELLI: Overruled.

12 MR. CARROLL: When she's talking about risk
13 assessments when, in what context?

14 HEARING OFFICER CELLI: Let's hear it. I -- I
15 think Ms. Head can answer this question. Let's see if she
16 can.

17 MS. HEAD: Yeah. I -- I believe that the answer
18 to the question is that because there's ambient air quality
19 standards for criteria pollutants there are certain tools
20 that are used to assess risk to health impacts, you know, of
21 those pollutants. And then there's different tools that are
22 used to assess the risks from toxic air contaminants.
23 It's -- it's just a term of art, shall we say, that we do
24 call the modeling technique used a health risk assessment.
25 That does not imply that in doing an assessment of

1 compliance with ambient air quality standards which are
2 health risk based standards that we aren't also doing a risk
3 assessment.

4 MS. WILLIAMS: Thank you.

5 HEARING OFFICER CELLI: Anything further?

6 MS. WILLIAMS: No.

7 HEARING OFFICER CELLI: Thank you, Ms. Williams.

8 Now, Mr. Carroll, anything further or would -- I
9 think this time we would ask that you move on to air quality
10 and public health, if you have no further questions of your
11 witness.

12 MR. CARROLL: We have no further questions, and we
13 appreciate the indulgence of the committee in allowing us
14 the questions that -- that we've asked.

15 HEARING OFFICER CELLI: So your motion?

16 MR. CARROLL: Our motion is that the following
17 exhibits be moved into the evidentiary record with the topic
18 of air quality, Exhibit numbers 6, 35, 46, 51, 52, 55, 72,
19 76, 110, 113, 128, 143, 144, 145, 29, 56, 69, 84, 101, 109,
20 115, 130, 35, 106, and 126. Oh, I'm sorry. In addition,
21 105, 107, 122, 141.

22 HEARING OFFICER CELLI: And so for the record
23 there's a motion to receive into evidence Exhibits 6, 35,
24 46, 51, 52, 55, 72, 76, 110, 113, 128, 143, 144, 145, 29,
25 56, 69, 84, 101, 109, 115, 130, 35, 106, 126, 105, 107, 122

1 and 141 marked for identification.

2 Any objection from Staff?

3 MS. DE CARLO: No.

4 HEARING OFFICER CELLI: Any objection, Ms.
5 Belenky?

6 MS. BELENKY: No.

7 HEARING OFFICER CELLI: Okay. That's a no for the
8 record, in case it didn't make the microphone.

9 So those exhibits that we just listed off are
10 received into evidence at this time.

11 (Whereupon, Applicant's Exhibits 6, 35, 46, 51,
12 52, 55, 72, 76, 110, 113, 128, 143, 144, 145, 29,
13 56, 69, 84, 101, 109, 115, 130, 35, 106, 126, 105,
14 107, 122, and 141 were received into evidence.)

15 We're going to take a --

16 MR. CARROLL: Mr. Celli, I -- I'm sorry -- we --
17 those were the air quality exhibits. We also have four
18 exhibits under the topic of public health.

19 HEARING OFFICER CELLI: Public health. Go ahead.

20 MR. CARROLL: Those are Exhibits 14, 140, 35, and
21 126.

22 HEARING OFFICER CELLI: So there's a motion to
23 move into evidence Exhibits 14, 140, 35, and 126, marked for
24 identification under the heading of public health.

25 Is there any objection from Staff?

1 MS. DE CARLO: No.

2 HEARING OFFICER CELLI: Is there any objection by
3 Center for Biological Diversity?

4 MS. BELENKY: No.

5 HEARING OFFICER CELLI: Exhibits 14, 140, 35 and
6 126 are received into evidence.

7 (Whereupon, Applicant's Exhibits 14, 140, 35, and
8 126 were received into evidence.)

9 Now at this time we're going to take a ten minute
10 break. Let's please -- we're going to get started at 12:27,
11 which is ten minutes from now. So please be back in your
12 seats, Parties, and we will resume with Staff's panel at
13 12:27.

14 We're off the record.

15 (Lunch recess.)

16 HEARING OFFICER CELLI: Now let's -- let's go back
17 on the record.

18 And I just want to say that I have a witness
19 problem with respect to Ms. Belenky whose witness can only
20 be until -- can only be here until two o'clock or something
21 like that, I think you said.

22 MS. BELENKY: My witness is only available until
23 2:30.

24 HEARING OFFICER CELLI: And he's --

25 MS. BELENKY: And since we have public comment at

1 2:00 --

2 HEARING OFFICER CELLI: And he's here?

3 MS. BELENKY: -- I think he might --

4 HEARING OFFICER CELLI: He or she is on the phone?

5 MS. BELENKY: Is on the phone, yes.

6 HEARING OFFICER CELLI: Any problem if I take
7 CBD's witness out of order?

8 MS. DE CARLO: No.

9 HEARING OFFICER CELLI: From Staff? Any problem
10 with that, Applicant?

11 MR. CARROLL: No.

12 HEARING OFFICER CELLI: Okay. I'm going to ask
13 the indulgence of this panel, just say comfortable there,
14 because I think this witness is on the phone. We'll just
15 hear his -- take his testimony, go through this, and then
16 we'll get back to staff. And thank you all for your
17 indulgence.

18 Go ahead, Ms. Belenky.

19 MS. BELENKY: Greg -- Greg Tholen, are you on the
20 phone?

21 HEARING OFFICER CELLI: Oh. Let me -- let me --

22 MS. BELENKY: Let make sure he's there and that
23 you can hear him.

24 HEARING OFFICER CELLI: Let me un-mute. Ask
25 again.

1 MS. BELENKY: Greg Tholen, are you on the phone?

2 HEARING OFFICER CELLI: He's the only person I
3 have muted. Oh, I have William Engel muted. I see Matt
4 Dowel. Let me just do this, un-mute all those. Okay.

5 Go ahead and ask your question again, Ms. Belenky.

6 MS. BELENKY: Greg Tholen, are you on the phone
7 now? Can you hear me?

8 HEARING OFFICER CELLI: Okay. That's call-in user
9 number 12. He's -- I'm seeing Matt Dowel. I don't know if
10 you're there. But I see that there's -- call-in user number
11 12 is -- was trying to make --

12 MR. THOLEN: Now I -- now I --

13 HEARING OFFICER CELLI: Is that --

14 MR. THOLEN: Now I can hear much better.

15 HEARING OFFICER CELLI: Is that Mr. Tholen?

16 MS. BELENKY: Is that you, Greg Tholen?

17 MR. THOLEN: Yes. This --

18 MS. BELENKY: Oh, hi. Okay. We're just --

19 MR. THOLEN: This is Greg Tholen.

20 MS. BELENKY: -- trying to make sure you could
21 hear us and we could hear you.

22 MR. THOLEN: I hear you much better now. And I
23 also hear -- okay. Go ahead.

24 MS. BELENKY: Okay. I'm just going to ask you a
25 couple of basic questions about your testimony, and then

1 we're going to leave it open for cross-examination.

2 DIRECT EXAMINATION

3 MS. BELENKY: You prepared the written testimony
4 called Testimony of Greg Tholen submitted in this proceeding
5 on February 4th?

6 MR. THOLEN: Yes, I did.

7 MS. BELENKY: And do you adopt this testimony?

8 MR. THOLEN: Yes, I do.

9 MS. BELENKY: So we're -- we're not going to
10 restate any of your testimony, but I did want to ask you if
11 you had any additions to your testimony or corrections at
12 this time?

13 MR. THOLEN: Not at this time.

14 MS. BELENKY: And then did you hear the testimony
15 this morning that was given by the applicant's witness on
16 air quality?

17 MR. THOLEN: Yes, I did.

18 MS. BELENKY: And did you have any -- anything you
19 wanted to respond to of the statements made by the
20 applicant's witness regarding your testimony?

21 MR. THOLEN: I just wanted to clarify that I
22 didn't state that the project would cause a violation of the
23 standard, only that it may contribute to future violations.

24 MS. BELENKY: Thank you. So the -- the witness
25 is prepared to be cross-examined.

1 HEARING OFFICER CELLI: Thank you, Ms. Belenky.
2 The cross-examination first with Applicant, if
3 any.

4 CROSS-EXAMINATION

5 MR. CARROLL: Hello, Mr. Tholen. Can you hear me?

6 MR. THOLEN: Yes, I can.

7 MR. CARROLL: Hi. This is Mike Carroll and I'm
8 representing the applicant. I -- just a few questions.

9 Did you review the PM2.5 modeling analysis that
10 the applicant have completed in connection with the
11 operations of the project?

12 MR. THOLEN: Portions of it. I reviewed the
13 conclusions. I didn't review the entire modeling.

14 MR. CARROLL: And did you disagree with the
15 conclusions reached in the modeling analysis with PM2.5
16 emissions?

17 MR. THOLEN: No, I do not.

18 MR. CARROLL: And did you conduct any independent
19 modeling analysis of the project's PM2.5 emissions?

20 MR. THOLEN: No, I have not.

21 MR. CARROLL: Thank you. And did you review the
22 health risk assessment that was prepared by the applicant
23 for air toxics, including diesel particulate matter?

24 MR. THOLEN: Only, again, only portions and the
25 conclusion.

1 MR. CARROLL: And did you disagree with the
2 conclusions reached in that analysis?

3 MR. THOLEN: No, I did not.

4 MR. CARROLL: And did you conduct your own
5 independent health risk assessment of the project's toxic --

6 MS. BELENKY: I'm sorry. I need to object. Mr.
7 Tholen is being offered as an -- as an expert on air
8 quality, not on health. So if -- to the extent that those
9 are two different things I do want to make sure that you're
10 asking him questions that are appropriate.

11 HEARING OFFICER CELLI: Before I can rule on that
12 I need to know whether the -- are you asserting then that
13 there was some testimony about public health by Mr. Tholen?

14 MR. CARROLL: I'm trying to understand the basis
15 of the assertions made in Mr. Tholen's prepared testimony.
16 So I'm trying to understand what analysis he either reviewed
17 that was prepared by others or what analysis he undertook
18 himself in support of the conclusions set forth in his
19 testimony.

20 HEARING OFFICER CELLI: And so I think that I
21 would sustain the objection if he's only being offered as an
22 air quality expert, not as a public health expert, and limit
23 his testimony to air quality.

24 MR. CARROLL: Thank you. Did you conduct any
25 analysis of the emissions of toxic air contaminants in

1 connection with the project?

2 MR. THOLEN: No, I did not.

3 MR. CARROLL: Thank you. And -- and I'm sorry,
4 Mr. Tholen, Ms. Belenky may have asked you this question,
5 but were you on the line to hear all of the testimony that
6 Ms. Head provided?

7 MR. THOLEN: Yes. Yes, I was.

8 MR. CARROLL: Thank you. And do you agree that
9 use of the road model as described as Ms. Head is the
10 appropriate approach for analyzing emissions associated with
11 the road paving activity?

12 MR. THOLEN: From the construction of road paving,
13 yes, I do.

14 MR. CARROLL: Thank you. And did you conduct any
15 independent analysis of your own in order to quantify the
16 emissions associated with the road paving activity?

17 MR. THOLEN: No, I did not.

18 MR. CARROLL: Thank you. Have you reviewed the
19 construction mitigation measures that are set forth in the
20 staff's proposed conditions of certification?

21 MR. THOLEN: Yes, I have.

22 MR. CARROLL: And do you agree that they
23 adequately mitigate the project's construction related
24 emissions?

25 MR. THOLEN: Yes, I do.

1 MR. CARROLL: On page two of your written
2 statement you -- you state that paved roads are likely to
3 attract more traffic than unpaved roads. Could you explain
4 the -- the basis of that conclusion?

5 MR. THOLEN: Well, generally if someone has the
6 choice to travel on a dirt road or a paved road they most
7 likely will choose the paved road.

8 MR. CARROLL: Okay. And are you familiar with the
9 development patterns in the area surrounding the road
10 segments that have been identified for paving?

11 MR. THOLEN: No, I am not.

12 MR. CARROLL: Are you familiar with the traffic
13 patterns in the area surrounding the road segments that have
14 been identified for paving?

15 MS. BELENKY: I'm sorry. I need to object. I
16 believe these are land use and growth inducing, which I
17 thought we were doing in a separate section. I'm just not
18 sure what --

19 HEARING OFFICER CELLI: Does his testimony -- does
20 he testify that the paved roads will cause greater traffic
21 and induce growth, Mr. Tholen? I'm not asking Mr. Tholen.
22 I'm asking Ms. Belenky.

23 MS. DE CARLO: His -- his written testimony
24 does -- does assert those two items. And it's unclear to me
25 that Mr. Tholen be made available during the road paving

1 panel discussion.

2 MS. BELENKY: Okay. I just wanted to clarify what
3 you're asking. Because you went from asking him about his
4 testimony to asking him more generally about road paving
5 issues.

6 HEARING OFFICER CELLI: Well, maybe --

7 MS. BELENKY: So I'm just getting confused.

8 HEARING OFFICER CELLI: So the question is
9 relevant if he opened the doors.

10 MR. CARROLL: Let me be -- let me be clear. On
11 page two, Mr. Tholen, of -- of the written statement, and I
12 believe elsewhere, but on page two, at least in one place,
13 you state, "Paved roads are likely to attract more traffic
14 than the previously unpaved roads and may -- and may induce
15 growth in outlining rural areas."

16 And so the -- what I'm getting at is the basis for
17 that conclusion. And so what I've asked you or what you've
18 already testified to is whether you're familiar with the
19 development patterns in the area.

20 And then my question, which gave rise to the
21 objections, was whether or not you were familiar with the
22 traffic patterns in the areas of the road segments that are
23 proposed for paving?

24 MR. THOLEN: Right. No. I -- it's more of -- my
25 testimony is more of a general statement regarding paved

1 roads versus dirt roads in my experience. My experience has
2 been really in Northern California.

3 MR. CARROLL: Okay. Thank you. Not further
4 questions. Thank you very much.

5 HEARING OFFICER CELLI: Thank you. Staff, cross-
6 examination of -- is Mr. Tholen or Dr. Tholen, Mr. Tholen?

7 MR. THOLEN: Mister.

8 MS. DE CARLO: Since Mr. Carroll took all my
9 questions I have nothing to add.

10 HEARING OFFICER CELLI: Okay. Any redirect by Ms.
11 Belenky?

12 MS. BELENKY: No. I don't believe so.

13 HEARING OFFICER CELLI: Okay. Thank you. Thank
14 you very much. Thank you, Mr. Tholen.

15 So can we --

16 MR. THOLEN: You're welcome.

17 HEARING OFFICER CELLI: Can we dismiss this
18 witness, Ms. Belenky?

19 MS. BELENKY: Yes, I believe we can. Thank you.

20 HEARING OFFICER CELLI: Is he needed on any other
21 subject areas, Applicant or Staff, as long as we have him?

22 MS. DE CARLO: No. I believe he's addressed all
23 the issue areas that he covered.

24 HEARING OFFICER CELLI: Okay. Thank you very
25 much.

1 MR. THOLEN: Thank you.

2 HEARING OFFICER CELLI: I'm going to go off the
3 record for a quick second.

4 (Discussion off the record.)

5 HEARING OFFICER CELLI: That being the -- were
6 there any other witnesses, CBD, other than Mr. Tholen you
7 were calling for air quality and public health?

8 MS. BELENKY: No. That's our only witness for
9 today's hearing.

10 HEARING OFFICER CELLI: Okay.

11 MS. BELENKY: Thank you.

12 HEARING OFFICER CELLI: Ms. Williams, the way I'd
13 like to proceed is applicant and staff, CBD, DCAP. That's
14 the way I want to go. I had to take him out of order in
15 order to preserve his testimony before he -- he was
16 unavailable. I'm now -- so don't take it personally, but
17 I'm now going to go back to staff and ask staff to -- to do
18 their direct at this time, and then we'll get back to DCAP.
19 It still needs to go if they have witnesses.

20 So with that, Staff, please.

21 MS. DE CARLO: We have three witnesses that need
22 to be sworn in.

23 HEARING OFFICER CELLI: Okay. At this time we
24 would ask the parties to stand and raise your right hand.

25 (Witnesses sworn.)

1 HEARING OFFICER CELLI: Please have a seat. And
2 from -- starting with Dr. Greenberg, let's have you state
3 and spell your name.

4 Now here's the -- the important thing, folks, we
5 have two mikes sitting there. The black one is the court
6 reporter's mike, and you have to be picked up on that mike.
7 The taller mike is the one that gets you onto the phone to
8 everybody and into the room. And so I'm going to need
9 everybody to talk into both of these. So please be
10 conscious of that. Thank you. Go ahead.

11 DR. GREENBERG: Alvin Greenberg,
12 G-r-e-e-n-b-e-r-g.

13 MR. RADIS: Steve Radis, R-a-d-i-s.

14 MR. DE SALVIO: Alan De Salvio, D-e S-a-l-v-i-o.

15 HEARING OFFICER CELLI: Please proceed.

16 MS. DE CARLO: In the interest of expediency I
17 would like to just identify what testimony the witnesses are
18 sponsoring and ask the -- the parties to stipulate to their
19 qualifications.

20 HEARING OFFICER CELLI: That -- their
21 qualifications are in the record.

22 Is there any objection to any of these witnesses
23 testifying as an expert by Applicant?

24 MR. CARROLL: No.

25 HEARING OFFICER CELLI: By CBD?

1 MS. BELENKY: No.

2 HEARING OFFICER CELLI: By DCAP?

3 MS. WILLIAMS: No.

4 HEARING OFFICER CELLI: Thank you. Then are
5 deemed experts.

6 MS. DE CARLO: Okay. Mr. De Salvio is the
7 supervising air quality engineer for the Antelope Valley Air
8 Quality Management district, and he is sponsoring the FDOC,
9 which is Staff's Exhibit 302.

10 HEARING OFFICER CELLI: Which has already been
11 received.

12 MS. DE CARLO: Yes. Mr. Radis, Steve Radis is our
13 air quality expert and he is sponsoring the air quality
14 testimony contained in a number of our exhibits previously
15 identified and entered. And Dr. Greenberg is our expert
16 witness for public health and he is sponsoring the various
17 public health testimonies and conditions of certification
18 contained in our exhibits.

19 DIRECT EXAMINATION

20 MS. DE CARLO: Mr. De Salvio, did you help prepare
21 the final determination of compliance for the Palmdale
22 Hybrid Power Project, Exhibit 302?

23 MR. DE SALVIO: I did.

24 MS. DE CARLO: And does this document represent
25 your best professional judgment?

1 MR. DE SALVIO: It does.

2 MS. DE CARLO: Can you please describe the
3 attainment status of PM10 and PM2.5 in the district?

4 MR. DE SALVIO: It's been covered so much. I'm
5 going to -- I'm going to ask Mr. Radis to open up the FSA,
6 because I believe it's accurate in the FSA.

7 HEARING OFFICER CELLI: But that's non-responsive.
8 The question was: What -- what was the attainment status of
9 PM10 and PM2.5, if I have that correct?

10 MR. DE SALVIO: That's correct.

11 HEARING OFFICER CELLI: Okay. Do you know the
12 answer to that question?

13 MR. DE SALVIO: It's attainment for PM2.5 and
14 state nonattainment for PM10.

15 MS. DE CARLO: Mr. Radis, can you please describe
16 and explain the air quality corrections submitted in Exhibit
17 307?

18 MR. RADIS: Yes. The background used in the
19 original analysis were the maximum PM2.5 values for the past
20 five years. On May 23rd, 2010 the EPA issued further
21 guidance on how to calculate and represent a PM2.5
22 background as the three-year average of 98 percentile
23 observed values. So we've since updated those values in the
24 document.

25 MS. DE CARLO: And is it your testimony that the

1 proposed project will not cause an exceedance of PM2.5?

2 MR. RADIS: That's correct.

3 MS. DE CARLO: The intervenors have raised
4 concerns about allowing the applicant to pave roads for the
5 purpose of generating emission reduction credits to offset
6 the project's emissions.

7 Can you please explain why road paving is an
8 acceptable method for mitigating this project's emission?

9 MR. RADIS: Road paving is a method that's been
10 used on other projects and approved by the EPA in the past.
11 It's quantifiable, it's enforceable, and it does represent a
12 valid method for offsetting PM10 emissions.

13 MS. DE CARLO: Can you please address CBD's
14 argument that road paving will actually result in an
15 increase of PM2.5?

16 MR. RADIS: We actually disagree with that
17 statement on a number of grounds. One is that the roads
18 that are proposed for paving are predominantly already fully
19 developed residential roads. The diversion of traffic on to
20 newly paved roads would simply divert that traffic off of
21 existing dirt roads, which would actually increase the
22 benefit of that road paving. We don't believe that given
23 the fact that these areas are pretty much fully built out
24 that it would induce any kind of growth or increase in
25 overall traffic in that area.

1 MS. DE CARLO: Did you analyze the impacts from
2 emissions resulting from the paving of the roads and their
3 maintenance?

4 MR. RADIS: We qualitatively evaluated the
5 construction emissions and have mitigation in the -- in
6 the -- I'm sorry -- the FSA covering construction emissions,
7 best management practices, as well as the applicant has
8 actually in some way (inaudible) the facility, so we believe
9 that that's adequately mitigated.

10 In addition, I think the issue came up of
11 maintenance of paved roads. Unpaved roads are maintained,
12 as well, so it's not like there's no maintenance emissions
13 associated with that. This is an ongoing issue that comes
14 up with both paved and unpaved roads.

15 MS. DE CARLO: DCAP has raised concerns about
16 allowing ERCs from the San Joaquin Valley Air Pollution
17 Control District to be used for this project. Can you
18 please explain why you concluded that such ERCs would be
19 acceptable to mitigate the project's impacts?

20 MR. RADIS: Based on long-range pollutant
21 transport studies conducted by the California Resources
22 Board we found that the San Joaquin Valley upwind impacts
23 the air quality in the Mojave Desert air basin. It's an
24 upwind basin with a more severe classification than Antelope
25 Valley. It's allowed by the district's rules, and it's been

1 done in the past. We advocate that given the distance that
2 the applicant used a higher ratio than required under
3 existing rules and regulations. This will add benefit that
4 we can demonstrate that air quality benefit.

5 MS. DE CARLO: And can you please discuss the
6 basis for allowing the inter-pollutant trading for PM10?

7 MR. RADIS: Inter-pollutant trading for PM10 is
8 something that's allowed by most districts. It's done
9 fairly frequently. I know that the Energy Commission over
10 the past ten years has approved at least 13 projects that
11 allowed inter-pollutant trading of PM10 and PM10 precursors.
12 And those projects were located in eight different air
13 pollution or air quality management districts which
14 encompass the majority of the population in California.

15 MS. DE CARLO: Dr. Greenberg, can you please
16 briefly summarize your conclusions regarding the project's
17 potential to result in impacts to public health?

18 DR. GREENBERG: Certainly. As soon as I get these
19 microphones closer. I'd like to go over two issues very
20 briefly. One is just a quick summary of findings. And
21 number two, talking about the cumulative impacts.

22 Staff conducts an independent analysis of public
23 health impacts. We look at applicant's human health risk
24 assessment that addresses the toxic air contaminants which
25 in EPA parlance are HAPs, hazardous air pollutants. In

1 Cal/EPA parlaments those are TACs, toxic air contaminants.
2 And we want to make sure that their health risk assessment
3 is both transparent and verifiable. So I conduct my own
4 health risk assessment.

5 I looked at several sources, including the two
6 combustion turbines, the diesel emergency generator which
7 has to be tested by law and, therefore, it will emit diesel
8 particulate matter, a known carcinogen and toxic air
9 contaminant, the diesel emergency fire water pump, and again
10 this has to be tested by law periodically, so there are
11 emissions, regardless of whether it's used to fight a fire,
12 the auxiliary boiler, the heat transfer fluid heater to
13 maintain the heat transfer fluid in a fluid state when it
14 gets below 24 degrees Fahrenheit on these desert nights,
15 sometimes days, and the ten cell cooling tower.

16 Now in addition to that I also assessed the
17 impacts of using diesel fueled vehicles for mirror washing.
18 So these are the vehicles that will drive up and down the
19 solar rays and keep the -- the dust and dirt off the
20 mirrors, and use that as an area source.

21 If you look on page 4.7-18 of the final staff
22 assessment, that's Table Public Health 5, you'll see the
23 results of the health risk assessment. And at the point of
24 maximum impact, which is about 1.7 miles northeast of the
25 facility, you'll see a risk, a cancer risk of .07 in a

1 million. The regulatory level of significance is ten in one
2 million. So .7 is very much lower than the regulatory
3 significance. That value, however, does not include the
4 emissions of diesel particulate matter from those mirror
5 washing vehicles, which you can find later on in the -- in
6 the staff assessment, where I determined that the maximum
7 impact there would be 2.9 in a million, but in a different
8 location. It would be at the western fence line, as opposed
9 to 1.7 miles northeast of the facility.

10 Now this is important when you look at the
11 cumulative impact analysis, which can be found on page 4.7-
12 25. I did not conduct the quantitative cumulative impact
13 analysis of -- of adding in or assessing other sources in
14 the area to that from the proposed project for a very simple
15 reason. In my years, 30-plus years conducting over 100 --
16 I've lost track of how many human health risk assessment
17 I've actually conducted -- I have found, and this is
18 consistent with what various air districts have found around
19 the state, is that the sources would have to be very close
20 together, located physically distant, no more than a block
21 or two, for there to be a cumulative risk that could be such
22 that the -- the plumes merge to create a significant
23 cumulative risk where individual cumulative risks would be
24 less than significant. So they have to be very close. And
25 if you get a source even three or four blocks away,

1 certainly a mile or two miles away, the plumes are not going
2 to mix to create a significant risk where the individual
3 source risks are insignificant.

4 But if you look at the cumulative impacts analysis
5 I stated that the risk of the maximum cancer risk for
6 operations emissions from the proposed power plant as
7 calculated by staff, the point of maximum impact is 3.6 in a
8 million. It's a little bit misleading because, as I
9 mentioned, that's taking the impacts from the stationary
10 sources which is, again, 1.7 miles northeast of the facility
11 and adding that to the maximum cancer risk from the diesel
12 particulate emissions from the mirror washing trucks, which
13 is at the western fence line; two separate locations.

14 Quite frankly, I really shouldn't have written
15 that, and that's why I'm trying to clarify it. It's a gross
16 overestimation of the cumulative risk. The cumulative risk
17 from the project itself is much less than that. In fact, if
18 you look at the point of the maximum receptor, this is a
19 residential receptor, the cumulative risk within the project
20 itself from both stationary and mobile sources is 0.23 in
21 one million, greater than an order or magnitude less than
22 what I've stated here.

23 I have found that when you have that low a risk
24 that even if you had multiple other sources in the area
25 there would not be a cumulative risk from all those other

1 multiple sources that would be above a level of significance
2 when the project is added to it. Simply put, I did not
3 conduct a quantitative assessment of cumulative risk because
4 I've done that already in the past for other projects.
5 Probably the most comprehensive study that I conducted for
6 the Energy Commission was on the SFERP project located in
7 San Francisco where I looked at 50 sources within a mile
8 distance and there still was no overlap from the proposed
9 power plant to all these 49 other sources in the southeast
10 quadrant of the City and County of San Francisco.

11 So we -- we don't, and I didn't at this time,
12 usually do a quantitative assessment. But I did want to
13 clarify that qualitatively I do not expect there to be any
14 cumulative impact as a result of the building of this
15 facility.

16 Now I could go on, but I just wanted to point out
17 that particular issue on -- on the cumulative side and allow
18 for cross-examination, questions on the other issues that I
19 know have been raised already today.

20 MS. DE CARLO: Panel, does that conclude your
21 testimony?

22 DR. GREENBERG: Yes.

23 MR. RADIS: Yes.

24 MS. DE CARLO: The witnesses are available for
25 cross.

1 HEARING OFFICER CELLI: Thank you. Ms. Belenky,
2 you may cross.

3 MS. BELENKY: Thank you. I had just a few
4 questions for staff. The -- in the FSA staff concluded that
5 a new rule would be needed by the Antelope Valley Air
6 Quality Management District to allow for road paving. And
7 then staff has changed that, as I understand it, in one of
8 their new filings.

9 My question is: What is the basis for that
10 change?

11 MS. DE CARLO: I'm going to object to that.
12 That's really a legal matter on whether or not the -- the
13 district has to do a rule making pursuant to their own
14 regulations.

15 HEARING OFFICER CELLI: Well, let me ask -- let --
16 let me first of all say, Jeremiah -- can we go off the
17 record for a second?

18 (Discussion off the record.)

19 HEARING OFFICER CELLI: Let's go back on the
20 record. But it appears that I am call-in user number five,
21 because as I'm speaking call-in user number five icon shows
22 activity, but Ken Celli does not show activity. So it looks
23 like we're call-in user number five. So I'm sorry, I may
24 have lost track.

25 But first of all, when we have these panels,

1 rather than direct questions to anyone in particular the
2 person who knows the -- the answer best should be the person
3 who should answer the question, and you know what your
4 expertise is. So please just jump in there if you know.

5 The question as asked had to do with a change.
6 And I think it was a reasonable question to let whichever
7 expert explain why there was a change from one iteration of
8 the FSA to some subsequent exhibit. So that, I think, was a
9 reasonable question. Let's -- let's hear that answer.

10 MR. RADIS: Basically, what staff is looking for
11 are 137 tons per year of PM10 offsets. The applicant has
12 proposed road paving. We think it's a little vague in the
13 rules and regulations as to whether or not a new rule is
14 required. It has been on the district's rule making
15 calendar. They insist that a rule is not required. And
16 ultimately all we're looking for are 137 tons per year of
17 PM10 offsets. If they can achieve that through something
18 besides road paving or if the district will bank those
19 emissions without any rule then we would accept that.

20 HEARING OFFICER CELLI: Okay. But my -- I was
21 sort of left with a question. What -- was the change? Was
22 there some change that was described in the record?

23

24 MS. DE CARLO: Our initial iteration of AQSC-19
25 required prior to providing us with their road paving plan

1 that a rule actually be in place. We discussed it amongst
2 ourselves, and as Mr. Radis testified determined that it
3 really wasn't our -- our purview to determine whether or not
4 a rule making was required, and that ultimately all that we
5 wanted to see was the banked ERCs. So then we revised
6 the -- the condition of certification to reflect that.

7 HEARING OFFICER CELLI: Thank you. I hope I
8 didn't take you somewhere you didn't want to go, Ms.
9 Belenky. Go ahead with your next question.

10 MS. BELENKY: No, that's fine. I don't -- I will
11 look at the -- the exact wording, but I don't believe it
12 uses the term banked ERC.

13 MS. DE CARLO: It does.

14 MS. BELENKY: Okay. I will double check that.

15 When you -- in your just -- your just -- your
16 testimony just now you stated that road paving was used in
17 other projects. Was it used in another project in this
18 district; is that your testimony? In this --

19 MR. RADIS: Not in this district.

20 MS. BELENKY: Not in this district. So to your
21 knowledge road paving has not been used as an ERC in the
22 Antelope Valley Air Quality Management District; is that
23 correct?

24 MR. RADIS: Not to my knowledge.

25 MS. BELENKY: Thank you. And I would also ask of

1 the other panel member who is on the district -- who is from
2 the district.

3 MR. DE SALVIO: That is correct. No other road
4 paving -- road paving is not going to be used to date to
5 generate ERCs in the Antelope Valley AQMD.

6 MS. BELENKY: Thank you. On the inter-pollutant
7 trading issue, which staff provided -- so I just want to
8 make sure that people understand what we're talking about --
9 staff changed -- I'm sorry. I'm having trouble finding
10 where it is in mine. But -- but staff changed the
11 conditions to allow for inter-pollutant trading, also as an
12 ERC, however, for the first time I think in your prehearing
13 conference statement. And I am -- would like to know from
14 staff's witnesses where your CEQA review is that would match
15 that new condition.

16 Have you done any CEQA review of inter-pollutant
17 trading for offsets for this project?

18 MR. RADIS: No. There's been no additional CEQA
19 review because this is part of the district's rules and
20 regulations, and these would come from existing offsets that
21 have already been banked.

22 MS. BELENKY: So you're stating that this is the
23 Antelope Valley District's rule. My understanding was you
24 were relying on the San Joaquin Valley's rule.

25 MR. RADIS: No. We -- we simply used the San

1 Joaquin Valley rules as a reference in terms of how they do
2 their inter-pollutant trading. The Antelope Valley has
3 their own rules regarding inter-pollutant trading, as well.

4 MS. BELENKY: Okay. I just want to clarify. I'm
5 sorry. But in the FSA there is a discussion of inter-basin
6 transfers as it relates to ozone precursors and other
7 issues. There is no discussion that I could find that
8 relates to any sort of inter-pollutant trading or inter-
9 basin transfers that relates to PM10 or PM2.5; is that
10 correct?

11 MR. RADIS: That's correct. We did not look at
12 specifically inter-pollutant inter-basin trading. We simply
13 noted the overall for transport. And if you have -- if you
14 have ozone precursors transported from San Joaquin Valley
15 you're also going to have PM10, PM2.5 and precursor
16 transport, as well.

17 MS. BELENKY: And again, not to belabor the point,
18 your saying that you would have these and yet you did not do
19 any specific impacts analysis on that issue, is that
20 correct, or modeling for that issue --

21 MR. RADIS: No.

22 MS. BELENKY: -- here?

23 MR. RADIS: We did not.

24 MS. BELENKY: Thank you. Okay. I just wanted to
25 make sure.

1 Have you reviewed the EPA's new Prevention of
2 Significant Deterioration for Particular Matter 2.5?

3 MR. RADIS: I've scanned over it.

4 MS. BELENKY: Would you agree that this -- but
5 perhaps is a legal question -- would you agree that the FSA
6 does not actually discuss the increments rule?

7 MR. RADIS: It does not.

8 MS. BELENKY: Thank you. I think that might be
9 all of my questions.

10 HEARING OFFICER CELLI: Thank you, Ms. Belenky.
11 Next is Desert Citizens Against Pollution. Ms. Williams?

12 MS. DE CARLO: Do I have the opportunity to
13 redirect, or are we going to handle all that --

14 HEARING OFFICER CELLI: No. I'm going around.

15 MS. DE CARLO: Okay.

16 HEARING OFFICER CELLI: And then I would have you
17 redirect, if necessary.

18 MS. DE CARLO: Thank you.

19 HEARING OFFICER CELLI: And then they would be
20 able to do cross on your redirect, and then we'll go around
21 and around again.

22 Ms. Williams, please.

23 MS. WILLIAMS: Okay. I have -- I'm going to warn
24 you, Hearing Officer, I'm going to warn you, I have a number
25 of questions of these witnesses.

1 HEARING OFFICER CELLI: Just -- my request is that
2 you get through them --

3 MS. WILLIAMS: Pardon me?

4 HEARING OFFICER CELLI: -- efficiently.

5 CROSS-EXAMINATION

6 MS. WILLIAMS: So let me try to organize them for
7 each.

8 So Dr. Greenberg, you did the public health
9 analysis and assessment and the health risk assessment,
10 specifically on toxic air contaminants; is that correct?

11 DR. GREENBERG: That is correct.

12 MS. WILLIAMS: Dr. Greenberg, did you do any of
13 the analysis at all on the public health impacts from the
14 criteria pollutants?

15 DR. GREENBERG: No, I did not. I'd be happy to
16 answer some questions if you might have any.

17 MS. WILLIAMS: Okay. So I just wanted to clarify,
18 then that would be mostly that Mr. Radis did that on the
19 criteria pollutants?

20 MR. RADIS: I think the correct assessment would
21 be that we did the air quality modeling, the applicant's
22 modeling, and made determinations as to whether or not the
23 project would comply with the air quality standards.

24 HEARING OFFICER CELLI: And for the record, that
25 was Mr. Radis speaking. And since -- I forgot; since we

1 have three of you, there are people on the phone that can't
2 see you. So every time you go to speak I just want you to
3 say your name and then speak, please.

4 Go ahead, Ms. Williams.

5 MS. WILLIAMS: And were any of you involved in the
6 alternatives analysis, or is that a separate set of
7 witnesses?

8 DR. GREENBERG: Yes. Alvin Greenberg. Yes.

9 MS. WILLIAMS: Okay. So if I have questions about
10 the alternatives analysis you'd be the person to ask?

11 DR. GREENBERG: Only to -- Alvin Greenberg. Only
12 to the extent that you're asking questions on public health.
13 Hazardous materials are worker safety, fire protection
14 regarding the alternatives.

15 MS. WILLIAMS: Okay. Great. And then also, what
16 about the cumulative impact analysis? Are you the -- Dr.
17 Greenberg, are you the correct person to address those
18 questions to?

19 DR. GREENBERG: Alvin Greenberg. Again, no.

20 MS. WILLIAMS: Then who would be?

21 DR. GREENBERG: Are you talking about public
22 health cumulative or --

23 MS. WILLIAMS: Yes.

24 HEARING OFFICER CELLI: I think that --

25 MS. WILLIAMS: Yes.

1 HEARING OFFICER CELLI: -- if there was any
2 cumulative analysis that you did on any of the sections that
3 you wrote you would be able to testify to that.

4 DR. GREENBERG: Alvin Greenberg. Yes, the public
5 health cumulative analysis.

6 MS. WILLIAMS: Okay. Okay. Dr. Greenberg, are
7 you familiar at all with the Green Chemistry Initiative that
8 the governor -- that the governor has?

9 DR. GREENBERG: Greenberg here again. Yes.

10 MS. WILLIAMS: Great. And do you know that the --
11 the statutory underpinning of that is two separate bills,
12 and one of those bills deals with identifying what hazard
13 traits are?

14 DR. GREENBERG: Yes.

15 Hearing Officer Celli, can I just assume that
16 everybody knows it's me talking now or not?

17 HEARING OFFICER CELLI: No. I'd actually like you
18 each time to state your name so that we have no question
19 about it for the call-ins.

20 DR. GREENBERG: Greenberg again. Yes.

21 MS. WILLIAMS: I'm very sorry. I know that's
22 awkward.

23 And you -- so you're probably familiar with the
24 fact that the Department of Toxic Substance Control as the
25 lead agency implementing -- or actually, the Office of

1 Environmental Health Hazard Assessment as the lead agency
2 implementing SB-509 actually put out recently, in the
3 last -- the end of last year, a list of hazard traits?

4 DR. GREENBERG: Greenberg. Yes.

5 MS. WILLIAMS: Okay. As you probably well know
6 then, since you are a toxicologist, right; is that your
7 background?

8 DR. GREENBERG: Greenberg. Yes.

9 MS. WILLIAMS: Okay.

10 DR. GREENBERG: Please, Mr. Celli.

11 HEARING OFFICER CELLI: You can -- you can -- just
12 for now until we switch --

13 MS. WILLIAMS: Yeah. Until we switch.

14 HEARING OFFICER CELLI: -- personnel.

15 MS. WILLIAMS: Until we -- I have a number -- I
16 have a number of questions for Mr. Greenberg. So how about
17 we just say that when we switch I'll specifically remind him
18 by saying now, Mr. Radis, I have questions for you?

19 HEARING OFFICER CELLI: Perfect.

20 MS. WILLIAMS: So --

21 HEARING OFFICER CELLI: Let's do that.

22 MS. WILLIAMS: So --

23 HEARING OFFICER CELLI: Thank you.

24 MS. WILLIAMS: -- as you well know that the -- the
25 list of hazardous air pollutants that's relied upon in the

1 Federal Clean Air Act were put together when the act was
2 amended in 1990, and that that list of hazardous air
3 pollutants became the basic list for California's TAC list,
4 the toxic air contaminants, and then California added more
5 toxic chemicals to their list so that there's a list of
6 HAPs, that's a federal list, and a list of TACs, which is
7 the state list, and all HAPs are TACs, and all TACs are not
8 HAPs?

9 DR. GREENBERG: Yes. That's partially correct.
10 California, and by virtue of San Luis County's Bill 1807 did
11 not just mimic the HAPs. The Office of Environmental Health
12 Hazard Assessment conducts independent review and evaluation
13 of each toxic air contaminant. And so it can be more
14 stringent, certainly at least as stringent as county -- US
15 EPA's review when it comes to establishing a toxic air
16 contaminant. The cancer potency factor for those substances
17 which are carcinogenic or a REL, a reference exposure level
18 for the noncarcinogenic effects.

19 MS. WILLIAMS: Correct. So in many cases the RELs
20 and the cancer potency slopes are more protected for the
21 TACs than for the HAPs?

22 DR. GREENBERG: Yes. I would agree with that.

23 MS. WILLIAMS: Great. So you probably also well
24 know that there is very incomplete data on the toxicity of
25 California's TACs, meaning, say for example the ability of a

1 chemical that's a TAC to disrupt the endocrine system. We
2 know very little about the 200-plus TACs' ability to disrupt
3 the endocrine system.

4 HEARING OFFICER CELLI: Is that a question?

5 DR. GREENBERG: I would have to disagree with you
6 that we know very little. I think we -- we know a lot about
7 the TACs. We probably know very little about many of the
8 thousands of other substances used in industry today.

9 But I thought your question was about the Green
10 Chemistry Initiative that both OEHHA and DTSC are working
11 on. And perhaps we ought to stick to that for the moment,
12 please.

13 MS. WILLIAMS: Actually, this is part of the Green
14 Chemistry Initiative. There were two bills past, AB-1879
15 and SB-509. And SB-509 specifically was told to generate a
16 list of hazard traits.

17 And my point and the -- the point of my question
18 is that for the over 200-plus TACs we actually have very
19 little information on these hazard traits.

20 MS. DE CARLO: Objection. A lot of these
21 questions are -- are really phrased in the form of
22 testimony.

23 HEARING OFFICER CELLI: Right. I -- let me make
24 that clear, Ms. Williams. You -- by making a declarative
25 statement it sounds like you're testifying. And what I need

1 you to do is actually ask this witness a question or phrase
2 your -- your statement in a way that ends up being a
3 question, like "right" or "is that so" or something to that
4 effect.

5 MS. WILLIAMS: Okay. So let me try this then.

6 So, Dr. Greenberg, do you know of any of the 200-
7 plus TACs that have been assayed for their epigenetic
8 toxicity?

9 DR. GREENBERG: Yes. But I can not state which
10 ones right off the top of my head. My -- my memory is
11 fading since the last cabernet I had.

12 MS. WILLIAMS: So -- so what -- so then --

13 HEARING OFFICER CELLI: I'm sorry, I have to ask
14 this.

15 Mr. Greenberg, when was the last time you had a
16 cabernet?

17 DR. GREENBERG: Last night at dinner.

18 HEARING OFFICER CELLI: Okay. So at least if we
19 can trust the calculations by the Department of Motor
20 Vehicles the -- the wine has respired off at this point and
21 you're sober.

22 DR. GREENBERG: Yes.

23 HEARING OFFICER CELLI: So there you go. I just
24 had to make that clear.

25 MS. WILLIAMS: Okay. Great.

1 HEARING OFFICER CELLI: Go ahead.

2 MS. WILLIAMS: So, Dr. Greenberg, for endocrine
3 disruption, do you know how many of the TACs have been
4 assessed for their ability to disrupt the endocrine system?

5 DR. GREENBERG: No, I do not.

6 MS. WILLIAMS: Okay. Do you know how many of them
7 have been assessed for their ability for -- to -- that are
8 genotoxic?

9 DR. GREENBERG: No, I do not. I do not have in my
10 memory bank the numbers of -- of TACs that have been
11 assessed for any particular type of toxicological input. If
12 you ask me about a particular chemical I certainly might
13 remember what it's been assessed for. But I -- I still want
14 to get to the Green Chemistry Initiative.

15 MS. WILLIAMS: Well, this is the -- this is the
16 Green Chemistry hazard traits.

17 DR. GREENBERG: Well, my -- it's my understanding
18 that the Green Chemistry Initiative --

19 HEARING OFFICER CELLI: Actually, there's no --
20 there's no question pending. And the questioner, which is
21 Ms. Williams, frames the question.

22 MS. WILLIAMS: Yeah. So I just want to say --

23 DR. GREENBERG: I apologize.

24 MS. WILLIAMS: -- this -- this document that I am
25 looking at here is called the Green Chemistry Hazard Traits.

1 And what I'm asking you is about these hazard traits and
2 whether the TACs have been assessed for these hazard trait
3 endpoints. Okay. And your -- your last statement to me was
4 if I asked you about a specific TAC you could tell me which
5 of these endpoints had been assessed for.

6 So let's take formaldehyde.

7 DR. GREENBERG: I'm sorry. That mischaracterizes
8 my testimony. I said I might be able to.

9 MS. WILLIAMS: Okay.

10 DR. GREENBERG: I don't memorize the toxicity of
11 every single chemical or -- or even the 200 TACs. That's
12 why we have databases.

13 MS. WILLIAMS: Great. Okay.

14 DR. GREENBERG: So please forgive me and -- and
15 I'll do the best I can.

16 MS. WILLIAMS: Okay. Can -- can you tell me any
17 TAC that you believe has been assessed for all of these
18 Green Chemistry hazard traits?

19 DR. GREENBERG: No, because I have not spent that
20 much time on the Green Chemistry Initiative because it's not
21 relevant to the issue of emissions from the stationary and
22 mobile sources.

23 MS. WILLIAMS: Okay. Are you familiar at all what
24 these hazard traits are?

25 DR. GREENBERG: Yes, I am.

1 MS. WILLIAMS: So would you agree or what -- what
2 would be -- what would you agree to? Would you agree that
3 in your -- in your expert opinion as a toxicologist that for
4 most of these hazard traits that we have the endpoint data
5 for toxicity for the suite of HAPs?

6 DR. GREENBERG: If I may refer you to the final
7 staff assessment where I do list hazard traits, in other
8 words, toxicological endpoints. And I'm just looking for my
9 copy here to give you the correct table.

10 MS. WILLIAMS: Is that going to be in Section 4.7?

11 DR. GREENBERG: Yes. Yes, it is. It would be
12 Public Health Table 2 on page 4.7-14. And those are the
13 toxic air contaminants that would be emitted from this
14 facility should it be permitted and built. And it indicates
15 there that there are certain inhalation and non -- and oral,
16 cancer and non-cancer toxicological endpoints. But
17 furthermore, it would be my testimony that the Office of
18 Environmental Health Hazard Assessment and/or the US EPA has
19 developed a fairly robust set of toxicological information
20 for those substances that we're -- that we're talking about
21 on that page.

22 I will also admit to you that it's not 100 percent
23 complete for every one of those. They're -- I will admit to
24 you that we only can do what -- what -- what science has
25 already provided to us. It is not the intent nor the

1 purview of the California Energy Commission staff to either
2 supplant or supplement the work of a sister agency, and --
3 and that being the Office of Environmental Health Hazard
4 Assessment. We do rely on their expertise to give us the
5 right toxicological potencies and endpoints.

6 So the extent that science has done so, that's
7 what we rely on in conducting a health risk assessment.

8 MS. WILLIAMS: Okay. So what -- I will tread
9 carefully here because I'm not sure the difference -- you
10 know, statements or questions. But the National Academy of
11 Sciences has taken a look at the HAPs, not the TACs but the
12 HAPs, and there are 188 HAPs, and there's like 230 TACs.
13 And for those HAPs they have stated that much of the
14 information on toxicology is missing and -- and has not been
15 filled in over the last 20 years since the HAPs were listed
16 in 1990.

17 And the SB-509 was an attempt to form a basic
18 list, actually in concordance with recommendations of the
19 National Academy of Sciences to try to get a better
20 understanding of what information is missing and what
21 information is needed. And interestingly enough one of the
22 things that the National Academy of Sciences opined on a
23 great deal was the fact that information on neurotoxicity
24 and respiratory impacts for many of the HAPs and TACs are
25 simply not available.

1 And so the reason I am -- am saying this and what
2 I'm leading up to is that the -- the staff has made
3 conclusion based on a health risk assessment that is missing
4 more data than it has --

5 MS. DE CARLO: Objection.

6 MS. WILLIAMS: -- that --

7 MS. DE CARLO: Is there --

8 MS. WILLIAMS: -- the emissions are safe --

9 MS. DE CARLO: -- a question?

10 HEARING OFFICER CELLI: All right. Let me just --
11 you're -- you're getting to a question; right, Ms. Williams?

12 MS. WILLIAMS: Right.

13 HEARING OFFICER CELLI: Let's let her get to the
14 question.

15 MS. WILLIAMS: Yes. I actually did just get to
16 the question for -- that's okay. I understand.

17 But the question is -- the question is: How in
18 the absence of much of the data which the National Academy
19 of Sciences recommends we have in order to say that these
20 emissions are safe can your health risk assessment conclude
21 that the emissions from this plant are safe?

22 DR. GREENBERG: Well, I'd be happy to answer that.
23 And first of all, let's just say that I have never said or
24 used the word safe. Toxicologists don't use the word safe.
25 We use the term significant risk, below significant risk, no

1 hazard, or there is a hazard. And -- and that's very
2 important because I certainly don't disagree with the
3 National Academy of Sciences that there is much
4 toxicological information lacking on the hazardous air
5 pollutants.

6 However, the National Academy of Sciences
7 addresses hazardous air pollutants nationwide, not just
8 those in California and not just those from the -- the
9 natural gas-fired power plant and a solar power plant that
10 uses heat transfer fluid. So many of the broad statements
11 that you've made I agree with, but they don't apply to the
12 specific sources that we're talking about here.

13 The toxic air contaminants that could potentially
14 be emitted in varying small quantities from this facility do
15 have a significant amount of toxicological information.
16 Again, California's Office of Environmental Health Hazard
17 Assessment has written more information on the toxic air
18 contaminants than the US EPA has written on their HAPs. And
19 you've correctly pointed out we have more TACs than the EPA
20 has gotten around to with HAPs.

21 What I am talking about when it comes to safety is
22 not that something is safe or not, whether or not the
23 emissions would pose a significant risk to public health.
24 That's not zero risk, but rather a significant risk. There
25 is enough data and there is enough information as we know it

1 today -- obviously, I can't assess something unless we have
2 information on it -- and the information that is missing, we
3 don't know what it will show. So I can only conduct an
4 assessment based upon the current scientific information.
5 That current scientific information allows me to come to the
6 conclusion using the standard, very health-protective
7 methodologies that, quite frankly, overestimated the risk
8 rather than underestimated the risk as we know it today,
9 shows that this facility would not pose the significant risk
10 to public health from the emissions of toxic air
11 contaminants.

12 MS. WILLIAMS: So on this table one of the -- one
13 of the -- the TACs is a di(2-ethylhexyl)phthalate. And I
14 see on here that you have assessed its risk for cancer. But
15 it is not only a carcinogen; right? It also has other toxic
16 endpoints. Do you know what those are?

17 MS. DE CARLO: For purposes of the record could we
18 clarify exactly what table Ms. Williams is talking about?

19 MS. WILLIAMS: I'm referencing the table that he
20 referenced to us, which is Public Health, Table 4 on 4.7-14.

21 HEARING OFFICER CELLI: Is that Table 4 or Table
22 2?

23 DR. GREENBERG: Table 2. Ms. Williams, I --

24 MS. WILLIAMS: Public Health, Table 4, emission
25 rates used in the cancer risk and hazard analysis conducted

1 by staff.

2 HEARING OFFICER CELLI: Okay. At that same page.
3 It's 4.7-14.

4 DR. GREENBERG: And this is 4.7-17 is the Public
5 Health, Table 4.

6 And what compound are you referring to in Table 4,
7 please?

8 MS. WILLIAMS: Di(2-ethylhexyl)phthalate.

9 DR. GREENBERG: Okay. I see that.

10 MS. WILLIAMS: So did you just look at the
11 carcinogenicity of the DEHP or did you look at it's other
12 toxic endpoints, as well, in your calculations?

13 DR. GREENBERG: Both. And as the table states,
14 emission rates used in the cancer risk and hazard analysis
15 conducted by staff. The hazard analysis is for
16 noncarcinogenic effects.

17 MS. WILLIAMS: Great. And so can you -- can you
18 point to me in the FSA where that hazard analysis is?

19 DR. GREENBERG: No. It's not in there; the
20 results are. In other words, what we did, here are the
21 emission rates, but the actual calculations are not in the
22 final staff assessment.

23 MS. WILLIAMS: Can you tell me for di(2-
24 ethylhexyl)phthalate what toxic endpoints you assessed?

25 DR. GREENBERG: The most sensitive one that the

1 California Office of Environmental Health Hazard Assessment
2 has chosen, and with a suitable safety factor to ensure that
3 the risks -- or, I'm sorry, that the hazard is not
4 underestimated.

5 MS. WILLIAMS: And that would be?

6 DR. GREENBERG: I'm sorry, Ms. Williams, it's the
7 same answer. I don't have --

8 MS. WILLIAMS: Okay.

9 DR. GREENBERG: -- the toxicity of 200 chemicals
10 memorized.

11 MS. WILLIAMS: Okay. Thank you.

12 DR. GREENBERG: I apologize.

13 MS. WILLIAMS: So let me -- let me just ask you
14 one more. How about trichloroethylene? You have in this
15 chart both cancer and hazard. Is -- is the answer the same
16 there, as well, with trichloroethylene? Do you know what
17 the endpoints were that were done for the hazard assessment?

18 DR. GREENBERG: That answer is the same. I just
19 don't have them all memorized.

20 MS. WILLIAMS: Okay. So the reason I'm asking the
21 questions is because the -- the hazard for trichloroethylene
22 has been now at the National Academy of Sciences for almost
23 half a decade. There's considerable controversy over what
24 its actual toxicity is.

25 MS. DE CARLO: Objection. Again, testifying.

1 HEARING OFFICER CELLI: Well, actually I think she
2 was explaining the relevance of her question.

3 MS. WILLIAMS: Yes. I'm explaining the relevance
4 of my question because --

5 MS. DE CARLO: But she's making statements.

6 HEARING OFFICER CELLI: Well, yeah, but it's not
7 testimony and she's not under oath. Let's just hear it out
8 and then we can get to her question.

9 Go ahead, Ms. Williams.

10 MS. WILLIAMS: The question -- okay. For --
11 for -- for some of these TACs the toxicity is not
12 determined. And, in fact, some of the -- some of the TACs
13 are under review by the National Academy of Sciences.
14 They're under review because there's evidence in front of
15 the National Academy of Sciences that they are much more
16 toxic than -- than the current regulatory standards. For
17 di(2-ethylhexyl)phthalate OEHHA is in a fight to list it as
18 a reproductive toxin.

19 Now, you know, I am especially concerned about
20 releasing amounts of reproductive toxins and respiratory
21 toxins and endocrine disruptors upwind from a large school
22 population. And so I am trying to elicit from Dr. Greenberg
23 exactly how he made his calculations that say these
24 emissions are safe. Okay.

25 So -- so, Dr. Greenberg -- and I know you didn't

1 say safe. You said -- I guess the proper term would
2 actually be that they meet a regulatory standard.

3 HEARING OFFICER CELLI: I believe he said
4 insignificant.

5 DR. GREENBERG: The -- the proper term that I use
6 is below a level of significance, because this is, after
7 all, a functional equivalent of CEQA.

8 MS. WILLIAMS: Okay. Below a level of
9 significance under CEQA?

10 DR. GREENBERG: Yes.

11 MS. WILLIAMS: Okay. Thank you. Was that your
12 question on trichloroethylene? May -- may I answer it now?

13 HEARING OFFICER CELLI: Well, I'm not sure there's
14 a question.

15 MS. WILLIAMS: I didn't --

16 DR. GREENBERG: Okay.

17 MS. WILLIAMS: I didn't ask a question, but I'd be
18 interested in your answer.

19 DR. GREENBERG: Well, I have to admit that, with
20 all due respect, I am having a hard time figuring out when
21 you're making an argument and when you're asking a question.

22 MS. WILLIAMS: I apologize for that.

23 DR. GREENBERG: I think you -- you have correctly
24 pointed out, once again, that the National Academy of
25 Sciences has pointed out that there is some lack of data and

1 lack of certainty over certain toxicological endpoints and
2 what the potency might be for certain chemicals.

3 For example, the US EPA Integrated Risk
4 Information Service still does not list a cancer potency
5 factor for trichloroethylene. California does. We consider
6 it to be a potential human carcinogen and we treat it as
7 such. If we were in Arizona you wouldn't see
8 trichloroethylene down there in the cancer calculation.

9 So once again, we are -- we do what we can with
10 the information that we have. I am very confident that the
11 Cal/EPA Office of Environmental Health Hazard Assessment has
12 very good toxicologists, and I rely on them to provide us
13 with those cancer potency values and the reference exposure
14 levels that take into account the many concerns that you
15 have. Not all the reference exposure levels do take into
16 account endocrine disruption. Some do, some do. Sometimes
17 the toxicological endpoint that is most sensitive that the
18 Office of Environmental Health Hazard Assessment bases their
19 reference exposure level on are actually different than
20 endocrine disruption. There are endpoints that are more
21 sensitive than endocrine disruption.

22 So just looking at that particular concern of
23 yours, if I would research this further I know I could come
24 up with a couple of -- of compounds whose toxicological
25 endpoint, the REL, is not based on endocrine disruption;

1 it's based on something more sensitive which, of course, I
2 think you understand means that to the extent that we know
3 endocrine disruption would not occur because our level of
4 no-hazard is based on a level of even more -- even lower, so
5 it's protective of that.

6 One compounder, for example, that I happen to know
7 that is not based on endocrine disruption but is based on
8 just an effect of tearing in the eyes is acrolein. And
9 acrolein is a carcinogen, and it also has other systemic
10 effects. But the endpoint that OEHHA used was tearing of
11 the eyes, which is not really a fatal endpoint, but yet they
12 thought it was significant enough to base the REL on that,
13 and then add a safety factor. Interestingly enough, they
14 raised rather than lowered the level recently for acrolein.
15 It used to be more stringent, now it's less.

16 But that gives you an idea of how one size does
17 not fit all in the world of toxicology. And while we all
18 share your concerns about endocrine disruption, we also
19 had -- I have a duty to point out that the toxic air
20 contaminants that come from a natural gas-fired power plant,
21 as opposed to what the National Academy of Sciences and the
22 USDA are worried about these coal fire plants back east
23 which emit far more toxic substances at greater levels,
24 the -- the toxic air contaminants that come from a natural
25 gas-fired power plant, one of the fugitive emissions that

1 come from a solar array using heat transferred fluid are
2 very small, and I have modeled them. And to the extent that
3 present-day science allows I have assessed their index.

4 MS. WILLIAMS: You know, so it is precisely the
5 reason that I entered into the record these Green Chemistry
6 hazard traits. Because essentially what OEHHA is saying is
7 that these are the hazard traits now that we consider to be
8 of biological relevance for chemicals that the State of
9 California is supposed to be regulating. And as of now the
10 State of California is not regulating TACs for many of these
11 hazard trades. And in some cases we do not even have the
12 assays. We don't have an assay that has been sanctified by
13 IRIS or NTP or something like that, for instance, for
14 endocrine disruption.

15 So my -- the point is that -- that I want to make
16 is I understand that the way that risk assessment is done
17 with air toxics, this plant meets that regulatory standard.
18 But it certainly can not be summarized to be able to say
19 that these releases are safe. So that's just my -- my --
20 my -- the purpose of my line of questioning, which I
21 appreciate you indulging me with.

22 HEARING OFFICER CELLI: Thank you, Ms. Williams.
23 Do you have anything further or we -- can we get on to
24 another witness yet?

25 MS. WILLIAMS: Yes. So, Mr. Radis, I was very,

1 very interested to read that -- that based on the staff's
2 modeling experience that beyond six miles there's no
3 statistically considerate concentration overlap for non-
4 reactive pollutant concentrations between two stationary
5 emission sources. That's 4.1-37.

6 So that in the cumulative impact analysis you did
7 not look at sources that were beyond six miles because you
8 felt as though emissions that were beyond six miles would
9 not impact the air, basically, in the six mile radius for
10 the plant; is that correct?

11 MR. RADIS: No. Well, six miles is correct. What
12 we're saying in that, and this is something that the
13 commission has done for quite a long time, is that the --
14 when sources are more than six miles away they don't
15 significantly contribute to the maximum downwind
16 concentration for the source that we're looking at. It
17 doesn't mean that the air that goes around that six mile
18 bubble, it doesn't mean that it's zero. All we're saying is
19 that there's no significant cumulative contribution with the
20 source that we're looking at.

21 MS. WILLIAMS: So that -- that sources that are
22 outside that six mile limit are not really having a major
23 impact on the air quality at -- at the plant and within a
24 six mile radius of it?

25 MR. RADIS: What we're saying is that the overlap

1 between the plumes from a source like the project versus a
2 cumulative source located one to six miles away you would
3 not have a point where they both contribute in a high
4 concentration, that there would be a basically de minimis
5 addition at the point of maximum impact for the project, but
6 that adding more sources beyond six miles will not change
7 that answer very much.

8 MS. WILLIAMS: So -- okay. So you're saying that
9 even if a source with say, you know, ten miles or eight
10 miles from the plant, even if it was a very big source, say
11 another power plant, that it's impact on that sort of six
12 mile donut around there, around the Palmdale Power Plant
13 would be de minimis?

14 MR. RADIS: What I'd be saying is that the
15 cumulative impact between the two sources would be de
16 minimis.

17 MS. WILLIAMS: The cumulative impact between the
18 two sources would be de minimis?

19 MR. RADIS: Right. The -- the contribution of a
20 source eight, ten miles away is not going to contribute
21 significantly to the maximum impact identified by the
22 project in the project modeling, which tends to be very
23 close to the source.

24 MS. WILLIAMS: Okay. And so can -- can you
25 clarify for me what you mean by de minimis, like in say a

1 microgram per cubic meter?

2 MR. RADIS: No. What we're saying is that
3 wouldn't change whether or not you would comply with the
4 standards or not. So the --

5 MS. WILLIAMS: What -- what standards?

6 MR. RADIS: -- the key to modeling --

7 MS. WILLIAMS: What standards?

8 MR. RADIS: The air quality standards.

9 MS. WILLIAMS: So why -- why would that be the
10 basis of the impact?

11 MR. RADIS: Whether or not the source complies
12 with the -- the air quality standards.

13 MS. WILLIAMS: Yeah. That doesn't have anything
14 to do with CEQA significance.

15 MR. RADIS: Yeah. We use the standards to
16 determine whether or not a project has significant impacts.
17 If the project exceeds a standard we call that significant.
18 If the project does not meet the standards and is
19 consistent with the rules and regulations that are
20 applicable then we would consider the impacts to be less
21 than significant.

22 MS. WILLIAMS: Well, I mean, even the Antelope
23 Valley Air Quality Management District has a significance
24 threshold that's below the standard, as do most of the
25 districts in the -- in the state.

1 MR. RADIS: Frequently I think you're looking at
2 significant emission thresholds which determine what kind of
3 analysis and regulatory requirements a source would have,
4 but not necessarily CEQA significance thresholds.

5 MS. WILLIAMS: So you're saying that a plant only
6 has a plant and its -- and the things around it within a six
7 mile range only have a cumulative impact if together they
8 exceed the applicable ambient air quality standard?

9 MR. RADIS: Yes.

10 MS. WILLIAMS: Is there something in the record to
11 support that? Is the -- the significance criteria?

12 MR. RADIS: I think we clearly laid out that the
13 compliance with the ambient air quality standards determined
14 whether or not a project is significant or not. And if
15 it's -- if it does show an exceedance of a standard it would
16 require mitigation, which in the case of ozone precursors is
17 NOx and VOC offsets and PM10 offsets.

18 MS. WILLIAMS: So -- so do you -- do you believe
19 that that complies with the -- the Cal/EPA guidance document
20 on cumulative impacts?

21 MR. RADIS: It's the way we've been doing
22 cumulative analysis for an awful long time.

23 MS. WILLIAMS: Okay. Well, that wasn't the answer
24 to the question.

25 MR. RADIS: I'm not sure if --

1 MS. WILLIAMS: There -- there is a new guidance
2 document, as you know, by the California Environmental
3 Protection Agency, which I know that the CEC is not part of
4 that. But that document is an attempt to respond to, you
5 know, sort of a longstanding effort to look at cumulative
6 impacts from an environmental perspective.

7 And are you familiar with that document at all?

8 MR. RADIS: Yes.

9 MS. WILLIAMS: Okay. So then can -- can you
10 answer for me whether you believe that this -- this way in
11 which you're doing it, in which things are only significant
12 if they basically bust through a federal law or a state law
13 that then they're -- they're not significant otherwise?

14 MR. RADIS: I'm not sure exactly which part of the
15 guidance you're specifically looking at. But when you have
16 a project where you're offsetting most of the emissions and
17 the project contributes -- and the project does not show a
18 sequence of those pollutants where you don't exceed the
19 standard, then we don't consider that significant.

20 MS. WILLIAMS: Well, that's -- that's certainly
21 not what the new guidance document says. I mean, it says
22 that you need to take a look at sensitive receptors, right,
23 and look at the -- the health status of those receptors in
24 making an assessment on whether or not these increases in
25 pollution are going to have a negative impact.

1 DR. GREENBERG: Alvin Greenberg replying. You
2 said the magic words; health.

3 MS. WILLIAMS, I have thoroughly read the OEHHA
4 proposal. And interestingly enough it states quite
5 explicitly that it is not to be used for the -- the health
6 risk assessments or for CEQA compliance activities or for
7 permitting. First of all, it's a draft, and so it is not
8 the State of California.

9 MS. WILLIAMS: Actually, it's final now.

10 DR. GREENBERG: Yeah. And second of all it's, as
11 I said, it's not meant to be used in the permitting or a
12 CEQA analysis or a human health risk assessment venue. It
13 has other utility, as stated in the guidance, but it is
14 certainly not to be used under these circumstances. There
15 was no intent at all by Cal/EPA to use it for these
16 circumstances. I could give you the page number.

17 MS. WILLIAMS: Well -- well, actually, you know,
18 it doesn't -- it doesn't have intent in it. The document
19 basically doesn't say where or where not to use it; right?
20 It basically says that, you know, what -- what is important
21 to the state as far as sensitive receptors in trying to give
22 guidance to agencies on how to do cumulative impacts
23 assessments.

24 HEARING OFFICER CELLI: I -- you know, I'm going
25 to have to cut in at this time. The document will probably

1 speak for itself. We've received it into evidence.

2 MS. WILLIAMS: No, we have not.

3 MR. CARROLL: This is a document that no one has
4 seen, which is just one of the many objections that I have
5 for this line of questioning.

6 HEARING OFFICER CELLI: No. I was -- are we
7 talking about the -- the green initiative?

8 DR. GREENBERG: No. We've moved on to another --

9 MS. WILLIAMS: We've moved on to --

10 DR. GREENBERG: -- an under-relevant document.

11 MS. WILLIAMS: We've moved on to talking about the
12 cumulative health impacts.

13 HEARING OFFICER CELLI: So --

14 MS. WILLIAMS: And we're taking a look. That
15 the -- what the staff is telling me is that they have made a
16 determination that what is a significant cumulative health
17 impact is whether or not you violated ambient air quality
18 standard.

19 HEARING OFFICER CELLI: Right. You've established
20 that.

21 MS. WILLIAMS: Right. And I'm saying why was
22 that -- why was that decision made when it -- it completely
23 contradicts what the Cal/EPA cumulative impacts document,
24 which was finalized in December and has undergone a three
25 year lengthy -- you know, I think that's not -- that's not

1 in there as far as any kind of guidance. So I'm asking them
2 to essentially defend why that's what's significant to them,
3 because that's not what would be significant under CEQA.
4 Even this air quality district has a CEQA significance
5 threshold, and that is not that you bust through the
6 standard, that you pollute the basin until you're in
7 violation of either federal or state law.

8 HEARING OFFICER CELLI: And I thought that the
9 answer was that they don't agree with that standard
10 essentially.

11 MS. DE CARLO: Yes. I believe that our witnesses
12 have testified that that standard is not relevant to their
13 analysis. And unless --

14 HEARING OFFICER CELLI: That was what Mr.
15 Greenberg was saying. So they don't agree. And this is now
16 getting into like legal argument, the kind of thing that's
17 going to show up in people's briefs. In fact, we're going
18 to have to brief this issue, but that's not your problem
19 right now.

20 Right now I just need you to get moving on with
21 some questions. It's a quarter to 2:00. We have to take
22 public comment. I'd like you to please finish up with these
23 witnesses. I need to really finish with all these witnesses
24 by all the parties -- and the applicant hasn't asked any
25 questions yet -- before we get to public comment, if you

1 could. So if you could move to your next questions. Let's
2 get moving.

3 MS. WILLIAMS: Okay. Mr. Radis -- Mr. Radis,
4 if -- if it is your testimony that the -- that there is no
5 statistically considerate concentration that sources
6 contribute that are not within six miles of the plant how is
7 it possible then to import ERCs from hundreds of miles away
8 to mitigate the plants emissions?

9 MR. RADIS: You're -- you're now talking about a
10 completely different issue. The statement that we made on
11 cumulative was strictly limited to non-reactive pollutants.
12 When you now are looking at importing ERCs from upwind
13 districts with a more significant classification in terms of
14 their ozone compliance there is a significant benefit to
15 reducing upwind ozone precursors for air quality within
16 the Antelope Valley. This is for reactive pollutants which
17 is much different, and that's usually done on a regional
18 scale and not localized non-reactive pollutants.

19 MS. WILLIAMS: So what would you consider to be a
20 localized non-reactive pollutants?

21 MR. RADIS: Localized non-reactive pollutants,
22 carbon monoxide, for example, relatively non-reactive. And
23 particulate matter, while it has -- while it has precursors
24 and is substantially comprised of ammonium nitrate and
25 ammonium sulfate it's treated for cumulative as a non-

1 reactive pollutant. NOx, volatile organic compounds, direct
2 impacts to NO2 are treated as non-reactive, even though they
3 do react and tend to lessen the impact. But then the
4 project for mitigation because of the ozone precursors does
5 look at regional mitigation.

6 MS. WILLIAMS: So to clarify then, the non-
7 reactive pollutants are CO, PM; is that both kinds?

8 MR. RADIS: Both kinds.

9 MS. WILLIAMS: Uh-huh. NOx, NO2 and VOCs?

10 MR. RADIS: And -- and sulfur dioxide.

11 MS. WILLIAMS: And sulfur dioxide.

12 MR. RADIS: And when I refer to them as non-
13 reactive, they all react. But the standards that we compare
14 them to are basically the NO2 and the SO2, carbon monoxide,
15 in particulate matter standards where their near field
16 impacts are relatively non-reactive.

17 The -- the -- the regional impacts with the
18 project associated with their NOx and VOC emissions, which
19 is why we look at regional ERCs for dealing with ozone non-
20 containment.

21 MS. WILLIAMS: Thank you. I have one last
22 question. And I know that none of you are biological
23 experts. But I noted with great interest that there is an
24 avian protection plan that will monitor the death and injury
25 of birds from collisions with facility features. And so

1 that there is a mitigation plan to look at the deaths of
2 birds that are going to be contributed by this facility.

3 MR. CARROLL: I'm going to object to what I can
4 see as leading up to an inflammatory state. The committee
5 is being very indulgent with Ms. Williams, and the applicant
6 is sitting here being very indulgent. But --

7 HEARING OFFICER CELLI: Let's -- let me do this,
8 if I may.

9 Ms. Williams, I'm going to ask that you ask one
10 more --

11 MS. WILLIAMS: This is --

12 HEARING OFFICER CELLI: -- question of --

13 MS. WILLIAMS: -- my last question.

14 HEARING OFFICER CELLI: And then we have to move.
15 So just please get to the question.

16 MS. WILLIAMS: This is my last question.

17 HEARING OFFICER CELLI: Okay.

18 MS. WILLIAMS: Actually, I stated it before I
19 started speaking it was my last question.

20 HEARING OFFICER CELLI: Thank you.

21 MS. WILLIAMS: Okay. So I am wondering if there
22 is any plan at all to take a look at baseline health effects
23 in the population downwind from the facility and to have a
24 similar monitoring plan for their health?

25 DR. GREENBERG: Alvin Greenberg. The public

1 health FSA does have a summary of some existing public
2 health concerns.

3 The second part of your question is, no, there is
4 no plan from staff to require the applicant to conduct a
5 post-operations assessment.

6 MS. WILLIAMS: Thank you.

7 HEARING OFFICER CELLI: Thank you, ma'am.

8 Now, Applicant, did you have any questions of this
9 panel?

10 MR. CARROLL: No, we do not. We thank the panel.

11 HEARING OFFICER CELLI: Redirect?

12 MS. DE CARLO: A few questions.

13 HEARING OFFICER CELLI: Is this necessary?

14 MS. DE CARLO: Just a few.

15 HEARING OFFICER CELLI: Well --

16 MS. DE CARLO: Just clarifying.

17 HEARING OFFICER CELLI: Well, you understand that
18 just these few --

19 MS. DE CARLO: I believe --

20 HEARING OFFICER CELLI: -- have to be --

21 MS. DE CARLO: I think it is necessary.

22 HEARING OFFICER CELLI: Okay. Your witnesses.

23 REDIRECT EXAMINATION

24 MS. DE CARLO: Mr. Radis, you discussed with CBD
25 the -- the additional allowance in AQSC-19 regarding inter-

1 pollutant trading. Do you believe the allowing for inter-
2 pollutant trading would result in any significant impact
3 that hasn't been mitigated?

4 MR. RADIS: No. The -- the inter-pollutant
5 trading is -- the ERCs been coming from sources that are --

6 MS. BELENKY: I'm sorry. I'm going to object
7 because there's no foundation. He said he didn't analyze
8 it. And I'm really confused.

9 MS. DE CARLO: And I'm just trying to clarify on
10 the record what -- what his testimony actually is.

11 MS. BELENKY: I asked him whether he analyzed it.

12 HEARING OFFICER CELLI: Wait, folks.

13 MS. DE CARLO: He said, no. And now you're
14 asking -- you asked --

15 HEARING OFFICER CELLI: All right.

16 MS. BELENKY: -- him to --

17 HEARING OFFICER CELLI: Everybody stop --

18 MS. BELENKY: -- provide an opinion.

19 HEARING OFFICER CELLI: This is a formal hearing.

20 MS. BELENKY: Yes.

21 HEARING OFFICER CELLI: All comments and
22 statements are directed to the committee and the committee
23 handles it. There's no cross-talk. Okay.

24 Now the objection is?

25 MS. BELENKY: The objection is that I asked him,

1 and he said he had not analyzed it, and that the question
2 goes to his opinion, which therefore would be based on what?
3 What is the basis for his opinion? No foundation. Okay.
4 How's that? No foundation.

5 MS. DE CARLO: The question was whether he
6 analyzed it in the FSA. I think there's a difference about
7 what staff has analyzed and stated in the FSA and what their
8 conclusions are here today. The FSA does not end staff's
9 analysis. That's why we have evidentiary hearings.

10 HEARING OFFICER CELLI: So I don't really exactly
11 recall what you testified earlier to. I'm going to allow
12 the question, and you may need to lay a foundation. So
13 let's -- let's hear the question.

14 MS. DE CARLO: Mr. Radis, the -- the revised AQSC-
15 19 allows for inter-pollutant trading for PM10 emissions.
16 Do you believe that this allowance would result in a
17 significant adverse impact?

18 MR. RADIS: No, I do not. The ERCs are part of
19 the existing rules and regulations and included as part of
20 the Clean Air Act. So this is not something that we would
21 do additional CEQA evaluation of it because there's really
22 nothing to evaluate, other than would these ERCs be
23 effective in reducing the impact of the project for PM10.

24 MS. DE CARLO: And mention was made of an
25 increment analysis. Does staff do a PSD analysis?

1 MR. RADIS: Staff does not.

2 MS. DE CARLO: So the -- the -- the lack of -- of
3 discussion of an increment analysis, is -- is that relevant
4 to -- to an analysis that the -- the staff would do?

5 MR. RADIS: That's part of the EPA's PSD process.

6 MS. DE CARLO: And in terms of your cumulative
7 analysis, did -- do you also include existing sources in
8 that analysis?

9 MR. RADIS: The existing sources are considered
10 part of the ambient baseline for the monitoring we did.

11 MS. DE CARLO: And, Ms. Williams -- oh, I'm sorry,
12 this is for Dr. Greenberg, a couple of questions for you,
13 Dr. Greenberg.

14 Is the document provided by Ms. Williams, Exhibit
15 501 titled Green Chemistry Hazard Traits, Endpoints and
16 Other Relevant Data, is that relevant to an analysis of the
17 project's potential impacts to public health?

18 DR. GREENBERG: Alvin Greenberg replying. No,
19 it's not. The -- the Green Chemistry Initiative is looking
20 at consumer products and the use of chemicals and the
21 toxicity and hazards they may pose in consumer products. It
22 is -- it really doesn't have anything to do with what's
23 emitted from a gas-fired plant.

24 MS. DE CARLO: And is this document considered an
25 authoritative source of -- of anything, to your knowledge?

1 DR. GREENBERG: Well, right now it's in draft form
2 and should be considered as such.

3 MS. DE CARLO: Great. And then one last question.
4 Ms. Williams mentioned or had a question about whether there
5 will be a post-operation monitoring program for public
6 health. Is there a need for such a program?

7 DR. GREENBERG: No, I do not believe there is a
8 need. And to the best of my knowledge I don't believe the
9 Energy Commission has ever required one.

10 MS. DE CARLO: Okay. Thank you. That concludes
11 my redirect.

12 HEARING OFFICER CELLI: Ms. Belenky, please.

13 MS. BELENKY: Thank you.

14 RECROSS-EXAMINATION

15 MS. BELENKY: Mr. Radis, I just want to clarify
16 this. AQSC-19, which was amended in staff's prehearing
17 conference statement, includes a new allowance for using
18 inter-pollutant trading.

19 Is there any documentation in any of the material
20 submitted by staff in the FSA or afterwards that discusses
21 the basis for that new condition or the environmental
22 impacts that may occur?

23 MS. DE CARLO: Objection. Staff has already
24 testified to the fact that they -- that their conclusion
25 with regard to that condition --

1 HEARING OFFICER CELLI: Overruled. I'm going to
2 allow it, but it's a yes or no question.

3 MR. RADIS: Well, the answer is we do talk about
4 the reactivity of NOx and SOx and the contribution of PM10.
5 So we do recognize in the FSA that those contribute to PM10.
6 And that's why we also require the applicant to provide PM10
7 offsets for their sulfur dioxide emissions.

8 HEARING OFFICER CELLI: So was that a responsive
9 answer for you, Ms. Belenky?

10 MS. BELENKY: It's actually non-responsive because
11 this goes to the PM10 question and inter-pollutant trading
12 for PM10. And there is, I might -- I'm trying to assess and
13 clarify is whether there is any analysis in the written
14 documents provided by the staff through this process that
15 anyone else could actually review regarding inter-pollutant
16 trading for PM -- PM, which was added by staff in their
17 prehearing conference statement.

18 MR. RADIS: Well, I guess what I don't understand
19 is what kind of analysis are you talking about; the
20 environmental impact of providing ERCs and approving the
21 ERCs? The actual act of providing the ERCs is simply
22 surrendering certificates. It's well recognized that NOx
23 and SOx are precursors to PM10. And -- and as I stated
24 before, this commission and eight districts in the state
25 routinely allow this kind of transfer.

1 MS. BELENKY: I think that that was non-
2 responsive. I asked whether there was analysis here in
3 these documents for this matter?

4 MS. DE CARLO: Objection. I believe he's
5 responded.

6 HEARING OFFICER CELLI: Overruled. Yes or no?

7 MR. RADIS: I guess in the thought that it depends
8 on how you define analysis, what kind of analysis are you
9 referring to. Did we do an analysis as if something had
10 happened, that there was an inter-pollutant?

11 MS. BELENKY: Did you do an analysis of how,
12 assuming for the sake of argument you allowed these inter-
13 pollutant tradings to be used as the ERCs for PM10, how that
14 would affect the environment, how that would work, what
15 would be the amount needed, where could it come from, how
16 exactly that would work, in this context for this project,
17 and what would be the impacts of that?

18 MR. RADIS: The document does not spell out --
19 actually, in the revised condition the document itself does
20 not spell out how much it would be or what the environmental
21 impacts would be regarding for inter-pollutant trading.

22 MS. BELENKY: Thank you. I just wanted to ask two
23 very short questions.

24 You stated that the EPA increment issues is EPA's
25 purview. However, if, assuming for the sake of this

1 question, it is a law or regulation that applies are you
2 trying -- are you saying that staff never analyzes any
3 issues that are laws and regulations subject to a different
4 agencies approval?

5 MR. RADIS: No. This is something that was passed
6 after the analysis was done. We didn't go for further
7 analysis because the project is in the process of getting a
8 PSD permit. And they have been working with the EPA in
9 regards to that issue.

10 MS. BELENKY: So just to follow up and clarify, if
11 you were writing the FSA today you would include this
12 question now that that has become the law?

13 MR. RADIS: You would include a discussion that
14 they would comply with that law, yes.

15 MS. BELENKY: Thank you. And then finally, I just
16 wanted to clarify and make sure I understood your testimony.
17 I thought that you stated the de minimis was the same as
18 below a level of significance. And I'm not --

19 MR. RADIS: No.

20 MS. BELENKY: -- certain that you meant that.

21 MR. RADIS: No.

22 MS. BELENKY: But it did -- that is the way it
23 came out.

24 MR. RADIS: No, I did not mean that.

25 MS. BELENKY: I just wanted you to clarify. What

1 did you mean when you were discussing something being de
2 minimis?

3 MR. RADIS: What we meant -- what I meant by de
4 minimis was that the -- I think we were talking about
5 cumulative impacts, that a secondary source a certain
6 distance away would not substantially contribute to the
7 overall maximum concentration that we compare to the EPA
8 quality standard.

9 MS. BELENKY: Thank you.

10 HEARING OFFICER CELLI: Anything further, Ms.
11 Belenky?

12 MS. BELENKY: Nothing.

13 HEARING OFFICER CELLI: Thank you.

14 Ms. Williams, anything limited to the scope of the
15 redirect?

16 MS. WILLIAMS: To the scope of?

17 HEARING OFFICER CELLI: The -- the questions that
18 Ms. De Carlo reopened with her redirect?

19 MS. WILLIAMS: Well, specifically I just wanted to
20 talk about the Green Chemistry Initiative. The Green
21 Chemistry Initiative comes from AB 1869 by Mr. Feuer.

22 MR. CARROLL: This is testimony.

23 MS. WILLIAMS: The hazard traits come from SB 509.
24 They're two different pieces of legislation. And the hazard
25 traits are applicable to all chemicals that are regulated by

1 the State of California, not just chemicals that are in
2 consumer products.

3 HEARING OFFICER CELLI: Did you have a question?

4 MS. WILLIAMS: So I just wanted to clarify that
5 and I don't have a question.

6 HEARING OFFICER CELLI: Thank you, ma'am.

7 MR. CARROLL: And I would just like to clarify for
8 the benefit of the public that Ms. Williams is not a witness
9 here today. She has not been sworn. She has not provided
10 her expert qualifications, unlike the other witnesses that
11 are testifying. And I think it's perhaps very confusing to
12 members of the public to have her making what amounts to --
13 or what is put in the form of testimony on the record.

14 HEARING OFFICER CELLI: Actually what I'm going to
15 do is when we take our break in a minute I'm going to ask
16 the public advisor to have a confab if she's around.

17 Is Jennifer -- Jennifer Jennings still here? At
18 the break maybe you can discuss with Ms. Williams a little
19 bit about the difference between, you know, testimony and
20 questions. That may speed things up. Thank you very much.
21 Thank you.

22 Nothing further from Applicant?

23 MR. CARROLL: Nothing further.

24 HEARING OFFICER CELLI: Thank you. Re-redirect?

25 MS. DE CARLO: Two questions.

1 FURTHER REDIRECT EXAMINATION

2 MS. DE CARLO: Mr. Radis, does AQSC-19 identify
3 the inter-pollutant ERCs that would be necessary for the
4 applicant to provide?

5 MR. RADIS: We identified the total number of ERCs
6 that would be required.

7 MS. DE CARLO: And in your expert opinion is there
8 the potential for significant impacts to result from the use
9 of inter-pollutant ERCs from PM10 as allowed by AQSC-19?

10 MR. RADIS: No, there would not.

11 MS. DE CARLO: That concludes my re-redirect?

12 HEARING OFFICER CELLI: Recross, Ms. Belenky?

13 MS. BELENKY: I'm not -- I'm sorry. I'm not sure
14 I caught of exactly what you asked. You were speaking very,
15 very quickly.

16 HEARING OFFICER CELLI: Yes.

17 MS. DE CARLO: Do you want me to repeat the
18 question?

19 MS. BELENKY: I think you have to.

20 HEARING OFFICER CELLI: The first was whether --

21 MS. BELENKY: I'm sorry, I couldn't hear you.

22 HEARING OFFICER CELLI: Did the FSA identify the
23 inter-pollutants necessary? I believe that was the first
24 question.

25 MS. DE CARLO: That was.

1 MS. BELENKY: And the answer was yes --

2 HEARING OFFICER CELLI: Yes.

3 MS. BELENKY: -- or no?

4 HEARING OFFICER CELLI: Wasn't that a yes
5 question?

6 MS. DE CARLO: The answer was, yes, they -- they
7 identified the amount that the applicant would have to
8 provide.

9 HEARING OFFICER CELLI: And the second question
10 was an opinion question.

11 MS. BELENKY: I -- I would -- can you please give
12 me -- yes.

13 FURTHER RECROSS-EXAMINATION

14 MS. BELENKY: So my re-redirect would be on what
15 page does the FSA identify the number of inter -- the amount
16 of inter-pollutant trading necessary to meet the PM -- PM
17 offsets?

18 MR. RADIS: The FSA identifies the -- both the
19 TACs and the conditions, total tons of PM10 that would be
20 required.

21 MS. BELENKY: Right.

22 MR. RADIS: In the revised mitigation in condition
23 19 we also identified that if they wanted to use inter-
24 pollutant offsets, what those ratios could be. It's 1-to-1
25 for NOx and 2.6 -- I don't think I have the exact number --

1 for NOx.

2 DR. GREENBERG: SOx.

3 HEARING OFFICER CELLI: Anything further of this
4 witness?

5 MS. BELENKY: No, thank you.

6 HEARING OFFICER CELLI: Ms. Williams? Just this
7 inter-pollutant trading?

8 MS. WILLIAMS: No.

9 HEARING OFFICER CELLI: Thank you. Applicant?

10 MR. CARROLL: Nothing. Thank you.

11 HEARING OFFICER CELLI: Okay. That's -- that's it
12 on this topic. There will be no more re-re-redirect. There
13 will be no further questions.

14 I want to thank the panel for being here. It's
15 now time for public comment. We --

16 MS. DE CARLO: Could I just ask a procedural
17 question --

18 HEARING OFFICER CELLI: Of me, yes. Go ahead.

19 MS. DE CARLO: -- about -- could I get a ruling
20 from the committee that the statements made by -- by Ms.
21 Williams do not constitute in any way, shape or form expert
22 opinion testimony, and -- and staff's response does not
23 imply that any statements made by Ms. Williams were indeed
24 correct?

25 HEARING OFFICER CELLI: We'll go with that.

1 MS. DE CARLO: Okay.

2 HEARING OFFICER CELLI: Thank you, Gentlemen.
3 You've been very patient. We do appreciate your being here
4 today.

5 Ladies and Gentlemen, I'm sorry we don't -- we
6 went over three minutes. It's now time for public comment.

7 Now with regard to public comment, this is our --
8 your opportunity to address and speak to the committee who
9 will be deciding this case. We have these blue cards that
10 I'm holding in my hand. This is the way that you've
11 indicated that you wanted to make a public comment. And if
12 there's anyone here who hasn't filled one of these out and
13 wants to make a public comment, then please see Jennifer
14 Jennings and she will take the card and bring it up to me.

15 When I finish taking public comment from the
16 people who are in the room, then I'm going to go to the
17 people on the phone and take any public comment from anyone
18 who wanted to call in with their public comment.

19 So I pretty much am taking these in the order that
20 I receive these. And the first person I have is Josef Yore,
21 Y-o-r-e.

22 Thank you for being here, Mr. Yore. Please, go
23 ahead.

24 MR. YORE: Dear gentle people, most of you people
25 sitting here don't live in the Antelope Valley. You do not

1 live in the Antelope Valley, so you don't know what's going
2 on in the Antelope Valley. So I'll give you a little bit
3 of -- of the Antelope Valley before I go on to your project,
4 good or bad.

5 It kind of scared me. You had a guy on his knees
6 there. I thought I was on the Titanic. That's a joke
7 people.

8 Anyway, if you pick up the *Antelope Valley Press*
9 today, a good paper, you'll read inside of the *Press*, they
10 want to raise the rates on sewage. Now if you go to Q and
11 30th Street you'll see them digging up this area. Where
12 they're digging up this area, in the past 20 years -- I've
13 lived 22 years in Palmdale. I moved from Hollywood. They
14 didn't want to make me a star so I came to Palmdale. If you
15 go down that area you'll find out they broke every act there
16 is, Environmental Act, Disability Act, Safety Act, you name
17 it, that whole area has been broken for 20 years.

18 For six years I was with Plant 42 out of Wright-
19 Patterson Air Force Base with an advisory group,
20 environmental advisory group. And when they started this
21 committee I did my own research. This was at one time a
22 military base. Where you're building that plant was once a
23 military base.

24 In the old days they buried every bit of garbage
25 people had. There was no dump in the Antelope Valley. When

1 I did my research there was 70 wells. The advisory
2 committee out of Wright-Patterson base only came up with
3 ten. And they claim out of the ten, four were contaminated.
4 Laurie Lile sat on that committee for a while. It was Mr.
5 Lyle Talbot, a great environmental person, was on that
6 committee six years.

7 In 1952 Mayor Rex Ledford -- I mean, Mayor Rex
8 Parris was born. I worked at Sylvania Electric in the
9 summer. They made the tubes that helped win the war, tubes
10 for the airplanes, ships. And then they started what you
11 call today black and white television. We're more or
12 less -- now you're in a computer age. All we had then was
13 black and white television.

14 In 1953 I graduated and went into the Marine Corp.
15 Years later, that's when Mayor Jim Ledford was born, 1953,
16 I went in the Marine Corp. They thought the Korean War was
17 going to start up again. I lost a lot of buddies from my
18 home town. Everybody went into the service. You had to
19 serve your country.

20 Years later I found out the plant up there in Port
21 Allegany contaminated the river. They didn't know what they
22 were doing. They dumped everything underground and it went
23 into the river. And Sylvania Electric dumped in the
24 Allegany River and it went downstream.

25 Now I'm not saying your plan is perfect, but you

1 didn't do environmental -- absolutely environmental act.
2 You should have -- before when you got that property and
3 thought you got the property you should have said to the
4 mayor and the city manager, let's dig down about four feet
5 and dig this whole area out and see if it's contaminated.
6 You never did that. That was once a military base.

7 Now why did they ever put it in that area? If I
8 was trained as a marine, if I was trained as a marine under
9 the act, 9/11 act commissioned by President George Bush
10 then, the illegal war that we're in, and then brought up by
11 President Obama you would never be building there. You
12 never would have thought of building there. You have
13 planes, down this -- just down below there, secret planes
14 being made down there, like the F-35 and what have you and
15 not, that are costing the government \$500 million.

16 What was the city thinking of? Not that I'm
17 against your project. It may be a great project for all I'm
18 concerned. I've never seen this power plant in focus. Why
19 didn't you build it down by 30th Street way out in the
20 desert? Why did you build it over there by Plant 42 to
21 begin with. You broke -- you're breaking every act that was
22 ever there, the Environmental Act, Disability Act, Safety
23 Act, Citizen Act, every act that was ever put in the book
24 you have broken by building over there if you plan on
25 building there. Yet the city has put millions of dollars in

1 this project, and every day last week I had to go through
2 eight inches of water that was frozen on Q and 26th Street.
3 Shame on the mayor, born in 1952 when I was serving -- born
4 in 1953 when I was serving my country over near Korea and
5 Japan.

6 You people, when you put a project there you got
7 to think what's going to happen down the road. What's going
8 to happen down the road 20 years from now? Not that your
9 project is no good, you put it in the wrong place, the wrong
10 place. And the city has put millions of dollars in this
11 project and they haven't done anything for the citizens
12 of -- of the Antelope Valley, as far as Safety Act goes.
13 I'm really ashamed of this city.

14 I probably moved up here from Hollywood. Who
15 knows, I might have been a star but I doubt it. I did give
16 Barbara Streisand her first kiss in a movie, but it ended up
17 in a cutting room floor and made \$7,000 in residuals, but
18 you can't fight over that, can you?

19 I just want you to do what you think is right.
20 It's the wrong, wrong location. You have to think what's
21 going down the road years from now. You're breaking every
22 act that was ever written in the book. And even here you're
23 breaking a law that says the citizens that make comments can
24 not be recorded. I'm sorry. Under the Supreme Court Law
25 whatever I say can be recorded and put on the books. Did

1 you know that? Check with your lawyers. Have a good day.

2 HEARING OFFICER CELLI: Thank you very much, Mr.
3 Yore.

4 Do we have Mr. R. Lyle Talbot here from Desert
5 Citizens Against Pollution?

6 And while he's coming to the podium I want to
7 mention, folks, that I guess it's the City of Palmdale, the
8 City of Palmdale has provided some box lunches in the back
9 there and some drinks. So if you're hungry for lunch
10 they -- that's there for you.

11 So go ahead, Mr. Talbot.

12 MR. TALBOT: Could I testify after lunch? I've
13 been here a long time.

14 HEARING OFFICER CELLI: This is comment. Go
15 ahead.

16 MR. TALBOT: You know, the demographics and the
17 studies they've done prior to this project proposal, they
18 used the figures from the 2000 Census. We've since reached
19 another decade, and I think we should go back and look at
20 the 2010 Census to see about the demographics and the
21 environmental justice issues with minority and population
22 and underemployed populations in the area north and east of
23 the project in East Lancaster.

24 You know, about the late '90s I did a survey
25 regarding another environmental project called operation --

1 anyway, it was to bring the sewage from Los Angeles to our
2 valley. And I checked with every -- every nurse in every
3 district. And about 1 out of 8 children 10 or 12 years ago
4 had to bring their inhaler to the nurses office and let her
5 administer their dosage. And I'm sure that's probably
6 increased by now.

7 In doing a FOIA search with the -- on these --
8 this project last July with the City of Palmdale's records I
9 found a February 2007 article where the city manager, I
10 believe it was, stated that originally it was going to be an
11 all natural gas unit -- generation unit. But they decided
12 to add a ten percent solar component to it to make it hybrid
13 and to appeal to the California Energy Commission's favor.

14 I've asked the Lancaster High School District and
15 the Lancaster Elementary District to intervene -- not
16 intervene but to testify here today because it's their
17 children who are downwind from the project. And I hope
18 there's some PTA parents here, because it's their kids.

19 And I'm curious if any of your panel members
20 would -- if your testimony would have changed with this
21 panel over here, Dr. Greenberg, if you suffered or you were
22 a parent of one who suffered from asthma. You know, 74
23 percent of the time the wind is from the southwest. So the
24 Lancaster school students are the ones endangered. No one
25 in Palmdale's districts will suffer, only Lancaster

1 students.

2 And I'm just going to throw in an old Iowa joke
3 here. I grew up in Iowa until I was ten years old, and are
4 a lot of pig farmers back there. And they all knew to build
5 their home, their residence, upwind from the piggens. And
6 exactly that lesson has been learned by the City of
7 Palmdale. They're putting their power plant on the north
8 edge of town with the 75 percent nearly southwest winds
9 blowing it right into the Lancaster School Districts. And I
10 think those students should be heard from. Thank you very
11 much.

12 HEARING OFFICER CELLI: Thank you, Mr. Talbot.

13 MR. TALBOT: And I'm out to lunch now.

14 HEARING OFFICER CELLI: Thank you. Go ahead and
15 grab one while they're still there.

16 Jason Caudle. I'm sorry if I mispronounce
17 anybody's name. I'll do my best up here. Caudle, is it?

18 MR. CAUDLE: Correct.

19 HEARING OFFICER CELLI: Jason Caudle from the City
20 of Lancaster.

21 MR. CAUDLE: One of the few that got it right.

22 Ladies and Gentlemen, thank you for the
23 opportunity to speak before you.

24 And before I start I want to thank Felicia Miller
25 and Steve Radis for their -- their assistance. Your -- your

1 staff has been fabulous in being responsive, accurate and
2 transparent by any stretch of the imagination. So their
3 information provided is fantastic.

4 I'm here on behalf of the city manager and the
5 city council. I'm expressing some of the concerns that
6 they've expressed, not necessarily in opposition or in
7 favor, but some concerns that we believe have not been
8 addressed.

9 The -- in order to explain it we need to talk a
10 little bit about context and how the -- the decision of
11 public policy issues are being made. Typically, and you
12 guys deal with this on a regular basis, that when a -- I
13 don't want to call it a normal power plant -- when a power
14 plant is presented by a private individual or private
15 developer I think there's a general understanding that we
16 all equally benefit from the impact, and we all generally
17 statewide receive the impacts associated with that as a
18 result of us using the light switches. We all utilize a
19 system. So in a collective basis the -- the power plants
20 benefit and the power plants impact are spread throughout
21 statewide.

22 In this case we have a power plant that's being
23 presented to us by a municipality, which then through a
24 public policy standpoint, I have a sense, takes it to a
25 different level so that we end up having winners and losers

1 in some cases, the winner being an adjacent municipality,
2 the loser potentially being a municipality to the north. So
3 you take this public policy discussion that goes on a
4 collective basis and you bring it to a local level. That
5 local level creates some -- some difficulties, difficulties
6 being what impacts are a result of this that are beyond a
7 statewide impact or stateside collective impact.

8 And -- and think there's -- there's a couple
9 things that -- that aren't in the analysis that maybe should
10 be, is what -- what do we -- what do we not get as a result
11 of this power plant and what do -- what are the impacts that
12 we receive locally that are not -- or conversely receive the
13 benefit for locally?

14 Another thought is that the CEC's permit adds
15 value, and that value has a cost to a certain extent, the
16 decisions you make. Currently the project doesn't have a
17 PPA to identify the demand for the electricity generated.
18 It does not have an interconnect agreement with Edison. It
19 does not have an identified contractor to build -- to
20 develop the project. It does not have a financing strategy
21 to finance the project. It does not have the ERCs necessary
22 to mitigate the impacts. It does not have a PM10 rule to
23 mitigate the PM10 transfer. At this point this project is
24 an idea.

25 Your approval of that idea adds value to that

1 permit that you're approving that currently has an idea in
2 an environmental impact report and no value to an
3 environmental impact report that now has value. That value,
4 that benefit, that value is -- is -- comes from something.
5 That monetary value comes from something. And in this case
6 we believe it happens to be the air quality impact. It's
7 that increment that is being sold, so to speak, so the -- so
8 that increment being sold for whatever value you generate to
9 that. You're allowing that increment to be sold, that air
10 quality.

11 Our concern is what -- what is now the cost
12 associated with that? What doesn't get built? Does the --
13 the transmission capacity in this value get utilized by the
14 ground energy, and therefore Edwards Air Force Base's 500
15 megawatt solar plant doesn't get built? Does our
16 distributed generation program that we're working on,
17 distributed generation from the solar standpoint throughout
18 the community, not get built as a result of it? Does
19 additional manufacturing not get built as a result of this
20 selling of this credit or selling of this increment? What
21 manufacturing facility can't come here because the threshold
22 of significance have reached beyond the air quality
23 standards?

24 And I think that's the -- the economic analysis
25 that we don't have answers to. We have plans. We have

1 prepared ideas as it relates to generation of solar. Our
2 neighbor to the north, Kern County has set a ten -- a ten
3 gigawatt goal for solar and renewables. The transmission
4 line that you guys are, I'm sure, very familiar with -- as
5 it relates to the Tehachapi wind resource is at full
6 capacity, yet we are -- we are putting this megawatt, this
7 load into the transmission system that is already at
8 capacity.

9 I don't know the answers to what gets impacted. I
10 don't know the answers of what it means to Lancaster. I
11 just know the council has express concern of what do we not
12 get in the future as a result of approving this today. And
13 I think that might be something that the commission needs to
14 take into account when discussing it.

15 So if you have any questions I'll be happy to
16 answer them. But with that I'll -- I'll leave my comments.

17 Thank you very much for your time.

18 HEARING OFFICER CELLI: Thank you very much for
19 your very clear and -- those comments.

20 Is Robina -- Robina Sunol [sic] --

21 MS. SUWOL: Suwol.

22 HEARING OFFICER CELLI: Suwol? I'm sorry. Please
23 come forward.

24 Folks, if -- if anyone is saying things that
25 speaks for you, when you get to the microphone if you can

1 say what they just said speaks to a concern I had so we can
2 kind of move along, that would be great. Thanks.

3 Go ahead, ma'am.

4 MS. SUWOL: Thank you. My name is Robina Sowul.
5 I'm the founder and executive director of California Safe
6 Schools. We're a children's environmental health,
7 environmental justice coalition that's been working for more
8 than a decade to protect students, teachers, staff and
9 community members who lives near school sites. Some of our
10 efforts that we're most noted for are working closely with
11 L.A. Unified in creating the most stringent pesticide policy
12 in the nation. We've also recently worked very closely with
13 US EPA in creating a school siting guidance document. And
14 air pollution, most recently at the Carson-Gore Academy,
15 which has a number of serious environmental health concerns
16 surrounding the school.

17 We have significant concerns regarding the safety
18 of placing a very large power plant upwind from more than a
19 dozen schools and an open soccer field complex. These
20 schools are all under-performing and have minority
21 populations that are far above 70 percent. There are no
22 other schools where these students can attend since only one
23 school is attaining state mandated performance standards.

24 These schools, as you -- as you may know, were
25 also part of a multi-year study looking at lung function in

1 children who were exposed to air pollution. And the study
2 found significant decreases in lung function due to existing
3 levels of air pollution. And the study was performed by the
4 University of California. And this university is now the
5 center for excellent -- for children's health for the
6 Western United States.

7 So at the existing air pollution levels school
8 children in these communities, Lancaster, they're already
9 losing lung function and they're at great risk, and even
10 greater risk for respiratory illnesses. Now a huge new
11 source of air pollution is being proposed to be sited
12 directly upwind from the school population. I mean, it's so
13 difficult to even talk about without wondering why. I mean,
14 this source will emit massive amount of pollutants which are
15 known to affect respiratory health, especially for children
16 and the elderly.

17 Our children have no vote. They have not lobbyist
18 and they have no war chest. They depend upon adults to
19 protect them. I really urge you to not build this. Thank
20 you very much.

21 HEARING OFFICER CELLI: Thank you for your very
22 clear comments.

23 Is Jim Ledford here? He's the mayor of the City
24 of Palmdale.

25 MAYOR LEDFORD: Thank you. Number one, thank you

1 for this hearing, Commissioners and Staff. We appreciate
2 the opportunity to continue to show the benefits of what
3 this project will bring to this Antelope Valley.

4 I heard just -- just heard a list of reasons of
5 unknowns and what ifs in -- in an attempt to kind of cloud
6 this issue. I don't think there's another project that's
7 been scrutinized to the level of this power plant that
8 has -- has been built in the Antelope Valley yet. I think
9 that the efforts that we're going through to -- to present a
10 case, I think are overwhelming. Quite frankly, I think that
11 we have done our homework. And I think we do know the
12 direction of the prevailing winds, and they do not blow
13 north in this valley. So this illusion we're trying to
14 create I don't believe is accurate. Quite frankly, this
15 project will clean the air and the Antelope Valley will be
16 cleaner because of this project.

17 So I'm here to urge you to continue your -- your
18 progress. And I think the benefactors here are our partners
19 at Plant 42, our residents, the people that can work at this
20 plant and the people that can work from the -- the -- the
21 generation of electrical power from this plant. The benefit
22 is the Antelope Valley. So this project, I believe, speaks
23 to many more benefits than -- than are what's being raised
24 as far as undefined questions at this stage of the game.

25 The -- the analysis that this project has gone

1 through, again, I've never seen anything like it in the
2 Antelope Valley. I believe we're very, very complete in our
3 analysis and I believe this project will truly be a benefit
4 for the entire Antelope Valley.

5 So we're here to, obviously, answer any questions
6 you may have and, again, congratulate you on your efforts
7 today. This has been one heck of a review.

8 HEARING OFFICER CELLI: Thank you, Mayor Ledford.

9 MAYOR LEDFORD: Thank you.

10 HEARING OFFICER CELLI: Thank you for your -- for
11 your comments.

12 Marvin Crist? Is Marvin Crist here? Come
13 forward. Mr. Crist is from Lancaster City, AVAQMD

14 MR. CRIST: How appropriate to follow Mr. Ledford.

15
16 I'm a member of the Lancaster City Council. I'm
17 also a member of the Antelope Valley AQMD. And I'd like to
18 acknowledge the CEC staff and the commissioners and thank
19 them for being here.

20 I'd like to clarify a few things that have been
21 said that the AVAQMD position is that we don't need a rule
22 for road paving. That is not our position. I don't stand
23 for the entire board. I have been asked to come here by
24 several members of that board. But we have instructed our
25 executive director not to offer an opinion because we are

1 looking into whether we need a rule of not. So the AVAQMD
2 has not taken a final position on the power plant, the PM10
3 rule, nor have we taken a position on the ERCs transfers
4 from the Central Valley.

5 As a Lancaster City councilman, with the approval
6 of the project many opportunities and costs have not been
7 accounted for. The quality offsets, the transfer of the
8 ERCs from the Central Valley for this plant will use nearly
9 70 percent of all the AV -- the Antelope Valley's available
10 air quality PM2.5, according to your Air Quality Table 17 on
11 the final staff assessment.

12 The applicant wants to spend millions of dollars
13 and send it to the San Joaquin Valley 265 miles away to
14 clean their valley's air up while we pollute ours. This
15 plant is located on the border of Palmdale and Lancaster.
16 The prevailing winds blow this way, all into Lancaster. All
17 of it does.

18 In addition, there's two new federal rules, the
19 PM10 increment rule and the boiler rule that have not been
20 incorporated into any of the documents that we have seen.
21 These rules should shed light on the cumulative impact of
22 this project.

23 Now to talk about the difference between brown and
24 green energy. This plant will be using critical
25 transmission capacity available for green energy projects.

1 Lancaster is trying to go green, solar. Everything that
2 we're doing is trying to go solar. We're not clogging the
3 transmission lines. This will use a tremendous amount of
4 those transmission lines. In addition, the City of
5 Lancaster is working on number distribution and renewable
6 programs and renewable energy products that will be impacted
7 by this project.

8 In summary, the CEC is being asked to approve a
9 plant that will use much of the remaining air quality
10 credits in the Antelope Valley, limiting the opportunities
11 for future economic activities. It will utilize a
12 substantial portion of AV's transmission capacity, limiting
13 the opportunities for future standards mandated renewable
14 energy products. It will utilize millions of dollars of
15 taxpayers' money to transfer pollution from one jurisdiction
16 to the City of Lancaster. It will impact Kern County's
17 ability to meet the renewable energy goal of ten gigawatts.
18 And most importantly, it will perpetuate California's
19 reliance on fossil fuel and brown energy.

20 I would like to recommend that an economic
21 analysis to assure the impacts of this plant will not have
22 long-term effects on our future economic development
23 activities or future renewable energy projects. And I would
24 also like to recommend not to approve the project until the
25 ERCs are confirmed and real, and review this permit with the

1 incorporation of the PM10 increments and the boiler rule.

2 Thank you.

3 HEARING OFFICER CELLI: Thank you, Mr. Crist.

4 Thanks for coming down.

5 VICE CHAIR BOYD: Mr. Celli, I need to --
6 Councilman Crist, might I ask you a question? This is
7 Commission Boyd speaking.

8 And just for the audience, you don't hear much
9 from Commissioner Douglas and I. That's because we're
10 sitting here with our judicial robes on adjudicating this
11 issue and relying on the record that's being built and the
12 testimony that's back and forth. And to ask many questions
13 may infer some kind of bias one way or another. So --
14 but -- but you said something, and I've just got to
15 understand.

16 You are a member of the Antelope Valley Air
17 Quality Management District Board. And -- and yet we heard
18 testimony, we have in evidence the fact that we have a so-
19 called final determination of compliance from the district,
20 which I infer as some kind of support for and approval of
21 the project. So you've left us with a little bit of a
22 dilemma because you're an official of that board. And I'm
23 trying to sort out what, you know, what truly do we have in
24 front of us.

25 MR. CRIST: We are in the midst of determining

1 whether we need a rule or not. The executive director has
2 been giving the direction not to offer an opinion until we
3 decide whether we need a rule of not, or whether we are in
4 favor of this project. We are in the midst of doing all
5 that.

6 Does that answer the -- the question?

7 VICE CHAIR BOYD: Well, it -- it really doesn't
8 because we have a document from your district --

9 MR. CRIST: Let's --

10 VICE CHAIR BOYD: -- called an FDOC, a final
11 determination of compliance, which is kind of a clearance to
12 staff, to us, and folks that -- that you've approved the air
13 quality aspects of the project, and they're in compliance
14 with your rules and regulations, so on and so forth.

15 MR. CRIST: We have not.

16 UNIDENTIFIED MALE: Yes, we have.

17 HEARING OFFICER CELLI: I mean, we have -- there's
18 an exhibit -- what is the exhibit?

19 MS. DE CARLO: Their -- staff's Exhibit 302, I
20 believe, is -- yes, 302.

21 HEARING OFFICER CELLI: Is --

22 MS. DE CARLO: It's the final determination of
23 compliance that we have received from the air district.

24 HEARING OFFICER CELLI: So we have it in evidence
25 now?

1 MR. CRIST: Well, we understand that there
2 was -- once the Antelope Valley Air Quality Board was made
3 aware of what executive director had done, he was then
4 advised not to make an opinion because we have not done that
5 as a board. The executive director expressed that opinion,
6 not the board's.

7 VICE CHAIR BOYD: Well, I won't push this much
8 further, other than sympathy for the executive director. I
9 was a state air director for 15 years so I identify with
10 these people. But I think we have a dilemma on our hands
11 and -- and your -- we're going to have to dig into it now,
12 because this has left us puzzled, to say the least.

13 MR. CRIST: I think that's -- that's part of what
14 we're asking you to take a look at, let us sort it out. Let
15 us find out where we're at here. Do we need a rule? Okay.
16 The board is determining that. Do we need a rule? Okay.
17 Are we for the power plants? Okay. We're looking into all
18 those. No votes have been taken by the board on those
19 projects.

20 HEARING OFFICER CELLI: Anything further,
21 Commissioner?

22 VICE CHAIR BOYD: No.

23 HEARING OFFICER CELLI: Nothing? Thank you for
24 your comments.

25 Is Emmett Murrell here? Murrell? I'm sorry if I

1 mispronounce your name. Come on forward.

2 I want to make sure we're not getting into debate
3 mode here.

4 MAYOR LEDFORD: We're not getting into debate.

5 HEARING OFFICER CELLI: Okay.

6 MAYOR LEDFORD: I'm here as mayor of the City of
7 Palmdale. I'm also a member of the Air Quality Management
8 District. This board has taken action. Mr. Crist is a
9 minority interest on the board and is trying to create
10 confusion and trying to create the -- some effort to delay
11 this project. He doesn't have any board action to back up
12 his claim, so this is his opinion.

13 And I just find it disingenuous of him to try to
14 resurrect something that he's had an opportunity for a year
15 to make any progress at the board level. He has not.
16 Actually, this board made a decision of May 13th of last
17 year on this project, just so we're clear.

18 HEARING OFFICER CELLI: Thank you. So we're in
19 the public comment section now.

20 Mr. Murrell or Murrell.

21 MR. CHRIST: Excuse me.

22 HEARING OFFICER CELLI: You know, I -- I -- this
23 is --

24 MR. CRIST: You did let him respond --

25 HEARING OFFICER CELLI: All right.

1 MR. CRIST: -- to my speaking.

2 HEARING OFFICER CELLI: You've got a minute. Go.

3 MR. CRIST: Okay. Mr. Banks is here --

4 HEARING OFFICER CELLI: Murrell, I'll get to you.

5 MR. CRIST: -- from the Air Quality Board. He
6 runs part of the Air Quality Board and he can explain to you
7 where we're at, if you'd like to --

8 HEARING OFFICER CELLI: I would like to not,
9 actually. What I'd like to do is hear from the public.

10 So, Mr. Murrell -- I'm sorry. Murrell? Murrell?

11 MR. MURRELL: Murrell.

12 HEARING OFFICER CELLI: Murrell. Please, go
13 ahead.

14 MR. MURRELL: You know, I -- without any of the
15 politics, I spoke with no one, other than who I communicate
16 with every morning, my name is Emmett Murrell. I've had a
17 home for boys for almost 30 years. I have followed the
18 trends across the country as it relates to our youth.

19 Oh, is this not working?

20 HEARING OFFICER CELLI: It doesn't sound like it.

21 VICE CHAIR BOYD: Not very --

22 HEARING OFFICER CELLI: And just checking to
23 see --

24 HEARING OFFICER CELLI: Not very good.

25 MR. MURRELL: How about this?

1 HEARING OFFICER CELLI: Go ahead. Keep -- keep
2 talking, Mr. Murrell, and I'll see if you're coming across
3 on the phone.

4 MR. MURRELL: Okay. Keep talking to see if I'm
5 coming across.

6 HEARING OFFICER CELLI: He's not. His -- his mike
7 needs to go up.

8 VICE CHAIR BOYD: It died.

9 HEARING OFFICER CELLI: The battery? Oh, that
10 happens.

11 You know, folks, when you rely on electricity,
12 batteries, electronics, computers, they all need to be
13 recharged sooner or later. So we're -- we're going to get
14 you a mike as quickly as possible.

15 You got one? Quick. Quick. Quick. Here it
16 comes.

17 Jeremiah, can I get you to perhaps grab the mike
18 form -- if it will reach, so we can keep going with the
19 public comment. Is that going to reach? Yeah. Can you --
20 yeah.

21 Go ahead, Mr. Murrell.

22 MR. MURRELL: This is find. I don't need a
23 podium.

24 My concern is very simple. It's not a concern
25 that we build this plant. I think it's almost essential

1 that we do it. If we look all throughout the country, small
2 and large municipalities are decaying from the inside out.
3 If we look at the educational system you can see the huge
4 number of youngsters that are not graduating. They're
5 either going to camp, coming out, or they've become a blithe
6 and -- and a terrible drain on the economy of every
7 municipality, not the two warring factions that have now.

8 What I'm really concerned with is that we don't
9 stop long enough to realize we have a very rare opportunity
10 to put together a plan that other municipalities never get,
11 and that plan is to put a portion of whatever is determined
12 for employment aside for the benefit of what's going to
13 eventually destroy us, as well as other municipalities, if
14 creative measures are not taken.

15 This has no self-serving interests at all. It's
16 just that what a chance for us to take that 65 percent of
17 kids that aren't graduating and put together a plan that
18 would allow them to not only become partners with the City
19 of Palmdale, become active working participants. This is
20 required, it's necessary, and I think we have the most
21 creative and concerned elected officials that we could ever
22 ask for. For us not to take into account -- there is
23 something greater in terms of environmental studies, and
24 that's the studies that are being brought to the table on
25 behalf of kids throughout this country. I'm talking about

1 young adults who have no way to be employed.

2 Here we have -- what an opportunity we have. And
3 I -- and I appreciate the comments about the location, but
4 there's a benefit in the location being there. Number
5 one -- and I haven't talked with my mayor or city manager,
6 Mr. Williams. The benefit is we already are having a
7 transportation crisis. If you've got a person that can take
8 a bus to the place of employment where the work will take
9 place it has enormous positive impact.

10 And I think it's a shame that -- and I know we're
11 dealing with this facet of the process which deals with the
12 environmental impact and all that has been discussed today.
13 But to not take into account the human factor that is going
14 to be -- at some point in time either you're going to have a
15 building that is completely covered with graffiti, every
16 other aspect of what unemployed, unemployable disfranchised
17 youngsters actually do when they have no way to identify
18 with what's being brought into the community. They need to
19 be involved from day one, the moment a decision is made.

20 Please take into account that -- when I looked at
21 the -- the complexion and -- and the individuals that are
22 here representing whatever different reasons for being here,
23 I don't see any real concern. I made a point of having
24 no -- having no conversation with any other community
25 groups. I've had -- not had this conversation with my

1 mayor, who I adore, or my city manager. I take it upon me
2 to say I'm speaking on behalf of a population that no one
3 really advocates for. What a golden opportunity we have.
4 Put all that other stuff aside, not that it's not essential
5 and important, but take into account this is not accidental.
6 And being a man of God, and I hate to bring that into it,
7 everybody, how the Lord is bringing it, it's not that at
8 all. It's just that that's who I spoke to and this was the
9 answer. And I was -- had to cut everything I was doing to
10 make sure I had a chance to at least put it on your mind.
11 There is another aspect of this project that must be
12 considered, and what a chance to considerate it.

13 That's basically I wanted to say.

14 HEARING OFFICER CELLI: Thank you. If you could
15 just put the mike right back where it was.

16 Any -- Jeremiah, is he around with regard to
17 the -- any word on our -- do we have a good mike? Good.
18 Thank you very much. I have --

19 MR. MURRELL: Well, let me repeat it all again
20 with a good mike.

21 HEARING OFFICER CELLI: We're not lacking for
22 humor here in Palmdale. Okay.

23 Virginia Stout -- Stout, S-t-o-u-t? S --

24 MS. STOUT: Yes.

25 HEARING OFFICER CELLI: Oh. Okay.

1 MS. STOUT: Stout.

2 HEARING OFFICER CELLI: Stout. Thank you. Come
3 on up. And if it would be easier for you, perhaps maybe you
4 might want to come around and use the -- the lower -- the
5 mike. Go ahead. Thank you.

6 MS. STOUT: My name is Virginia Stout, S-t-o-u-t.
7 And I'm speaking not necessarily for or against the power
8 plant. I'm speaking in regard to the testimony that I heard
9 today. And I'm rather astounded that the fact that
10 considering that this valley for a long time has been out of
11 compliance with PM10s and now PM-2s. And I -- when I was a
12 teacher I had an astounding number of students who
13 constantly came in with their inhalers and asthma. And I
14 watched it grow as I've lived here over the many years.

15 And at the testimony of the people here who should
16 be experts, at least in the environmental and the healthy
17 aspects and what, it -- it seems like they're just glossing,
18 oh, it won't really do this, oh, well, only three miles, oh,
19 well, we don't need to monitoring -- we don't need to
20 monitor the health of the people around the -- the area. It
21 will grow but we don't really care about that, just as long
22 as we get it built, for whatever reason.

23 And I would just like to say that I'm really
24 concerned about that. There's state-of-the-art. It gets
25 better. People are becoming more concerned with the health,

1 with the air. And I think that if something gets built the
2 fact that it's anything that's vague, anything that doesn't
3 take into looking into the future is something that's
4 actually not really a good -- a good project when people are
5 out there and the data is being researched and people are
6 sort of glossing that over.

7 And I don't want to go into specifics, but that's
8 just what I have to say. Thank you.

9 HEARING OFFICER CELLI: And thank you for your
10 comments.

11 Is James McGuire here? Mr. McGuire, please come
12 forward to the podium.

13 Any more of these? This is -- it looks like I'm
14 on my last card. So if you wanted to make a comment --

15 MR. MCGUIRE: Jim McGuire. I represent
16 Ironworkers, Local 433 and 416, 9,000 hardworking
17 construction members in the L.A./Orange County area. Here
18 in the Antelope Valley, Lancaster, Palmdale, representing
19 about 1,200 workers. The people that will be employed in
20 this plant in its construction, manufacture and maintenance
21 is the people that pay taxes in this valley. Also, the
22 apprentices that will have a chance to gain a career and a
23 trade, and not only those apprentices but the apprentices
24 yet to be hired and trained in this facility.

25 We -- we very much strongly stand and approve

1 this, and thank you very much.

2 HEARING OFFICER CELLI: Thank you, James McGuire.

3 Is Ron Miller here? Please come forward, Mr.
4 Miller.

5 MR. MILLER: Good afternoon. My name is Ron
6 Miller. I'm a representative with the L.A./Orange County
7 Building and Construction Trades. We represent 140,000
8 building men and women, craftsman in Los Angeles and Orange
9 County. There's roughly 3,000 of them that live up here in
10 Palmdale and the Antelope Valley.

11 Seeing that the majority of the craft workers that
12 will work on this project actually live in the area we are
13 very appreciative of the California Energy Commission's hard
14 work, what they have done to protect the environment.
15 Having reviewed the environmental documents for this project
16 we are confident that there will be no unmitigated
17 environmental impacts associated with this project.

18 Currently the building trades as a whole has about
19 40 percent unemployment across the trades. When this
20 project begins construction it will create up to 700 good
21 paying middle class jobs for highly skilled craftsmen and
22 women. This will in turn benefit the economy of Palmdale
23 and the Antelope Valley. We support you on this project.
24 Thank you.

25 HEARING OFFICER CELLI: Thank you, sir.

1 And lastly, I have Steve Chisolm. Thank you.
2 Come forward, Mr. Chisolm. And then I'll go to the phones.

3 MR. CHISOLM: Yes. My name is Steve Chisolm. I'm
4 a resident of the City of Palmdale. Yes, I'm a member of
5 the International Brotherhood of Electrical Workers, Local
6 11, Los Angeles. We have over 7,800 members. And out of
7 that 7,800 we have presently 500 that have went through a 40
8 hour hands-on solar installation school that is recognized
9 by the federal government. We are willing and able and
10 ready professional trained to help the City of Palmdale
11 install a power house.

12 I personally -- I've been at this for 42 years.
13 This is not my first rodeo. I'm an electrician. And to
14 what somebody said awhile ago about electricity, yes,
15 electricians and god make light.

16 I've worked all over the United States. I've
17 worked out of nine countries outside the nine states. I've
18 worked on six solar power houses. The biggest one I worked
19 on was in Riyadh, Egypt and it was 15 square miles. All of
20 these projects, including the one in Barstow, including the
21 one in Lone Pine, including the one in Banning, California,
22 all of these were done on time and under budget by union
23 professionally trained solar people.

24 Now then with the economy it seems like anybody
25 that can pick or hammer nails, all of a sudden they don't

1 roof houses anymore, they're going to install solar power
2 houses. So you kind of wonder about what kind of
3 reliability you're going to have.

4 As to the wind, all you have to do is go north on
5 Highway 14, and before you get to Avenue K look at the park
6 on the right-hand side that adjoins the freeway and see
7 which way the trees bend. They've got a 20 degree slant
8 going east.

9 So thank you for your time and thank you for
10 listening to me.

11 HEARING OFFICER CELLI: Thank you. Mr. Talbot,
12 I'll give you one minute. I don't know why, but I will.

13 MR. TALBOT: Thanks for the lunch.

14 I'd like to read a letter that appeared in Los
15 Angeles -- or the Antelope Valley paper yesterday. The
16 letter is to the readers -- letters from readers. And the
17 headline is "Paving Roads: A Lousy Tradeoff for the Plant."

18 "This environmental activist must respond to Palmdale
19 Mayor Jim Ledford's February 3rd letter regarding the
20 Palmdale Power Project in his pithy response to
21 Lancaster Councilman Marv Crist's earlier letter on the
22 project" -- oops, "criticizing the project," I'm sorry.
23 "If built the power plant will put thousands of
24 Lancaster Eastside -- and Eastside school children at
25 risk because of unhealthy PM2.5 particulate matter of

1 the worst kind. Fumes from the two gas powered
2 turbines will provide those PM2.5s. These students and
3 teachers will become the down-winders nearly 75 percent
4 of the time because of prevailing winds while in the
5 classroom or while on the playgrounds when those giant
6 turbines are fired up to go online. Palmdale students
7 face no such risk as they are upwind from the project.
8 "Palmdale plans to pave over some dusty dirt roads on
9 the southeast side of the valley to reduce the amount
10 of PM10s, but that will not ease the airborne burden
11 placed on those Lancaster students, period, just to
12 allow the tradeoff to satisfy California Energy
13 Commission's beastly regulations.

14 "It's not about politics, guys, it's about protection.

15 And Desert Citizens Against Pollution is the engine
16 driving this effort to short-circuit this monster power
17 play that is probably just a way to make up for a
18 city's loss of sales tax revenue. And if built it
19 plans to sell off to the highest bidder instead of
20 operating itself."

21 It's signed by this activist called Lyle Talbot.

22 And one last comment. When you're mixing 2.5 PMs
23 and 10 PMs it's like mixing apples and avocados or grapes
24 and grapefruit. It ain't the same. Thank you very much.

25 HEARING OFFICER CELLI: Thank you, Mr. Talbot.

1 Jack Ehernberger, are you here? Okie-doke. I'm
2 told that you just wanted to summarize some written
3 comments.

4 MR. EHERNBERGER: Or at least capture their
5 background.

6 First of all, I'd like to say I enjoy a memory, a
7 change of scenery --

8 Like this?

9 HEARING OFFICER CELLI: Perfect. Thank you.

10 MR. EHERNBERGER: Okay. I enjoy the change of
11 scenery in the Antelope Valley after being a weather watcher
12 for 50 years. We know longer see the colored air shed
13 coming through the Tehachapi Pass or coming up through the
14 San Gabriel Mountains. And I appreciate very much
15 everybody's earnest and honest efforts to assure that we
16 preserve our good efforts here. I know it's painstaking and
17 there's a lot of unknowns in this business, and so I've
18 prepared some written remarks on the unknowns that I didn't
19 see in a glance at the background material.

20 The most serious and easily solved unknown is the
21 use of Victorville data, as opposed to Palmdale Plant 42
22 data. And I've heard some specific concerns in that regard,
23 if -- if I can submit those.

24 HEARING OFFICER CELLI: Thank you. So you're --
25 your submitting comment, written comment?

1 MR. EHERNBERGER: Yes.

2 HEARING OFFICER CELLI: Okay. Good.

3 MR. EHERNBERGER: I don't see as detailed an
4 analysis of the data as I'd like to see. And I don't see
5 details of the data that was used in order to appraise the
6 appropriateness of estimating a Palmdale environment with
7 the Victorville environment.

8 HEARING OFFICER CELLI: Got you loud and clear.
9 Thank you very much.

10 MR. EHERNBERGER: Okay. Thank you.

11 HEARING OFFICER CELLI: Okay. I'm going to the
12 phones now. It looks like I may have some people who wanted
13 to call in make public comment.

14 Folks, I'm just going to ask if there's anyone on
15 the phone who would like to make a public comment, speak up
16 now. Speak loudly.

17 And -- and let me just say that, folks, on the
18 phone, if you are on a speaker phone I'm going to ask you to
19 pick up the handset and use the handset because we can't
20 hardly hear you. Go ahead. Speak very loudly.

21 Is there anyone who would like to make a comment
22 on the phone?

23 MR. PARSON: Hello?

24 HEARING OFFICER CELLI: Yes. Your name, ma'am?

25 MR. PARSON: Oh, this is Ms. Parson, Nicole.

1 HEARING OFFICER CELLI: Could you spell that?

2 MS. PARSON: Parson, P-a-r-s-o-n.

3 HEARING OFFICER CELLI: Last?

4 MS. PARSON: Nicole, N-i-c-o-l-e.

5 HEARING OFFICER CELLI: Thank you. Go ahead.

6 Your comment, please.

7 MS. PARSON: (Call-in connection inaudible.)

8 HEARING OFFICER CELLI: Thank you so much for your
9 comments.

10 Is there anyone else on the phone who would like
11 to make a comment, public comment at this time? Please
12 speak up. I see I have a couple of unidentified users on
13 the phone, and some other people. If anyone wishes to make
14 a comment at this time please speak up. Okay.

15 Hearing none and seeing that it's three o'clock
16 it's time for us to resume taking testimony. We have closed
17 the record then on air quality and public health.

18 And we next go to the road paving issues. Now
19 this is going to be at the request of CBD, a panel that
20 deals with road paving which encompasses the following
21 sections out of the final staff assessment: biology, land
22 use, soil and water, traffic and transportation, and what
23 were called at the prehearing conference growth inducing
24 impacts.

25 So if there aren't enough chairs, bring up a chair

1 with you. This is a large panel. The record should reflect
2 and the people on the phone need to know that there are one,
3 two, three, four, five, six, seven, eight people on this
4 panel -- or is it seven people? Okay.

5 MS. DE CARLO: Before we go to road paving, really
6 quickly I just want to --

7 HEARING OFFICER CELLI: Is your mike on?

8 MS. DE CARLO: Yeah. I'm just not speaking close
9 enough.

10 Before we get to road paving I just want to talk
11 about the exhibits produced by Ms. Williams and whether or
12 not we'll have an opportunity at the end of the day to talk
13 about our objections to those or whether we needed to do it
14 right now?

15 HEARING OFFICER CELLI: Did I not give you an
16 opportunity to object when I --

17 MS. DE CARLO: We didn't -- not after that first
18 opportunity at the beginning.

19 HEARING OFFICER CELLI: Okay. Because my
20 intention at the time was really to -- since these were
21 all -- all of the exhibits that I was attempting to receive
22 into evidence, which were all of staff's, all of CBD's, all
23 of Desert Citizen Against Pollution, were -- were all
24 received at the prehearing conference statement in terms --
25 in other words, you had seen them all except for I think

1 there was some correction to mister -- or Dr. Tholen's
2 testimony, Mr. Tholen. And my intention was to receive them
3 into evidence earlier on when I thought we had done that.

4 MS. DE CARLO: Well, we -- we had raised
5 objections, the applicant and the staff. And --

6 HEARING OFFICER CELLI: There are two objections
7 that I'm aware of that are still pending. One was 50 --
8 give me a second -- 300 through 307 are received with no
9 objection; 400 through 403 were received without objection,
10 other than the objection that the applicant raised with
11 regard to the opinion of expert without an expert resume
12 attached, which we still received over that objection. And
13 then there's 500 -- or, no, I'm sorry, 501 and 502 have
14 relevancy objections.

15 MS. DE CARLO: Yeah. Those are the two I was
16 talking about --

17 HEARING OFFICER CELLI: Right.

18 MS. DE CARLO: -- one of which specifically deals
19 with public health. And I was wondering if you wanted to
20 take that after the public health panel or if you wanted to
21 discuss those objections at the end of the day?

22 HEARING OFFICER CELLI: We're going to have to --
23 let's discuss it at the end of the day.

24 MS. DE CARLO: Okay.

25 HEARING OFFICER CELLI: Please remind me about

1 that. But I just want to be -- I just want to say that the
2 other one, was it 502, was a transcript. We -- it was kind
3 of hard to say whether it was relevant because we hadn't
4 heard --

5 MS. DE CARLO: Well --

6 HEARING OFFICER CELLI: -- the testimony yet.

7 MS. DE CARLO: -- as proposed by Ms. Williams,
8 initially the transcript had to do with aviation issues
9 which --

10 HEARING OFFICER CELLI: Right.

11 MS. DE CARLO: -- we've agreed are not subject to
12 this hearing. So that was my objection.

13 HEARING OFFICER CELLI: Well, we -- we weren't
14 taking any testimony on it. She was going to be able to
15 argue.

16 MS. DE CARLO: No, not for aviation. That was
17 hazardous materials, I believe.

18 HEARING OFFICER CELLI: No. Actually, I have that
19 in the order that we -- it says, "Traffic and
20 transportation, apart from impacts from road paving." And
21 then --

22 MS. DE CARLO: I believe you were going to allow
23 her to -- to argue the hazardous materials issue in regards
24 to whether or not other parties should be able to review
25 documents --

1 HEARING OFFICER CELLI: You're right.

2 MS. DE CARLO: -- during compliance.

3 HEARING OFFICER CELLI: That's correct.

4 MS. DE CARLO: But the aviation issue is, my
5 understand, it was completely off the table. It was not
6 subject to dispute.

7 HEARING OFFICER CELLI: Impacts to road paving,
8 traffic and transportation. Then when we talked about
9 disputed we said, "Traffic and transportation limited to
10 issues arising from road paving. No witnesses on aviation."

11 MS. DE CARLO: Right. And --

12 HEARING OFFICER CELLI: And so we're not taking
13 any testimony. And there's been no testimony offered on
14 aviation, apart from the desert -- Desert Citizens Against
15 Pollution's offer of the exhibit having to do with -- I
16 think it was the East Short transcript.

17 MS. DE CARLO: Right. And it was my understanding
18 that there is no issue with the aviation at this point.

19 HEARING OFFICER CELLI: I'm going to allow the
20 parties to argue in their briefs. But we're not going to --
21 we're not taking testimony.

22 MS. DE CARLO: I guess I'm a little perplexed
23 about what that argument would be since staff has not been
24 provided the opportunity to present testimony

25 HEARING OFFICER CELLI: We have no idea.

1 MS. DE CARLO: Okay.

2 HEARING OFFICER CELLI: But the staff did receive
3 the prehearing conference statement where she said this is
4 what I'm putting in. So you were on notice that this was
5 coming in. They had some designs. We talked about it.
6 They weren't putting anything in on aviation, other than
7 this transcript. And frankly, I have no clue what --
8 what -- how they're going to use that information. But
9 they're limited to briefing it and not --

10 MS. DE CARLO: Okay.

11 HEARING OFFICER CELLI: -- we're not going to have
12 an argument. So --

13 MR. CARROLL: So just so I understand, and for the
14 record, the applicant's objection to 400 is not limited to
15 the failure to include a resume. It -- it's also based on a
16 failure to produce that witness for cross-examination. And
17 so it's beyond -- although, having failed to produce a
18 resume is also important, but it goes beyond the bigger
19 issue.

20 So is it my understanding that we're going to come
21 back to the committee ruling on the intervenor's exhibits?

22 HEARING OFFICER CELLI: Just the ones -- just the
23 ones for which the objections were preserved.

24 MR. CARROLL: Okay.

25 HEARING OFFICER CELLI: So we'll cross that bridge

1 again --

2 MR. CARROLL: And --

3 HEARING OFFICER CELLI: -- sorry to say.

4 MR. CARROLL: And if I may, before we begin with
5 the road paving panel, has -- has Miss -- this is Mike
6 Carroll for the applicant.

7 As Ms. Head testified earlier today in response to
8 concerns raised by the intervenors, the applicant has
9 recently narrowed the list of proposed roads for paving from
10 ten to five. We filed on Monday a map showing the location
11 of those five road segments. We have with us here 11-by-17
12 color copies of that and a blowup of the board. Our thought
13 was that that could be very helpful to the committee and --
14 and the parties during the discussion of the road paving.
15 But at the same time I realize that we just made that
16 available on Monday.

17 What we would do is propose to have that marked as
18 Petitioner's *[sic]* Exhibit 156, distribute the 11-by-17
19 copies so that we all have it in front of us, and put the
20 board up here in front. But I just wanted to make sure that
21 nobody had an objection to that.

22 HEARING OFFICER CELLI: Any objection from staff?

23 MS. DE CARLO: No.

24 HEARING OFFICER CELLI: Any objection from Ms.
25 Belenky, from CBD and your -- thanks.

1 MS. BELENKY: I don't object to him providing
2 the -- the exhibit, or whatever you're calling it at this
3 point. It's not officially an exhibit. So --

4 HEARING OFFICER CELLI: It's marked for
5 identification as Exhibit 156.

6 (Whereupon, Applicant's Exhibit 146 was marked for
7 identification.)

8 MR. CARROLL: Yeah. I'm sorry. It's -- it would
9 be 146.

10 HEARING OFFICER CELLI: Okay.

11 MR. CARROLL: I misspoke.

12 HEARING OFFICER CELLI: 146.

13 MS. BELENKY: I guess I was confused because you
14 put this in after the evidentiary record. I'm --

15 MR. CARROLL: And that's why I'm raising it.
16 We're --

17 MS. BELENKY: Okay.

18 MR. CARROLL: We're not going to press --

19 MS. BELENKY: Okay.

20 MR. CARROLL: -- that this go into the evidentiary
21 record if there are concerns. We just thought that it would
22 be helpful to everybody --

23 MS. BELENKY: Yeah.

24 MR. CARROLL: -- to have it.

25 MS. BELENKY: No. I think it's helpful to

1 everyone to look at it. That would be fine.

2 HEARING OFFICER CELLI: Okay. Thank you. And any
3 objection from DCAP, Ms. Williams?

4 MS. WILLIAMS: Any objection to looking at it or
5 to having it as part of the evidentiary record?

6 HEARING OFFICER CELLI: Well, right now it's
7 marked for identification, but it has not been received into
8 evidence. I don't really know exactly, other than perhaps
9 to just show us on a map so we're all talking about the same
10 thing, how they would use this document. But they are
11 essentially seeking a stipulation that that be allowed into
12 the record.

13 MS. BELENKY: Well, yeah, I guess I wasn't sure
14 that's what they're seeking. I'm just confused. And this
15 happens, I know. I can't believe I'm still confused after
16 doing this for over a year. But, you know, there's always
17 this sense in which things are changing and there's a moving
18 target as to what the proposals are.

19 So I understand that applicant has now put this
20 forward as their preferred road segments, but there has been
21 no discussion between the parties of whether, you know, that
22 means the other road segments are off the table or not.

23 And so I guess I don't object to them saying this
24 is what they prefer. But there is nothing that's been, even
25 with staff as far as I've seen in the record, that anyone

1 has agreed that the other road paving segments are off the
2 table. So that's my concern.

3 HEARING OFFICER CELLI: I -- and I hear you. You
4 know, one of the things that the committee really, really
5 smiles on is when the parties get together and talk and
6 stipulate and can come to an agreement on what should and
7 should not be in the record. I understand that some things
8 come up last minute and you never -- you know, this is, as
9 Ms. Williams said, a bit of a moving target because the
10 project is in a constant state of correction and improvement
11 and so forth. So it is kind of hard to get your finger on
12 it.

13 Therefore -- so the point I'm -- I'm making is
14 this, I would hope that the parties would stipulate -- if
15 there are anything -- if there's anything to stipulate to
16 now that the parties would talk to -- amongst themselves
17 about it. And if they can inform me that takes anything off
18 the takes anything off the table, we're interested in that.

19 But what we're going to do with this right now
20 because you seem to be unsure about what you want to do is
21 we will allow you to mark the exhibit as Exhibit 146 for
22 identification. We'll let you use it however you're going
23 to use it in the record. And then we will -- you'll have to
24 remind me with a motion to move it into the record later.
25 So right now it's not received into evidence, it's just

1 identified.

2 MR. CARROLL: Thank you.

3 HEARING OFFICER CELLI: Thank you.

4 So what I'm holding in my hand now is marked for
5 identification as Exhibit 146 is -- a PHPP PM10 road paving
6 map that is really -- it looks like a satellite shot of the
7 PHPP site, PHPP being the Palmdale Hybrid Power Plant, and
8 then two insets laid over it showing other segments of road
9 presumably to be paved.

10 So with that, is this --

11 MR. CARROLL: And again, just for purposes of
12 clarification, this is the same map that was docketed on
13 Monday, and these are five of the previously identified road
14 segments. These are not, obviously, new road segments.
15 So -- and again, what we're trying to do here is facilitate
16 discussion, narrow the scope of the discussion and, frankly,
17 respond to concerns raised by the intervenors by honing the
18 list of roads that we're proposing to pave.

19 HEARING OFFICER CELLI: Okay. So we're into a new
20 topic. Applicant has the burden, goes first.

21 MR. CARROLL: Thank you. On -- on this panel --

22 HEARING OFFICER CELLI: One minute. We need to
23 swear your witnesses.

24 MR. CARROLL: Yes. So on this panel we have Ms.
25 Head, who was sworn earlier. We also have Mr. John Wilson,

1 who is testifying by telephone. And we have Ms. Laurie
2 Lile, who is here testifying in person. So Mr. Wilson and
3 Ms. Lile need to be sworn.

4 HEARING OFFICER CELLI: Okay. Let me do this,
5 let's see -- okay. John Wilson.

6 Mr. Wilson, are you online?

7 MR. WILSON: Yes, I am.

8 HEARING OFFICER CELLI: Okay. Can you talk -- say
9 your name and spell it, but take your mouth about an inch
10 away from the -- from your phone speaker.

11 MR. WILSON: Okay. My name is John Wilson,
12 J-o-h-n W-i-l-s-o-n.

13 HEARING OFFICER CELLI: Okay. We can hear you
14 beautifully. You sound very clear. So keep yourself at
15 that distance from your speaker, if you would. So --

16 MR. WILSON: Okay.

17 HEARING OFFICER CELLI: -- Mr. Wilson, Mr. Head
18 has already been sworn. Who was the other person, Mr.
19 Carroll?

20 MR. CARROLL: Ms. Lile.

21 HEARING OFFICER CELLI: Ms. Lile. Okay.

22 Ms. Lile, would you please stand, and Mr. Wilson,
23 would you please stand?

24 (Witnesses sworn.)

25 HEARING OFFICER CELLI: Ms. Lile, would you state

1 and spell your name, please?

2 MS. LILE: Laurie Lile, L-a-u-r-i-e L-i-l-e.

3 HEARING OFFICER CELLI: Thank you. Mr. Wilson,
4 would you state and spell your name?

5 MR. WILSON: John Wilson, J-o-h-n W-i-l-s-o-n.

6 HEARING OFFICER CELLI: Applicant, you may
7 proceed.

8 MR. CARROLL: Thank you. And on this panel we're
9 going to begin with Ms. Head. We'll then commence to Mr.
10 Wilson, and then finish with Ms. Lile.

11 DIRECT EXAMINATION

12 MR. CARROLL: Ms. Head, you testified earlier
13 today that you had recently worked to narrow the list of
14 candidate roads to the five that are identified on the
15 exhibit that's been marked as Petitioner's Exhibit 146.

16 Having narrowed that list of candidate roads did
17 you undertake any further analysis to confirm the previous
18 conclusions that you had reached regarding whether or not
19 the paving of the roads would result in any adverse
20 environmental impacts?

21 MS. HEAD: Yes, we did. On last Friday, February
22 25th, myself and Dr. Carl Demetropoulos, a wildlife
23 biologist and cultural research specialist, conducted an
24 additional survey of the short list of road segments. And
25 Dr. Demetropoulos has a masters in ecology and zoology and a

1 Ph.D. in fisheries and wildlife biologies, as well as formal
2 training in cultural resources evaluation.

3 MR. CARROLL: And what was the purpose of the --
4 and if you could describe the -- the survey work that you
5 did and then -- and the purpose of that survey work?

6 MS. HEAD: The -- the purpose of the survey was
7 just to confirm the nature and location of the road segments
8 such that we would not expect any environmental impacts.
9 And -- and our survey did accomplish this goal. We did
10 confirm our previous views that the paving of the road
11 segment would not result in unmitigated adverse impacts,
12 that there was no potential impacts to biological resources,
13 jurisdictional waters, and no cultural resources were found
14 in this fairly cursory survey of the five miles of roads
15 proposed for paving. There was some granitic and
16 metamorphic fractured rocks, but appear to have been machine
17 crushed and imported as road base.

18 And do the location of the roads within existing
19 residential areas we felt that there was low potential for
20 presence or use by listed species.

21 No significant drainage features were found. And
22 similarly, the roadbeds are already disturbed through
23 maintenance grading of unpaved roadways, and hence impacts
24 to cultural resources are expected to be minor at all. All
25 of the roads are in fairly well developed areas, and

1 therefore we would not expect the paving to lead to further
2 development that could produce growth inducing impacts.

3 MR. CARROLL: Did you conduct what are typically
4 referred to as protocol level surveys for biological
5 resources?

6 MS. HEAD: No. And in my opinion it's not
7 necessary to conduct protocol level surveys such that -- to
8 reach meaningful conclusions regarding the potential for
9 impacts for the appropriate mitigation.

10 MR. CARROLL: And did you complete a formal
11 delineation of potential navigable waterways in the vicinity
12 of the road segments?

13 MS. HEAD: Not a formal delineation. But again,
14 we didn't find any drainages that we felt would require such
15 an analysis.

16 MR. CARROLL: Thank you. I want to now draw your
17 attention to a comment letter submitted by Dr. Fox. And in
18 the interest of moving this along I am going to condense a
19 series of questions that I had previously prepared. So I
20 apologize in advance if -- if the testimony is a little bit
21 disjointed. But I believe that by consolidating the
22 questions we'll be able to move through this more quickly.

23 Ms. Fox makes a number of assertions in her
24 comment letter regarding potential environmental impacts
25 associated with the proposed road paving. And I'd like, if

1 you would, to render your opinion of some comments raised by
2 Ms. Fox in her comment letter.

3 MS. BELENKY: I'm going to object because I'm not
4 sure why this wasn't in your testimony previously. And we
5 had agreed not to go over any previous testimony. You had
6 the opportunity to submit Ms. Fox's letter since, I believe
7 July last year.

8 HEARING OFFICER CELLI: So is there -- so Ms.
9 Fox's letter was submitted with your opening testimony, Ms.
10 Belenky?

11 MS. BELENKY: Our letter was submitted to the
12 commission and has been on the commission website since July
13 of last year, and was provided to the -- to the entire proof
14 of service list at that time. At that time we were not a
15 party, but we were a member of the public who submitted
16 comments specifically on the F docket and provided it to the
17 entire proof of service list. It was also put up on your
18 website for this project at that time.

19 I think I'm -- I'm raising this because it is a
20 concern that the center has, having both been an intervenor
21 and someone who comments on some of these projects that
22 comments from members of the public are not taken into
23 account appropriately. And so if for some reason the
24 applicant felt they didn't need to look at those comments I
25 would like to understand why and why at this late date they

1 are now responding to them.

2 HEARING OFFICER CELLI: Okay. So part of the
3 prehearing conference statement was a letter from the Center
4 for Biological Diversity regarding the FDOC for the Palmdale
5 Hybrid Power Plant Project, dated July 22nd, 2010, an
6 attachment letter regarding proposed paving, emission
7 reduction credits for Palmdale Hybrid Power Project, dated
8 July 19, 2010 from Phyllis Fox, Ph.D., UEP, PE, PCE,
9 Consulting Engineer.

10 Now, Mr. Carroll, I -- oh, I actually do have the
11 opening testimony. I have what's called Opening Testimony
12 Rebuttal, the Applicant's Response to Final Staff
13 Assessment. And that letter is contained in that opening
14 testimony and rebuttal to applicant's response. So
15 presumably that was opening testimony --

16 MR. CARROLL: Well --

17 HEARING OFFICER CELLI: -- part of the opening
18 testimony.

19 MS. BELENKY: We -- we asked it to be considered
20 an exhibit at that time.

21 HEARING OFFICER CELLI: Okay. You understand,
22 we're heading for -- you know, maybe this is the time we
23 have to deal with this problem head-on, which is the
24 admissibility of this comment letter.

25 MS. BELENKY: Well --

1 HEARING OFFICER CELLI: Because there's a witness.
2 Of course, then again, Applicant didn't -- did you ask to
3 have Ms. Fox in your prehearing statement?

4 MS. BELENKY: They did ask to cross-examine Ms.
5 Fox. And we explained that she was not available because
6 this was the date that you -- you set for the hearing and
7 she is not available.

8 Applicant has had this letter for eight months, at
9 least. And -- and if they had any comments on it or any
10 rebuttal testimony that they wanted to submit they had more
11 than enough chance to -- to raise it.

12 HEARING OFFICER CELLI: Yeah. What we need to do
13 right now is make it -- draw a distinction between comment
14 and testimony.

15 MS. BELENKY: Well --

16 HEARING OFFICER CELLI: Because it's -- it's --
17 this letter appears to be -- well, you tell me that -- how
18 it's testimony and not comment.

19 MS. BELENKY: We submitted it as a comment. It
20 has been relied on by our expert who was already cross-
21 examined, and they had an opportunity to cross-examine him
22 at that point. It was relied on our expert. That's what we
23 discussed this morning.

24 HEARING OFFICER CELLI: Okay.

25 MS. BELENKY: And it was taken into evidence

1 already, and there was already an objection.

2 So now what I hear is fresh new testimony from the
3 applicant.

4 HEARING OFFICER CELLI: Yeah. But we may not have
5 to go there --

6 MS. BELENKY: Okay.

7 HEARING OFFICER CELLI: -- if this is treated as
8 comment and not -- not evidence.

9 MS. BELENKY: It was relied on by my expert, and
10 therefore taken. And you already ruled on this this
11 morning. So I'm not sure what --

12 HEARING OFFICER CELLI: Well, we haven't ruled on
13 the objection.

14 MS. BELENKY: You did. I thought you did on the
15 record.

16 HEARING OFFICER CELLI: I thought we -- actually,
17 I do recall that we were going to allow it in --

18 MS. BELENKY: Uh-huh.

19 HEARING OFFICER CELLI: -- but not rely on any of
20 the opinions because she -- she's -- her expertise, I
21 thought the objection was her expertise. There's no
22 evidence of her expertise attached.

23 Am I confusing this with another --

24 MR. CARROLL: Well, let me -- let me state
25 Applicant's position.

1 First of all, it is true that this comment letter
2 was submitted on July 22nd, 2010. However, it was not
3 indicated by the intervenors that this would be -- and then
4 it was subsequently attached to the opening statement in
5 this matter. However, it was not until the filing of the
6 prehearing conference statements that this comment letter
7 was identified as an exhibit.

8 So you know, there are a great many comment
9 letters that are submitted into the record that the
10 applicant may or may not believe that it needs to respond to
11 over the course of the proceedings. But when we get to the
12 point where the intervenor then identifies it as an exhibit,
13 which did not happen until the filing of the prehearing
14 conference statements. And of course, we had no opportunity
15 to file any rebuttal to it or -- or comments on it after
16 that day.

17 So -- so we've had the comment letter since July
18 22nd, but we didn't know that the intervenors were proposing
19 to use it as an exhibit in these proceedings until the
20 filing of the prehearing conference statement.

21 HEARING OFFICER CELLI: That's true.

22 MR. CARROLL: And there is not --

23 MS. BELENKY: That's actually incorrect. Because
24 in our opening testimony we -- we identified it as an
25 exhibit, as Exhibit 400. It -- it was identified at that

1 time.

2 I don't -- I don't want to belabor this point, but
3 I do want to say that if you want to have new testimony
4 regarding this letter that I -- we had no idea you were
5 going to have I have no one -- I am now at a disadvantage
6 and I would like the hearing to be continued so that we can
7 then find an expert to rebut that, and see if Phyllis Fox is
8 available at a time when she could rebut it, because this
9 was supposed to be dealt with during air quality.

10 HEARING OFFICER CELLI: Look, we --

11 MS. BELENKY: And now you're trying to deal with
12 it here when I don't have an expert available.

13 MR. CARROLL: Well, Applicant would ask --

14 HEARING OFFICER CELLI: Before -- before you get
15 into it let me just -- I want to say something clearly. We
16 had a prehearing conference.

17 MS. BELENKY: Yes.

18 HEARING OFFICER CELLI: The reason we had a
19 prehearing conference is so that we can say what is the
20 evidence that each party wants to put in, and that's what --
21 that's the whole purpose for having a prehearing conference,
22 so you -- everybody knows what the evidence will be and
23 everybody's prepared to deal with it.

24 Now CBD put it in there prehearing conference
25 statement. They mentioned this exhibit. So Applicant was

1 on notice that the exhibit existed. And my recollection of
2 the prehearing conference statement was that you has asked
3 Mr. Carroll to have Ms. Fox present to -- for questioning.

4 MR. CARROLL: That's right. We did.

5 MS. BELENKY: That's right.

6 HEARING OFFICER CELLI: Okay.

7 MS. BELENKY: And we said that she was not
8 available. And we had another air quality expert who was
9 available, and he was available today. He was available for
10 cross-examination. And he was available during air quality.

11 HEARING OFFICER CELLI: Now he relied on this
12 letter in his testimony?

13 MS. BELENKY: That's right. And he could have
14 been cross-examined, and he could have been -- also been
15 listening to rebut, and the rebuttal that they are now going
16 to present. But now he is not available because I had no
17 idea that they were going to raise this issue in this part
18 of the --

19 HEARING OFFICER CELLI: Well, you did because you
20 were told that they were interested in hearing from Phyllis
21 Fox but she's unavailable.

22 MS. BELENKY: No. That this is about road paving.

23 MR. CARROLL: Well, let me clear, the --

24 MS. BELENKY: This part is the road paving, not
25 the air quality, so --

1 MR. CARROLL: Mr. Tholen was presenting for
2 purposes of air quality and public health.

3 MS. BELENKY: That's --

4 MR. CARROLL: And we did --

5 MS. BELENKY: Road and air quality.

6 MR. CARROLL: We did question Mr. Tholen about all
7 of the issues raised in Ms. Fox's letter related to air
8 quality. We're not intending to cover air quality.

9 The questions that I was about to ask Ms. Head
10 relate to biological resources. The intervenors have not
11 put on any witness rebuttal for resources.

12 But let me -- let me cut to the chase. If we can
13 get a ruling from the committee that his is being admitted
14 as comment and nothing further, and the fact that Mr. Tholen
15 relied upon his expert testimony doesn't make it anything
16 more than public comment, then we will not proceed with any
17 further questions with respect to this letter.

18 HEARING OFFICER CELLI: Okay. We're going to go
19 off the record for a moment.

20 (Discussion off the record.)

21 HEARING OFFICER CELLI: Back on the record. So
22 the committee discussed the issue and has decided that under
23 1212 of our regulations that the document can come in as
24 evidence. If it comes in as evidence then the applicant has
25 the right to ask questions about it by your expert. And so

1 we won't preclude it for that.

2 The problem now is down to Ms. Belenky's argument
3 that Mr. Tholen would have been available to make rebuttal
4 testimony on any of the questions that the applicant would
5 ask now as it relates to Ms. Fox's letter. Do we have -- am
6 I accurately reflecting that?

7 MS. BELENKY: I think that's correct. And also
8 this was not rebutted in the rebuttal testimony. So this is
9 new testimony that has not -- on an old document.

10 MR. CARROLL: First of all, we're not planning to
11 ask any questions about air quality. We asked those at the
12 appropriate time during the air quality panel. So the
13 absence of Mr. Tholen is completely irrelevant because he
14 was presented as exclusively an air quality witness.

15 HEARING OFFICER CELLI: That's true.

16 MR. CARROLL: The questions I'm going to ask Ms.
17 Head are related to biology.

18 And let me just explain what we have here. We
19 have a comment letter here that suggests that the road
20 paving is going to result in biological impacts. It was
21 submitted without a declaration. We asked that the -- that
22 if that was going to be produced as an exhibit that the
23 witness be made available for cross-examination. That
24 witness was not made available for cross-examination.
25 And -- and now the -- the only witness that was made

1 available was an air quality witness who happened to defer
2 to the same letter.

3 And so our view is that the intervenors are really
4 trying to bootstrap into the evidentiary record these
5 comments on biological resources without having presented
6 the qualifications of the -- of the author of the letter, or
7 having made that witness available for cross-examination.

8 HEARING OFFICER CELLI: Yes. That -- that's an
9 accurate statement as it relates to the -- the foundation
10 for the expert testimony if it came in as expert testimony.

11 MS. BELENKY: Well --

12 HEARING OFFICER CELLI: So -- and so, Ms. Belenky,
13 did you offer the resume of Ms. Fox when you submitted her
14 letter?

15 MS. BELENKY: I don't believe we did. But the --
16 when we submitted it as to public comment I don't believe we
17 did. I did not.

18 But I think that we're losing sight of the
19 initiating part here. The ERCs were provided as part of the
20 air quality offsets. And we raised this in the context
21 of -- this is part of the problem with divvying this all up
22 into little pieces.

23 HEARING OFFICER CELLI: Oh, I understand.

24 MS. BELENKY: So you're --

25 HEARING OFFICER CELLI: No, I understand that.

1 MS. BELENKY: You're now asking me to have had a
2 witness available for -- I don't even know what they're
3 trying to say that they're -- that they're trying to ask.
4 So why doesn't he go ahead and ask his questions and I can
5 object to each question.

6 HEARING OFFICER CELLI: All right. The -- the --
7 I do want to point out, though, that when there were
8 questions asked of Mr. Tholen there was an objection by you
9 that he was not a public health expert.

10 MS. DE CARLO: That's right.

11 HEARING OFFICER CELLI: He as limited to air
12 quality.

13 MS. BELENKY: That's right.

14 HEARING OFFICER CELLI: So -- and as Mr. Carroll
15 said, this was a biological question.

16 So was Mr. Tholen going to be the expert on --

17 MS. BELENKY: No. He's not a biological expert.
18 Because of the rush that the committee has been in the
19 center has been unable to obtain a biological expert, even
20 though we have such experts on staff. The committee has
21 rushed this schedule, what we believe is at -- at a rate
22 that is absolutely -- there's no basis for this rush. We
23 have been unable to obtain a biological expert to work on
24 this matter. We felt that we -- we put in -- let me just
25 start over.

1 We put in this -- this comment, which was at the
2 time a comment in July. The staff in the FSA did not
3 respond to it in a meaningful way. The staff put in
4 comments in rebuttal to our opening testimony, finally
5 addressing the biological issues.

6 We were unable to obtain a biological expert after
7 that time to deal with this case. And I have to tell you, I
8 was very upset by that. But the fact is that the committee
9 has insisted on rushing this matter through and we were not
10 able to provide a biological expert.

11 HEARING OFFICER CELLI: Actually, I -- I have to
12 say that this is one of the oldest cases we have at the
13 California Energy Commission. Okay.

14 MS. BELENKY: Well --

15 HEARING OFFICER CELLI: It's probably the oldest
16 active case we have that isn't in suspense.

17 MS. BELENKY: It --

18 HEARING OFFICER CELLI: And so we have hardly
19 rushed this case.

20 MS. BELENKY: Between the FSA and today and given
21 the briefing schedule you're looking at I would say it's
22 extremely rushed. And I do not believe that if we had had
23 an appropriate opportunity to provide any cross-rebuttal
24 after the FSA. The staff finally took up an issue that we
25 raised last July. The -- the staff did not even take up

1 that issue until -- I don't remember the date right now.

2 But --

3 MS. DE CARLO: I can explain why we didn't address
4 the issue -- the comment letter head-on in the FSA, if the
5 committee is interested.

6 HEARING OFFICER CELLI: Well, now I don't want to
7 get into that. I want to get into -- I want to get into the
8 admissibility of this -- this evidence. And I'm -- and I'm
9 trying to get to the heart of it and see. Where we're at
10 right now is, granted, CBD did put Applicant on notice of
11 the existence of this document back in July prior to
12 Intervenor in the case.

13 Now for our purposes up here our prehearing
14 conference is pretty much the place where we say what comes
15 in and what stays out. And at the prehearing conference you
16 put the parties on notice that you wanted to bring in this
17 comment letter, as you described it. And at the prehearing
18 conference the applicant said we would like to cross-examine
19 Dr. Fox on that. Okay.

20 Now Dr. Fox isn't here. The witness you did have
21 wasn't a biological witness. See, because I was thinking,
22 oh, well, maybe we could get Dr. Tholen back on the phone
23 later in the afternoon or something like that, but Dr.
24 Tholen is of no use if he's not a biological -- he's got no
25 biological expertise. So that's -- that's the concern we

1 have there.

2 MS. BELENKY: I think we should probably move
3 forward with our questions. I -- I do have to say it, I --
4 I don't think that the statements in the letter are of
5 particular -- regarding the fact that road paving may have
6 significant biological effects are particularly
7 controversial. In fact, the appeals court agreed. So I
8 don't know exactly what it is that Applicant --

9 HEARING OFFICER CELLI: So --

10 MS. BELENKY: -- is trying to prove by now cross-
11 examining a letter.

12 HEARING OFFICER CELLI: Right. Let me -- let me
13 just get back to -- to Mr. Carroll on this. Because under
14 1212 the letter can come in. There's nothing to exclude the
15 letter on its face just because it's a document, it's a
16 letter from someone that has -- expresses an opinion. We
17 have had weaker evidence than that come in under 1212. So
18 it can come in as evidence. And I believe you can ask
19 your -- your expert questions about that letter because it's
20 being brought -- it's being offered as evidence by CBD.

21 Now -- so with that I think we better proceed with
22 your questions, and then we'll hear whatever the objections
23 are.

24 MR. CARROLL: Thank you. And again, as I said at
25 the outset, we were going to try to make this as brief as

1 possibly by consolidating it into one single question, which
2 probably will take less time to answer than we just covered
3 in determining whether we would be allowed to ask the
4 question or not.

5 But, Ms. Head, having reviewed Dr. Fox's comments
6 on the potential for the road paving to produce
7 environmental impacts what is your opinion of her views with
8 respect to those issues?

9 MS. HEAD: Basically, Dr. Fox's comments are
10 predicated on the idea that road paving would occur in
11 remote areas, would be in the midst of undisturbed habitat
12 and/or widening of the road footprint, and -- and that
13 she -- her comments are based on an unsupported assumption
14 that the road paving would increase traffic.

15 We've looked at the roads, as I mentioned, and --
16 and again, narrowed these to a list of -- of the initial
17 preferred roads. And we believe that these particular road
18 segments would have none of those attributes and that they
19 would not increase traffic or -- or induce driving.

20 So basically we felt that, you know, her comments
21 provided little evidence to rebut that determination and
22 were basically fairly irrelevant, and we'll leave it at
23 that.

24 MR. CARROLL: Thank you. I have no further
25 questions for this witness. And I don't know how -- if you

1 want to handle cross-examination on a witness by witness
2 basis here.

3 HEARING OFFICER CELLI: No. I want you to
4 basically finish with this panel, we're treating this as a
5 panel.

6 MR. CARROLL: Okay.

7 HEARING OFFICER CELLI: And then we'll go to staff
8 to cross the panel, and then we'll go to the intervenors to
9 cross the panel.

10 MR. CARROLL: Thank you. Mr. Wilson, can you hear
11 me?

12 MR. WILSON: Yes.

13 MR. CARROLL: Good. You've already stated your
14 name and -- and have been sworn in.

15 MR. CARROLL: Who is your employer, please?

16 MR. WILSON: Sandis Engineering. We're the sub-
17 consultant to AECOM and we were retained to conduct the
18 aspects of the traffic and transportation analysis for the
19 project.

20 MR. CARROLL: And what was your role with respect
21 to the project?

22 MR. WILSON: I was the individual responsible for
23 completing certain aspects of it.

24 MR. CARROLL: And are your qualifications
25 accurately reflected in the resume contained in Appendix B

1 of Applicant's Prehearing Conference Statement filed on
2 January 12th, 2011?

3 MR. WILSON: Yes.

4 MR. CARROLL: We'd ask that this witness be
5 recognized as an expert in the technical specialties
6 identified in his resume which is on file.

7 HEARING OFFICER CELLI: Any objection, Staff?

8 MS. DE CARLO: No.

9 HEARING OFFICER CELLI: Any objection, CBD?

10 MS. BELENKY: No.

11 HEARING OFFICER CELLI: Any objection, DCAP?

12 MS. WILLIAMS: No.

13 HEARING OFFICER CELLI: Thank you. Mr. Wilson is
14 an expert.

15 And would you just say what he's an expert in?

16 MR. CARROLL: Traffic.

17 HEARING OFFICER CELLI: Traffic. Thank you. Go
18 ahead.

19 MR. CARROLL: Mr. Wilson, are you familiar with
20 the short list of preferred roads that have been identified
21 for paving in connection with the project?

22 MR. WILSON: Yes. I have reviewed the -- with the
23 looking at aerial maps and the surrounding area, and just
24 basic knowledge of traffic patterns and whatnot in the area.

25 MR. CARROLL: And have you had an opportunity

1 analyze whether or not the paving of these roads would
2 increase traffic on the road segments, thereby causing
3 additional environmental growth inducing impacts?

4 MR. WILSON: I do not think that would occur.

5 MR. CARROLL: And could you please elaborate on
6 the -- the basis of that view?

7 MR. WILSON: Well, several things. One, the five
8 segments, for instance, segments two, six and eight are all
9 in subdivided areas where alternate streets are already
10 paved. There's no reason for drivers to divert from one to
11 another. They don't really open up any clear throughway
12 that would promote through traffic. The same is true of
13 segment four. And paving a short segment of 40th Street
14 wouldn't provide any kind of a preferable route that would
15 divert any existing traffic. Basically all the traffic is
16 going to continue to be simply just local traffic going to
17 adjacent properties.

18 And then with regard to number nine, West Avenue
19 N-8, basically West Avenue N is paved already and it
20 provides the direct route really through an access to the
21 freeway. So you know, traffic volumes are limited on these
22 roads, and there's no reason for traffic to divert to a
23 newly paved street here.

24 And furthermore, this is a situation where you
25 would only be paving a piece of this road rather than a long

1 extension of it that could provide any kind of a cross-town,
2 if you will, throughway that might divert traffic.

3 MR. CARROLL: Okay. Thank you, Mr. Wilson. That
4 concludes my comments. But please stay on the line. Some
5 of the other parties might have questions for you.

6 HEARING OFFICER CELLI: Can I ask --

7 MR. WILSON: Very well.

8 HEARING OFFICER CELLI: -- Mr. Wilson --

9 MR. WILSON: Yes?

10 HEARING OFFICER CELLI: -- this is Ken Celli. I'm
11 the hearing advisor. I just have a question, because I'm
12 looking at what's been marked as Exhibit 146. And you --

13 MR. WILSON: Yes.

14 HEARING OFFICER CELLI: And you testified that
15 these roads are through subdivided areas that are already
16 built and developed.

17 And my question to you is: Are they dirt -- what
18 are they now, alleys? How are they used for --

19 MR. WILSON: Right now they are -- it's -- it's --
20 basically they're just unpaved. The -- the subdivisions
21 were laid out as a subdivision. And as I said, alternate
22 ones were paved. They basically just have what appears to
23 be probably somewhere between a 40 and a 60 foot right-of-
24 way. And it has a dirt surface where people just keep the
25 center area the equivalent of basically two lanes open as

1 travel lanes, and then just park on the edges. And then
2 front yards for the residences just start behind that.

3 HEARING OFFICER CELLI: Do you have any sense
4 of -- of the level of use currently?

5 MR. WILSON: Very limited. It's -- it's just, as
6 I say, local access to the, you know, the residential units,
7 that there really isn't any through-traffic on them now.
8 But they would remain and operate the same, in my opinion,
9 paved or unpaved.

10 HEARING OFFICER CELLI: So what -- if there's very
11 little traffic on them now what is the benefit of paving
12 them?

13 MR. WILSON: In terms of an advantage to the --
14 the people it -- it basically -- if you've got roads that
15 are unpaved like this now you've got to really maintain the
16 maintenance on them at -- at some level that's much higher
17 than having a paved surface because every year you've got to
18 come in and essentially regrade them to get all the potholes
19 out. And you know, whenever they rain, they get their
20 rains, everything gets muddy they -- you know, cars get
21 dirty. And I don't know, having grown up in a bit of a
22 rural community that's just an issue. And just for dust
23 control alone it's nice to have those paved if you live in
24 an adjacent residence.

25 MR. CARROLL: Mr. Celli, if I may, if I understand

1 your question it really goes to the -- what I'll refer to as
2 the credit generation potential of these roads, which is
3 actually more of an air quality issue than a traffic issue.

4 And we did include in Applicant's Exhibit 76 traffic counts
5 that were collected for these roads because, obviously, we
6 had to make a demonstration that we had identified
7 sufficient roads to generate sufficient credits to make the
8 offset obligation of the project.

9 Ms. Head, who continues to be sworn and on the
10 panel, may be more appropriate if you have further questions
11 regarding, as I said, the credit generation potential of
12 these roads. But the -- the traffic count data is available
13 in, as I said, Exhibit 76.

14 HEARING OFFICER CELLI: So from the committee,
15 that same question of you then, Ms. Head.

16 MS. HEAD: I'm sorry. The -- the question being?

17 HEARING OFFICER CELLI: What -- what is the
18 benefit? As we look at this map --

19 MS. HEAD: Yes.

20 HEARING OFFICER CELLI: -- and -- and if you look
21 up in the -- let's see, the upper right-hand corner, segment
22 six, it looks like it runs right through a very developed
23 housing development. But then we can't really tell from
24 this map whether any of the parallel streets as you go,
25 well, south and down the page towards the bottom, are also

1 unpaved.

2 MS. HEAD: It's -- it's actually a mix. As I
3 mentioned, I did go out to these areas last Friday. And
4 some of the roads are paved and some of the roads are not.
5 And -- and that's why, you know, paving these roads seems
6 attractive from a neighborhood perspective to kind of finish
7 out the development. But also, you know, because --
8 because -- and -- and this is actually part of Ms. Lile's
9 testimony is that, you know, that these are established
10 neighborhoods. Most of the lots are developed. There's not
11 going to be a lot of new traffic but -- so there really --
12 you know, so it won't induce the growth and it won't
13 generate new traffic, but it will create the PM10 emission
14 reductions by paving.

15 MR. CARROLL: If I may, Ms. Head, I -- I -- can I
16 ask a question?

17 I think the question is: If these roads are
18 relatively light in traffic, as has been the testimony
19 provided, then how is it that the paving of them generates
20 credits? And so perhaps you could address that question,
21 because I sense that that's the question.

22 HEARING OFFICER CELLI: Is that the question you
23 want?

24 MS. HEAD: Yes.

25 MS. BELENKY: Just can we clarify, this is an air

1 quality type question.

2 HEARING OFFICER CELLI: Right. And I'm not sure
3 we want to go there right now. One -- one moment.

4 (Discussion off the record.)

5 HEARING OFFICER CELLI: That's enough. I'm sorry.
6 And you can continue to ask questions if -- if you need to,
7 to follow up on the questions that I'm asking. But --

8 MR. CARROLL: At this time we call Ms. Laurie
9 Lile.

10 Ms. Lile, you've been sworn.

11 MR. CARROLL: Who is your employer?

12 MS. LILE: I'm employed by the City of Palmdale.

13 MR. CARROLL: And what is your position with the
14 city?

15 MS. LILE: I am the assistant city manager.

16 MR. CARROLL: And in your role as assistant city
17 manager do you have responsibility for overall planning and
18 development in the City of Palmdale and the surrounding
19 area?

20 MS. LILE: Yes. As the -- in my position I
21 oversee the planning department, economic development, and
22 also portions of the public works staff. And prior --
23 before I was assistant city manager I was also the planning
24 director of the city for eight years.

25 MR. CARROLL: And are your qualifications

1 adequately reflected in the resume contained in Appendix B
2 of Applicant's Prehearing Conference Statement?

3 MS. LILE: Yes, they are.

4 MR. CARROLL: We would ask that this witness be
5 recognized as an expert in the technical specialties
6 identified in her resume.

7 HEARING OFFICER CELLI: Any objection, Staff?

8 MS. DE CARLO: No.

9 HEARING OFFICER CELLI: Any objection, CBD?

10 MS. BELENKY: No.

11 HEARING OFFICER CELLI: Any objection, DCAP?

12 MS. WILLIAMS: No.

13 HEARING OFFICER CELLI: Okay. Ms. Lile is an
14 expert.

15 MR. CARROLL: Ms. Lile, are you familiar with the
16 road paving proposal and the short list of preferred roads
17 that have been identified for paving which have been
18 previously described?

19 MS. LILE: Yes, I'm very familiar.

20 MR. CARROLL: And were you involved in identifying
21 the specific roads that have been proposed for paving?

22 MS. LILE: Yes, I was.

23 MR. CARROLL: And what -- what criteria did you
24 utilize in identifying and evaluating -- evaluating the
25 candidate roads?

1 MS. LILE: As Ms. Head indicated we looked at --
2 as -- very close -- as Ms. Head indicated, we looked at the
3 potential for generating emission reduction credits from the
4 roads, which is a function of the traffic flowing on the
5 roads. They are rather -- relatively light traffic volumes,
6 but there is a significant amount of traffic that use --
7 utilizes them coming and going to the -- the residences that
8 are along these roads. And then also the actual physical
9 characteristics of the roads themselves.

10 MR. CARROLL: And have you had an opportunity to
11 analyze whether or not paving of these roads would increase
12 traffic on the roads as a result -- I'm sorry, increase
13 traffic on the roads or result in growth inducing impacts?

14 MS. LILE: As -- as Mr. Wilson indicated, he
15 looked at the potential for increased traffic. I also
16 evaluated the roads to a degree for traffic generation and
17 agree with Mr. Wilson that from -- from a traffic standpoint
18 the -- the paving of these roads will not create additional
19 traffic that will serve these neighborhoods. They're
20 generally rural developed neighborhoods that are taking
21 access off these dirt roads.

22 The -- the destination to any of these
23 neighborhoods will not change and the traffic patterns will
24 not substantially be modified with the -- the road paving,
25 specifically the traffic pattern over in the portion that is

1 on the eastern part in Little Rock. Those are a mixture of
2 paved and unpaved roads. And so the fact that there are
3 some unpaved roads there that will now be paved probably
4 will have very limited impact on existing traffic patterns
5 because the traffic will not avoid those roads. They
6 will -- they will utilize the roads there that -- that will
7 be -- that are -- that are most convenient. So it will
8 provide for a more natural traffic pattern for that -- for
9 those areas.

10 With respect to growth inducing impacts, I did
11 evaluate that with a little more information. And there are
12 no development standards in place in the county that would
13 lead me to believe that the paving -- paving of these roads
14 would induce growth. By and large they're zoned for low
15 density residential development. They're largely developed,
16 as the -- as indicated on aerial photos that are before you.
17 And there are really no additional urban level
18 infrastructure that would be extended that would support
19 higher levels of development intensity or density with the
20 paving of these road segments.

21 MR. CARROLL: Thank you. We have no further
22 questions of Ms. Lile at this time.

23 With the committee's permission I would like to
24 ask one additional question of Ms. Head before we turn the
25 panel over for cross-examination.

1 HEARING OFFICER CELLI: One more question. Go
2 ahead.

3 MR. CARROLL: Ms. Head, are you familiar with
4 proposed condition AQSC-19?

5 MS. HEAD: Yes.

6 MR. CARROLL: And that condition, is it your
7 understanding that that condition requires the applicant to
8 submit to the compliance project manager a road paving plan
9 prior to commencement of the road paving?

10 MS. HEAD: Yes.

11 MR. CARROLL: And is one of the requirements of
12 that road paving plan that you include actual daily average
13 traffic counts, including the classifications of the
14 vehicles in daily vehicle miles traveled?

15 MS. HEAD: Yes.

16 MR. CARROLL: Thank you.

17 HEARING OFFICER CELLI: Thank you. Cross by
18 staff?

19 MS. DE CARLO: No.

20 HEARING OFFICER CELLI: No cross?

21 MS. DE CARLO: No cross.

22 HEARING OFFICER CELLI: Thank you. Cross by CBD.

23 CROSS-EXAMINATION

24 MS. BELENKY: Thank you. First, I have a couple
25 of questions that relate to your testimony today.

1 Ms. Head, you opined that you thought that Ms.
2 Fox's testimony or that the letter from Ms. Fox, regardless
3 of whether we call it testimony or not, was based on
4 assumptions that these roads would be in rural areas or
5 undisturbed areas and that they could increase traffic.

6 If they were in rural areas or undisturbed habitat
7 would you agree that they could have -- that road paving can
8 have a significant biological impact?

9 MR. CARROLL: Objection based on relevancy. The
10 testimony is that they're not in rural areas. So I don't
11 see any relevancy to answering the question.

12 HEARING OFFICER CELLI: Actually, didn't Ms. Lile
13 say that this was a rural developed neighborhood? And I
14 don't know what that means. But I'm not sure if it's rural
15 or not.

16 MS. LILE: The -- the county's zoning standard
17 would be one lot per -- or one -- one unit per one acre lot.
18 The pattern of development in this area has been -- is not a
19 standard subdivision. The -- the land was subdivided, my
20 guess would be in the '60s. The development has occurred on
21 an ad hoc basis with property owners developing over time.
22 There is no urban level street section that you would
23 characterize with a large lot, urban development with
24 streetlights per se, sidewalks per se. It is -- it is a
25 rural area. There are horses in -- on -- on the lots.

1 There's some livestock out there. So the -- the type of
2 development, I would characterize it as rural.

3 HEARING OFFICER CELLI: Rural. So --

4 MR. CARROLL: So in other words it's rural but
5 it's developed.

6 HEARING OFFICER CELLI: It's developed rural. And
7 I hope that helps. I'm sorry if I --

8 MS. BELENKY: You know, I mean, I can withdraw
9 that question if it's too confusing.

10 Ms. Head, I also -- and actually, and all three of
11 the applicant's witnesses have testified about roads. But I
12 want to make sure that we're clear, you are talking only
13 about your short list in this new preferred road segments in
14 the testimony that you gave today?

15 MS. HEAD: That's correct.

16 MR. WILSON: That is correct.

17 MS. BELENKY: Would your -- and, Ms. Lile, as
18 well?

19 So your -- your answers to the question would be
20 different if the full list that was provided whenever it was
21 provided, the original full list, were at issue; is that
22 correct?

23 MR. CARROLL: Well, to be --

24 MR. WILSON: No, that is not correct from my
25 perspective. I did not look at the other segments in this

1 at the level of detail I looked at these.

2 MS. BELENKY: So you've only looked at the short
3 list?

4 HEARING OFFICER CELLI: Let -- let me ask you
5 this, before you ask your next question, because I'm -- I'm
6 not -- I thought you were asking Ms. Head these questions.

7 MS. BELENKY: Okay.

8 HEARING OFFICER CELLI: So I'm going to ask you,
9 Ms. Belenky, to direct who should answer your question, and
10 then that person will ask -- answer your question.

11 MS. BELENKY: Okay. Ms. Head, your testimony
12 regarding the -- the potential for biological impacts from
13 road paving that has been proposed in this matter, did your
14 testimony that you just gave here at hearing apply only to
15 the short list of five road segments?

16 MS. HEAD: As Mr. Wilson was trying to indicate,
17 we did look in more detail at these particular five. But I
18 will point out that staff's analysis in the rebuttal
19 testimony did conclude that all 11 of the roads could be
20 paved without significant impact. And we concur.

21 MS. BELENKY: So it's your testimony that there
22 is -- there would be no impacts to the environment from
23 paving East Barrel Springs Road?

24 MS. HEAD: My testimony was that there would be no
25 significant impact from paving those. That was staff's

1 finding.

2 MS. BELENKY: Is that your opinion, as well? Are
3 you adopting that opinion?

4 MS. HEAD: I didn't specifically look at Barrel
5 Springs Road, so I can not voice opinion on that one.

6 MS. BELENKY: Okay. So you have not actually
7 looked at North Barrel Springs Road.

8 What about Carson Mesa Road; in your opinion would
9 paving Carson Mesa Road have any significant impacts to the
10 environment?

11 MS. HEAD: Again, I think I already stated that I
12 only reviewed on Friday these five particular road segments.

13 And I know staff looked at -- at all 11 of the road
14 segments and I tended to concur with staff's analysis, but I
15 have not personally looked into these other segments.

16 MS. BELENKY: So your opinion is based on staff's
17 opinion, not your own opinion, that you have no personal
18 opinion? I'm just trying to understand. You're brought
19 here as an expert on biology. At least two of these
20 segments I understand may have actually significant
21 biological impacts. But you are saying that they do not
22 based on your opinion of the staff's opinion; is that
23 correct?

24 MR. CARROLL: Okay. I'm going to object to the
25 question. There's no foundation.

1 MS. BELENKY: That's right.

2 MR. CARROLL: The --

3 MS. DE CARLO: There's no --

4 MR. CARROLL: -- the question you just stated --

5 MS. BELENKY: -- foundation for her opinion.

6 MR. CARROLL: -- that she understands that -- in
7 the form of the question that there are significant and
8 biological impacts associated with two of the road segments.
9 There's no evidence that's been presented to support that.

10 MS. BELENKY: There --

11 HEARING OFFICER CELLI: I'm going to first ask
12 that the parties not talk at the same time so we don't drive
13 our court reporter crazy.

14 And secondly, I thought it was a fair question.
15 I'm going to overrule the objection because I think it would
16 be treated as a hypothetical, as nothing. Yes.

17 And also I want to -- you know something, Mr.
18 Carroll, I have a problem with you speaking while your
19 witness is testifying. It doesn't look good. And I'm
20 wondering if maybe I should have your witness be separated,
21 I guess there's no place to put her. But I -- I just
22 request -- we've had problems with this in the past that,
23 you know, we have no cross-talk, if you would please.

24 MR. CARROLL: We have no objection to the witness
25 sitting someplace else, or I can move to the end of the

1 table. That's --

2 HEARING OFFICER CELLI: Why don't we have you come
3 on up to the podium to answer your questions from staff.

4 MS. HEAD: Okay.

5 HEARING OFFICER CELLI: I'm sure you weren't
6 feeding her answers or anything like that. She is an
7 expert. But you know, I just want to make sure that there's
8 no question about whether these proceedings were conducted
9 properly.

10 Go ahead. You can answer the question. This is
11 cross-examination of Ms. Belenky.

12 MS. BELENKY: Thank you. I think the last
13 question was -- I'm sorry. I think the last question was
14 that your testimony -- I think you may have already answered
15 this -- your testimony today based on your own -- was based
16 on the short list of five roads; is that correct?

17 MS. HEAD: My testimony was that I personally
18 looked at the short list of five roads, and so I'm very
19 confident about findings there.

20 In terms of the rest of the 11 roads my -- my
21 testimony is that I did review the staff analysis, and that
22 their staff analysis looked appropriate and reasonable and
23 it didn't conclude that there were no significant impacts
24 from the paving of any of the roads, and I do concur with
25 that analysis based on what I knew.

1 MS. BELENKY: And have you conducted any
2 biological surveys of the, I guess the other six roads?

3 MS. HEAD: No.

4 MS. BELENKY: And have you conducted any
5 jurisdictional determinations for the other six roads for
6 either waters of the state or waters of the United States?

7 MS. HEAD: No.

8 MS. DE CARLO: And did you -- have you reviewed
9 the letter from the Antelope Valley Conservancy regarding
10 Barrel Springs Road?

11 MS. HEAD: Yes, I have.

12 MS. BELENKY: And have you actually surveyed
13 Barrel Springs Road --

14 MR. CARROLL: Objection --

15 MS. BELENKY: -- for jurisdictional waters?

16 MR. CARROLL: -- to relevancy. We've withdrawn
17 Barrel Springs Road from consideration in response to the
18 comments raised by the conservancy.

19 MS. HEAD: Right. There was no purpose to look at
20 that because we -- we did withdraw that road and -- and felt
21 that that was, you know, conciliatory to -- to the comment.

22 HEARING OFFICER CELLI: So that's an affirmative
23 statement we can all rely on.

24 MS. BELENKY: That's it's been --

25 HEARING OFFICER CELLI: It's --

1 MS. BELENKY: Barrel Springs Road has been
2 withdrawn, that's right. But in the FSA the staff concluded
3 that Barrel Springs Road had no jurisdictional waters; isn't
4 that correct?

5 MR. CARROLL: Relevancy.

6 HEARING OFFICER CELLI: Let me --

7 MR. CARROLL: Barrel Springs Road --

8 HEARING OFFICER CELLI: Let me --

9 MR. CARROLL: -- is not part of the road paving
10 project.

11 HEARING OFFICER CELLI: I'm going to sustain the
12 objection.

13 But first I need to ask staff if Barrel Springs
14 Road was withdrawn from staff's consideration?

15 MS. DE CARLO: It was included in the FSA. But
16 subsequent to the FSA we received comment from the
17 conservancy and the applicant at that time declaring that
18 they were withdrawing it from consideration. So it's our
19 understanding that that road is no longer a part of the road
20 paving proposal.

21 HEARING OFFICER CELLI: Yeah. So I wouldn't -- I
22 would rule that it's irrelevant at this time.

23 MS. BELENKY: That's fine. I don't think it's
24 irrelevant because it goes to the accuracy of the FSA on
25 which Ms. Head is basing her opinion. But it's fine.

1 You've already ruled it.

2 I'd like to ask you a few questions about soils
3 and waters in this area. And I -- my questions are based on
4 the full list of the roads, which at this time I just want
5 to make sure we're all on the same page. Applicant has now
6 submitted a list of five preferred roads. But there are
7 still ten roads that are within -- that are still being
8 considered as part of the ERC. So that's the background.
9 So we all know there's five roads that they're saying are
10 preferred, but the full list is ten roads. So these
11 questions that I'm going to ask you are based on the ten
12 roads.

13 HEARING OFFICER CELLI: So here's the question --
14 because maybe this isn't the right witness to talk to. If
15 she's just relying on the FSA let's get into the FSA and
16 talk to the staff's witnesses. Apparently she's done no
17 independent investigation over and above what staff did in
18 this area. So why ask her the questions when we can take it
19 directly to the source?

20 MS. BELENKY: I'm happy to do that. That's fine.

21 HEARING OFFICER CELLI: Okay. That would be
22 great. Except don't -- don't leave yet, because if you have
23 no further questions we still have Ms. Williams.

24 MS. BELENKY: I have to -- let me just make sure
25 that I didn't have some that were just for the applicant. I

1 think that's it.

2 HEARING OFFICER CELLI: Okay. Thank you, Ms.
3 Belenky.

4 Ms. Williams, cross-examination?

5 CROSS-EXAMINATION

6 MS. WILLIAMS: So I just -- I just want to be
7 clear as well, Ms. Head, that -- have you -- have you been
8 to these roads, or which of these roads have you been to?

9 MS. HEAD: I've personally been to the five
10 preferred segments. And we went out there on Friday the
11 25th and reviewed those roads.

12 MS. WILLIAMS: And what -- what do you mean,
13 reviewed them?

14 MS. HEAD: I had one of my staff biologists with
15 me, and Dr. Demetropoulos also has training in cultural
16 resources evaluations. We basically went and drove along
17 the roads. We walked along some of the areas where we
18 thought there could be disturbance. And -- and basically
19 we -- we did -- as I testified earlier, we didn't find any
20 jurisdictional waters, any kind of drainages that would be
21 impacted. We saw no real habitat. It was all pretty
22 disturbed. And in terms of cultural resources, as I
23 indicated earlier, was -- you know, the roads are already
24 disturbed. We didn't see a lot of potential for disturbing
25 new cultural resources that aren't visible on the surface.

1 MS. WILLIAMS: So I'm looking at -- at your short
2 list and you're saying -- okay. So you went to Avenue N,
3 40th Street West and Avenue N?

4 MS. HEAD: Correct.

5 MS. WILLIAMS: And you also went to Avenue S-6 on
6 96th Street East?

7 MS. HEAD: Correct.

8 MS. WILLIAMS: That's also on the short list.

9 MS. HEAD: Yes.

10 MS. WILLIAMS: So can you tell me what -- what --
11 were there major differences in -- in these two areas, any
12 differences in these two areas?

13 MS. HEAD: The -- the -- the three road segments
14 over near Little Rock are -- are basically, as Ms. Lile
15 testified, are one acre lots. It's -- it's fairly well
16 developed. The -- the two road segments four and nine
17 over -- most of the dark lines are -- are a little
18 different. They're two-and-a-half acre lots, about that, so
19 it's a little more sparsely populated. Segment nine also
20 abuts up against a very dense residential neighborhood to
21 the south, which is actually in the -- to the south of the
22 road is the City of Palmdale. But none of the traffic from
23 the dense residential area can actually access segment nine,
24 except on the ends of the road.

25 MS. WILLIAMS: So the major differences then are

1 the lot size?

2 MS. HEAD: Yeah.

3 MS. WILLIAMS: Are there any major differences in
4 traffic?

5 MS. HEAD: You know, I -- I didn't see any major
6 differences of traffic when I was out there. I'd have to
7 scrutinize the traffic data that was collected by the City
8 of Palmdale and -- and used for the -- the numbers to -- to
9 see if in general there's differences.

10 MS. WILLIAMS: All right. Thank you. No further
11 question.

12 HEARING OFFICER CELLI: Thank you. Any further
13 redirect?

14 MR. CARROLL: No, thank you.

15 HEARING OFFICER CELLI: Thank you. And this
16 panel -- we're finished with this panel. Was there
17 evidence, a motion from the applicant with regard to
18 evidence on -- is -- is that everything on the road paving?

19 MR. CARROLL: Do you want more?

20 HEARING OFFICER CELLI: Well, no. I just have --
21 I've got -- I mean, we've heard traffic concerns, and I've
22 heard --

23 MR. CARROLL: Yes. So we -- we covered air
24 quality earlier.

25 HEARING OFFICER CELLI: Yes.

1 MR. CARROLL: So we covered air quality issues
2 associated with road paving during the air quality panel.
3 We just covered bio, soil and water.

4 HEARING OFFICER CELLI: Traffic, land, cultural,
5 growth inducing impacts.

6 MR. CARROLL: Yes.

7 HEARING OFFICER CELLI: Excellent. So is there a
8 motion on behalf of the applicant with regard to evidence in
9 the record?

10 MR. CARROLL: Yes.

11 HEARING OFFICER CELLI: Go ahead. And could you
12 just give me the full line? You have them separated out by
13 bio, cultural, land on this?

14 MR. CARROLL: Yes.

15 HEARING OFFICER CELLI: How ever you have it.

16 MR. CARROLL: Okay.

17 HEARING OFFICER CELLI: Let's just -- I'll just
18 take it.

19 MR. CARROLL: In the area of biological resources
20 Applicant moves Exhibits 7, 30, 39, 44, 46, 47, 51, 53, 56,
21 57, 61, 67, 74, 76, 77, 79, 82, 85, 86, 90, 95, 101, 106,
22 108, 118, 129, 132 -- and I apologize for the hesitation,
23 I'm trying to -- we had these broken down by witness, so I'm
24 trying to avoid repeating myself -- 80, 81, 88, 98, 128,
25 136.

1 In the area of soil and water resources Applicant
2 moves Exhibits 16, 21, 27, 34, 39, 138, 44, 46, 106, 125,
3 45, 137, 76, 102, 11, 141, 83, 128, 127, 133. And that
4 completes the list.

5 HEARING OFFICER CELLI: So that's -- I have bio
6 and soil and water.

7 MR. CARROLL: Correct.

8 HEARING OFFICER CELLI: And then cultural, land,
9 traffic, growth inducing impacts, do you have anything else?

10 MR. CARROLL: We -- we moved all --

11 HEARING OFFICER CELLI: Are they all --

12 MR. CARROLL: -- cultural and all land earlier.

13 HEARING OFFICER CELLI: Oh, that's right. Okay.
14 So you had nothing additional that was in dispute. Very
15 good.

16 So any objection? I'm not going to read those off
17 but I've got a shaking head of nos, so --

18 MS. DE CARLO: No from staff.

19 HEARING OFFICER CELLI: No objection from staff to
20 those exhibits.

21 CBD, any objection?

22 MS. BELENKY: No.

23 HEARING OFFICER CELLI: Any objection DCAP?

24 MS. WILLIAMS: No.

25 HEARING OFFICER CELLI: Okay. Then for the record

1 the motion to receive into evidence is granted for Exhibits
2 marked for identification as 7, 30, 39, 44, 46, 47, 51, 53,
3 56, 57, 61, 67, 74, 76, 77, 79, 82, 85, 86, 90, 95, 101,
4 106, 108, 118, 129, 132, 80, 81, 88, 98, 128, 136 are
5 received into evidence under biological resources.

6 (Whereupon Applicant's Exhibits 7, 30, 39, 44, 46,
7 47, 51, 53, 56, 57, 61, 67, 74, 76, 77, 79, 82,
8 85, 86, 90, 95, 101, 106, 108, 118, 129, 132, 80,
9 81, 88, 98, 128, and 136 were received into
10 evidence.)

11 HEARING OFFICER CELLI: And under soil and water
12 resources exhibits marked for identification as 16, 21, 27,
13 34, 39, 138, 44, 46, 106, 125, 45, 137, 76, 102, 11, 141,
14 83, 128, 127, and 133 are received into evidence.

15 (Whereupon Applicant's Exhibits 16, 21, 27, 34,
16 39, 138, 44, 46, 106, 125, 45, 137, 76, 102, 11,
17 141, 83, 128, 127, and 133 were received into
18 evidence.)

19 HEARING OFFICER CELLI: Okay. At this time we'll
20 turn to staff. Staff's witnesses are ready. We'll need to
21 have them sworn. I wonder how I can do this. Well --

22 MS. DE CARLO: Before you get to that, I just want
23 to confirm -- we ended air quality and public health quite
24 abruptly. I just want to make sure we move Staff's exhibits
25 and testimony into the record.

1 HEARING OFFICER CELLI: I thought I took in all of
2 Staff's --

3 MS. DE CARLO: Okay. At the beginning. I just
4 wanted to make sure.

5 HEARING OFFICER CELLI: -- early on.

6 MS. DE CARLO: Okay.

7 HEARING OFFICER CELLI: That was already received.

8 MS. DE CARLO: Okay.

9 HEARING OFFICER CELLI: But thank you. I mean, I
10 appreciate your helping me on that because I -- you know,
11 things can happen. Yeah.

12 So with that, let's have your witnesses stand.

13 (Witnesses sworn.)

14 HEARING OFFICER CELLI: Thank you. Please be
15 seated. And from your left proceeding right please identify
16 yourself, state your name. And you're going to have to grab
17 that mike. And if it's not long enough to pass around,
18 because I think you might want to take it out of the holder
19 and just pass it if you can. I see that -- oh, and these
20 two witnesses will use that other one. Okay.

21 MS. WILSON: Erin Wilson with the Department of
22 Fish and Game. Last name?

23 HEARING OFFICER CELLI: Please spell your last
24 name.

25 MS. WILSON: W -- Wilson is W-i-l-s-o-n.

1 MR. HUNTLEY: Chris Huntley, Biological Resources,
2 Energy Commission, C-h-r-i-s H-u-n-t-l-e-y.

3 MR. VEERKAMP: First name Eric, E-r-i-c, last name
4 Veerkamp, V-e-e-r-k-a-m-p.

5 MS. TAYLOR: Mary Lou Taylor, T-a-y-l-o-r, soil
6 and water resources.

7 MS. ALLRED: Sarah Allred, Energy Commission,
8 cultural resources, S-a-r-a-h A-l-l-r-e-d.

9 MS. HUERTA: Susanne Huerta, Energy Commission,
10 land use analysis. First name, S-u-s-a-n-n-e, last name,
11 H-u-e-r-t-a.

12 MS. VAHIDI: Negar Vahidi. First name is spelled
13 N, as in Nancy, -e-g-a-r, last name spelled V, as in V, as
14 in Victor, -a-h-i-d, as in David, -i, Energy Commission land
15 use staff.

16 HEARING OFFICER CELLI: Thank you. And Steve, I
17 didn't get your last name. I'm sorry. I missed. The first
18 Steve next to Erin Wilson.

19 MR. HUNTLEY: Chris.

20 HEARING OFFICER CELLI: Oh, I -- boy, did I miss.
21 Chris. Go ahead. What's your last name?

22 MR. HUNTLEY: Huntley.

23 HEARING OFFICER CELLI: Okay.

24 MR. HUNTLEY: H-u-n-t-l-e-y.

25 HEARING OFFICER CELLI: Okay. Erin Wilson, Chris

1 Huntley, Eric Vanderkamp [sic] --

2 MS. DE CARLO: Veerkamp.

3 MR. VEERKAMP: Veerkamp.

4 HEARING OFFICER CELLI: Okay. Got it. Thank you.
5 Go ahead, please.

6 MS. DE CARLO: And in case Mr. Veerkamp didn't
7 mention, he's the analyst for traffic and transportation.

8 HEARING OFFICER CELLI: Thank you.

9 MS. DE CARLO: If we could do like we did before I
10 can identify -- well, they -- they've all identified their
11 subject matters. Their technical analyses are included in
12 the exhibits that we've already previously identified. If
13 we could get the parties to stipulate to their
14 qualifications it would be quicker.

15 HEARING OFFICER CELLI: CBD, would you be willing
16 to stipulate that these experts are expert in their field?

17 MS. BELENKY: Yes.

18 HEARING OFFICER CELLI: And DCAP?

19 MS. WILLIAMS: Yes.

20 HEARING OFFICER CELLI: Applicant?

21 MR. CARROLL: Yes.

22 HEARING OFFICER CELLI: Thank you. One moment.

23 I'm going to go off the record for a second.

24 (Discussion off the record.)

25 HEARING OFFICER CELLI: I'm going to take a five

1 minute break, and we will be back on the record at 4:25.

2 Please be in your seats at 4:25. Thank you.

3 (Off the record from 4:20 p.m., until 4:25 p.m.)

4 HEARING OFFICER CELLI: And all the requisite
5 people are here, I believe.

6 Do we have all our witnesses, Ms. De Carlo?

7 MS. DE CARLO: Yes, I believe we do.

8 HEARING OFFICER CELLI: Okay. And the record
9 should reflect that both intervenors are present, Applicant
10 and Applicant's counsel is here.

11 MR. CARROLL: Yes.

12 HEARING OFFICER CELLI: So we're ready to proceed.
13 The committee is all here. So go ahead.

14 MS. DE CARLO: Okay. And we've identified all the
15 exhibits that they're sponsoring.

16 I just have one question for Ms. Vahidi.

17 DIRECT EXAMINATION

18 MS. DE CARLO: What is your expert opinion on the
19 potential for the applicant's proposal to pave roads to
20 induce growth?

21 MS. VAHIDI: Yes. This is Witness Vahidi. The
22 road segments are part of an existing road or street grid
23 system. And therefore the paving of these existing roads
24 doesn't translate into or represent new or expanded roadways
25 or infrastructure into an area which, you know, was

1 previously unserved or underserved, which is -- that
2 definition comes from the CEQA guidelines.

3 And to add to that, these roads -- this is also in
4 our rebuttal testimony -- these roads are intended to
5 provide access to existing land uses that are adjacent to
6 them and are already used, as was testified to by air
7 quality staff. And it's worth noting that they've already
8 been included as part of local and regional road planning
9 activities of the affected jurisdictions.

10 Of particular note -- now we did look at all 11
11 segments -- of particular note the -- the five preferred
12 segments that the applicant has identified are in areas that
13 are already built out with housing. So with regard to
14 growth inducing it's highly unlikely that that area could --
15 there's not sufficient land along those five segments to,
16 you know, have large-scale development projects to bring in
17 a huge amount of population that would induce growth as
18 defined by the CEQA guidelines. So --

19 HEARING OFFICER CELLI: Very clear.

20 MS. DE CARLO: Thank you. They're -- the
21 witnesses are available for cross, unless the committee
22 wants us to summarize. They're all prepared to summarize
23 their individual testimony in the interest of time.

24 HEARING OFFICER CELLI: Cross by CBD or Staff's
25 road paving panel.

1 MS. BELENKY: Well --

2 HEARING OFFICER CELLI: Your -- your microphone
3 is -- is not pointed at you.

4 MS. BELENKY: I apologize.

5 CROSS-EXAMINATION

6 MS. BELENKY: Well, first I'll just follow up on
7 Ms. Vahidi, is it, your testimony. I just want to clarify,
8 because I think what -- your statements seems to blur
9 between the five new preferred road segments and the other
10 five road segments that are still part of the proposal. And
11 you said that the road paving segments were all part of a
12 grid system, but I -- I believe that many of them are
13 outside of this grid. I'm not sure what you meant by that.

14 MS. VAHIDI: Well, I can -- I'm sure traffic staff
15 can help me with that because I'm not a traffic expert, I'm
16 a land use expert.

17 But when I say part of an existing grid system
18 they're part of an established road system, all -- of the 11
19 segments that we had looked at.

20 MS. BELENKY: So in -- I'm just trying to make
21 sure I understand your testimony. As a land use expert your
22 testimony is that paving a road that is considered part of a
23 system can never have any growth inducing impacts? Is --
24 is --

25 MS. VAHIDI: That wasn't all I testified to. The

1 definition of CEQA -- the definition of growth inducing,
2 what is defined as -- as a growth inducing project, and I
3 can give you the specifics, it's -- a project would be
4 identified as growth inducing if it fosters economic or
5 population growth or construction of additional housing, or
6 if there are new employees hired for proposed commercial and
7 industrial development projects and population growth
8 resulting from residential development projects represent,
9 you know, the forms of growth.

10 So if I'm understanding your question correctly --
11 can you restate your question? I think you were
12 restating --

13 HEARING OFFICER CELLI: The question --

14 MS. VAHIDI: -- my testimony, but I was --

15 MS. BELENKY: I was trying to understand your
16 testimony. Because some of these segments are not -- are --
17 anyway.

18 HEARING OFFICER CELLI: The question was --

19 MS. BELENKY: I'm trying to understand your --
20 your testimony on the question of growth inducing impacts.

21 MS. VAHIDI: Okay.

22 MS. BELENKY: As you just stated, going over
23 the -- what is growth inducing, things that can induce
24 additional residential development are also considered
25 growth inducing --

1 MS. VAHIDI: Uh-huh.

2 MS. BELENKY: -- is that correct?

3 MS. VAHIDI: Yes.

4 MS. BELENKY: And is it -- is it your testimony
5 that none of these segments, that paving any one of these
6 segments -- that paving any one of these ten segments that
7 are now on the table will not in any way increase
8 residential development --

9 MS. VAHIDI: Yes.

10 MS. BELENKY: -- in these areas?

11 MS. VAHIDI: That is -- I -- I'm not talking about
12 residential development, I'm talking about growth inducing
13 impacts.

14 MS. BELENKY: Which --

15 MS. VAHIDI: And if you look at the land use
16 analysis in the rebuttal testimony, yes, we -- there is no
17 growth inducing from the ten road segments. The one that's
18 off the table also was part of the analysis, but that's off
19 the table. So -- and the reasoning behind that is, is
20 because they're already existing roads, meaning they were
21 put in place with the intent of serving -- providing access
22 to the land uses adjacent to them.

23 MS. BELENKY: So in -- I just want to make sure I
24 understand your testimony.

25 It is your opinion that there is no difference as

1 far as land use between a paved and an unpaved road?

2 MS. VAHIDI: Well, that's too broad of a question.
3 I don't -- maybe I'm not understanding your question. I'm
4 sorry.

5 MS. BELENKY: I'm trying to understand your
6 testimony in which you've stated that because these roads
7 exist paving them can not induce any growth, so that there
8 would be no difference between the roads when they are
9 unpaved or paved?

10 MS. VAHIDI: Yes.

11 MS. BELENKY: That's your testimony, they --

12 MS. VAHIDI: Yes. The ten segments would not
13 induce growth, paving them.

14 MS. BELENKY: Thank you. So I have a whole set of
15 questions here for staff about the -- first soil and water,
16 and the roads. And I think the most -- probably Chris
17 Huntley would be the person who should answer, but I'm not
18 positive. So if staff thinks somebody else should answer
19 that's fine.

20 MS. BELENKY: Were there any soil surveys done on
21 the roads proposed to be paved?

22 MR. HUNTLEY: That's a soil and water question
23 that I'm probably not in a position to answer.

24 MS. TAYLOR: This is Mary Lou Taylor. No soil
25 surveys were done to my knowledge, but there is soil

1 information out there.

2 MS. BELENKY: Thank you. On any of the roads?
3 And I'm talking about the full ten roads that are still on
4 the table.

5 Did you undertake a jurisdictional delineation for
6 waters of the state for any of the ten roads?

7 MR. HUNTLEY: This is Chris Huntley. A formal
8 jurisdiction delineation was not conducted for any of ten
9 roads. However, it was identified in our testimony that
10 some of these drainages would likely be considered
11 jurisdictional drainages.

12 In addition, we have a condition of certification
13 which is required prior to any development that formal
14 jurisdictional delineation be conducted.

15 MS. BELENKY: For those segments where you believe
16 there may be some drainages that would be considered waters
17 of the state did you consider -- that may be considered
18 waters of the state, did you consider the impact to water
19 quality from paving these roads?

20 MR. HUNTLEY: Yes, we did. We considered the
21 shift from an earthen road which has -- which is muddy and
22 then subject to offside sediment transport versus paving,
23 but we didn't provide exhaustive testimony to that effect.

24 MS. BELENKY: And did you consider impacts to
25 species that may be downstream of these waters of the state?

1 MR. HUNTLEY: I would say, yes, we did for all of
2 the road impacts.

3 MS. BELENKY: Did you do the analysis that would
4 be required for a streambed alteration permit under the DFG
5 rules?

6 MR. HUNTLEY: The Energy Commission would be
7 issuing the equivalent of a 1600 permit proposed project.
8 However, the exact acreage has not yet been identified.

9 Subsequently -- or because of that a condition of
10 certification requires the applicant to formally identify
11 all impacts to the state or federal jurisdictional waters
12 and present that to the client's project manager.

13 MS. BELENKY: I just want to make sure I
14 understand. I do understand that the commission's permit
15 would act in lieu of a streambed alteration permit.

16 My question is: Did you do the kind of analysis
17 that is normally done for a streambed alteration permit?

18 MR. HUNTLEY: Regarding the roads, we provided the
19 best information we had at the time. We did not quantify
20 the exact acreages that would be subject to disturbance.
21 That's why our condition of certification mandates that that
22 total is quantified prior to receiving it.

23 MS. BELENKY: And perhaps then my next question is
24 for the woman from -- Erin Wilson, Ms. Wilson from DFG.

25 Normally when DFG issues a streambed alteration

1 permit do they require the delineation and the evaluation to
2 be done before the permit is issued?

3 MS. WILSON: Yes. This is Erin Wilson. And, yes,
4 eventually before you issue a streambed alteration agreement
5 you would have to have a delineation.

6 MS. BELENKY: Thank you. Before it is issued?

7 MS. WILSON: Yes.

8 MS. BELENKY: Okay. So for biological resources,
9 which I think is also Mr. Huntley, or now I think it's Mr.
10 Huntley, were any surveys -- and I'm talking about the full
11 ten roads again -- were any surveys for listed rare or
12 sensitive species undertaken along or adjacent to the roads
13 proposed to be paved?

14 MR. HUNTLEY: No. At this time, because of the
15 timing of the data preparation, protocol surveys could not
16 be conducted for any of the road segments.

17 However, reconnaissance level surveys were
18 conducted on two occasions, in February and one in March, to
19 verify and our analysis was accurate.

20 MS. BELENKY: Can you explain what you need by a
21 reconnaissance level survey?

22 MR. HUNTLEY: I visited the sites in February and
23 then yesterday, stopped periodically along all segments to
24 look at such things as -- as habitat, drainages,
25 connectively, adjacent land uses, things of that nature. So

1 again it was strictly reconnaissance level survey. But
2 where biological resources were observed they were amended.

3 MS. BELENKY: Okay. So for -- okay. I just --
4 one -- if you know, and I'm not sure if you know or if it's
5 somebody else on the panel, when were these, what were then
6 11 road segments, first identified to staff?

7 MR. HUNTLEY: From a biological resource
8 perspective we were asked to analyze these sections, I
9 believe in late January. But the project manager may have
10 more specific information to that effect.

11 MS. BELENKY: I'm -- I'm -- I'm asking because I
12 understood from the applicant that the -- these had been
13 identified in their application.

14 MS. DE CARLO: I believe the -- the specific roads
15 were identified in a response to Staff's data request in air
16 quality. Now the other technical areas aren't necessarily
17 privy or aware of what the -- what the applicant is
18 responding to in other technical areas. So the individual
19 staff outside of air quality may not have been aware of the
20 proposal until we mentioned it in January.

21 I believe my project manager is telling me that
22 the specific roads were first identified in a response dated
23 July 22nd, 2009.

24 MS. BELENKY: Okay. So I just want to be sure
25 that I'm clear. The road segments were identified to staff,

1 to the commission, in July of 2009.

2 And Mr. Huntley's testimony is that because of the
3 timing of the hearing staff did not have time to do
4 biological surveys; is that correct?

5 MR. HUNTLEY: I think that's a little bit of a
6 mischaracterization. For the biological resources section
7 we were notified and requested to do analysis on the roads
8 sometime in late January, early February. At those periods
9 of time it would not have been possible to conduct protocol
10 level surveys for the road segments due to the weather.

11 MS. BELENKY: I understand. So your testimony is
12 that you as part of the biological resources part of staff
13 did not know about the road segments and were not asked to
14 look at them until January of this year; is that correct?

15 MR. HUNTLEY: That's correct.

16 MS. BELENKY: But staff has stated that Staff was
17 aware of these. I'm not sure who Staff is. But Staff was
18 aware that these 11 segments have been identified as
19 potential for road paving as early as July 2009; is that
20 correct?

21 MR. HUNTLEY: That appears to be the case.

22 MS. BELENKY: Is there someone on staff who can
23 answer that question?

24 MS. DE CARLO: Well, I believe it's a matter or
25 record when the applicant provided the various data

1 responses.

2 MS. BELENKY: And I'm just not sure who to -- who
3 to ask. Staff was aware of these roads, that they were
4 proposed to be paved, in July of 2009.

5 I guess my question is: Why did staff not do any
6 biological assessment until January of this year and now is
7 claiming that they didn't have time to do full biological
8 surveys because of time? I'm just -- I'm not sure who I get
9 to ask that question of.

10 MS. DE CARLO: Well, I believe you did ask that
11 question of Mr. Huntley, and he replied that he was made
12 first aware of -- of the existence of the road paving
13 proposal in January.

14 MS. BELENKY: Yes.

15 MS. DE CARLO: And I apologize for the -- for
16 the --

17 HEARING OFFICER CELLI: I think that the answer
18 was -- the question was asked and the question was answered.
19 So --

20 MS. BELENKY: The question was asked of Mr.
21 Huntley who was only told about this. Someone on staff knew
22 of this in 2009. So I guess I would like the staff to
23 answer as to that gap, and I don't know who to ask.

24 HEARING OFFICER CELLI: I'm sorry. You know, I
25 actually -- these witnesses are the experts. And if they

1 know that, that's great. And if they don't know they don't
2 know. But the fact is we're not going to do discovery
3 today. And basically let's ask these witnesses what they --
4 what they came here to testify to.

5 MS. BELENKY: I'm following up on the witnesses
6 answer, which was that he did not have time to do any
7 biological surveys, protocol surveys because of the timing.

8 HEARING OFFICER CELLI: Right.

9 MS. BELENKY: This is -- this is clearly directed
10 at this line of questioning. If Staff doesn't not have
11 anyone who can answer the question, that's fine. But I
12 don't understand why you're objecting to me asking the
13 question.

14 HEARING OFFICER CELLI: I'm not objecting. I'm
15 just saying the question was asked and that you got an
16 adequate answer. It was a responsive answer.

17 MS. BELENKY: I did not get a responsive answer to
18 why there were no biological surveys conducted or any
19 biological review of the 11 road segments between July 2009
20 and January of 2011.

21 HEARING OFFICER CELLI: Do you know the answer to
22 that question?

23 MR. HUNTLEY: No, sir, I do not.

24 HEARING OFFICER CELLI: There's your answer.

25 MS. BELENKY: Does anyone on the panel know?

1 HEARING OFFICER CELLI: Do I see anyone who would
2 know? Can I see a raised hand if somebody knows the answer
3 to this question?

4 You haven't been sworn yet, Ms. Miller. Let's --
5 do you have an answer? The answer is no. Everybody is
6 shaking their head, so the answer is nobody knows.

7 Let's move on to the next question.

8 MS. BELENKY: I thought they -- I thought they
9 were shaking their heads yes.

10 HEARING OFFICER CELLI: Who was -- who was shaking
11 their head yes?

12 MS. BELENKY: Well, maybe I'm misunderstanding the
13 head shake. All right, we'll move on.

14 Mr. Huntley, when you say that because of timing
15 you couldn't -- we couldn't at this time do surveys for
16 sensitive species is that because, for example, this is not
17 the active period for desert tortoise?

18 MR. HUNTLEY: That's -- that's one of many
19 factors. Desert tortoise surveys would not be appropriate
20 to kick off for a short time now. Nesting birds, most
21 neotropical migrants are not in town yet, although they're
22 starting to arrive. Floristic surveys wouldn't have been
23 appropriate during the initial time, although they are --
24 they're coming up.

25 But to that effect, our conditions of

1 certification as described in the FSA will require that the
2 applicant conduct sensitive species surveys in all natural
3 habitats prior to implementation of any road paving. So we
4 did consider the -- the absence of data at that point in
5 time.

6 MS. BELENKY: First of all, I just want to make
7 sure, you're talking about surveys what would be done after
8 a permit is issued; is that correct?

9 MR. HUNTLEY: Yes, ma'am, it is.

10 MS. BELENKY: So there's no provision right now
11 for staff to do surveys within the appropriate time period
12 this year, for example, as you mentioned, that the time now
13 for neotropical migrants is coming up, as well as the time
14 for plant surveys; is that correct?

15 MR. HUNTLEY: It's not my understanding that Staff
16 would be conducting any of those surveys.

17 MS. BELENKY: Thank you. When you stated about
18 the conditions you said that they would require the
19 applicant to do surveys in natural habitats. Is there's a
20 definition of the term natural habitats that you're using
21 there?

22 MR. HUNTLEY: I believe natural habitats would be
23 native vegetation communities. In review of the road areas,
24 commencing first with aerial photography and then backed up
25 by our site visits, many of the habitats adjacent to the

1 proposed road segments are not native, not natural. And
2 even where they are natural some of them are highly
3 disturbed. Nonetheless, wherever there is natural habitat,
4 native habitat, we would have them do the series of surveys.
5 I could probably provide greater specificity if you had a
6 specific question.

7 MS. BELENKY: I do. When you say adjacent, how
8 far from the road are you -- would -- would that be, in your
9 view?

10 MR. HUNTLEY: If you look at the conditions of
11 certification identified in the FSA they have specific
12 requirements for many of those species, some of them up to
13 500 feet on either side wherever legal access is required.
14 But for desert tortoise or other species it's largely
15 associated with the area of potential effect, the impact
16 area. And those surveys would be done in accordance with
17 fish and wildlife surveys' protocols.

18 MS. BELENKY: But the condition only apply after
19 the permit is issued; is that correct?

20 MR. HUNTLEY: Yes, ma'am. But with other projects
21 that are moving forward at a rapid pace the applicant is in
22 some cases conducting those surveys so they have that data
23 available to them. Failure to do so could void some of
24 their survey results because they wouldn't have a chance to
25 do those surveys if they waited.

1 MS. BELENKY: But -- but it's -- to the best of
2 your knowledge that's not the case here; is that correct?

3 MR. HUNTLEY: I'm unaware of what the applicant is
4 doing out there right now.

5 MS. BELENKY: So I want to go briefly to the
6 conditions of certification which you have mentioned several
7 times. The conditions of certification did not expressly
8 apply to the road paving segments. We haven't yet discussed
9 today the -- the project description, and so it's a little,
10 maybe a little out of order here.

11 But the bio conditions in your -- you just stated
12 that the conditions would require certain kinds of surveys
13 for the road paving, and that they require it for all of the
14 project. But my reading, and I did go back through most of
15 the conditions, is that they do not expressly call out the
16 road paving segments and that they, in fact, appear to apply
17 only -- most of them only to the plant site itself. So
18 would --

19 MR. HUNTLEY: The conditions of --

20 MS. BELENKY: Can you -- yeah.

21 MR. HUNTLEY: The conditions of certification as
22 identified in our rebuttal testimony, we did not provide new
23 or revised conditions of certification. We are requiring
24 the applicant to implement the same -- same conditions of
25 certification as identified in the rebuttal testimony --

1 pardon me, in the FSA.

2 There are in certain cases some specificity
3 regarding the proposed plant site for fencing a plant site
4 or conducting certain surveys on the plant site because
5 habitat conditions and the nature of the impacts are
6 slightly different than what would occur on a road paving
7 section.

8 So for example, we wouldn't necessarily for a
9 desert tortoise expect them to pave a mile-long section of
10 the roadway during construction of -- of a disturbed road
11 area. We would expect them to do pre-construction surveys,
12 identify whether or not there are tortoise burrows in or
13 adjacent to that area, the same way they would do on the
14 linear facilities, and then implement avoidance measures
15 during the construction phase.

16 If you have any other question I can try to
17 provide some specificity.

18 MS. BELENKY: Yes, I do have a question, because
19 Staff has submitted I think two -- at least two different
20 revisions of these conditions of certification since the
21 rebuttal testimony. And none of them go back and include
22 road paving segments specifically, expressly as part of
23 the -- as part of these conditions. So I am wondering if
24 staff has gone through and looked at which conditions should
25 be specifically applied to the road paving and has actually

1 done that to submit -- I don't think you've submitted, but
2 have you gone back and looked at --

3 MR. HUNTLEY: One of the things --

4 MS. BELENKY: -- which ones should apply?

5 MR. HUNTLEY: I'm sorry.

6 MS. BELENKY: That's all right.

7 MR. HUNTLEY: This is Chris Huntley. One of the
8 obligations of the applicant will be to identify and develop
9 their biological resource mitigation prior to permit. And
10 they'll identify the mitigations their proposing to
11 implement. And then we have to check that with our
12 compliance project manager and biological staff to ensure
13 that the biological resource conditions of certification are
14 being applied appropriately across the project. We have
15 provided some specificity for surveys, and the other -- on
16 the other side we have not.

17 Bird surveys, for example, are conducted in any
18 areas subject to disturbance. Because whether it's in a
19 residential street or others by law you're not allowed to
20 disturb those nesting birds. We would expect them to do
21 that. Conversely, we would not expect them to do desert
22 tortoise surveys in the developed areas of, say road
23 sections two, four, six, eight or nine. It's -- it's an
24 urbanized area.

25 And so while we did not identify that under

1 conditions of certification we feel we have a viable
2 mechanism to ensure that appropriate surveys are done.

3 HEARING OFFICER CELLI: Do you mind if I cut in
4 and just ask a question, just for the clarification?

5 Where are -- where are the roads that are to be
6 paved actually described in the record?

7 MS. DE CARLO: First they are described by the
8 applicant in their response, their data response.

9 HEARING OFFICER CELLI: Do we know which exhibit?
10 I'd like to just be able to say, you know, where that
11 description is by way of exhibit.

12 MR. CARROLL: Yes. The -- the roads were
13 specifically identified, and these -- these are the 11 roads
14 that were initially identified in Applicant's Response to
15 Staff Data Request Number 103, which was submitted on May
16 1st, 2009.

17 HEARING OFFICER CELLI: Thank you. So that -- so
18 essentially we're looking at Exhibit 103 minus the Barrel
19 Springs Road.

20 MS. DE CARLO: And then Staff provided a detailed
21 analysis of that proposal in Exhibit 301, which was our
22 rebuttal testimony.

23 HEARING OFFICER CELLI: Is there a description of
24 the roads in 301?

25 MS. DE CARLO: Yes. We include a chart

1 identifying the various road segments proposed. And then in
2 each of the technical areas Staff describes the
3 characteristics of the roads as they pertain to their
4 particular area.

5 HEARING OFFICER CELLI: Are -- are -- in -- where
6 in 301? Are we talking project description? Are we talking
7 traffic and --

8 MS. DE CARLO: There's an introduction that just
9 gives a brief overview of the roads proposed. And then in
10 each technical area like biology, biology describes the
11 characteristics of the roads in terms of biological
12 resources. Traffic and transportation also has a thorough
13 description of the various roads. And some of the other
14 technical areas do as well, of course pertaining to their
15 particular analysis.

16 HEARING OFFICER CELLI: The rebuttal testimony.
17 Got it. Thank you.

18 MR. CARROLL: And, Mr. Celli, just for
19 clarification, I -- I cited to the data request number which
20 was 103. But just to be clear, that is now Exhibit 56.

21 HEARING OFFICER CELLI: Thank you very much.

22 Sorry for the interruption, Ms. Belenky. Your --
23 it's still your cross.

24 MS. BELENKY: Okay. I -- I think this goes back
25 to the description of the roads. The -- in the rebuttal

1 testimony regarding the roads, which is on page four, I
2 think -- I'm looking at the chart on page four -- and which
3 lists the 11 roads, and then also has -- the last column on
4 the right says "expected of right-of-way width."

5 So can you explain what that -- that represents,
6 that column?

7 MR. VEERKAMP: Eric Veerkamp speaking.

8 MS. BELENKY: Oh, sorry.

9 MR. VEERKAMP: My -- my page numbering, I'm not --
10 I'm not quite sure what you're referring to. But I also am
11 looking at a table --

12 MS. BELENKY: It's called --

13 MR. VEERKAMP: -- identifying all the road
14 segments.

15 MS. BELENKY: -- Biological Resource Table
16 Rebuttal - 1.

17 MR. VEERKAMP: Well, I also have in my traffic and
18 transportation section right-of-way requirement. And the
19 right of way is the ultimately width of the road including
20 not only the paved area, but also any areas that would be
21 devoted to typically curb, gutter and sidewalk, right up --
22 right up to the private property line.

23 MS. BELENKY: So this -- I thought that this was
24 Mr. Huntley's testimony. But you're saying you -- you
25 developed this chart on the -- as far as the -- the expected

1 width? I'm just trying to understand, that's the expected
2 final width of the road after it's paved; is that correct,
3 what it's supposed to represent?

4 MR. HUNTLEY: This is Chris Huntley. The
5 information on the road width I obtained from the traffic
6 and land use folks. And that is, from my understanding is,
7 and I may be incorrect, is the maximum right of way that
8 could be implemented for city plans. That is correct. That
9 is correct.

10 MS. BELENKY: So the word "expected" really means
11 maximum?

12 MR. VEERKAMP: It's -- it's taken directly from
13 the City of Palmdale Engineering and Design Standards Manual
14 that identifies for that type of road what the expected or
15 maximum right of way would be. That would include anything
16 up to roadway surface, center medians, bike lanes, curb,
17 gutter and sidewalk, depending on the configuration of the
18 road. This is Eric Veerkamp speaking.

19 So I just -- I'm really trying to understand this
20 because it is confusing.

21 Can you point me where in your testimony it says
22 the current status of the road, like the current width of
23 the roadbed?

24 MR. HUNTLEY: If that directed for biological
25 resources --

1 MS. BELENKY: Well --

2 MR. HUNTLEY: -- I did not identify the current
3 road width of all of the roads.

4 MS. BELENKY: Okay. So -- so you didn't identify
5 the current road width of the roads, shoulders, whatever,
6 and you've only -- you're just identifying the final in this
7 chart. I understand that now.

8 And I want to go back to your chart in a minute
9 because there's several places I just -- let's just use one
10 example, because I'm really trying to understand what you
11 actually have done here.

12 HEARING OFFICER CELLI: And the -- and the chart
13 is -- is exhibit?

14 MS. BELENKY: On page four of the biological
15 resources in the -- it's his chart in his rebuttal
16 testimony.

17 HEARING OFFICER CELLI: Exhibit 301, page four.
18 Is there any --

19 MS. BELENKY: I --

20 HEARING OFFICER CELLI: Just four?

21 MS. BELENKY: I think it's bio, page four, which
22 is the .pdf page six.

23 HEARING OFFICER CELLI: Thank you.

24 MS. BELENKY: Biological Resources Table Rebuttal
25 - 1.

1 At the -- let's just start at the bottom. Segment
2 11 which is stated to be Carson Mesa Road you describe as
3 primarily natural lands with various scrub communities,
4 juniper woodland, and small ephemeral drainages, and that it
5 generally parallels the railroad right of way and Highway
6 14; is that correct?

7 MR. HUNTLEY: Yes, it is. And you describe -- and
8 the last piece of the chart, the last row, you say that
9 it's -- that 40 feet would be the expected road width; is
10 that correct?

11 MR. HUNTLEY: Yes, ma'am. That's what's
12 identified in the table.

13 MS. BELENKY: And -- and what would -- do you --
14 you don't know what the current road width is; is that
15 correct?

16 MR. HUNTLEY: I've been there multiple times. And
17 my sense of the road width is somewhat greater than 25 feet,
18 not including the road shoulders.

19 MS. BELENKY: And -- and does it have shoulders
20 all the way along on both sides?

21 MR. HUNTLEY: It's -- it's irregular.

22 MS. BELENKY: It is irregular?

23 MR. HUNTLEY: There are areas where it's graded.
24 In some cases the road is incised and cut out of the hill,
25 and others it goes up and is bordered by guardrails which

1 drop off somewhat precipitously on either side. In certain
2 cases it's very close to the railroad and in other cases
3 it's very close to rural residences. So it varies
4 tremendously as you go along the roadsides.

5 MS. BELENKY: And in your experience -- although
6 this may be a better question for Ms. Wilson -- in your
7 experience is it possible that rare, endangered and
8 sensitive plants are found in such areas?

9 MR. HUNTLEY: Absolutely. It is possible that
10 there could be rare plants in that area. In fact, Beaver
11 Tail Cactus or Short Joint Beaver Tail Cactus is a species
12 we know occurs from that area. And we identified potential
13 impacts to rare plants from road development in our rebuttal
14 testimony.

15 MS. BELENKY: But you didn't identify any specific
16 impacts because you didn't actually do a survey; is that
17 correct?

18 MR. HUNTLEY: No, we didn't, and it would not have
19 been possible at that time.

20 MS. BELENKY: But given that you did not actually
21 do a survey I'm -- I'm just really trying to understand how
22 you could conclude that there would be no significant
23 impacts if you didn't survey the area --

24 MR. HUNTLEY: Actually --

25 MS. BELENKY: -- for rare plants.

1 MR. HUNTLEY: Actually, my -- that's -- that's not
2 what we said in the testimony, and I beg you to read it
3 again. Impacts could be reduced to less than significant
4 levels with the implementation of our conditions of
5 certification. We never said that impacts would not occur.
6 Impacts would be -- likely be less than significant. And
7 that's based not just on, you know, could there be a plant
8 there or not. Most of the road shoulders that we originally
9 reviewed through aerial photography were -- were fairly
10 disturbed and well within the disturbance footprint of where
11 we expected the road, but not all the roads were like that.

12 When we conducted our reconnaissance level surveys
13 we were looking at the road shoulders. You know, is there a
14 Short Tail Beaver Tail Cactus there? You know, they're
15 pretty conspicuous plants. You can see them sometimes. But
16 most of the road shoulders are disturbed. We would not
17 expect based on the level of disturbance for the vast
18 majority of those roads that these are able to support, you
19 know, large populations of unique or rare species. It is
20 absolutely possible that a rare plant could occur on the
21 road shoulder. And, in fact, as you well know there are
22 some species that are fairly disturbance tolerate. However,
23 listed species in that area I don't believe are tremendously
24 disturbance tolerant.

25 HEARING OFFICER CELLI: I'm just going to check in

1 with you and see how you're doing on your progress, how many
2 more questions do you happen to have?

3 MS. BELENKY: Well, I think I have a couple more
4 questions. I'm not sure because I'm -- I'm very confused by
5 his testimony. So I would like to be allowed to continue --

6 HEARING OFFICER CELLI: Oh, you are allowed --

7 MS. BELENKY: -- cross-examination.

8 HEARING OFFICER CELLI: -- to continue. I just
9 wanted to check in with you. It's five o'clock. And we --
10 so if you can just keep going.

11 MS. BELENKY: I'd like to clarify what -- you're
12 saying that even though you don't know whether there are
13 rare species potentially that could be disturbed, and even
14 though -- and there have been no surveys, that you are
15 certain that those impacts -- any impacts could be reduced
16 to a level of -- below a level of significance based on
17 mitigation measures, is -- is that your testimony?

18 MR. HUNTLEY: That's not quite what we said.

19 MS. BELENKY: Okay.

20 MR. HUNTLEY: I think what we said in our
21 testimony on page seven was the potential for rare plants to
22 occur along the road paving sections is considered low.
23 However, impacts to rare plants, should they occur, would be
24 similar to those discussed in the FSA. And the next
25 paragraph basically says impacts to rare plants would be

1 reduced to less than significant levels with implementation,
2 the same conditions of certification have identified in the
3 FSA.

4 Currently the applicant is not authorized to have
5 impacts to state or federally listed species -- or rare
6 plants. Pardon me. So if in their pre-construction surveys
7 those plants should occur they'd be required to avoid those
8 or come back to the commission, seek an amendment, and
9 coordinate with the Fish and Wildlife Service for those
10 species.

11 So we don't expect right now that they would
12 impact the listed plant species. It is possible that CMPS
13 List 4, CMPS List 1 plants could be impacted should they
14 occur in the road shoulder. However, buy and large most of
15 the road shoulders are highly disturbed and we don't expect
16 the -- the potential for rare plants to be high in most of
17 the areas. There are some areas that will have rare plants.

18 MS. BELENKY: Thank you. I do -- I think I do
19 understand what you're saying.

20 But now I would like to ask a questions of Ms.
21 Wilson. Is -- in your experience does the Department of
22 Fish and Game allow permits to be issued before surveys are
23 done for rare plants and then the applicant can come back
24 later and ask for another permit?

25 MS. WILSON: Are you strictly talking about listed

1 species on your CESA?

2 MS. BELENKY: Well, I'm actually -- even rare
3 plants in California require some level of DFG approval
4 before they can be taken.

5 MS. WILSON: The -- it depends on who the lead
6 agency is and who is issuing the permits. If it's -- if
7 it's a sensitive species that's not listed under the
8 California Endangered Species Act then it's the lead agency
9 that is responsible for determining what the thresholds of
10 significance are under CEQA. And they would be issuing
11 mitigation measures in their CEQA documents.

12 MS. BELENKY: I see. And -- and can those
13 determinations be made before surveys are conducted?

14 MS. WILSON: Sure. In my experience it happens
15 all the time.

16 MS. BELENKY: Really? Very interesting. Does the
17 California Department of Fish and Game issue take permits
18 for listed species under the California Endangered Species
19 Act before permits are -- before surveys are conducted?

20 MS. WILSON: No.

21 MS. BELENKY: No. Thank you. All right.

22 I'd like to turn to segment one, I believe, which
23 is called Avenue B, which Mr. Huntley describes as low
24 density rural residences with fallow agricultural fields,
25 desert scrub and various ephemeral drainages; is that

1 correct?

2 MR. HUNTLEY: I believe that's accurate.

3 MS. BELENKY: That's what your rebuttal testimony
4 says.

5 And for that one, as well, you list here that the
6 expected right-of-way width is 40 feet. Do you know what
7 the current width of the road is?

8 MR. HUNTLEY: I believe it's in excess of 40 feet.
9 It's quite wide and it has a utility distribution line on
10 the north side of the road. And it has, I believe,
11 something about a ten foot graded road shoulder that's
12 largely dominated by weeding annuals right now.

13 MS. BELENKY: And the drainages, how are those
14 currently provided for on this roadside now?

15 MR. HUNTLEY: Most of the drainages that were
16 identified during our site visits and from the aerial are
17 small. Some of them run parallel to the road. And in a
18 couple cases there's a very small dip. But they're not
19 substantial drainages, but drainages they are nonetheless.

20 MS. BELENKY: And segment three you describe as
21 primarily natural lands, as well. Do you know what the --
22 I'm trying to find segment three on here.

23 MR. HUNTLEY: That's Avenue 110th Street East --
24 or 110th Street East.

25 MS. BELENKY: Is that one of the ones that they've

1 identified as -- no.

2 MR. HUNTLEY: They've discounted that area.

3 MS. BELENKY: Okay.

4 MR. HUNTLEY: After site visits I would say that
5 it's not primarily natural lands. What looked more natural
6 during our preliminary or our graphic reviews turns out to
7 be some fallow agricultural lands. There are active
8 agricultural lands that are large fallow fields dominated by
9 Russian thistle.

10 And there is -- the drainage that was identified
11 in my aerial photograph as flowing into the road had been
12 repaired. And in fact, during my site visit in late
13 February the city or somebody was out creating and
14 reestablishing the road again. So the drainage that -- that
15 bisected that road across some of that road that was
16 identified staff assessment has now been channelized and
17 occurs on the east side of the road segment.

18 MS. BELENKY: So what you've just described as
19 your experience, that you had originally considered certain
20 features of the land but when you went out there and looked
21 at it you thought differently, would you perhaps have a
22 different view again if you did a protocol level survey of
23 the area?

24 MR. HUNTLEY: If you protocol -- well, that area
25 would not warrant protocol level surveys for many species.

1 But I think it's accurate to say that the large percentage
2 of the habitats that we identified through our aerial
3 reviews were accurate, although as any ground truth and
4 exercise will pan out is there are discrepancies. The
5 communities that you may have thought were Rabbit scrub is
6 an Atriplex scrub, things of that nature. But largely the
7 habitat was -- was consistent with what we found. There
8 were some other variations, as well.

9 MS. BELENKY: Okay. I just want to make sure I
10 understand. So in going back to your original testimony, in
11 your view all of the biological conditions that -- for the
12 project, except where it says specifically that it is for
13 the power plant site, also applied to all of these road
14 paving segments; is that correct?

15 MR. HUNTLEY: Where there's suitable habitat or
16 conditions that warrant those kinds of things. For example,
17 we have a survey protocol identified. And one of the
18 conditions for surveys for Arroyo toads that would only be
19 applicable on dry creek. It would not be applicable in
20 other areas. But again, that's why we have the permit
21 process which all the -- all the mitigation measures,
22 conditions, etcetera will be identified and verified through
23 technical staff in the CPN prior to implementation of the
24 surveys.

25 MS. BELENKY: And just a few more questions. At

1 the present time -- I'm just clarifying -- there is no road
2 paving design that has been provided yet; is that correct?

3 MR. HUNTLEY: Not that I have seen.

4 MS. BELENKY: And so did you analyze this assuming
5 that the shoulders would remain unpaved or that the
6 shoulders would be paved?

7 MR. HUNTLEY: We considered or I considered more
8 of a worst case scenario in a sense, and I we identified
9 that in impacts to vegetation, that would expect a permanent
10 loss of native and nonnative vegetation depending on which
11 segment was done because of road expansion. So we did
12 consider impacts to adjacent habitats.

13 MS. BELENKY: I think those are all my questions
14 on the biological.

15 HEARING OFFICER CELLI: Thank you.

16 MR. HUNTLEY: Thank you, ma'am.

17 HEARING OFFICER CELLI: Ms. Williams, do you have
18 any questions of this witness?

19 MS. WILLIAMS: Yes, I do.

20 HEARING OFFICER CELLI: Okay. And I'm going to
21 ask you to please make sure that you aren't asking anything
22 that's already been covered so that we can kind of go
23 quickly. Thanks.

24 CROSS-EXAMINATION

25 MS. WILLIAMS: So, Ms. Wilson, could you -- could

1 you give me a list of -- I know, hopefully, it's -- it would
2 be a short list of species which are currently listed under
3 the Endangered Species Act that might occur here in the
4 Antelope Valley? Obviously, the -- the tortoise is one of
5 them.

6 MS. WILSON: Desert -- desert -- under -- I'm
7 sorry, under State Endangered Species Act or --

8 MS. WILLIAMS: Under --

9 MS. WILSON: -- are you talking --

10 MS. WILLIAMS: Under the state would be fine.

11 MS. WILSON: That's okay. Desert -- desert
12 tortoise, Mojave ground squirrel, Swainson's hawk, Least
13 Bell's vireo, potentially Southwestern Willow Flycatcher.
14 Just listed? You don't want sensitive?

15 MS. WILLIAMS: No. Just the listed.

16 MS. WILSON: Okay. Is that about -- I think
17 that's about it.

18 MS. WILLIAMS: All right. So the tortoise --
19 tortoise --

20 MS. WILSON: Yeah.

21 MS. WILLIAMS: -- horny toad, Mojave ground
22 squirrel, Swainson's hawk, Least Bell's vireo, and the
23 flycatcher; right?

24 MS. WILSON: Correct.

25 MS. WILLIAMS: So the -- the -- these roads which

1 are being proposed to be paved actually have a fairly large
2 geographic area. Avenue B, for instance, is just short of
3 the Los Angeles County line where Carson Mesa Road is
4 probably, you know, at least -- well, S to B, that's a mile
5 apart, so 20 miles. So it's a fairly large geographic area.
6 And these roads are actually extremely variable in their --
7 you know, some are in virtual urban areas and some are
8 almost in the middle of nowhere.

9 So I'm -- I'm -- again, how -- it's hard for me to
10 understand how you can mitigate -- how you can say that you
11 would allow a project to move forward without having
12 identified whether or not there are state listed endangered
13 species that are present. And I -- I can tell you,
14 remember, I live here. And in fact, I ride horses. And so
15 I've actually ridden on a few of these roads. And that
16 it's -- it's -- it used to be extremely common to see desert
17 tortoise --

18 MR. CARROLL: I'm going to object.

19 MS. DE CARLO: I'm going to have to start to --

20 MR. CARROLL: I'm going to object.

21 MS. DE CARLO: Yeah.

22 HEARING OFFICER CELLI: Sustained. Now --

23 MS. WILLIAMS: Okay.

24 HEARING OFFICER CELLI: -- here's the situation,
25 we've got to ask questions. I can't have you testifying and

1 asking questions.

2 MS. WILLIAMS: Okay. I'm sorry.

3 So would you expect on -- say on Avenue B, which
4 is actually partly the drainage for the dry lake, that you
5 would see any of these --

6 MR. CARROLL: Objection. Again, I mean, she can
7 not ask a question without inserting a piece of testimony,
8 it seems. I mean, there's no evidence to indicate that this
9 is on the edge of a dry lake, or whatever it was she just
10 asserted in the question.

11 HEARING OFFICER CELLI: Let me -- I thought that
12 she -- what's your question, Ms. Williams?

13 MS. WILLIAMS: Would you expect to see any of
14 these state listed endangered species on an area such as
15 Avenue B?

16 MR. HUNTLEY: It is possible --

17 HEARING OFFICER CELLI: Overruled.

18 MR. HUNTLEY: -- that some portion -- this is
19 Chris Huntley speaking. It is possible that some portions
20 of Avenue B could support a habitat for species such as the
21 Mojave ground squirrel. We know that Swainson's hawk nests
22 in that very close proximity to that roadway along some of
23 the rural roadways. It is also possible to find desert
24 tortoise out in some of those areas where more natural
25 habitats occur. Least Bell's vireo and some of the other

1 neotropical songbirds are not likely to occur there because
2 there's really an absence of a nesting habitat for them.
3 But, yes, it's possible to see that and we've considered
4 those impacts in our staff testimony.

5 MS. WILLIAMS: As well, would you expect to see
6 some of those listed species on Carson Mesa Road?

7 MR. HUNTLEY: Carson Mesa Road would not be
8 expected to support desert tortoise or Mojave ground
9 squirrel. It's really pushing the edge of its range. And
10 there isn't -- I wouldn't consider the riparian habitat down
11 there to really be characteristic of something like a Willow
12 Flycatcher, or even a Least Bell's vireo.

13 MS. WILLIAMS: Thank you. That's it.

14 MR. CARROLL: Thank you, Ms. Williams.
15 Cross by Applicant.

16 MR. CARROLL: Just -- just very quickly.

17 CROSS-EXAMINATION

18 MR. CARROLL: Mr. Huntley, is it typical that the
19 energy commission would require protocol level surveys on
20 all aspects of a proposed project?

21 MR. HUNTLEY: No. Typically protocol surveys are
22 warranted for habitat. Our species didn't warrant those
23 kinds of activities. So not necessarily. You wouldn't be
24 doing critical surveys for desert tortoise in areas that
25 didn't support that.

1 MR. CARROLL: So it's not atypical for Energy
2 Commission to complete its review of a project with certain
3 aspects of that project site not having been subject to
4 protocol level surveys?

5 MR. HUNTLEY: Generally on the large solar
6 projects we have wanted to have the best information
7 available. But we recognize there are some small changes
8 that not all areas can be subject to protocol surveys. But
9 largely the commission does want the data for those kinds of
10 things.

11 MR. CARROLL: But is it required in every case?

12 MR. HUNTLEY: No, not in every case, as far as the
13 projects I've worked on.

14 MR. CARROLL: And in this particular case were
15 protocol level surveys completed by the applicant on the
16 project site?

17 MR. HUNTLEY: Yes, they were.

18 MR. CARROLL: And are the proposed conditions of
19 certification designed to protect the biological resources
20 that were identified in those protocol level surveys?

21 MR. HUNTLEY: I believe they were.

22 MR. CARROLL: And from your perspective are the
23 areas where the road segments are located materially
24 different from a biological perspective than the project
25 site in the other linears that were subject to protocol

1 level surveys?

2 MR. HUNTLEY: Yes. I would characterize some of
3 the road segments, particularly two, four, six, eight, nine,
4 as primarily urbanized and lacking habitat for most rare and
5 endangered species. Although portions of some of the other
6 roads which -- such as one, three, five, do have habitat
7 that can support them, but most of that road there is highly
8 disturbed.

9 MR. CARROLL: So would it be fair to say then that
10 the areas of the road segments are less biologically
11 sensitive than the project site and other linears that were
12 subject to protocol level surveys?

13 MR. HUNTLEY: Most of the areas immediately
14 adjacent to the roadsides. But there are some natural lands
15 off the roadsides that -- that could very well support rare
16 species.

17 MR. CARROLL: Okay. So given that, would your
18 expectation of the conditions of certification that were
19 designed to protect the species that were identified through
20 protocol level surveys would be adequate to protect any
21 biological resources along the road segments?

22 MR. HUNTLEY: Yes, I do.

23 MR. CARROLL: Thank you.

24 HEARING OFFICER CELLI: Nothing further from
25 Applicant?

1 MR. CARROLL: Nothing further from Applicant.

2 HEARING OFFICER CELLI: And nothing further, I'm
3 sure, from Staff?

4 MS. DE CARLO: One redirect.

5 HEARING OFFICER CELLI: Yeah. Actually, I
6 would -- I'm going to go off the record, and then I'm going
7 to confer with the committee to see whether we will allow
8 any more redirect.

9 (Discussion off the record.)

10 HEARING OFFICER CELLI: I'm going to ask staff to
11 take a long look at the question that needs to be asked now
12 which opens the door for all the recross that's about to
13 happen and see if it's really necessary to ask one more
14 question.

15 MS. DE CARLO: If you'll give me a minute to see
16 what's in our written testimony to see if it's already been
17 covered.

18 HEARING OFFICER CELLI: Thank you. Because I
19 would just comment that, boy, we have one heck of a record
20 here, lots of information.

21 MS. DE CARLO: Well, I would state that this is on
22 soil and water and not on biology, which was the -- the bulk
23 of -- of the testimony -- questions.

24 I would like to ask the question. I apologize.
25 But I'm not sure that it's been sufficiently --

1 HEARING OFFICER CELLI: Here --

2 MS. DE CARLO: -- addressed --

3 HEARING OFFICER CELLI: Here's the rule.

4 MS. DE CARLO: -- in our written testimony.

5 HEARING OFFICER CELLI: The rule is you get one
6 question, Intervenors get one question on recross, the
7 applicant will get one question, and then that's the end of
8 this panel. So --

9 MS. DE CARLO: Thank you.

10 HEARING OFFICER CELLI: -- go ahead.

11 MS. DE CARLO: I appreciate your indulgence.

12 REDIRECT EXAMINATION

13 MS. DE CARLO: Ms. Taylor. You testified that, I
14 believe you did not have access to, was it soil surveys for
15 the -- for the road -- roads identified by the applicant?

16 MS. TAYLOR: That's correct.

17 MS. DE CARLO: Can you please --

18 HEARING OFFICER CELLI: That was your question.

19 MS. DE CARLO: Oh, I'm -- this is a follow up.
20 That was just setting it up. I apologize.

21 HEARING OFFICER CELLI: Applicant concedes its
22 question to staff.

23 MS. DE CARLO: Can you please explain -- can you
24 please explain what you did rely on in reaching your
25 conclusion with regard to potential for the project to

1 result in impacts to soil and water from the road paving
2 proposal?

3 MS. TAYLOR: I relied on my -- this is Mary Lou
4 Taylor. I relied on my past experience in roadway design
5 and construction, which I have done for previous years.
6 Because we did not have a lot of information that we would
7 typically ask for, we would typically expect, I went from my
8 past experience and used the typical road design and
9 construction to base my analysis on, and from that listed
10 all the potential impacts as I put in my testimony, and that
11 came up with the conditions of certification, which I feel
12 would be adequate to lessen the potential impacts to less
13 than significant.

14 MS. DE CARLO: Thank you.

15 HEARING OFFICER CELLI: Thank you.

16 Ms. Belenky, you've got one question to ask, if
17 you want.

18 RE-CROSS-EXAMINATION

19 MS. BELENKY: Yes. I'm sorry, I've forgotten your
20 name. I really apologize.

21 MS. TAYLOR: Mary Lou. Mary Lou Taylor.

22 MS. BELENKY: Oh. Ms. Taylor, when you say you
23 relied on your past experience, have you had past experience
24 in this area with these high desert soils?

25 MS. TAYLOR: Not specifically in that design. But

1 I am familiar with other projects with high desert soils.

2 MS. BELENKY: Oh, I -- I have to clarify. I'm
3 sorry. You said that you relied on your past experience.
4 And I asked you if you had past experience yourself with
5 these high desert soils in this area.

6 HEARING OFFICER CELLI: And she said no. And I
7 think that's -- we're getting into argument now because --

8 MS. BELENKY: No.

9 HEARING OFFICER CELLI: -- I mean --

10 MS. BELENKY: I'm just trying to get a clear sense
11 of what she's saying.

12 HEARING OFFICER CELLI: She had no personal
13 experience and relied on other evidence. That's basically
14 the big takeaway. Okay. Thank you.

15 Ms. Williams, go ahead, if you -- if you have one.

16 MS. WILLIAMS: I pass.

17 HEARING OFFICER CELLI: All right.

18 MR. CARROLL: No questions.

19 HEARING OFFICER CELLI: Thank you. Thank you,
20 Panel. The panel is excused. The record is closed on the
21 issue of road paving involving biology, cultural, land,
22 traffic, soil and water, and growth inducing impacts.

23 MS. DE CARLO: Did we move Staff's -- all Staff's
24 exhibits regarding those technical areas into the record?

25 HEARING OFFICER CELLI: Aren't all Staff's

1 exhibits already in the record?

2 MS. DE CARLO: I wasn't sure if we had just moved
3 those that were in controversy at the beginning or if they
4 were all --

5 HEARING OFFICER CELLI: No. I have -- I have 300
6 through -- or I'm -- yeah --

7 MS. DE CARLO: Okay.

8 HEARING OFFICER CELLI: -- 300 to 307 --

9 MS. DE CARLO: Okay.

10 HEARING OFFICER CELLI: -- I think it was.

11 MS. DE CARLO: I wasn't sure if you were retaining
12 some of the one that were controversial or not. Thank you.

13 HEARING OFFICER CELLI: And I took in all of
14 intervenors testimony, as well. So there's no more evidence
15 to put in from the intervenors because they're not calling
16 anymore witnesses. The only thing we have left is
17 alternatives.

18 Before we get to alternatives we'd like to hear
19 from Steven Hofbauer who's of the City of Palmdale who had a
20 meeting to go to at six o'clock and wanted to make brief
21 comments to the committee.

22 So meanwhile, Staff, if you can get your
23 alternatives -- or, no, I'm sorry, Applicant, your
24 alternatives people. That's our last issue, alternatives.

25 MR. CARROLL: Okay.

1 HEARING OFFICER CELLI: I'm sorry. Go ahead,
2 Steven Hofbauer, please.

3 MR. HOFBAUER: Thank you. Steve Hofbauer, City of
4 Palmdale, council member. I'd like to thank the -- the
5 board, the commissioners, the staff for coming down and
6 conducting this hearing. It's really been important to
7 flesh all these issues out, resolve them, and -- and move
8 forward.

9 We've been working on this for a long time. This
10 is an important regional project. This is important for the
11 Antelope Valley as a whole, especially considering some of
12 our isolation that can occur out here during disaster
13 situations. This is important from an economic standpoint
14 for the region, as well.

15 So I just encourage you to continue your -- your
16 deliberations in -- in a timely manner. I really appreciate
17 it. I was a planning commissioner for 12 years, so I
18 appreciate the technical review that has to go on, in
19 addition to the political considerations. So again, thank
20 you very much, and looking forward to a speedy resolution
21 and approval on this project.

22 HEARING OFFICER CELLI: Thank you for your
23 comments.

24 What happened to Ms. Jennings? Any more? Do we
25 have -- that's it on public comment? Thank you. Okay.

1 We are into -- so I want to do a little check in
2 with everybody here. The only thing we have left is
3 alternatives. I've taken into evidence all of desert --
4 DCAP's and CBD's exhibits.

5 MS. DE CARLO: Actually, I believe we were
6 still --

7 HEARING OFFICER CELLI: That's right.

8 MS. DE CARLO: -- waiting to discuss Exhibit 501.

9 HEARING OFFICER CELLI: 501 was --

10 MS. DE CARLO: The Green Chemistry Hazard Traits.

11 HEARING OFFICER CELLI: That's right. We're going
12 to have to -- we're going to have to take that under
13 submission for the moment, and then we'll see how much time
14 I have and whether I can rule now --

15 MS. DE CARLO: Okay.

16 HEARING OFFICER CELLI: -- or whether we rule
17 later.

18 MS. DE CARLO: Would you like me -- for me to make
19 my argument about the relevance of that now?

20 HEARING OFFICER CELLI: Not right at this moment.

21 MS. DE CARLO: Okay.

22 HEARING OFFICER CELLI: What I'd like to do is get
23 the alternatives going by -- so we're going to go in the
24 same order, Applicant, Staff, CBD, DCAP, on alternatives.
25 If there's no direct testimony, in other words, if Applicant

1 is satisfied with the testimony that's in the record then
2 maybe we -- we just need to have cross of the witnesses.

3 We'll here was the -- what does Applicant have to
4 say?

5 MR. CARROLL: Applicant calls Ms. Sara Head on
6 alternatives.

7 HEARING OFFICER CELLI: Okay. Ms. Head, would you
8 take the podium?

9 MS. HEAD: Yes.

10 HEARING OFFICER CELLI: So these are Staff's
11 witnesses over here?

12 MS. DE CARLO: Yes.

13 MR. CARROLL: Pardon me?

14 HEARING OFFICER CELLI: These aren't your
15 witnesses?

16 MR. CARROLL: No. Those are staff witnesses.

17 HEARING OFFICER CELLI: Okay. Ms. Head, you're
18 already sworn and still under oath.

19 DIRECT EXAMINATION

20 MR. CARROLL: Ms. Head, were you involved in the
21 preparation and/or review of the alternatives analysis that
22 was included in the application for certification submitted
23 by the applicant?

24 MS. HEAD: I was.

25 MR. CARROLL: Ms. Head is tendered for cross-

1 examination.

2 HEARING OFFICER CELLI: Thank you. Staff?

3 MS. DE CARLO: No questions.

4 HEARING OFFICER CELLI: CBD? Alternatives; which
5 you I think called something like purpose and need.

6 MS. BELENKY: Yeah. I just wanted to -- I have a
7 couple of questions I need to clarify first, that we're only
8 talking about alternative -- we're not talking about
9 alternative types of ERCs in this segment of the
10 alternatives?

11 HEARING OFFICER CELLI: Absolutely not.

12 MS. BELENKY: We're only talking about project
13 alternatives?

14 HEARING OFFICER CELLI: Correct. Actually, we're
15 just --

16 MR. CARROLL: Well --

17 HEARING OFFICER CELLI: -- limiting it to -- you
18 had raised the question at the prehearing conference
19 statement -- in your prehearing conference statement about
20 purpose and need, and we decided we were going to slot it in
21 alternatives because we don't generally have a topic area
22 called purpose and need.

23 MR. CARROLL: Right. Applicant's understanding is
24 that this item is limited to purpose and need, which was
25 very clearly specified in the hearing order.

1 HEARING OFFICER CELLI: Right. Item two of
2 disputed topics, alternatives, parenthesis, purpose and
3 need, end parenthesis.

4 MS. BELENKY: Well, I think that we're probably on
5 the same page, but we'll see, although I'm not sure I have
6 any questions for the applicant's witness. I -- I am
7 looking at the FSA.

8 CROSS-EXAMINATION

9 MS. BELENKY: However, I would ask one question of
10 the applicant, which is -- but I'm not sure this witness
11 can -- did the applicant consider having a different
12 percentage of solar in this project, for example, up to 33
13 percent?

14 HEARING OFFICER CELLI: That's a good question.

15 MS. HEAD: We did look at different solar
16 technologies in the alternative section. But the amount of
17 solar was limited by the amount of land available. And at
18 this time the City of Palmdale was only proposing to develop
19 the -- the 300 acre parcel. And -- and so the -- I'd have
20 to say I -- I know that we did look at, you know, no project
21 and -- but I'm having a difficult time remembering exactly
22 what we looked at in terms of different sizes. I don't
23 believe we did.

24 HEARING OFFICER CELLI: I think you answered her
25 question.

1 MS. HEAD: Okay.

2 HEARING OFFICER CELLI: Anything further from CBD
3 on this witness?

4 MS. BELENKY: My only -- I'm worried that then
5 she'll -- you'll say that my question should have been asked
6 of her if I ask Staff's. So --

7 HEARING OFFICER CELLI: Well, you know, I think
8 that --

9 MR. CARROLL: The applicant would allow a follow-
10 up question of Ms. Head if --

11 HEARING OFFICER CELLI: Yeah. I don't really
12 think -- I think your questions are going to really be more
13 of Staff's, up their alley.

14 MS. BELENKY: Okay.

15 HEARING OFFICER CELLI: So thank you. Any -- any
16 questions of the applicant's witness Ms. Head, Ms. Williams,
17 on purpose and need?

18 CROSS-EXAMINATION

19 MS. WILLIAMS: So actually, yeah. What -- what
20 actually is the purpose of the project as you understand it?

21 MS. HEAD: To provide power into the electrical
22 grid of California.

23 MS. WILLIAMS: So as you -- as you -- so the grid
24 is not interconnected. So where would this power go?

25 MS. HEAD: The power would go into the -- into the

1 grid. We proposed a transmission line that connects into
2 the Vincent Substation, which connects into the California
3 grid.

4 MS. WILLIAMS: Primarily for Southern California?

5 MR. CARROLL: Objection. This witness is not
6 qualified --

7 HEARING OFFICER CELLI: Right. That's --

8 MR. CARROLL: -- to answer that question.

9 HEARING OFFICER CELLI: That's a transmission
10 systems engineering question. We -- we want to keep it --
11 you were -- you were off to a great start with the question,
12 because we're -- we're talking about purpose and need, Ms.
13 Williams. So if you can keep it on purpose and need we'll
14 be -- we'll be good.

15 MS. WILLIAMS: So you stated that the purpose and
16 the need of the project is to deliver energy into the State
17 of California?

18 MR. CARROLL: I believe the witness stated the
19 purpose of the project was to deliver energy to the state
20 of -- to the grid.

21 HEARING OFFICER CELLI: And that -- and that was a
22 yes, Ms. Head?

23 MS. HEAD: Yes.

24 HEARING OFFICER CELLI: Okay. Anything further
25 from Ms. Williams?

1 MS. WILLIAMS: Yeah. This -- this actually is a
2 very important point because she did say to the State of
3 California.

4 HEARING OFFICER CELLI: Yes.

5 MS. WILLIAMS: And this plant actually can not
6 provide energy to the State of California. It can only
7 provide energy into the Vincent --

8 MR. CARROLL: Objection. Ms. Williams is
9 testifying again.

10 HEARING OFFICER CELLI: Understood. And the
11 objection is sustained.

12 We just want to get to purpose and need, if you
13 have any more questions. And again I'm going to point out
14 that I think Staff is probably better witnesses for your
15 questions.

16 MS. BELENKY: Well, I do have one question that I
17 think is directed towards this witness.

18 HEARING OFFICER CELLI: Okay. But are we finished
19 with this witness?

20 MS. WILLIAMS: No. But I'll go --

21 MS. BELENKY: No. No. Go ahead. Go ahead.

22 HEARING OFFICER CELLI: No. I don't want to
23 bounce back and forth. I've got to make some progress here.

24 MS. WILLIAMS: Ms. Head, are you -- are you
25 familiar with the proposal for 2500 megawatts of solar

1 within a mile of this project?

2 MS. HEAD: No.

3 MS. WILLIAMS: Okay. That's all.

4 HEARING OFFICER CELLI: Thank you. Go ahead. One
5 more, Ms. Belenky, please.

6 MS. BELENKY: Yes. I just wanted to double check.
7 I believe in the FSA it stated that there was no PPA for
8 this project. Is that still the case?

9 MS. HEAD: I'm not the right person --

10 MS. BELENKY: Okay.

11 MS. HEAD: -- to answer that question.

12 MS. BELENKY: Fine.

13 HEARING OFFICER CELLI: Nothing further? Staff,
14 did I ask if you had any cross on this?

15 MS. DE CARLO: You did and I didn't.

16 HEARING OFFICER CELLI: Okay. So we're back to
17 Applicant.

18 Any redirect?

19 MR. CARROLL: No. No redirect.

20 HEARING OFFICER CELLI: Thank you. Thank you, Ms.
21 Head. You may resume your seat.

22 If there's nothing further, then we're on to
23 Staff.

24 MS. DE CARLO: Staff has two witnesses for
25 alternatives, Suzanne Finney and Hedy Koczvara. They need

1 to be sworn.

2 HEARING OFFICER CELLI: Please stand.

3 (Witnesses sworn.)

4 HEARING OFFICER CELLI: Thank you. Have a seat.
5 Please state your name and spell it for the record. Speak
6 directly into the microphone.

7 MS. KOCZWARA: My name is Koczwarra, H-e-d-y
8 K-o-c, as in cat, -z, as in zebra, -w-a-r-a.

9 MS. PHINNEY: My name is Suzanne Phinney,
10 S-u-z-a-n-n-e P-h-i-n-n-e-y.

11 HEARING OFFICER CELLI: Go ahead. Your -- your
12 witnesses.

13 MS. DE CARLO: And I just wanted to establish for
14 the record, Dr. Phinney is sponsoring the alternatives
15 Appendix A in the Final Staff Assessment, Exhibit 300. Ms.
16 Koczwarra is sponsoring the alternative section in the Final
17 Staff Assessment, Exhibit 300. And if we could get the
18 parties to stipulate to their qualifications?

19 HEARING OFFICER CELLI: Do you stipulate that
20 these are expert witnesses in the area of alternatives, Ms.
21 Belenky?

22 MS. BELENKY: Yes.

23 HEARING OFFICER CELLI: Ms. Williams?

24 MS. WILLIAMS: Yes.

25 HEARING OFFICER CELLI: Mr. Carroll?

1 MR. CARROLL: Yes.

2 HEARING OFFICER CELLI: So stipulated.

3 MS. DE CARLO: In the interest of time we forego
4 our summary of the analysis and leave the witnesses open to
5 cross-examination.

6 HEARING OFFICER CELLI: Thank you. Starting with
7 CBD, alternatives, purpose and need.

8 MS. BELENKY: And I'm -- I'm a little confused as
9 to who I'm supposed to ask.

10 HEARING OFFICER CELLI: Bring your mike up a
11 little closer, if you would.

12 MS. BELENKY: Sorry.

13 HEARING OFFICER CELLI: Thanks.

14 MS. BELENKY: I -- I think it's Ms. Phinney.

15 CROSS-EXAMINATION

16 MS. BELENKY: Did you consider an alternative that
17 be an all solar project at this site?

18 MS. KOCZWARA: That's actually in -- in the
19 alternatives analysis, yes, we did. It's under solar energy
20 on page 6-27 in the FSA.

21 MS. BELENKY: And -- sorry.

22 MS. KOCZWARA: That was Hedy Koczwarra speaking.

23 MS. BELENKY: And --

24 HEARING OFFICER CELLI: Thank you.

25 MS. BELENKY: -- Ms. Koczwarra, Staff did not take

1 this alternative forward; is that correct?

2 MS. KOCZWARA: Well, it was -- it was considered
3 and it was analyzed. And then following the analysis Staff
4 determined that it was not recommended over the proposed
5 project.

6 MS. BELENKY: And can you explain why?

7 MS. KOCZWARA: First and foremost, the amount of
8 land required to produce 570 megawatts of an all solar
9 alternative would generate, I think the FSA said between --
10 between 2,200 and close to 9,000 acres of land. And this
11 amount of land in disturbance would be more disturbance,
12 both to biological resources. It likely would have to be an
13 undeveloped area which could create increased visual
14 resources impacts, as well. And it would not be as close to
15 the load, thereby it would not meet the project objectives,
16 namely the applicant is the City of Palmdale, and it would
17 likely not be able to be located within the city boundaries,
18 which is one of the stated project objectives.

19 And then all -- in addition, during non-sunny
20 portions of the day it requires either energy storage or a
21 different type of generation to generate power during those
22 times.

23 MS. BELENKY: Okay. But that's an all-solar at
24 the full capacity of the project as described, is that
25 correct --

1 MS. KOCZWARA: What is described as --

2 MS. BELENKY: -- the 500 --

3 MS. KOCZWARA: Correct.

4 MS. BELENKY: Yes. So did Staff consider a solar
5 project that would be on this footprint, a smaller number of
6 megawatts but on the same footprint?

7 MS. KOCZWARA: No, we did not.

8 MS. BELENKY: And so you just listed a series
9 of -- of bases that staff rejected solar, and all-solar
10 project that would be the full number of megawatts. I'm
11 very confused by that because that logic seems to go against
12 so many other projects that we've seen here at the
13 commission. So --

14 HEARING OFFICER CELLI: Do you have a question?

15 MS. BELENKY: I'm trying to find -- figure out
16 what -- which was the dispositive issue of those issues that
17 you listed in your rejecting a solar alternative?

18 MS. KOCZWARA: Well, the parcel size of the
19 proposed site is only -- I think it was 377 acres. And
20 produced -- to produce solar it takes about four to ten
21 acres per megawatt. So in order to produce, I guess at
22 that, that would produce only approximately -- that would be
23 way less than 570 megawatts that we needed and that -- that
24 was proposed as part of the project, so it would not meet
25 project objectives.

1 MS. BELENKY: So I'm just really trying to
2 understand this. So you said the 570 megawatts that are
3 needed. But my understanding from our earlier -- I think it
4 was at the prehearing conference was that the commission
5 does not actually evaluate the need; is that correct?

6 MS. KOCZWARA: You're right. I didn't -- I guess
7 I misspoke when I said need. I meant as -- that were the
8 stated project objectives of the City of Palmdale, the
9 project applicant.

10 MS. BELENKY: Okay. It didn't meet the project
11 applicant's full megawatts that they had as their objective?

12 MS. KOCZWARA: Right.

13 MS. BELENKY: That was what I didn't meet.

14 MS. KOCZWARA: Correct.

15 MS. BELENKY: Okay.

16 MS. KOCZWARA: The -- the Energy Commission does
17 not make a determination of need.

18 MS. BELENKY: Okay. And then I'm just trying to
19 make sure I -- because some of these things you did not
20 participate in, am I correct, the greenhouse gas assessment
21 for this project; is that correct?

22 MS. KOCZWARA: No, I did not. However, the
23 greenhouse gas section does provide the basis and talks
24 about the reliability and power that this project will
25 introduce to the grid.

1 MS. BELENKY: Okay. So you may be able to answer
2 these questions. I'm just trying to make sure I have the
3 right person. And when things are divided up sometimes it's
4 hard to tell.

5 HEARING OFFICER CELLI: Let's just ask the
6 question, and then we'll see how she does and whether she
7 has the foundation. Let's go.

8 MS. BELENKY: In the staff assessment of the role
9 that this project would play in -- within California there's
10 a discussion of the RPS standard and the 20 percent scenario
11 and the 33 percent scenario. This project in the RPS as
12 stated -- I mean in the FSA it stated that this project at
13 peak would only have a ten percent solar profile; is -- is
14 that your understanding, as well?

15 MS. KOCZWARA: As stated in the project
16 description within this section I believe that's what it
17 said. I do not have it in front of me at the moment. So if
18 that's what the project description states then --

19 MS. BELENKY: So I'm trying to understand how this
20 staff considered alternatives, the purpose of the project,
21 what the project was -- how the project was formulated in
22 Staff's view when the -- the standards in California, what
23 we're trying to achieve is a minimum of a 20 percent
24 renewable profile with up to a 33 percent renewable profile
25 when this project on its own at maximum peak hours only has

1 a 10 percent renewable profile.

2 Did you consider that in the alternatives
3 analysis?

4 MS. KOCZWARA: In the alternatives analysis under
5 CEQA you're required to analyze a reasonable range of
6 alternatives. And within that we looked at an all-solar
7 alternative, and we also looked at the use of distributed
8 solar generation on -- on rooftops, both as the solar
9 component only of the project, and then also as an entire
10 replacement of the whole -- of the project as a whole.

11 Does that answer your question?

12 HEARING OFFICER CELLI: I thought it did.

13 MS. BELENKY: Kind of. I think it did. In the
14 alternatives analysis did you consider the commission's
15 recent approval of over 4,000 megawatts of solar energy that
16 may be using some of the same gridlines?

17 MS. KOCZWARA: Yes. I mean, just because the
18 projects have been approved doesn't mean that they'll
19 necessarily be constructed. Historically, many of the
20 Energy Commission's projects that they've approved have not
21 been constructed due to permitting, financing. Also,
22 there's several lawsuits against many of the solar projects
23 that I think affect the viability of up to 3,000 megawatts
24 of those solar projects. So it can't be assumed that they
25 will be online.

1 HEARING OFFICER CELLI: But the question was: Did
2 you consider them in your analysis of alternatives?

3 MS. KOCZWARA: I guess, yes.

4 HEARING OFFICER CELLI: Thank you. So that's kind
5 of what we want to do, literally ask the --

6 MS. KOCZWARA: Sorry.

7 HEARING OFFICER CELLI: -- answer the question. I
8 know that's a funny concept, but let's try to do that.

9 Go ahead. Next question please.

10 MS. BELENKY: Did you consider an alternative that
11 would require the applicant to retire other dirtier forms of
12 fossil fuels?

13 MS. KOCZWARA: Well, yes. I mean, many -- all of
14 the alternative generation technologies, several of them
15 such as the wind alternatives, the all-solar alternatives,
16 they all would be cleaner than the fossil fuel gas-fired
17 plants now. The proposed project itself has a solar
18 component that would -- may cause other plants to be
19 retired.

20 MS. BELENKY: I think my question is slightly
21 different. Is -- did you consider requiring the applicant
22 to ensure that some of those dirtier sources would be
23 retired and that this would, in fact, replace them, as
24 opposed to a theoretical replacement through the grid?

25 MS. KOCZWARA: That's not my -- that's outside of

1 my expertise, and I can't require another plant to go
2 offline.

3 MS. BELENKY: I think those are the questions I
4 have that deal with alternatives --

5 HEARING OFFICER CELLI: Thank you.

6 MS. BELENKY: -- that are not the ERC
7 alternatives --

8 HEARING OFFICER CELLI: Let's talk --

9 MS. BELENKY: -- that we already dealt with.

10 HEARING OFFICER CELLI: Let's hear from Jane
11 Williams and the Desert Citizens Against Pollution regarding
12 purpose and need of the project. These are the
13 alternatives.

14 CROSS-EXAMINATION

15 MS. WILLIAMS: So -- so in the final staff
16 assessment it says in this section in -- in section six that
17 you determined this project to be the environmentally
18 superior project; is that the case with all the alternatives
19 that you looked at?

20 MS. KOCZWARA: Of the -- of the -- yes. I did not
21 recommend any of the sites or other generation technologies
22 over the proposed site and proposed technology.

23 MS. WILLIAMS: And can you tell me why?

24 MS. KOCZWARA: For -- for each of the individual
25 ones? Sure. Of the alternative sites, two of the

1 alternative sites were found to be infeasible. The third
2 alternative site, which would be east of Plant 42, was found
3 to have greater environmental impacts, namely to biological
4 resources. The linears would be longer. And there could be
5 increased visual impacts, as well.

6 Of the technologies, I discussed already the solar
7 energy technology. The other -- the other technologies I
8 looked at were wind, geothermal, bio mass, I think fuel
9 cells, as well, and nuclear. And all of them were found not
10 be viable, either would not meet project objectives, namely
11 the resources were not available in the area such as hydro
12 and geothermal and, actually, wind as well. Wind also; the
13 turbines located near Plant 42 could interfere with Plant
14 42's air operations.

15 And then I guess the one other alternative that I
16 analyzed was the no-project alternative, and this also was
17 not found to be recommended because it wouldn't provide the
18 economic benefits to the City of Palmdale. It wouldn't
19 contribute to the development of renewable energy, part of
20 one of California's policy goals. And it would not provide
21 reliable power.

22 MS. WILLIAMS: So as part of your alternatives
23 assessment you did assess the economic benefit to the City
24 of Palmdale from the project, and that was part of your
25 decision making?

1 MS. KOCZWARA: It was -- it was analyzed. You
2 know, it was -- it was analyzed in terms of it being a
3 socioeconomic beneficial effect. But it was analyzed more
4 as like -- as a project objective and -- rather than -- it
5 wasn't the overriding factor for any decision to retain or
6 eliminate an alternative.

7 MS. WILLIAMS: So when you did analyze that did
8 you analyze the economic effect to the -- to the other
9 residents of the Antelope Valley or just --

10 MS. KOCZWARA: Not --

11 MS. WILLIAMS: -- to the City of Palmdale?

12 MS. KOCZWARA: I didn't do a full economic
13 benefit. But, no, I -- it was to the City of Palmdale as
14 the applicant.

15 MS. WILLIAMS: Is that one of the project goals?

16 MS. KOCZWARA: Not specifically.

17 MS. WILLIAMS: So I'm wondering why you analyzed
18 that.

19 MS. KOCZWARA: It was analyzed as stating that in
20 the no-project alternative that constructing the projects in
21 the City of Palmdale would bring jobs to the city and would
22 provide some economic benefit to the city during the project
23 construction.

24 MS. WILLIAMS: Yeah. But -- but the converse is
25 also true, as well, and that is that it actually takes jobs

1 away because it uses up the air --

2 MR. CARROLL: Objection.

3 MS. WILLIAMS: -- uses up the --

4 MR. CARROLL: Testimony.

5 MS. WILLIAMS: -- air pollution increment.

6 HEARING OFFICER CELLI: Overruled.

7 Ask your question, because I think you -- you
8 need -- we didn't hear the last of your question.

9 MS. WILLIAMS: What I'm saying is that there is an
10 analysis done of the benefit to the City of Palmdale. And
11 this is a socioeconomic analysis that was part of the
12 decision making process on choosing this plant to be the
13 preferred alternative. And what I'm saying is --

14 HEARING OFFICER CELLI: What you're asking is --

15 MS. WILLIAMS: What I'm asking is did you also
16 look at that for the rest of the citizens of the Antelope
17 Valley?

18 MS. KOCZWARA: Well, there would be secondary
19 economic effects to the other citizens of the valley, and in
20 that sense it was -- it was analyzed. But the socioeconomic
21 issue area author is the expert who formed the socioeconomic
22 analysis of the plant. So --

23 MS. WILLIAMS: There's a big socioeconomic impact
24 to -- to approving the plant, and there's a big
25 socioeconomic impact to not approving the plan. And so I'm

1 wondering why you analyzed one and you didn't analyze the
2 other.

3 MR. CARROLL: I'm going to object to this line of
4 questioning.

5 HEARING OFFICER CELLI: Sustained.

6 MR. CARROLL: Socioeconomics is not a disputed
7 area. It's --

8 HEARING OFFICER CELLI: Well, she --

9 MR. CARROLL: -- been discussed today.

10 HEARING OFFICER CELLI: She's looking at the
11 benefits that were defined in the alternative section, so
12 it's okay to ask questions about the benefits. But your
13 objection about assuming facts not in evidence is sustained
14 in that we don't know that there are any benefits for --
15 with the no project alternative. I have not heard any
16 evidence in there or any read anything yet. That might be
17 something you can ask.

18 MS. WILLIAMS: That's sort of, in essence, what I
19 am asking. I'm saying you -- you identified the
20 socioeconomic benefit as part of your decision making
21 process on this alternative, but you didn't do it for the
22 no-project alternative. And there is a huge socioeconomic
23 benefit --

24 HEARING OFFICER CELLI: I'm not sure that --

25 MS. WILLIAMS: -- for the no-project --

1 HEARING OFFICER CELLI: -- that's --

2 MS. WILLIAMS: -- alternative.

3 COMMISSIONER CHOPER: -- that's an accurate
4 statement. So go ahead and ask.

5 MS. WILLIAMS: So let me ask the question.

6 HEARING OFFICER CELLI: Yeah.

7 MS. WILLIAMS: Let me ask the question again. Did
8 you do a socioeconomic impact -- you said you did it for
9 approving the project -- did you do it for not approving the
10 project?

11 MS. KOCZWARA: Under the no-project alternative
12 the FSA states that the economic benefits to the city would
13 not realized if the project is not constructed.

14 HEARING OFFICER CELLI: That would be a yes to
15 your answer. That was the analysis they did.

16 MS. WILLIAMS: You did a socioeconomic analysis
17 for the benefit of the City of Palmdale? But it's not just
18 the City of Palmdale that lives in the air basin. There's
19 over a quarter of a million people that live here.

20 HEARING OFFICER CELLI: So based on --

21 MS. WILLIAMS: And what -- what I'm -- what I'm
22 asking her specifically is: Did you do a socioeconomic
23 analysis, not for the City of Palmdale but for the residents
24 of the air basin, for the no-project alternative?

25 MS. KOCZWARA: How -- I'm confused, the

1 relationship between air quality impacts and socioeconomic
2 impacts. Let me further explain.

3 I mean, socioeconomics was not the only reason
4 that the no-project alternative was not recommended over the
5 proposed project.

6 HEARING OFFICER CELLI: The question was whether
7 there -- okay. Apparently there is a socioeconomic benefit
8 that was defined in the alternative section that made the
9 no-project alternative less beneficial, shall we say.

10 And the question is: Did -- was there was any
11 analysis of the economic benefit to any other areas outside
12 the jurisdiction of the City of Palmdale near the project?

13 MS. KOCZWARA: Not outside of the secondary
14 economic benefits that would occur from the increased cash
15 flow into the City of Palmdale and the surrounding area, not
16 beyond that.

17 MS. WILLIAMS: So the answer to the question is,
18 no, there was not such an analysis done.

19 MS. DE CARLO: I believe she's already answered
20 the question.

21 HEARING OFFICER CELLI: Yeah. That -- you got
22 your answer.

23 MS. WILLIAMS: I am making sure, because it was --

24 MS. KOCZWARA: Rephrasing it.

25 MS. WILLIAMS: -- very roundabout.

1 MS. DE CARLO: I just want to make sure you're not
2 rephrasing it --

3 MS. KOCZWARA: No.

4 MS. DE CARLO: -- inaccurately.

5 HEARING OFFICER CELLI: She got her answer.

6 MS. WILLIAMS: Okay.

7 HEARING OFFICER CELLI: So your objection is
8 overruled.

9 MS. WILLIAMS: Were there other -- on the -- on
10 the other proposals that you also did not accept, did you,
11 as well, do a socioeconomic benefit analysis for those
12 alternatives for the air basin as a whole, not just for the
13 City of Palmdale?

14 MR. CARROLL: I'm going to object to this line of
15 questioning. There's an entire section of the AFC and FSA
16 devoted to socioeconomics. All of these questions fall
17 squarely within that area, and the Intervenors did not
18 identify that as an area -- as an area that they wanted to
19 cover at the hearings. And we --

20 HEARING OFFICER CELLI: Well -- okay.

21 MR. CARROLL: -- did not prepare cross-examination
22 on that area. We did not present any like witnesses --

23 HEARING OFFICER CELLI: Right.

24 MR. CARROLL: -- as a result.

25 HEARING OFFICER CELLI: So your objection is

1 overruled because it's the same questions as the last
2 question, which is: Did you do any analysis outside of the
3 economic benefits, outside of the City of Palmdale?

4 MS. KOCZWARA: It was all at the same level as the
5 no-project alternative, nothing outside of the city.

6 HEARING OFFICER CELLI: Okay.

7 MS. WILLIAMS: Thank you.

8 HEARING OFFICER CELLI: I'm glad we cleared that
9 up.

10 MS. WILLIAMS: Thank you.

11 MR. CARROLL: Well, and for the record, we object
12 to the back-dooring of a socioeconomic discussion through
13 alternatives, and we object to the mischaracterization of
14 testimony that Ms. Williams is engaged in.

15 HEARING OFFICER CELLI: Overruled.

16 Ms. Williams, do you have any more questions?

17 MS. WILLIAMS: Did you -- did you look at the
18 impacts of these alternatives that you took off the board in
19 the same timeframe as you looked at impacts for the
20 Palmdale -- for the -- the proposal that you -- you did
21 accept? I mean, did you use the same timeframes?

22 MS. KOCZWARA: You mean construction timeframes?

23 MS. WILLIAMS: No.

24 HEARING OFFICER CELLI: What timeframes do you
25 mean?

1 MS. WILLIAMS: Well, this power plant has an
2 operating life of about 50 years. So it generates economic
3 benefits, as well as environmental impacts. It's impact is
4 over a half a century.

5 MS. KOCZWARA: Yes.

6 MR. CARROLL: Objection.

7 MS. KOCZWARA: It was assumed the life of the
8 project would be the same.

9 HEARING OFFICER CELLI: There you go.

10 MS. WILLIAMS: You assumed that the life of the
11 project would be the same for all the alternatives?

12 MS. KOCZWARA: Correct.

13 MS. WILLIAMS: Including the no-project
14 alternative?

15 MS. KOCZWARA: Well, under the no-project
16 alternative scenario it assumes that other plants would need
17 to be constructed, either renewable, gas-fired or hybrid
18 power plants. It also assumes that other existing older
19 gas-fired power plants would continue to operate for a
20 longer duration.

21 MS. WILLIAMS: Did you identify which plants those
22 would be?

23 MS. KOCZWARA: Not specifically.

24 MS. WILLIAMS: Or where they would be?

25 MS. KOCZWARA: Not specifically. It's -- it's

1 assumed that it would be in the area to serve the -- the
2 same.

3 MS. WILLIAMS: Did you identify then that any of
4 the projects that the Energy Commission recently approved
5 that are clean energy projects would be able to supplant
6 that load?

7 MS. KOCZWARA: As I -- as I stated before to Ms.
8 Belenky, yes, we considered them. But it is not -- can not
9 be assumed that all of those projects will be constructed.
10 There's some current lawsuits by Native American groups.
11 And due to financing and other permitting issues it's been
12 shown that just because they're approved they may or may not
13 necessarily be constructed.

14 MS. WILLIAMS: Well, what about the ones that are
15 constructed and already have transmission lines associated
16 with them into the grid?

17 MS. KOCZWARA: Well, then they are considered part
18 of the baseline.

19 MS. WILLIAMS: Can you elaborate on that,
20 considered part of what baseline?

21 MS. KOCZWARA: Well, if they're existing plants
22 then they're already in the grid and they're considered part
23 of the baseline.

24 MS. WILLIAMS: I'm talking about --

25 HEARING OFFICER CELLI: So for purposes of the no-

1 project alternative, I believe.

2 MS. WILLIAMS: I'm talking about there's a new
3 transmission line running through the center of the Antelope
4 Valley.

5 MR. CARROLL: Objection. Assumes facts not in
6 evidence.

7 HEARING OFFICER CELLI: Sustained. Let's --
8 let's -- let's get back into purpose and need here, because
9 we need to wrap it up. You've got like four minutes left.

10 MS. WILLIAMS: Did your alternatives analysis,
11 when you looked at these different alternatives and the
12 different sites and the different energy mixes, did you take
13 into account the potential to -- to crowd the grid with
14 fossil rather than renewables?

15 MS. KOCZWARA: Well, in --

16 HEARING OFFICER CELLI: That's -- that's a yes or
17 no question, I think.

18 MS. KOCZWARA: Yes.

19 MS. WILLIAMS: And is -- I didn't see that
20 analysis in the final staff assessment.

21 So you did do an analysis for each proposed
22 alternative on which ones would be less likely to -- to
23 congest the grid with --

24 MS. KOCZWARA: Well, in the consideration of
25 project objectives and of California's energy policy rules

1 it was considered whether or not each alternative would
2 introduce renewable power into the grid.

3 MS. WILLIAMS: Yes. And so there's -- there is an
4 analysis for each of the proposed alternatives on their
5 ability to congest the grid, basically the inability to meet
6 the clean energy goals that the state has set?

7 MS. KOCZWARA: It seems to be to be --

8 MR. CARROLL: I'm going to object based on facts
9 not in evidence. There's an assumption running through
10 these questions that the grid is going to be congested or
11 that there isn't --

12 HEARING OFFICER CELLI: Sustained.

13 MR. CARROLL: -- sufficient capacity for all of
14 the proposed projects, and there's no basis for that.

15 HEARING OFFICER CELLI: Sustained. Facts not in
16 evidence.

17 MS. WILLIAMS: Okay. So we've covered -- so when
18 you looked at these alternatives did you look at the -- the
19 fact that the -- the air basin is an existing nonattainment
20 for pollutants that are already having adverse public health
21 impacts and which of the proposed alternatives would be --
22 have the least impact on -- on public health?

23 MS. KOCZWARA: Part of the alternatives analysis
24 is to analyze alternatives that would substantially lessen
25 or eliminate significant impacts in the proposed project.

1 The proposed project was not found to have any significant
2 impacts.

3 That being said, in -- in a comparison of
4 alternatives we did weight factors such as air quality and
5 any benefits that it would have in terms of usage in the
6 alternatives.

7 MS. WILLIAMS: Well, actually the final staff
8 assessment says that there are significant impacts and that
9 as currently proposed it doesn't meet the -- the LORS.

10 MS. DE CARLO: Objection. That mischaracterizes
11 the testimony. Staff's testimony is that the impacts with
12 the conditions proposed by staff will be mitigated to less
13 than significant impact.

14 HEARING OFFICER CELLI: Sustained.

15 MS. WILLIAMS: So it -- you're saying it does not
16 say in the final staff assessment that there are significant
17 air quality impacts?

18 MS. DE CARLO: If you read this FSA section it
19 goes into detail about adoption of the proposed conditions
20 of certification. The project's impacted would be mitigated
21 to less than significant. And that is what the air quality
22 staff testified to today, as well.

23 MS. WILLIAMS: So did you take a look of the
24 ability of your proposals, your alternatives that you kicked
25 out as not needing air pollution mitigation?

1 MS. KOCZWARA: The mitigation itself from the
2 different components is not -- that -- that's to the
3 individual issue area authors. But in terms of significant
4 impacts, each alternative was analyzed whether or not it
5 would create significant impacts of its own, and that --
6 those includes ones that could result from air quality
7 impacts.

8 MS. WILLIAMS: So was there a preferential project
9 that would not need to import ERCs from the San Joaquin
10 Valley?

11 MS. KOCZWARA: A portion of ERCs is the air
12 quality specialists issue area. I don't know what -- what
13 or would not constitute needing ERCs. But I will say that,
14 for example, we looked at an entirely fossil fuel
15 alternative, and that alternative was eliminated, most
16 notably, because it would create increase air emissions.

17 MS. WILLIAMS: Which -- which project did you
18 eliminate?

19 MS. KOCZWARA: An all fossil -- fossil -- natural
20 gas-fired power plant alternative. Basically an alternative
21 at the site but without the solar component, which would
22 reduce the acreage and amount of ground disturbance. It was
23 considered as an alternative and eliminated from
24 consideration.

25 HEARING OFFICER CELLI: We're now over time, so

1 I'm going to ask you to start wrapping it up if you can, Ms.
2 Williams.

3 MS. WILLIAMS: So -- and you eliminated that
4 alternative because of the --

5 MS. KOCZWARA: Well, most notably, one of the main
6 reasons was the -- is the increase in air emissions that
7 could possibly be emitted.

8 MS. WILLIAMS: But the project that you chose has
9 huge air emissions.

10 MS. KOCZWARA: There are significant and
11 unmitigable impacts from the project and that's what we used
12 as a basis of our analysis.

13 MS. WILLIAMS: But there would have been from a
14 project that was only fossil?

15 MS. KOCZWARA: There would be increase emissions.
16 To create 570 megawatts from only fossil fuel fired power
17 plant would have greater emissions than a project that -- of
18 which 60 -- excuse me, 50 of the megawatts would be used by
19 solar.

20 MS. WILLIAMS: And so you're saying that the
21 project that would have been for 570 megawatts for a fossil
22 fuel fired power plant you would not accept that because of
23 the air pollution related to it?

24 MS. KOCZWARA: I compared it to the proposed
25 project, not compared to the no-project alternative.

1 MS. WILLIAMS: Yeah. But, I mean, the proposed
2 project is only 50 megawatts less. Did you actually see
3 that the air pollution would be less from the 570 megawatt
4 plan than the 510 megawatt plant?

5 MS. KOCZWARA: The alternative that was analyzed
6 was also a 570 megawatt plant, but it would be entirely gas-
7 fired.

8 MS. WILLIAMS: And you -- and you understand then
9 that the air basin that this -- that these -- this
10 alternative analysis is -- is taking place in is -- is in
11 nonattainment for air pollution standards and doesn't have
12 local emission reduction credits to offset them with?

13 MS. DE CARLO: Objection. Assumes facts not in
14 evidence.

15 HEARING OFFICER CELLI: Sustained.

16 MS. WILLIAMS: Okay. So what you're saying is --
17 let me try to rephrase it -- you have a 570 megawatt plant
18 that you say, well, that would be too dirty, you have a 510
19 megawatt plant but you say that's going to be okay?

20 MS. KOCZWARA: The comparison of the two plants,
21 we compared all the environmental impacts of the two, it was
22 found to not be preferred. I'm not -- I'm not talking about
23 it against the baseline. I'm talking about it compared to
24 the proposed project.

25 MS. WILLIAMS: Okay. Thank you.

1 HEARING OFFICER CELLI: Thank you, Ms. Williams.
2 Applicant, any questions?

3 MR. CARROLL: No questions.

4 HEARING OFFICER CELLI: Redirect?

5 MS. DE CARLO: Nothing from Staff.

6 HEARING OFFICER CELLI: That's great. Then I want
7 to thank these witnesses. You're excused.

8 That closes -- no, it doesn't close. Do I have
9 all the evidence? I don't have Staff's -- I'm sorry,
10 Applicant's evidence with regard to alternatives, I think.

11 MR. CARROLL: That's correct.

12 HEARING OFFICER CELLI: And we -- and we better
13 make sure we got everything else because this is it, we're
14 about to close; correct?

15 MR. CARROLL: Yes. We -- there are three areas
16 that have not been covered. The first is alternatives. In
17 the area of alternatives the applicant moves Exhibit 4, 56,
18 110, 112, 122, 128, 131, 46, 47, 120, and 142.

19 HEARING OFFICER CELLI: Any objection, Staff, to
20 the receipt of those exhibits into the record?

21 MS. DE CARLO: No objections.

22 HEARING OFFICER CELLI: CBD, any objection to
23 those exhibits?

24 MS. BELENKY: No objection.

25 HEARING OFFICER CELLI: DCAP, any objection to

1 those exhibits?

2 MS. WILLIAMS: No objections.

3 HEARING OFFICER CELLI: Okay. The record will
4 reflect that Exhibits marked for identification as 4, 56,
5 110, 112, 122, 128, 131, 46, 47, 120, and 142 are received
6 into the record.

7 MR. CARROLL: Thank you. The area of hazardous
8 materials had already -- had also been identified as a
9 disputed area. It was not at all clear to me exactly what
10 the basis for that request from the intervenors was. But as
11 a result we did not cover that earlier when we went through
12 the undisputed areas, and therefore we did not move our
13 exhibits under hazardous materials.

14 HEARING OFFICER CELLI: What -- what are you
15 exhibit numbers?

16 MR. CARROLL: 10, 26, 27, 44, 46, and 130.

17 HEARING OFFICER CELLI: 10, 26, 27 --

18 MR. CARROLL: 44, 46, and 130.

19 HEARING OFFICER CELLI: Any objection, Staff, to
20 hazardous materials?

21 MS. DE CARLO: No objection.

22 HEARING OFFICER CELLI: Any objection, CBD, to
23 those exhibits being admitted into the record? That's 10,
24 26 --

25 MS. BELENKY: No. I -- I don't object, but it

1 doesn't mean it doesn't remain undisputed.

2 HEARING OFFICER CELLI: No. That's correct.

3 But --

4 MS. BELENKY: Okay.

5 HEARING OFFICER CELLI: But I want to -- no. I
6 want to -- you know, let's just be clear that we're -- what
7 we said was it was limited to argument, no witnesses.

8 MS. BELENKY: Right.

9 HEARING OFFICER CELLI: So --

10 MS. BELENKY: Just checking.

11 HEARING OFFICER CELLI: Yeah. Any objection to --
12 to Applicant's exhibits coming in?

13 MS. WILLIAMS: No.

14 HEARING OFFICER CELLI: No from Ms. Williams. And
15 did I get a no from Ms. Belenky?

16 MS. BELENKY: Yes. No. No.

17 HEARING OFFICER CELLI: Okay. Then that was
18 hazardous materials. You said there was one more, I think.

19 MR. CARROLL: Yes. And then, finally, Applicant
20 has a handful exhibit -- of exhibits that cut across various
21 topic areas, mostly data requests that covered a broad range
22 of topic areas that have already been covered today, and
23 we've identified those as various topic areas. Those are
24 Exhibit 1, 122, 3, 120, 70, 99, 101, 102, 106, 116, 128, and
25 146.

1 HEARING OFFICER CELLI: Any objection to those
2 exhibits, Applicant *[sic]*?

3 MS. DE CARLO: Staff. No.

4 HEARING OFFICER CELLI: I'm sorry. It's getting
5 late. Staff has no objection.

6 CBD, do you have any objection?

7 MS. BELENKY: No.

8 HEARING OFFICER CELLI: Any objection from DCAP?

9 MS. WILLIAMS: No.

10 HEARING OFFICER CELLI: Okay. Then the motion of
11 Exhibits 4 -- on alternatives -- Exhibits 4, 56, 110, 112,
12 122, 128, 131, 46, 47, 120, 142 are received into evidence.
13 (Whereupon, Applicant's Exhibits 4, 56, 110, 112,
14 122, 128, 131, 46, 47, 120, 142 were received into
15 evidence.)

16 MR. CARROLL: Hazardous materials Exhibits marked
17 for identification as 10, 26, 27, 44, 46, and 130 are
18 received into evidence.

19 (Whereupon, Applicant's Exhibits 10, 26, 27, 44,
20 46, and 130 were received into evidence.)

21 HEARING OFFICER CELLI: Exhibits 1, 122, 3, 120,
22 70, 99, 110 *[sic]*, 102, 106, 116, 128, and 146 are going to
23 be received into evidence.

24 (Whereupon, Applicant's Exhibits 1, 122, 3, 120,
25 70, 99, 102, 106, 116, 128, and 146 were received

1 into evidence.)

2 MR. CARROLL: One correction, Mr. Celli. You
3 identified Exhibit 110 under various. It was actually
4 Exhibit 101.

5 HEARING OFFICER CELLI: Strike the 110 and make
6 that 101 is received into evidence.

7 (Whereupon, Applicant's Exhibit 101 was received
8 into evidence.)

9 HEARING OFFICER CELLI: Now the record should
10 reflect, should it not, that all of these exhibits in the
11 exhibit list have been received for the applicant?

12 MR. CARROLL: That is correct. The -- the one
13 remaining exhibit is the map which we've marked as Exhibit
14 146.

15 HEARING OFFICER CELLI: Yes. Let's take care of
16 all of our evidentiary remaining issues. The committee has
17 already conferred on the issue of CBD's letter from -- it
18 was a letter from Dr. Fox. The ruling is as follows: the
19 document will be received into evidence as evidence.

20 MS. DE CARLO: I have a quick question about that.
21 The committee referenced regulation 1212 --

22 HEARING OFFICER CELLI: Yes.

23 MS. DE CARLO: -- that identifies both regular
24 evidence and hearsay evidence.

25 HEARING OFFICER CELLI: Yes.

1 MS. DE CARLO: Will it be accepted as hearsay
2 evidence, which I believe is most appropriate?

3 HEARING OFFICER CELLI: It is certainly hearsay.

4 MS. DE CARLO: Thank you.

5 HEARING OFFICER CELLI: It is -- it is that. But
6 it's coming in as evidence, not comment. So we will receive
7 and give it the weight it deserves in light of the
8 foundation that's laid within the document.

9 MR. CARROLL: And I hate to belabor the point, but
10 when you say it's coming in as evidence, not comment, does
11 that also mean expert testimony?

12 HEARING OFFICER CELLI: That's correct. It is not
13 expert testimony because it hasn't been -- there's been no
14 foundation for it.

15 MR. CARROLL: Thank you.

16 HEARING OFFICER CELLI: So that's -- that's how it
17 comes in.

18 Now that means that all of CBD's evidence has been
19 received into evidence.

20 There were two objections to DCAP's evidence; 501
21 and 502. They are both objections based on relevancy. I
22 take it Staff is joining in Applicant's motion?

23 MS. DE CARLO: Well, 501, not only relevancy but
24 authoritativeness. There's -- there's been no foundation
25 laid for 501. Ms. Williams has presented no witnesses to

1 testify to this. My witness testified that it's both
2 irrelevant and is not authoritative text that should be
3 relied on here.

4 HEARING OFFICER CELLI: There is some very, very
5 tenuous relevance to this document, because it's talking
6 about the TACs. There was testimony on that. It's talking
7 about the qualification of -- or the impacts, the public
8 health type impacts. And for that reason it has relevance.

9 MS. DE CARLO: Well, I would argue that my witness
10 has testified that it -- it is not relevant to --

11 HEARING OFFICER CELLI: No.

12 MS. DE CARLO: -- the commission's decision.

13 HEARING OFFICER CELLI: That's -- I accept that
14 you're witness did testify to that. And that's something
15 that we will look at.

16 MS. DE CARLO: Well, no other witness has
17 testified that it is relevant.

18 HEARING OFFICER CELLI: That's right.

19 MS. DE CARLO: Just submit that.

20 HEARING OFFICER CELLI: But the committee can do
21 its own independent analysis and make a determination of
22 relevancy. Though weak, there's relevance. Therefore,
23 without more, 501 will come in. But I'm putting everybody
24 on notice that it will get the weight it deserves.

25 502; what was the objection there? It was

1 relevancy. That was Applicant's objection.

2 MR. CARROLL: Yes. This was relevancy. There was
3 no foundation laid for the document. There was no testimony
4 presented as to the relevancy. Traffic and transportation
5 wasn't even an area that was in dispute.

6 HEARING OFFICER CELLI: Aviation. Yeah. I want
7 to just say that while there was no foundation laid the
8 committee can certainly take official notice of the Energy
9 Commission's transcripts. We assume that Ms. Williams
10 intends to make some argument based upon that transcript.
11 The transcript would be admissible. And so we have no idea
12 what the use is going to be.

13 MS. DE CARLO: And Staff has a concern about that.
14 Generally we are privy beforehand to what the areas in
15 contention for briefing are. There are --

16 HEARING OFFICER CELLI: That's right.

17 MS. DE CARLO: There are going to be those topics
18 disputed at the evidentiary hearing. Now that's not the
19 case with hazardous materials. But Staff was aware ahead of
20 time what the particular issues were for that and we could
21 argue at that point whether we thought testimony was
22 necessary or not. We decided not to argue that.

23 For the aviation issue, we have no idea. So --

24 HEARING OFFICER CELLI: True.

25 MS. DE CARLO: -- I don't know that it's --

1 HEARING OFFICER CELLI: But --

2 MS. DE CARLO: -- it's ripe for briefing. Now
3 if -- if Ms. Williams wants to submit comments --

4 HEARING OFFICER CELLI: Ms. Williams can file --
5 put in her opening brief whatever she needs to on this area.
6 I have no clue what -- what she may be able to make out of a
7 transcript having to do with a power plant, you know, and
8 AFC that was dealing with a power plant up in Contra Costa
9 County, as I understand it. We're out in the desert here.
10 There's -- the only commonality is the nearby -- some
11 aviation area, but that's about it. We'll see what she has
12 to say. But --

13 MS. DE CARLO: I guess I just have concerns with
14 the practice of allowing intervenors to break open the
15 briefing to anything under the son --

16 HEARING OFFICER CELLI: No. You know --

17 MS. DE CARLO: -- and not just limited to what has
18 been subject to evidentiary hearing.

19 HEARING OFFICER CELLI: They're -- they can
20 brief -- now I'm glad you raised briefs because I have to
21 talk about briefs.

22 But if she wants to use up -- look, I'm giving
23 everybody a maximum of 20 pages, single space, 12 point,
24 single-sided pages, 20 pages of briefing. So if she wants
25 to use up her 20 pages on aviation, I don't know how, it's a

1 mystery to me, but that's her -- that's her call. But that
2 helps frame the issues with regard to rebuttal. So we'll
3 see what she raises, and then we'll see what the rebuttal to
4 it is.

5 But for those reasons it is -- it is a document
6 that may be useful if we can take official notice of it.
7 And I think since we can take official notice of it we might
8 as well just find that this is relevant and let it in. And
9 so the committee will accept 500 through 504.

10 (Whereupon, Intervenor DCAP's Exhibits 500, 501,
11 502, and 503 were received into evidence.)

12 HEARING OFFICER CELLI: Which means now that the
13 only remaining exhibit was Exhibit 146.

14 MR. CARROLL: And I realize, just so that the
15 record is clear, that I inadvertently called out Exhibit 146
16 in our various exhibit lists. So I didn't mean to do that.
17 I had written it down with an intention to come back to it.
18 So it was --

19 HEARING OFFICER CELLI: Did I receive it into --

20 MR. CARROLL: Yes, you did.

21 HEARING OFFICER CELLI: -- evidence already?

22 MR. CARROLL: And there were no objections. But
23 I --

24 HEARING OFFICER CELLI: Oh, you're a sly one, Mr.
25 Carroll. Okay.

1 The objection was based on timeliness if I --
2 if -- I don't want to put words in your mouth, CBD or DCAP.
3 But I believe that the objection was based on timeliness.

4 Was there any other objection to this Exhibit 146,
5 which shows some -- some roads?

6 MS. BELENKY: Well, I understood that 146 was not
7 just the map but the discussion preceding it that was
8 discussed limiting -- or the preferred, what they were
9 calling, I believe, the preferred roads. And my concern is
10 that here's confusion that's now being created. And so
11 without us having a chance to respond to this it -- that's
12 my concern.

13 HEARING OFFICER CELLI: Okay. So --

14 MS. BELENKY: The confusion that's being created
15 is that there are only five roads at issue, when actually
16 there are ten roads that remain at issue.

17 HEARING OFFICER CELLI: There are ten roads that
18 were considered in the record because the one, Barrel
19 Springs, was withdrawn.

20 MS. BELENKY: Yes.

21 HEARING OFFICER CELLI: Now Exhibit 146 is just a
22 map that shows some lines showing road segments itself. It
23 is tied into the testimony because there was some testimony
24 about this exhibit, I believe. I'm not even sure about
25 that. I'm not sure if anyone said I'm holding exhibit --

1 what's been marked as 146 and I'm referring to these red
2 lines here. I don't remember anyone actually doing that.

3 MS. BELENKY: I would like the applicant to
4 clarify what they're putting in as 146.

5 HEARING OFFICER CELLI: Well, just this document.
6 It's just a diagram.

7 MS. BELENKY: I thought they were putting in the
8 whole document.

9 MR. CARROLL: Just the -- just the map.

10 MS. BELENKY: Just the map. Well, then I don't
11 have an objection to just the map without the argument that
12 preceded it in the document that they served us on Monday.

13 HEARING OFFICER CELLI: Well, the testimony is the
14 testimony.

15 MS. BELENKY: Yeah.

16 HEARING OFFICER CELLI: So all I -- all I want to
17 know is, is there an objection to this particular document
18 containing the maps, 146. And the answer is from CBD?

19 MS. BELENKY: I don't object to the map being
20 provided.

21 HEARING OFFICER CELLI: Okay. Any objection from
22 Desert Citizens Against Pollution?

23 MS. WILLIAMS: No.

24 HEARING OFFICER CELLI: Okay. And no objection
25 from Staff?

1 MS. DE CARLO: No.

2 HEARING OFFICER CELLI: So therefore 146 is
3 received, again, apparently. And with that the record is
4 closed on all topic areas.

5 Now let's talk about briefs. I said that the
6 briefs are going to be a maximum of 20 pages, single space,
7 12 point, single-sided -- or, yeah, single-sided sheets.
8 We -- I misspoke when we had our prehearing conference
9 statement. What I said was that we would have transcripts
10 off in three days. That turns out to be not the case. That
11 was -- that was ancient history when we were doing ARRA
12 cases. So now we're back to the usually, I guess maybe ten
13 days or -- or even up to two weeks of getting our
14 transcripts. Two weeks is what I'm getting the indication.

15 So my -- what I'm proposing to do is have opening
16 briefs be due ten days after the transcripts are made
17 available. That's opening briefs. And rebuttal briefs
18 would be due seven days after the opening briefs.

19 MS. DE CARLO: Are those calendar days or business
20 days?

21 HEARING OFFICER CELLI: They're all calendar days.
22 And the clock doesn't start ticking until we get -- we
23 actually put out a notice, a notice of availability of
24 transcripts that will go out to all of the parties as soon
25 as we receive them. So I'm sorry I can't be more definite

1 but it all depends upon when the transcripts come off.

2 MS. DE CARLO: I am horrible at it when it comes
3 to the calendar. I'm going to be on vacation from March
4 11th to the 18th, so I just want to make sure. Do -- do you
5 have an approximate time? Ten days from now is what, the
6 12th? And then --

7 HEARING OFFICER CELLI: Let's just say you go like
8 this, on some day you're going to get an email from my
9 office or someone --

10 MS. DE CARLO: Right.

11 HEARING OFFICER CELLI: -- that says notice of
12 availability of transcripts. Now the clock is ticking. The
13 day after that is one day. The day after that is two days.

14 MS. DE CARLO: I understand how to calculate. I
15 just -- right now I'm afraid that I'm going to be on
16 vacation for the greater part of that. So I was hoping
17 maybe in order to obviate any need for Staff to request
18 additional time if we can agree to maybe 14 days after
19 receipt of the transcripts, that would definitely allow me
20 enough buffer time to be able to submit a brief, regarding
21 of how long it takes the transcripts to come out.

22 MR. CARROLL: No objection from Applicant.

23 HEARING OFFICER CELLI: I just want you to
24 understand that here's the importance of the briefs, the
25 briefs are critical to writing the PMPD. And really we're

1 waiting for the briefs so that we really know what the areas
2 are that we really get to roll up our sleeves on and get
3 into.

4 So if -- if -- it's really -- Applicant is the one
5 who's most in the hurry. So if we just go with the 14 days
6 that's acceptable to you. I just wanted you to, you know,
7 be informed that that's -- that's kind of what we're doing.

8 MR. CARROLL: We understand that. And we are,
9 obviously, very anxious to get to the end of this process.
10 But if a matter of 4 days, 10 days versus 14 days, is
11 necessary to accommodate the staff we're amenable to that.

12 HEARING OFFICER CELLI: Okay. So the -- so
13 opening briefs will be due 14 days after the notice of
14 availability. And rebuttal briefs are going to be due
15 ten -- I'm sorry, seven days after the opening briefs. Is
16 that acceptable to all of the parties?

17 MS. DE CARLO: Yes. Thank you.

18 HEARING OFFICER CELLI: Intervenor CBD?

19 MS. BELENKY: Uh-huh. Yes. Thank you.

20 HEARING OFFICER CELLI: Desert Citizens?

21 MS. WILLIAMS: Yes.

22 HEARING OFFICER CELLI: And the applicant?

23 MR. CARROLL: Yes.

24 HEARING OFFICER CELLI: Okay. With that we'll
25 close the record.

1 MR. CARROLL: Mr. Celli, at the risk of prolonging
2 anything, but I don't want there to be any question that we
3 didn't cover something that the hearing order indicated we
4 were going to cover, hazardous materials, did we --

5 HEARING OFFICER CELLI: We put that in.

6 MR. CARROLL: Okay.

7 HEARING OFFICER CELLI: And we received your
8 evidence on it.

9 MR. CARROLL: You received the evidence. I didn't
10 know if there -- there was an indication that there was a
11 desire to make an argument. I'm no more anxious to hear it
12 than anybody else is, but I just want -- I don't want
13 anybody after the fact to say that something didn't get done
14 here that was supposed to have been done.

15 HEARING OFFICER CELLI: No. It was limited to
16 argument because they didn't put anything in --

17 MR. CARROLL: Okay.

18 HEARING OFFICER CELLI: -- except that transcript.
19 That was it. Okay.

20 With that I'm now going to hand the meeting back
21 over to Commissioner Douglas who is the presiding member.

22 COMMISSIONER DOUGLAS: Thank you, Mr. Celli. And
23 I'd like to thank all of the parties for their hard work and
24 constructive participation in this evidentiary hearing.

25 And with that, Commissioner Boyd, do you have

1 anything else? No. All right.

2 With that, we're adjourned.

3 (Thereupon the California Energy Commission,
4 Palmdale Hybrid Power Plant Evidentiary Hearing
5 adjourned at 6:26 p.m.)
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