

1 U. S. DEPARTMENT OF THE INTERIOR  
2 BUREAU OF LAND MANAGEMENT  
3 CALIFORNIA DESERT DISTRICT ADVISORY COUNCIL  
4  
5  
6  
7  
8  
9  
10  
11  
12

13 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
14  
15  
16

17 LOCATION: RAMADA INN  
18 Main Street  
19 Barstow, CA

20 DATE AND TIME: Saturday, April 2, 2005  
21 7:59 a.m. to 4:06 p.m.

22 REPORTED BY: NUMIA N. BOUNDS, CSR NO. 12678

23 JOB NO. : 1-64232  
24  
25

1 A-P-P-E-A-R-A-N-C-E-S

2

3 MEMBERS PRESENT:

- 4 PRESTON ARROW-WEED
- 5 WILLIAM A. BETTERLEY
- 6 HOWARD J. BROWN
- 7 MICHAEL BUGERA
- 8 DAVID CHARLTON
- 9 SHERI DAVIS
- 10 ROY DENNER
- 11 RON KEMPER
- 12 JON McQUISTON
- 13 DR. WILLIAM PRESCH
- 14 RON SCHILLER
- 15 PAUL SMITH
- 16 CAROLE ANNE WILEY
- 17 LINDA HANSEN

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

2		
3	AGENDA ITEM:	PAGE
4		
5	WELCOME (KEMPER)	4
6	U. S. FISH & WILDLIFE BRIEFING	
7	RENO DESERT TORTOISE RECOVERY OFFICE	
8	DESERT TORTOISE ASSESSMENT REPORT	
9	ROY AVERILL-MURRAY	5
10		
11	SURPRISE CANYON STATUS REPORT	99
12		
13	CDD GRAZING CONSULTATION POLICY/PROCEDURE	
14	UPDATE	197
15		
16	LUNCH	145
17		
18	COUNCIL ROUNDTABLE & MEETING SUMMARY	202
19		
20	PUBLIC COMMENT	202
21		
22	ACTION ITEMS	204
23		
24	ADJOURN MEETING	234
25		

4

5 CHAIRMAN KEMPER: Okay. I will call the  
6 meeting to order. First of all, I'd like to welcome  
7 everybody to the Saturday's session of the Desert  
8 Advisory Counsel meeting and I'll start off by asking  
9 Bill Betterley to lead us in the Pledge of  
10 Allegiance. Ready, begin.

11 I pledge allegiance to the flag of the  
12 United States of America and to the republic for  
13 which it stands, one nation under God, indivisible,  
14 with liberty, and justice for all.

15 CHAIRMAN KEMPER: Before we get started with  
16 the regular business, has everybody had an  
17 opportunity to review the agenda, and is there any  
18 comments regarding the agenda before we get started?

19 BILL BETTERLEY: One comment is I believe we  
20 should try to stay on this agenda today.

21 CHAIRMAN KEMPER: Bill, you're going to have  
22 to use the microphone.

23 BILL BETTERLEY: Forget it.

24 CHAIRMAN KEMPER: We're going to start off  
25 this morning's meeting with a presentation from U.S.

4

1 Fish and Wildlife and I believe it will be Roy  
2 Averill-Murray.

3 I hope I didn't slaughter your name, Roy.

4 ROY AVERILL-MURRAY: No, that's pretty good.

5 All right, thank you. Basically, what I'm

6 going to do today is give a -- I kind of feel like  
7 I'm on a swivel -- give a background on the new  
8 Desert Tortoise Recovery Office starting with the  
9 review of the recovery plan and moving into what the  
10 Desert Tortoise Recovery Office is and what we're  
11 going to be doing, so I'll just go ahead.

12           As probably just about everybody knows by  
13 now, the desert tortoise recovery program has gone  
14 through a lot of recent review and scrutiny beginning  
15 in 2002, with an audit by the GAO and that was  
16 followed last year by a service initiated review of  
17 the desert tortoise recovery plan published in 1994.

18           So basically, I'm going to kind of summarize  
19 both of these two reports and the major conclusions  
20 that came out of those and those being that first,  
21 the, both the GAO and the desert tortoise recovery  
22 plan assessment committee or dirt pack concluded that  
23 the basic recovery plan from '94, was a -- they did a  
24 pretty good job and was a good guide for recovery,  
25 but we've been losing ground since then, as far as

5

1 actually achieving the goals of recovery because the  
2 plan has not been fully implemented.

3           And then another significant conclusion was  
4 that -- especially from the assessment is that one of  
5 the greatest threats to recovery was not recognizing  
6 the complexity of the needs and -- that the recovery  
7 program required and not providing adequate effort to

8 implement recovery prescriptions, and so kind of the  
9 three short bullet conclusions were that: One, the  
10 effectiveness of the recovery program was unknown,  
11 funding was uncertain and inconsistent and kind of  
12 scatters and, basically, the bottom line is that we  
13 needed better coordination for an effective recovery  
14 program.

15           So I'm going to, from here the next several  
16 slides I'm going to kind of go into a little bit more  
17 detail of the -- the assessment, the recovery plan  
18 assessment report and just hit some of the highlights  
19 out of that, which build on the GAO conclusions and  
20 set the stage for the recovery office.

21           And beginning with the status and trends,  
22 the current status and trends of the tortoise, we  
23 start with looking at the -- the permanent study  
24 plots, which were used in the original listing and  
25 have been surveyed in the year since then. Their

6

1 individual plots scattered across the desert, but not  
2 randomly located or anything like that, but they were  
3 selected and tortoise habitat.

4           Declines have been recorded at many of these  
5 and supported the ultimate listing, decision, but the  
6 shortfall of these is that since they're not randomly  
7 located, they are isolated sites, very localized site  
8 specific, but they limit our ability to make broader  
9 scale conclusions about what's really going on with

10 the tortoise.

11           So in the assessment report, we -- we took a  
12 stab at looking at data, tortoise survey data a  
13 little bit differently and in the last several years  
14 transects, which were randomly located throughout the  
15 desert, were used to monitor tortoises, survey for  
16 tortoise, and the assessment report looked at  
17 different ways of -- of viewing those on maps and  
18 using some different statistics than had been used  
19 previously to -- to try to get a better idea of -- of  
20 kind of what was going on across the landscape.

21           This just shows that -- that based on these  
22 transects, you can see that problem areas do tend to  
23 be localized and potentially reflect differences in  
24 management or ecosystem condition across the  
25 landscape. So just for this depiction of the -- the

7

1 desert wild life management areas in the western  
2 Mojave, the blue -- the blue dots on this map are  
3 transects where there was an average probability of  
4 finding a live tortoise, the red ones are transects  
5 that there was a lower than average probability of  
6 finding a tortoise and, then the green dots are  
7 transects that there was a higher chance of finding a  
8 tortoise.

9           So here you can see what stands out in this  
10 map are kind of two dead -- apparent dead zones; one,  
11 kind of south of China Lake and Fort Irwin, west of

12 Fort Irwin Road, and the other one up there in the  
13 northwest. And most of the rest of the area is  
14 fairly average, but a couple of little hot spots in  
15 there as well.

16 Another way of looking at the same data as  
17 using a different technique, this -- this kind of  
18 lumps the transects together and shows areas where  
19 there's a 95 percent chance of finding a live  
20 tortoise, which are the green blobs or the 95 percent  
21 probability distribution of finding a dead tortoise.

22 And so, basically, what we're looking at  
23 here is where the -- the red lines overlap with the  
24 green lines, we have green without a lot of red,  
25 basically, that's kind what we would expect.

8

1 You have a lot of tortoise here, tortoises  
2 do live and die so you expect to find shells on the  
3 ground even where you have live tortoises. But what  
4 we don't really like to see are areas where there's a  
5 lot of red outline with no green backing it up. So  
6 that indicates that there's a lot of dead tortoises  
7 out there, but there were not a lot of shells found  
8 on the ground, but we're not finding a lot of live  
9 tortoises there replacing those.

10 So, conveniently, this kind of -- the red  
11 outlines without any green behind it fall in the same  
12 areas as from the previous slide and indicate that,  
13 you know, there was particular areas are, for

14 whatever reason, which we didn't get into in the  
15 assessment, are having more problems than perhaps  
16 other areas.

17           So basically, this just provided a new  
18 suggestion for ways that we can look at the data  
19 besides just going out and counting tortoises and  
20 trying to find out how many tortoises exist in the  
21 West Mojave, for example, but by actually looking at  
22 it on the map and doing this kind of thing so we can  
23 get a lot more relevant information than just, you  
24 know, a bottom line number at the end of a report or  
25 something.

9

1           And I'm going to come back to some -- some  
2 additional applications of this in just a little bit.

3           So moving on to threats and the discussion  
4 of that in the assessment, the recovery plan listed a  
5 whole list of -- of threats to the tortoise, things  
6 that were known to field tortoise or affect  
7 populations and other things that were hypothesized  
8 or supposed to affect tortoises, but basically, it  
9 was a shotgun list, comprehensive thing of just about  
10 everything that could possibly be bad for desert  
11 tortoises.

12           The, of 43 pages in the recovery plan  
13 describing threats to the tortoises, only a page and  
14 a half mentioned anything about interacting threats  
15 or how different threats could work together to

16 actually affect tortoise populations, and the  
17 assessment report paid particular attention to this  
18 and emphasized the need to not view these things as  
19 just the list that can be checked off individually,  
20 but that many or several of these threats might  
21 actually work together or compound each other in  
22 their affects on tortoises.

23           And we'll get more into that as I go along,  
24 too.

25           So looking at the, at both the, you know,

10

1 the status and trends of actual tortoises and  
2 threats, we start getting into needs for monitoring  
3 and how we're actually tracking tortoise populations  
4 and the status, and the assessment report emphasized  
5 the need for hypothesis based monitoring, so  
6 approaching the tortoise monitoring program in a more  
7 scientific frame with specific hypotheses that would  
8 be pertinent to management so that while we're out  
9 there counting tortoises, we're doing more than just  
10 giving numbers, we're actually providing some insight  
11 into things that land managers or wild life managers  
12 can do to, you know, make more effective recovery  
13 actions and decisions.

14           The monitoring program needs to be sensitive  
15 to genetic differences within a species range,  
16 there's a wide range in species and there's a lot of  
17 genetic diversity across that range, and so desert

18 tortoises in different parts of the range, many may  
19 react differently to different threats or stressors  
20 or whatever, and so that just has to be kept in mind  
21 while we're doing this.

22           The monitoring program needs to be  
23 coordinated across that range, integrated  
24 collaborative and must truly be a range-wide program  
25 and not a piecemeal thing that ignores different

11

1 parts of the range or emphasizes different areas over  
2 others.

3           And finally, part of this range-wide  
4 package, the monitoring program should be  
5 comprehensive and multi scaled; that is, we can't  
6 just be counting -- going out and counting tortoises.  
7 Basically, that doesn't -- I mean that will tell us  
8 if there's more or fewer tortoises, but it's not  
9 going to tell us why there's more or fewer tortoises  
10 over the years.

11           We need to also take a look at different  
12 habitat variables and threats or impacts and see how  
13 those things are changing along with tortoise numbers  
14 and how they're related to the tortoise numbers  
15 across the landscape to actually be able to develop  
16 effective management actions.

17           So one aspect of that, I talked about the  
18 monitoring, the more recent monitoring surveys based  
19 on transects randomly located across the desert. In

20 previous years those transects have concentrated on  
21 enumerating the, basically, the numbers of live and  
22 dead tortoises found.

23           What we're doing this year, and I just came  
24 to this meeting from the training workshop for the  
25 monitoring program which was held in Las Vegas where

12

1 as we're adding several variables to try to start  
2 addressing some of the habitat and threats that may  
3 be related to tortoise declines or not, but haven't  
4 really been evaluated at a range-wide scale, and in  
5 an effort to kind of build this comprehensive multi  
6 scaled program, so what we've added variables while  
7 the field workers out there instead of just counting  
8 live and dead tortoises, we're going to be recording  
9 information on roads and tracts, as well as  
10 additional items on live tortoises, especially  
11 including some disease where there's going to be  
12 additional characteristics of inner threats recorded,  
13 including things like evasive exotic plants,  
14 unleashed dogs in the desert and ravens and just a  
15 handful of new variables that we're going to look at  
16 to try to evaluate and see how those are distributed  
17 and try to identify if there are problem areas in  
18 those -- in those things.

19           So I think one of the other -- before we get  
20 into this, one of the other aspects to -- to the --  
21 to the threats and tortoises monitoring is if you

22 think back to that map with the green and red  
23 polygons on it, if we -- now with these new data we  
24 can also plot those into the -- in the GIS and map  
25 those and look for correlations. So hopefully that's

13

1 going to give us a lot more, especially if you do  
2 those on a range-wide scale, we're going to be moving  
3 away from this single plot based analysis where  
4 you're looking at, say, one section and looking at  
5 patterns across the entire range. So it should give  
6 us a lot more power to evaluate different  
7 correlations on the landscape. So if -- if feral  
8 dogs or something like that or if they keep popping  
9 up in these red zones, then it provides a really  
10 strong clue that, you know, maybe there really is  
11 something to do with feral dog and that -- we need to  
12 focus more on that or if it's just kind of random or  
13 haphazard, then, relative to the live and dead  
14 tortoises, maybe those are things that fall down the  
15 priority list. But at least it's going to tie some  
16 of these things more directly into management and  
17 give us a little bit more direction and guidance on  
18 what we need to be looking into. And so in the next  
19 couple of years I'm excited to see how this stuff  
20 pans out and I'm looking forward to applying that.

21 So getting into the -- more into the  
22 integration of the research and monitoring and  
23 bringing that into actual management decisions and

24 applying that to on-the-ground actions, which was one  
25 of the major criticisms of the GAO report and the

14

1 recovery plan assessment, we can look back at other  
2 reviews of recovery plans, which found that recovery  
3 plans that had an actual recovery coordinator or a  
4 committee overseeing the effort, as well as those  
5 that had a centralized recovery data base, were much  
6 more effective in implementing the plan and making  
7 progress in the recovery program than those that  
8 lacked that centralized coordination.

9           And if you think about how widespread the  
10 desert tortoise is, it seems all the more reasonable  
11 that this would be the case, that there's just so  
12 many players, four states and multiple state and  
13 federal agencies that some kind of coordination would  
14 be helpful in getting things moving in the right  
15 direction.

16           So that led to the creation of the Desert  
17 Tortoise Recovery Office, and basically, my position  
18 as desert tortoise recovery coordinator for the Fish  
19 and Wildlife Service, this office was created or I  
20 guess formally established with my hiring in  
21 mid-December with the specific objective to  
22 coordinate research monitoring and recovery plan  
23 implementation.

24           Included in that will be the recovery  
25 permitting review, so instead of the four states and

1 multiple fishing and wild life field offices working  
2 with permits on research and recovery things and  
3 sometimes one hand not knowing what the other was  
4 doing or permitting or what's going on, that will be  
5 centralized.

6           We're not going to be dealing with Section 7  
7 during mitigation and things like that, there's  
8 different field offices that will continue doing  
9 that, we're specifically dealing with recovery. And  
10 so we have a mandate dedicated to that and it's not  
11 just going to, I'm not the recovery office in and of  
12 myself, we're in the process of hiring additional  
13 local field tortoise coordinators that will be able  
14 to work more directly and more consistently and  
15 continually with the different agency personnel and  
16 stakeholders in a given region.

17           So we're going to have, by the middle of May  
18 we should have three people under me working end of  
19 DTR0 and available to help with the BLM and other  
20 agencies and of stakeholders to move forward with  
21 recovery.

22           So this kind of gives the general  
23 relationship of the DTR0 with other organizations or  
24 collectives that currently exist.

25           So basically, the -- the recovery office

1 will interact directly with the management oversight  
2 group at a range-wide level and specifically in  
3 California, we'll work closely with the desert  
4 managers group, so we kind of have a two-way  
5 relationship there with these inner agency  
6 coordinating groups at the range wide and the  
7 California level.

8           And then especially with the -- the local or  
9 regional field coordinator personnel, we'll be able  
10 to interact with more specifically agencies and  
11 stakeholders in planning and implementation of work  
12 groups in California and Nevada and Utah and Arizona.  
13 So we'll get more into what's going on with those in  
14 just a minute.

15           Finally, there's, also, we're putting  
16 together a science advisory committee that will be  
17 kind of the -- the watchdog on the whole process from  
18 a scientific perspective and they will interact  
19 directly with the Desert Tortoise Recovery Office and  
20 provide the kind of the peer review or the critical  
21 scientific oversight to make sure that the things  
22 we're doing are scientifically rigorous and we're  
23 doing things from a solid foundation.

24           That committee, we're in the process of  
25 rounding that out. That's going to be -- it will

1 include both Mojave tortoise biologists, but I think  
2 importantly it's going to include and be dominated by  
3 outside scientists so that we have a good  
4 representation and a good panel that can bring new  
5 ideas and different perspectives than the -- than the  
6 kind of blinder's view of just working in the Mojave  
7 desert for, you know, however many years and having  
8 specific ideas already in mind.

9           PAUL SMITH: Paul Smith. You indicated that  
10 the mitigation was not part of what your office would  
11 be doing. How would mitigation fit into that  
12 flowchart there?

13           ROY AVERILL-MURRAY: Well, strictly  
14 speaking, mitigation doesn't really fit into this  
15 flowchart, that's kind of an outside thing.

16           As I mentioned, we are -- I mean, this just  
17 kind of encapsulates the Desert Tortoise Recovery  
18 Office world from a -- from a narrow perspective. I  
19 mean obviously, we're -- the Fish and Wildlife  
20 Service internally is especially going to be  
21 coordinating, so I can draw another arrow off of the  
22 DTR0 box there to a mitigation box so that with our  
23 other field offices, so that the biologists working  
24 on biological opinions and things like that actually  
25 are up to date and up to speed with what's going on

18

1 in recovery and vice versa, so that the Section 7

2 aspects of the service are consistent with what's  
3 going on in recovery and we're not going off on  
4 diversion paths that way.

5           So internally, the service will be, we  
6 actually have quarterly tortoise coordination  
7 meetings among the field offices and so that will,  
8 through those and -- and more regular communication,  
9 especially with the regional coordinators being based  
10 in the, are not all in the same office with me, two  
11 of those are going to be in field offices in  
12 California, so the Section 7 biologists will be  
13 interacting with the recovery coordinators and that's  
14 where, you know, we're going to try to keep things  
15 consistent across the board.

16           Does that answer your question?

17           PAUL SMITH: Yes.

18           ROY AVERILL-MURRAY: All right.

19           BILL BETTERLEY: Where is your office  
20 located?

21           ROY AVERILL-MURRAY: I'm based in Reno.  
22 That's the lead for tortoise, Bob Williams is in the  
23 Reno office and so I was stationed there so we have  
24 the coordination at that level and I just travel a  
25 lot.

19

1           BILL BETTERLEY: One other question, while  
2 you're on this slide, who appoints this advisory  
3 group?

4 ROY AVERILL-MURRAY: The science advisory  
5 committee is being put together by our office itself  
6 and we -- basically, the process we went through in  
7 doing that was, is developing a long list of -- of  
8 scientists both from the Mojave and outside the  
9 Mojave tortoise arena and then basically trying to go  
10 through and look at the -- the backgrounds and  
11 expertise that were in that list and to piece things  
12 together so that it was a diverse committee that  
13 brought different things to the table.

14 And we had some -- I didn't -- we didn't  
15 want to have a committee that excluded tortoise  
16 biologists or didn't know what was going on in the  
17 desert, but we wanted to have sufficient influence --  
18 our outside perspectives so that we can hopefully  
19 diversify our approach and not fall into a rut in how  
20 we're approaching towards research monitoring  
21 recovery, et cetera.

22 JIM BUGERA: Jim Bugera. Is everybody  
23 that's on this biologists, because I know that as an  
24 engineer, I work near the desert tortoise preserve  
25 and live there and I also work throughout the desert,

20

1 Death Valley and all over, and the information and  
2 the research that I would do on these tortoises is a  
3 lot different than what a room full of biologists  
4 would bring to it because they're looking at it from  
5 one point from how they were taught to research.

6                   Are we going to include on this board people  
7 who may have a science degree but come from a  
8 different background?

9                   ROY AVERILL-MURRAY: Currently, the science  
10 advisory committee is based -- is made up of  
11 biologists. The committee is going to be directed --  
12 it's not a closed committee, so to speak. The  
13 committee is going to be directed to, for any given  
14 topic that it's working on. We're going to be  
15 bringing in outside people to contribute and provide  
16 ideas, suggestions and help. I guess no matter what  
17 kind of committee we put together, we didn't want to  
18 have a huge 25-person committee that we can never get  
19 all in the same room.

20                  JIM BUGERA: What about an ornithologist?  
21 You know, I mean if we're going after the predatory  
22 habits of the black birds, why shouldn't we have  
23 somebody that can come in and say, yes they are, no,  
24 they're not, or this is somebody that knows how to  
25 study their habits?

21

1                   ROY AVERILL-MURRAY: The committee does  
2 include people from different taxonomic backgrounds.  
3 In fact, there's one -- there's at least two that  
4 have a lot of ornithology background. There is one  
5 that has a lot of mammal background and there's one  
6 that has tortoise background in the -- well, that  
7 one's not confirmed yet, but we very specifically

8 broadened the committee to include more than just  
9 herpetologists or total biologists for that very  
10 reason, in trying to bring in that level of different  
11 perspectives and recognize that even -- even still  
12 with half a dozen -- the committee is going to  
13 consist of basically half a dozen people that were  
14 not going to -- you can't get everything in that into  
15 a workable size and so for whatever issue or the  
16 committee is addressing will be pulling in additional  
17 people to participate and help address those issues.

18 JIM BUGERA: Thank you.

19 ROY AVERILL-MURRAY: So it's kind of a  
20 balancing act between having a core committee that  
21 was a workable size that had a lot of diversity in it  
22 and a direction that okay, for this topic none of us  
23 really has, not enough of us really have the  
24 background or expertise to do a good job on it, so  
25 we're going to go out and get additional input.

22

1 CHAIRMAN KEMPER: Does that answer your  
2 question, Jim?

3 JIM BUGERA: Yes.

4 CHAIRMAN KEMPER: Bill, do you have another  
5 question?

6 BILL BETTERLEY: We've had so many different  
7 people that have come in front of us that have  
8 different views on the recovery of the tortoise over  
9 the years and I just wondered with the Fish and

10 Wildlife being the ones that pick the -- their bosses  
11 or their review people, I wonder if we're going to  
12 get a good cross section.

13 CHAIRMAN KEMPER: Howard.

14 HOWARD BROWN: On the committee, could you  
15 indicate whether they're from an academic, government  
16 or private sector, how's that distributed?

17 ROY AVERILL-MURRAY: The committee is a  
18 cross section of that. The -- I can run through the  
19 names of people who have, this is all kind of in  
20 progress, but the names of people who have accepted  
21 so far include Dick Tracy at UNR from academics --  
22 academia. Christine Barry, U.S.G.S. So those are  
23 the two, the tortoise people that are going to be  
24 starting out with the committee anyway.

25 To bring in the outside effect influence and

23

1 perspectives, we have Catherine Roul s [PHONETIC] at  
2 the Smithsonian National Zoo. She has a background  
3 in mammalogy, especially marine mammalogy, but she's  
4 also done some kick box work in California and she's  
5 participated on similar committees, several  
6 scientific advisory committees as a lengthy kind of  
7 academic oriented background.

8 Bob Stietal [PHONETIC] at the University of  
9 Arizona is a biostatistician with a lot of experience  
10 and expertise in monitoring and population analysis  
11 especially with birds, but more recently it's a

12 little bit of turtle work in Arizona, but he's done a  
13 lot of work with like Bald Eagles and ospreys and  
14 Peregrine falcons.

15 The fifth person is Michael Reed at Tufts  
16 University and he has a -- largely a bird, but a  
17 taxonomic background and a lot of his work focuses on  
18 identifying characteristics of species that make them  
19 vulnerable to extinction and population viability and  
20 things like that.

21 CHAIRMAN KEMPER: I think we got a little  
22 side tracked.

23 How much more of a presentation do you have?

24 ROY AVERILL-MURRAY: I have probably 8 or  
25 10 more slides.

24

1 CHAIRMAN KEMPER: Why don't we have you go  
2 ahead and finish your presentation and I'll ask the  
3 counsel members to hold their questions until after  
4 the presentation is over with.

5 ROY AVERILL-MURRAY: Okay. I'm happy to  
6 talk as much as --

7 CHAIRMAN KEMPER: But I think it will go a  
8 little quicker that way. I suspect you'll answer  
9 some of the questions in your presentation.

10 ROY AVERILL-MURRAY: Some of this, we will  
11 be getting into it so we can go ahead.

12 Here we go. We can go ahead and we'll just  
13 cruise through some of this stuff, it goes without

14 sayi ng.

15           So basi cally, the purpose of the scientifi c  
16 advisory commi ttee is to improve lengths between  
17 research acti vity and the research results wi th  
18 management acti on so trying to tie research to  
19 manage.

20           The scientifi c advisory commi ttee wi ll be  
21 advisi ng the recovery offi ce and cooperators  
22 regardi ng the directi on of recovery. Pri ori ti zi ng  
23 research and recovery acti on and evaluati ng those and  
24 the progress that is actual ly made i n that assessi ng  
25 the effi cacy of the moni tori ng effort, developi ng

25

1 scientifi c synthesi s documents as we go al ong so that  
2 we can condense and synthesi ze the research i nto  
3 formats that are more useful , more accessi ble to  
4 manager and provi de more speci fi c directi on and  
5 consul ti ng wi th addi ti onal experts.

6           So agai n, the -- whatever the makeup of the  
7 commi ttee is, we recogni ze that we weren' t going to  
8 be able to get everythi ng that we needed i n a si ngle  
9 si x-person commi ttee, but that commi ttee wi ll be  
10 responsi ble and directed to bring i n addi ti onal  
11 experts and advi ce so that i t' s not just these si x  
12 people and thei r experti se or whatever shortcomi ngs  
13 might be i n that makeup provi di ng the sole voi ce  
14 through the process.

15           And one of the fi rst responsi bi li ti es that

16 the committee is going to be responsible for is  
17 evaluating the recovery criteria in the '94 plan and  
18 determining whether those need to be revised.

19 One of the conclusions of the recovery plan  
20 assessment was that the primary recovery criterion of  
21 having a stable increasing trends and tortoise  
22 population numbers may not be realistic or very  
23 achievable, not that those trends will be happening,  
24 but there's some -- the ability to detect them and  
25 the noise in the system might overcome our ability to

26

1 do that within the time frames that we're hoping,  
2 hoping for and so how we might tweak those to get a  
3 more precise and better idea of whether the tortoise  
4 is actually being recovered.

5 The first -- one of the first things that  
6 the committee is going to do and this kind of gets  
7 back to bringing in the outside experts right from  
8 the beginning is having a meeting with the -- with  
9 everyone that's doing tortoise research especially,  
10 and while I'm bringing the science advisory committee  
11 up to speed on who's doing what out in the desert  
12 right now, reviewing the current projects and, you  
13 know, how do those relate to recovery goals and what  
14 do we need to be doing relative to recovery goals and  
15 priorities and having the -- the tortoise biologists  
16 that aren't on the committee providing them an  
17 opportunity to identify their priorities or what they

18 think needs to be done and from the very first step,  
19 bring in a lot of diverse ideas from within the  
20 tortoise community.

21 I mentioned the need for a centralized  
22 recovery data base. We're at the very preliminary  
23 stages of developing that and basically, what we  
24 envision is a centralized data base that includes not  
25 only the information on tortoise numbers and

27

1 distribution from the monitoring program, but who's  
2 doing what as far as research and, you know, recovery  
3 permits, bringing in the Section 7 information and  
4 integrating that into the same data base, entering  
5 information on recovery plan implementation and  
6 what's going on on the ground and tying all of these  
7 things into an interactive geospatial framework so  
8 like the monitoring the transect data shown on the  
9 maps, we can map these things on the ground as well  
10 and, you know, pull all this stuff together in a  
11 system that -- that researchers and managers can pull  
12 up and look at and see where we're doing a good job  
13 more quickly and where things may be falling a little  
14 short or just getting a better idea of who's doing  
15 what and where.

16 Ultimately, the whole idea behind the  
17 recovery office and the advisory committee is to  
18 facilitate adaptive management and bringing in these  
19 hypothesis based research and monitoring that has a

20 more direct tie to management actions and the  
21 integrating the -- a range-wide program so that we  
22 can get this information, report it back and tweak  
23 things and actually implement a truer adaptive  
24 management program so that what's going on in the  
25 research world is being applied to management, we see

28

1 what work and doesn't work with that and adjust it as  
2 necessary, focusing not just on counting tortoises  
3 again, but habitats and impacts.

4           So I mentioned the desert tortoise planning  
5 implementation work groups that we're going to be  
6 working with and all the range states of the  
7 tortoise. The purpose of these groups is to  
8 facilitate the development of recovery action plans  
9 and the process of revising the tortoise recovery  
10 plan.

11           It will be a collaboration between the  
12 Desert Tortoise Recovery Office, the science advisory  
13 committee, and the agencies and stakeholders to  
14 prioritize recovery and implementation activities  
15 through a consensus based process. And basically,  
16 our goals in this process are to enhance support for  
17 recovery activities and increase the likelihood that  
18 the projects will be funded and happen on the ground.

19           There are going to be essentially five-year  
20 planning documents that will prioritize the recovery  
21 actions within specific geographic areas and identify

22 them, and importantly identify what research and  
23 monitoring needs occur to link recovery with  
24 management and provide that feedback.

25 The recovery plan then, in revising the

29

1 recovery plan, it's going to incorporate the -- the  
2 conclusions from the recovery plan assessment. These  
3 recovery action plans that are developed on a  
4 regional level will all be integrated into the  
5 revised recovery plan and -- and then as I mentioned  
6 before, the science advisory committee may develop  
7 revised recovery criteria that give us a better  
8 target to shoot for, for actually meeting recovery.  
9 And by doing all this, we hope to effectively address  
10 the issues raised especially by the GAO in their  
11 audit.

12 This is a very simplified schematic of how  
13 we kind of view the process going and from now to  
14 ending up with a final revised recovery plan at the  
15 end. So starting with the '94 plan and the  
16 assessment report at the top, soliciting input from  
17 stakeholders on, you know, where they see priorities  
18 and especially what areas that stakeholders can  
19 contribute to the recovery process and, we recently  
20 sent out letters, they went out a little later than I  
21 anticipated so they should be in people's mailboxes  
22 now.

23 Getting input from stakeholders up front so

24 that they're involved in the process and have a  
25 chance to weigh in before and as and during the --

30

1 these work group and each state are getting together  
2 to actually sit down and develop these recovery  
3 action plans, and that process will include a -- a  
4 new assessment of threats and then trying to identify  
5 recovery actions that are ongoing, currently ongoing  
6 or what new ones may need to be implemented to  
7 address those high priority threats.

8 In California, this is being coordinated  
9 through the desert managers group and the planning  
10 and implementation work subcommittee or work group  
11 under the desert managers group and so we'll be  
12 working through them and -- and developing early  
13 drafts of these before as -- before they go through  
14 wider review. So we'll have draft recovery action  
15 plans for each region and those will be reviewed by  
16 the broader agencies and stakeholders and we expect  
17 there will be a lot of feedback on that.

18 The science advisory committee meanwhile  
19 will be looking at, the recovery criteria to make  
20 sure those are addressed adequately in the whole  
21 process. And they'll also take a look at the draft  
22 recovery action plans and as those are revised and  
23 additional feedback obtained through, from the  
24 agencies and stakeholders, ultimately, that will all  
25 be brought in together into a draft recovery

1 integrated into a single draft recovery plan and  
2 with, you know, subsequent review on the overall  
3 package and we hope to have something put together in  
4 the summer this year as a draft revised recovery plan  
5 and then after that goes through final review, we'll  
6 have a new updated plan.

7           So basically, to sum everything up, the  
8 Desert Tortoise Recovery Office is intended to -- not  
9 to recreate the wheel necessarily but to build upon  
10 and support existing recovery efforts and coordinate  
11 with the agencies and stakeholders to carry out  
12 recovery activities. We want to expand collaborative  
13 relationships, minimize conflict and benefit the  
14 desert tortoise. We'll be recommending range-wide  
15 recovery priorities based on research and we'll --  
16 and this is -- one of the big things is we'll be  
17 closely tracking recovery accomplishments and where  
18 we're making progress and where we're not,  
19 identifying resource needs through that process.

20           And so basically, the last slide was just  
21 the thanks to all the agency and stakeholders who  
22 have been giving us advice and contributing to this  
23 whole process.

24           So -- that concludes my presentation, so --

25           CHAIRMAN KEMPER: Thank you.

1 Any questions from the counselmen?

2 Paul.

3 PAUL SMITH: Yes, I have one question and  
4 several comments. I'll deal with the comments first.

5 You can view this as a question, as well as  
6 a comment.

7 One, I think that it would be very important  
8 to recognize that public acceptance of what comes out  
9 of this is a key ingredient, the desert managers  
10 group is, I think they may even have a job search out  
11 right now for an outreach coordinator and I would  
12 hope that that outreach coordinator reaches into  
13 every arm of what you're doing so that the public can  
14 be made aware of what you're doing, that would be my  
15 first comment.

16 ROY AVERILL-MURRAY: I agree 100 percent.  
17 And as we get the staff built up for me right now,  
18 I've been covering a lot of bases and not doing  
19 anything particularly well, I don't think, because  
20 I've been spread so thin. But I expect the  
21 performance to improve as we get people on board and  
22 to be working very closely with the DMG and that  
23 outreach coordinator because the public acceptance  
24 is -- is critical through outreach efforts with the  
25 DMG coordinator and other things and directly with

1 the recovery action planning process as we revise the  
2 recovery plan and direct involvement in that. We  
3 want to facilitate as much as possible so we can get  
4 that public buy in.

5 PAUL SMITH: The next comment that I have, I  
6 noticed in each of the disciplines that you talked  
7 about bringing to bear on this study, I didn't hear  
8 you mention a professional and ongoing professional  
9 input dealing with the economics of the desert  
10 tortoise in the desert. It's economic effects and  
11 benefits and I would encourage you to think about  
12 that not only as part of the outreach, but also as  
13 something that has a direct effect on people that are  
14 active in the desert or effected by what goes on in  
15 the desert.

16 I don't have any specific advise on how to  
17 do that and perhaps it may deal with the fact that  
18 when you get your stakeholders involved, that that  
19 may be one charge you make to them, to request that  
20 they provide to you on the economic pluses or minuses  
21 on what recovery, what the recovery costs and  
22 benefits might be as well as, as what you see from  
23 what your researches what that might be, and that's  
24 just a comment.

25 ROY AVERILL-MURRAY: Thank you.

1 PAUL SMITH: And I think that will have a  
2 large effect on the public acceptance of what goes

3 on.

4           And the third thing is we've been sort of  
5 made aware that the University of Redlands has had a  
6 large role to play into the desert, how do they fit  
7 into all this? Are they part of your science team or  
8 what?

9           ROY AVERILL-MURRAY: The University of  
10 Redlands and Redlands Institute, they're not going to  
11 be a direct part of the science advisory committee,  
12 but we're definitely going to be working closely with  
13 them especially in using their expertise in the data  
14 management area and helping to build this centralized  
15 recovery data base.

16           We've already been talking with them,  
17 actually, they're going to be important players in  
18 the recovery action planning process as well on the  
19 front end in helping establish and go through in  
20 providing materials for the new threats assessments  
21 and things like that. So we're definitely going to  
22 be working closely with the Redlands Institute and  
23 try to capitalize on their expertise especially in  
24 data management and things like that, absolutely.

25           CHAIRMAN KEMPER: Jon McQuiston.

35

1           JON McQUISTON: Thank you, Mr. Chairman.

2           I have a number of questions, so I'll try to  
3 be brief.

4           The recovery plan has been in place since

5 1994, do you have any sense since that time how much  
6 effort and drop order of magnitude will be fined 10  
7 percent, 20 percent in terms of manpower money has  
8 been directed towards disease and predation?

9 ROY AVERILL-MURRAY: Jeez, I guess my short  
10 answer would be, no. Just --

11 JON McQUISTON: Let me -- I'm sorry. I have  
12 a series that I'm just trying to --

13 ROY AVERILL-MURRAY: The short answer is,  
14 no. There is very definitely -- but just because --  
15 quantifying exactly what proportion. The elaborate  
16 answer is we're going to be looking at the -- closely  
17 at disease and there's current work ongoing right now  
18 that is trying to get a better handle on epidemiology  
19 and research coming on line that's going to be  
20 looking at nutrition and how it relates to disease  
21 and trying to get a lot more applied information out  
22 of disease research. And so I can't give you a  
23 percentage of how that's going to relate to other  
24 aspects of research. It's going to be a prominent  
25 area.

36

1 JON McQUISTON: At least to some of us it's  
2 been a lingering question because the impact on the  
3 species had been so overwhelming, to some it's akin  
4 to in terms of recovery action stepping over a 20  
5 dollar bill to pick up a nickel and, so I'm very,  
6 very interested in that.

7 ROY AVERILL-MURRAY: Before we go, I would  
8 just say that I agree with that assessment and so  
9 that we're definitely looking at that.

10 JON McQUISTON: You made a statement at 43  
11 pages, "1.5 dealt with interactive threats."

12 Any idea on those 43 pages how many dealt  
13 with predation and disease?

14 ROY AVERILL-MURRAY: Not just off the top of  
15 my head. I think predation and disease were probably  
16 on the high end of the list because those were both  
17 identified early on in the listing with ravens  
18 especially and upper respiratory tract disease.

19 We've learned a lot since then, but our --  
20 what we're trying to move towards is get a better  
21 handle on more applied research as opposed to some of  
22 the research that we've done in the past to figure  
23 out what was going on.

24 JON McQUISTON: I'm not a scientist, and was  
25 never smart enough to be, but when I hear the term

37

1 "hypothesis based," I'm not sure I know what it  
2 means. I'm not asking for a definition, but given  
3 that I do understand definition wise what a  
4 hypothesis is, are there any standards that will be  
5 put in place that said if we're going to go to a  
6 hypothesis-based active management, what I would call  
7 quality assurance, things like that, in terms of the  
8 science base, is there any interest, effort or

9 direction that if we're going to go hypothesis-based  
10 management, a requirement for peer review?

11 ROY AVERILL-MURRAY: I think peer review and  
12 that's part of the purpose of the science advisory  
13 committee and the idea of even having such a thing is  
14 that the -- or the monitoring that we're doing needs  
15 to be from a framework of more than just going out  
16 and counting tortoises, we can count tortoises, we  
17 can say that tortoises are going up or down, but if  
18 we can't say anything about why they're going up or  
19 down, that's where the hypothesis-based part of it  
20 comes from, we need to tie other things in there and  
21 say that we think the tortoises are going up because  
22 of this management action or whatever and show its  
23 effectiveness and be able to respond --

24 JON McQUISTON: Individually, in this  
25 science-based team, are we going to require that

38

1 their work be peer reviewed or if the group itself  
2 comes forward with a hypothesis, does it go out to  
3 peer review?

4 ROY AVERILL-MURRAY: At this stage of the  
5 game, we don't have a specific mechanism identified,  
6 we fully expect that this diverse committee, many of  
7 whom have no vested interest and that's why we wanted  
8 to dominate it by outside individuals because they  
9 have no visited interest in the research that's going  
10 on here. We expect them to provide very effective

11 peer review from the ground level and as other  
12 research and things come out, we'll be continuing to  
13 solicit additional review.

14 JON McQUISTON: You made a statement or  
15 there was a statement on your briefing that you want  
16 to be sensitive to genetic differences.

17 Could you explain what you meant by that.

18 ROY AVERILL-MURRAY: I guess the easiest  
19 example to use that is, is in looking at his  
20 management options that may become very important as  
21 far as tramp location or head starting, if we were  
22 just to start implementing those things without  
23 evaluating genetic differences and the genetics of  
24 where we're moving towards, we can make things worse  
25 before we made them better by putting tortoises in

39

1 areas that they weren't really as well adapted for,  
2 but also just understanding that tortoises in  
3 different areas and different genetic makeup may  
4 respond differently to disease or something else.  
5 And so having that at least in the back of our minds  
6 when we're looking at differences, how much of it is  
7 related to the fact that these tortoises over here  
8 are different than the ones on -- in a different  
9 area.

10 JON McQUISTON: I'm not sure I understand  
11 that, but genetic differences I know in reading some  
12 of the information we're talking about

13 environmentally or sensitive units and other places  
14 we talk about distinct population segments. Could  
15 you expand on that perhaps. When you talk about  
16 genetic differences, are you talking about at the ESU  
17 level, are you talking about the species?

18 ROY AVERILL-MURRAY: We're talking about  
19 more at the ESU level. The recovery plan assessment  
20 had an entire chapter devoted to reevaluating the  
21 recovery units and --

22 JON McQUISTON: So do you consider the ESU  
23 to be a recovery unit?

24 ROY AVERILL-MURRAY: Well, the -- for --  
25 there's different levels to this question. For the

40

1 purposes of the recovery plan and/or formal recovery  
2 unit or distinct population segment designation, the  
3 service isn't planning on -- on tying things up and  
4 redoing DPSs or going through a long process to  
5 formally designate DPSs.

6 What we want to do is get an idea of where  
7 these populations or just where these effective DPSs  
8 or the different evolutionary significant units,  
9 whatever you want to call them, where the tortoises  
10 in the west Mojave are different genetically than  
11 tortoises in the Colorado deserts, just to throw  
12 something out of a hat.

13 Identify those things and use that  
14 information in the research and management that's

15 going on on the ground, so it's at that ESU-type  
16 level that we're -- that we're looking at within the  
17 range of the Mojave desert and identifying where  
18 different genetic differences exist.

19 JON McQUISTON: I'm just about through,  
20 Mr. Chairman, but a couple more and this is just a  
21 comment, there was a statement in there about  
22 interacting threats --

23 ROY AVERILL-MURRAY: Uh-huh.

24 JON McQUISTON: -- and a lot of discussion  
25 today about the science advisory group. It seems

41

1 that you know the statement was made at 43 pages, 1.5  
2 dealt with interacting threats, it would seem to me  
3 that you would want interactive disciplines to deal  
4 with interactive threats in conjunction with the  
5 science group.

6 There was one slide up there that had a  
7 little block it said, state, federal and stakeholder  
8 groups. At least within the desert managers group  
9 recently local government as a government agency was  
10 invited to participate at the desert managers group  
11 level. Is it the intention that this -- that slide  
12 will change to reflect their decision?

13 ROY AVERILL-MURRAY: Yeah, that was a --  
14 that slide was created, I think, in December, so --

15 JON McQUISTON: Okay.

16 ROY AVERILL-MURRAY: In fact, just to update  
Page 39

17 you -- in a recent DMG meeting that was taking a  
18 first look at how we're going to approach these  
19 recovery action plans, the working -- the recovery  
20 planning implementation work group, there was an  
21 elect -- a county representative at that meeting.

22 JON McQUISTON: Right. How do you envision  
23 integrating local government into your functions and  
24 your responsibilities running the Desert Tortoise  
25 Recovery Office? How will local government be

42

1 integrated in with federal and state?

2 ROY AVERILL-MURRAY: I think the first and  
3 easiest way is going to be directly through the --  
4 through our coordination with the DMG because as I --  
5 as that same slide indicated that in the DMG is going  
6 to have a very close relationship with the recovery  
7 office and with local government -- local governments  
8 participating directly with the DMG, they're going to  
9 have that first line coordination right there. But  
10 throughout the process as we're, you know, conducting  
11 activities and we want to have an open dialogue with  
12 all levels.

13 JON McQUISTON: Thank you.

14 Thank you, Mr. Chairman.

15 CHAIRMAN KEMPER: Preston Arrow-Weed.

16 PRESTON ARROW-WEED: It's not on.

17 JIM BUGERA: It's on.

18 PRESTON ARROW-WEED: It's on? Okay. I

19 don't think it's on. Oh.

20           You know, I almost get a feeling you're  
21 saying that tortoises have feelings in a way. Being  
22 familiar with the certain area and being placed in  
23 certain areas they're not familiar with like any  
24 living thing it is not familiar so, therefore, it  
25 could, even if it had vomitus of its own food, it

43

1 could lose its appetite and getting weaker also is be  
2 able to get the disease -- their bodies would  
3 normally fight off, they can't because they're  
4 weaker.

5           And my feeling is that turtles have feelings  
6 like anything else and to me that's what you're  
7 saying. I don't know if you're saying it that way,  
8 but it's like being in captivity. A lot of other  
9 animals in captivity will not eat or will not accept,  
10 maybe sometimes they will if they get used to it, but  
11 sometimes they'll die if they're in captivity or if  
12 they're placed in a different environment they're not  
13 used to, they change too. And if they reach a place  
14 where they're not there, where they reach a place  
15 where everything they're familiar with is not there,  
16 they have a certain, I guess they react to it  
17 differently and maybe they don't even reproduce  
18 anymore. There's certain things that happen to them.

19           But I believe turtles have feelings and if  
20 we say they don't have feelings, I think we're wrong.

21 And also what I feel is that who's going to win the  
22 race, the human beings or the turtles? Everybody  
23 wants this, the turtles want that, but nobody speaks  
24 for the turtles' situation as I am.

25 I feel like I'm their lawyer, but in their

44

1 behalf, I would say turtles have feelings, too, like  
2 anything else. And I think we should respect those  
3 feelings somehow, being we're the highest order of  
4 nature, we're thinking people, we should also think  
5 of them as living things that have feelings and I  
6 think they get confused when they find something  
7 missing or something gone as human beings do, too.

8 The ravens are going to do what they're  
9 going to do to keep eating them because they have  
10 nothing else to eat after everyone is gone. All its  
11 food or all the garbage, all the things that are left  
12 are said and gone, then they have nothing to eat but  
13 go after them and so they are doing what they can to  
14 survive.

15 We have, I notice in my area now we have  
16 more ravens than we've ever had on my reservation,  
17 too. There's so much there now because of the people  
18 going into the desert, going out there leaving food  
19 around to eat. They're used to it. They come eat  
20 that. And when everybody's gone, boom, they got no  
21 place to go. But to our reservation and any place in  
22 the desert to eat what they can or start going to the

23 trash bins out there, but the turtle is the one  
24 that's losing and he wanders back into that area and  
25 he dies or goes into different areas, then to die,

45

1 but I have also seen turtles at one place where they  
2 had gold mining and they told us that they had taken  
3 all the turtles out of there and they were safe and  
4 that gold mine was there for some time.

5           We went back and rode through there and  
6 there sat a turtle. He didn't leave, he'd been there  
7 all that time buried underneath and nobody ever saw  
8 him, but he was still there. I don't know if by  
9 moving him someplace else or he might die, but to me,  
10 I'm saying turtles have feelings.

11           CHAIRMAN KEMPER: Thank you.

12           Bill.

13           DR. WILLIAM PRESCH: Roy, I wanted to thank  
14 you for coming and presenting your ideas about the  
15 recovery office. I'm a herpetologist. I've been  
16 running around the east Mojave since '65 and I run  
17 the desert study center out at Isaacs [PHONETIC],  
18 which you'll probably become familiar with.

19           ROY AVERILL-MURRAY: Been there a couple of  
20 times.

21           DR. WILLIAM PRESCH: Your presentation was  
22 interesting from my standpoint because it seems to me  
23 you're building one large bureaucracy and I think  
24 that's one of the problems we currently have with the

25 desert tortious. In fact, we have five or six

46

1 bureaucracies, and unfortunately, they haven't talked  
2 to one another really, ever, and you're going to have  
3 the opportunity to try to get them to work together  
4 and I would greatly hope that you succeed.

5 I don't give you much chance, but I hope you  
6 succeed. I don't think the national park is going to  
7 give up their boundaries.

8 But the other thing I wanted to comment was  
9 that your presentation indicates to me that you're  
10 going to be going over and looking at a lot of past  
11 data and past actions that have occurred and so many  
12 of those are not really compatible with one another  
13 from an analysis standpoint, the data set is not very  
14 big, the data set has been collected in different  
15 ways and you can't put all that together  
16 statistically and your biostatistician knows why and so  
17 forth.

18 So my interest is that you have this  
19 bureaucracy but I didn't hear anything about getting  
20 new data or the agreement of how the data would be  
21 collected from all of the -- what did you call them,  
22 you called them the recovery permits. I assume  
23 that's permits for people who work on the desert  
24 tortoise someplace.

25 Who's going to be doing that work and

1 whether there's going to be some standardized field  
2 techniques to coordinate the efforts.

3           Right now I'm currently negotiating with  
4 Sacramento to do some blizzard work in the same areas  
5 as the tortoise, and one of the things we're really  
6 trying to work out is our protocols as to how exactly  
7 we do this type of thing and I just wanted to get  
8 that across that I think this is very important, but  
9 we're really going to have more than five years of  
10 data to make any substantial, in my view, at least  
11 substantial where a comment about whether one action  
12 or another action is actually the reason for  
13 recovery.

14           ROY AVERILL-MURRAY: I agree completely and  
15 that's what those limitations are in the previous  
16 data that you mentioned are not an insignificant  
17 hurdle that we're facing right now and -- and  
18 basically, what -- what that means is that in a lot  
19 of cases we're starting from ground zero and trying  
20 to, and by incorporating the recovery permit and  
21 under the review of recovery permits and coordination  
22 in one office as opposed to scattered among four or  
23 five offices, we hope to facilitate that and  
24 streamline that and using the science advisory  
25 committee and other avenues to try to focus the new

1 research and to more apply specific-applied questions  
2 that will give us more information for management and  
3 effectiveness.

4           Effectiveness monitoring is a big key word  
5 in the assessment report and there's very little of  
6 that to date. Dr. Bill Boreman with U.S.G.S is in  
7 the process of completing a report on effectiveness  
8 monitoring and basically, he didn't find a whole lot.  
9 And so that's where we're taking that to -- the  
10 Desert Tortoise Recovery Office is take that to heart  
11 and we're going to strongly push and try to, you  
12 know, through permitting process and prioritization  
13 and try to push more for that and do a much better  
14 job, but it's not -- definitely not a short endeavor.

15           DR. WILLIAM PRESCH: Thank you.

16           CHAIRMAN KEMPER: David?

17           DAVID CHARLTON: It's been about 15 years  
18 since the tortoise was listed and I thought the  
19 presentation was so pathetic in that of the progress  
20 we've made because the lack of effort so far, as far  
21 as the money that's being spent on the project. I  
22 think we realized what an absolutely complicated and  
23 expensive situation this is going to be.

24           The big picture is that the desert tortoise  
25 is a landmark species representing the health of the

1 desert and the big picture is, is the drought a major  
2 problem? Are we going to have to try and get  
3 recovery increase in tortoise population during a  
4 drought? Are we going to have increased man-made  
5 disturbance? Are we going to have to try and get  
6 increased number of tortoises under increased  
7 disturbances?

8           And I cringed every time I heard the word  
9 recovery because it sounds like the presentation is  
10 just trying to come up with an effort to determine  
11 whether the population is increasing or decreasing  
12 and not really talking about management actually  
13 increasing the number of tortoises, which is the  
14 small scale problem. The big scale problem is just  
15 health of the desert.

16           I mentioned yesterday that we had a major  
17 increase in a weed here, Sahara Mustard, which is not  
18 going to be probably an improvement for the desert  
19 tortoise. And in the early '70s, I'd go 15 miles to  
20 see my first split grass. It was not ubiquitous at  
21 the time. I know people had collections of it back  
22 in the '60s, but it spread rapidly and there were new  
23 species on the rise that are going to be problems in  
24 the future.

25           I'd like to see addressed under the

50

1 commitment that the federal government is willing to  
2 make based on the fact that there are lots of reasons

3 why they can't increase a commitment to killing  
4 ravens or difficulties improving habitat, going  
5 against the problems that have been caused in the  
6 past, say, by disturbance, we still don't know the  
7 direct relationship between grazing and tortoise  
8 populations or off-road vehicle disturbance in  
9 populations, and so we're still stumbling around  
10 trying to answer whether any one of these problems  
11 can be changed and bring about recovery.

12           So I guess so the basic question is, under  
13 the commitment we're now making, when can we expect  
14 tortoise numbers to start to go up, because that's a  
15 practical answer to the question. I think you're  
16 just looking at the thing and saying is Reno a common  
17 sense place to center it, is that the best spot.  
18 That's where I'm sort of coming from.

19           ROY AVERILL-MURRAY: I think that that  
20 question, when can we expect tortoise number  
21 increases is the sixty-four-thousand-dollar question.  
22 If we had the answer to that, then my job would be a  
23 heck of a lot easier.

24           You know, I definitely recognize and agree  
25 with -- with everything that you said about, you

51

1 know, the lack of effectiveness over the last 15  
2 years of recovering. There actually has been a lot  
3 of work done that agencies and researchers have put a  
4 lot of work into the desert tortoise, but the

5 fundamental flaw that GAO recognized and that the  
6 recovery plan assessment committee recognized was  
7 that it -- it was a lot of work that wasn't well  
8 coordinated.

9           And at the risk of creating a new  
10 bureaucracy, which was one of my primary concerns in  
11 the whole recovery plan assessment was diverting  
12 resources away into a new bureaucracy. Providing  
13 that oversight and that coordination has been shown  
14 to be more effective for other species and other  
15 recovery plans and so we're starting a little later  
16 than we would like relative to the listing of the  
17 tortoise.

18           But our mandate now is to provide that  
19 coordination and trying to get things moving in the  
20 right direction and do the -- the research and tie  
21 the research directly to the management so that we  
22 can figure out exactly, more precisely what is  
23 causing effects of the tortoise and what we're doing  
24 on the ground that is effective at increasing  
25 tortoise numbers given drought, given additional

52

1 pressures here and there and whatever.

2           And I had hoped that the presentation would  
3 have shown that that level of adaptive management  
4 that we're striving for and actually working with,  
5 you know, getting that management component in there  
6 so that we're addressing those issues because

7 that's -- that's one of our fundamental objectives.

8 CHAIRMAN KEMPER: Jim, did you have a  
9 question?

10 JIM BUGERA: No.

11 CHAIRMAN KEMPER: Linda Hansen?

12 LINDA HANSEN: Linda Hansen.

13 Roy, thanks for coming and going through as  
14 completed a discussion you have this morning as to  
15 what you're trying to build.

16 My question probably goes more to as a  
17 manager of an agency who sits in a sea of desert  
18 tortoise area, not desert tortoises, but desert  
19 tortoise area, do you think that there's enough cross  
20 pollination between what you're going to be  
21 developing through the Desert Tortoise Recovery  
22 Office? And what happens with the Section 7 reviews,  
23 the biological opinions that are created in the  
24 other, if you will, of the Fish and Wildlife Service,  
25 that when I receive a biological opinion on the west

53

1 Mojave plan that I can feel secure that that opinion,  
2 those terms and conditions, those things that we  
3 agree upon are going to be the right things to deal  
4 with in terms of future efforts that we're going to  
5 be asked to make through the desert managers group  
6 for recovery?

7 I know you say there's a link there and I  
8 know that there's a review process internally that

9 you go through, but can -- I don't know, but just  
10 from your perspective, do you think that cross  
11 pollination is good enough to allow us to build good  
12 biological opinions and ultimately good management  
13 plans that will lead us towards those recovery  
14 actions that the recovery office wants to see?

15 ROY AVERILL-MURRAY: I think right now, it's  
16 probably not where we want it just because of where  
17 we -- where we are in the genesis of the Desert  
18 Tortoise Recovery Office itself.

19 I fully expect that a year from now as we  
20 get, you know, go through the growing pains that  
21 we're, you know, dealing with, this transitional  
22 period that we're dealing with internally and  
23 creating this office and dealing with a hundred  
24 things at once with just me for right now, it -- you  
25 know, it's a slow and painful process.

54

1 But in a year from now, I fully expect that  
2 that Section 7 and recovery linkage is going to be  
3 sufficiently close and tied that the biological  
4 opinions at the BLM and whatever other agencies get  
5 are going to be fully consistent with our recovery  
6 objectives and that cross pollination -- I mean, it's  
7 important for me to maintain a cross pollination for  
8 multiple reasons, for the reasons you're bringing up  
9 right now, but also that there's a certain amount of  
10 experience in the people in the Section 7 world that

11 have been, you know, working with you and others  
12 that, you know, I don't -- I don't want to sacrifice  
13 and say, okay, these are -- they're not completely  
14 mutually exclusive arenas so they need to be closely  
15 tied.

16 So I do expect that we're going to be there.

17 CHAIRMAN KEMPER: Ron Schiller?

18 RON SCHILLER: Schiller, thank you.

19 I once had a good friend who was the head  
20 biologist at the Naval Weapons Center, her name was  
21 Dr. Tilly Barlen [PHONETIC] and I had a number of  
22 conversations with her about the desert tortoise and  
23 one of the things that she told me that I've always  
24 remembered was that desert tortoises are literally  
25 candy for every carnivore on the desert, including

55

1 tigers, bob cats, road runners, hawks, owls and  
2 eagles.

3 I notice you focused on, and it seems we've  
4 mostly focused on ravens and feral dogs now. How do  
5 we know that these other predators are not -- are  
6 less significant than ravens and feral dogs? I mean,  
7 it would be hard to find a shell taken by a bob cat  
8 or a coyote where you could find under a raven's nest  
9 a number of shells and also they'd be taken off of a  
10 steady plot and moved some distance.

11 So how do you determine what's more  
12 important as far as consideration for predation?

13 ROY AVERILL-MURRAY: Predation risk is  
14 different depending on what kind of -- how old or how  
15 big the tortoise is. So the candy analogy, I think,  
16 is pretty appropriate for hatchlings and little guys.  
17 Adult tortoises are much less subject to predation.  
18 I mean, I think coyotes and foxes can do a  
19 little bit of damage, but generally, if the adult  
20 tortoises are relatively immune to most predators  
21 except for maybe mountain lions and things like that,  
22 and those are very -- there's no indication that  
23 there's range-wide or significant population level  
24 effects there so a lot of the predation is focused  
25 either on hatchling or in the case of free ranging

56

1 dogs that can do more damage to larger tortoises  
2 presumably because they have more free time on their  
3 hands and aren't predating a tortoise necessarily as  
4 opposed to just, you know, doing the dog thing of  
5 playing with it and eating it just because or chewing  
6 it up because it's a dog's way in the desert.

7 But the -- as far as hatchlings go, they're  
8 certainly subject to predation by all of those things  
9 and have been documented. The extent that one thing  
10 is a bigger factor than another, you know, there's  
11 not -- the -- really, the only rationale that I can  
12 just standing here give you is just the -- the  
13 observed increases and things like ravens in the  
14 desert relative to the natural predators and the kind

15 of expectation that, you know, obviously tortoises  
16 are, you know, one part of the -- the food web and,  
17 you know, foxes and roadrunners are going to eat baby  
18 tortoises, but presumably, those levels of predation  
19 haven't increased to the same extent, I think, like  
20 ravens. So that's kind of the current rationale for  
21 the attention on predators.

22           RON SCHILLER: What about with coyotes?  
23 Coyotes seem to have significant increase, at least  
24 around my parts.

25           JIM BUGERA: Oh, yeah.

57

1           RON SCHILLER: I know they're very fond of  
2 my wife's chickens and geese, but --

3           CHAIRMAN KEMPER: If I can, Ron.

4           Where are you from? Where are you coming in  
5 from?

6           ROY AVERILL-MURRAY: I am -- I came from the  
7 Fish and Wildlife Service from the Arizona Fish and  
8 Game Department where I was amphibian and reptiles  
9 program manager.

10          CHAIRMAN KEMPER: Great. I will share with  
11 you this committee has asked Fish and Wildlife on  
12 several occasions a couple of things. And when we  
13 talk about predation not increasing, I don't know if  
14 you're aware or not but California outlawed leg hole  
15 traps about seven or eight years ago and there was  
16 literally thousands of predators collected every year

17 on the Mojave.

18           So to say that there hasn't been a  
19 significant increase in predators I think is a little  
20 misleading when we all know that when we did away  
21 with that whole industry, we certainly got predators  
22 back up to whatever level they can stabilize at,  
23 which was certainly much higher in numbers than it  
24 had been for over a hundred years.

25           ROY AVERILL-MURRAY: Well, I was going to

58

1 say especially with regarding to coyotes, I don't  
2 think that they're -- well, I know that there's not  
3 any kind of quantifiable evidence that says that  
4 coyotes, how great a predation pressure are coyotes  
5 specifically or other forbearing mammals, predators  
6 applying toward hatchling tortoises because the  
7 hatchling tortoises are so -- ravens are convenient  
8 because they lay the carcasses all in one place and  
9 coyotes and things like that may be responding in  
10 ways that you're saying, yeah, we don't have that  
11 kind of data and so that may be an important area to  
12 look at relative to predation.

13           CHAIRMAN KEMPER: Yeah, you know the group  
14 of people you've given your presentation to today you  
15 really represent a diverse group and it was a group  
16 formed by Congress. We give advice to the district  
17 manager, to the secretary if necessary, and at times  
18 we've been requested to give testimony to Congress.

19           We have some real concerns as a body when we  
20 go to Fish and Wildlife three years ago and we asked  
21 them to look at possibly what a previous management  
22 decision was, which was to outlaw leg hole traps.

23           What that may have done to the tortoise and  
24 for no research to occur in the last three years  
25 concerns us. You know, we think it's an important

59

1 part of figuring out the problem.

2           Furthermore, what I can share with you is  
3 that this group has requested on three occasions that  
4 I'm aware of that Christine Berry's work, which she  
5 has never been allowed to be peer reviewed, to be  
6 released to this group and to the public for peer  
7 review.

8           I for one have some real concerns with one  
9 of your core people being a scientist who refuses to  
10 have her research reviewed and I hope that you will  
11 take that into consideration before you accept her.

12           ROY AVERILL-MURRAY: I can tell you two  
13 points that you raise as far as the research three  
14 years and a lack of research on the effect of  
15 discontinuing leg hole trapping and things like that.

16           That's not the only thing that hasn't been  
17 -- only research topic that hasn't been adequately  
18 addressed, you know. So I'm very open and receptive  
19 to hearing things just like that coming in from the  
20 outside and not being aware of the history. So I'm

21 very receptive to hearing those perspectives so we  
22 can make sure that they're not continued -- that  
23 they're included in the considerations and that we do  
24 address those or provide some kind of rationale for  
25 where it falls in the list of priorities.

60

1 CHAIRMAN KEMPER: Your work will be much  
2 more accepted I can assure you amongst this entire  
3 group I believe that if all your scientists that are  
4 involved will allow their research to be peer  
5 reviewed.

6 ROY AVERILL-MURRAY: I agree with that  
7 completely and it's my expectation that the --  
8 through the participation on the science advisory  
9 committee and the direction of that committee is that  
10 the members of the committee are as productive and as  
11 forthcoming as how we expect. But the people that  
12 aren't on the committee and that, you know, the  
13 overall recommendations that come from the committee  
14 are followed by the individual members as well as  
15 everyone outside of that. And so as the whole  
16 recovery plan assessment committee, this issue was  
17 raised in trying to gather information, this issue  
18 was raised and dealt with, and that's something that  
19 the -- the Desert Tortoise Recovery Office is very  
20 aware of and very conscious of and is considering  
21 even through this entire science advisory committee  
22 process. So we're planning on working through those

23 things.

24 CHAIRMAN KEMPER: Right, and thank you very  
25 much.

61

1 And I'd like to say that in defense of Fish  
2 and Wildlife, that we are very appreciative that they  
3 have taken the raven under serious consideration.  
4 That was one of the concerns of the counsel three  
5 years ago. But I don't think the raven is the only  
6 problem. And I don't think the rest of the counsel  
7 feels that way.

8 Also, is there any more comments or  
9 questions?

10 Jon McQuiston.

11 JON MCQUISTON: First of all, thank you for  
12 being here. This isn't probably one of the easier  
13 audiences that you've had to meet with and I do  
14 appreciate it very much.

15 I had a question I overlooked earlier, it's  
16 really part of a two-part question from a disease or  
17 epidemiological, I can't even say it, basis. How  
18 much do we know 11 years after the original recovery  
19 plan than we did in 1994?

20 ROY AVERILL-MURRAY: From an epidemiological  
21 standpoint, we don't know hardly anything. We know a  
22 lot more specifically about -- when the tortoise was  
23 listed, we knew that it got a runny nose and a lot of  
24 them died. Now we know a lot more about what causes

25 the runny nose and the direct factors and what -- why

62

1 tortoises die.

2 The epidemiological question is the -- is  
3 the big important thing that's still lingering out  
4 there that was mentioned in the recovery plan in '94  
5 as something we needed to address.

6 It hasn't been done well. A lot more  
7 attention was focused on figuring out what caused it,  
8 and now the research is specific -- specific research  
9 is beginning on the epidemiological aspects.

10 JON McQUISTON: Given the magnitude of the  
11 impact on the species, will there be an effort to  
12 bring in this epidemiological discipline in the  
13 current recovery plan or recovery plan view? And by  
14 that, rather than just bringing them in to sit in  
15 front of the biological team from time to time to  
16 answer questions or provide input, will there be a  
17 dedicated effort to make them a part of this recovery  
18 plan update?

19 ROY AVERILL-MURRAY: You're asking whether  
20 we'll have an epidemiologist on the science advisory  
21 committee or --

22 JON McQUISTON: Somewhere within this  
23 recovery plan review, given the magnitude of the  
24 impact of this on the species, will there be in this  
25 recovery plan review an effort to bring this type of

63

1 discipline as a part of this review process?

2           ROY AVERILL-MURRAY: Yes, I would think --  
3 we don't have a dedicated -- I mean, an  
4 epidemiologist on board that's going to be, you know,  
5 full-time or kind of dedicated. But we --  
6 absolutely, we want to bring in epidemiologists in  
7 the review process to make sure that -- that the  
8 tortoise biologist and the Fish and Wildlife Service  
9 doesn't have some narrow idea of what's going on, and  
10 it doesn't even fully understand the field of  
11 epidemiology. And so our recommendations relative to  
12 the epidemiology of disease are evaluated and have  
13 input from -- from specific people with that  
14 background, absolutely.

15           JON McQUISTON: I think my suggestion would  
16 be given we're 11 years in and your original  
17 statement, "We don't know much more now than we did  
18 11 years ago," and if the purpose of a recovery plan  
19 is to stabilize or increase the population, we would  
20 be remiss if that wasn't an integral part of any  
21 recovery effort.

22           Thank you.

23           CHAIRMAN KEMPER: Roy Denner.

24           ROY DENNER: I've been involved with this  
25 issue for a number of years, as most of you know, so

1 I have some extensive comments. I hope the counsel  
2 will bear with me.

3 This is a super important issue, probably  
4 the most important one this counsel has ever  
5 addressed, because in my mind, it impacts public use  
6 of public lands over millions of areas in four  
7 different states, and it has -- there has been no  
8 justification, we just heard we don't know any more  
9 than we knew 11 years ago, yet limitations to public  
10 use of public lands continues to occur without  
11 scientific foundation for those limitations. So I  
12 think this is a really important issue.

13 First, Roy, I'm not sure whether to  
14 congratulate you or offer you our condolences. I  
15 agree with Dr. Presch that you have your work cut out  
16 for you. I hope you know what you got yourself into.

17 ROY AVERILL-MURRAY: I'm reminded every day.

18 ROY DENNER: If you can pull it off, you're  
19 a real champion in my mind for sure.

20 First of all, relative to your presentation,  
21 I have to tell you I've been sitting on this counsel  
22 for about five years, and if we went back through the  
23 records of presentations we've gotten on the desert  
24 tortoise, I would bet at least 90 percent of your  
25 bullet points have already been presented to this

65

1 counsel in one way or the other.

2           You know, we've heard the same thing over  
3 and over and over again. We keep hearing that one  
4 day we're going to have a plan in place that is going  
5 to do something to help the desert tortoise. If this  
6 was a private enterprise tackling this problem, you  
7 know, they would look at the project I think from two  
8 standpoints: What's a long-term effort necessary,  
9 and what can we do in the short term.

10           The OHV community has been very active over  
11 the -- at least three years, we have attended all the  
12 DMG and MOG meetings in the science impositions. We've  
13 done a lot of research on our own. We've offered a  
14 lot of volunteer projects that we feel we can do on  
15 the ground, projects that might save a tortoise  
16 tomorrow, you know. And I'm going to give you what a  
17 few of those projects are because being new on board,  
18 I'm sure nobody has taken the time to tell you about  
19 them.

20           We keep getting the argument that we can't  
21 do anything on the ground right now for the tortoise  
22 until we understand what all the interacting  
23 influences are, which is bullshit, frankly. I'll  
24 give you a couple of examples of what I'm talking  
25 about.

66

1           First of all, we have offered to provide a  
2 volunteer base and funding to go out on the ground  
3 and do a headstart program. You may be familiar with

4 the breeding program they did in Clark County,  
5 Nevada, where they fed them alfalfa pallets. These  
6 are tortoises collected from development site and  
7 turned into Fish and Wildlife over there or maybe it  
8 was Game and Fish.

9 But anyhow, while they were waiting for  
10 somebody to adopt these tortoises, the theory is you  
11 can't put them back in the wild once you've handled  
12 them. I think that's BS, too, but they had tortoises  
13 coming out their ears. They had to develop a  
14 euthanasia program because they couldn't get rid of  
15 all those tortoises, which to me not being a  
16 scientist and understanding DNA and that sort of  
17 thing, I still get sort of an indication that it is  
18 possible to breed tortoises, you know, put them  
19 back -- maybe put them back in the wild.

20 We've offered to do that on the ground and  
21 been turned down because, "No, we don't want to do  
22 that until we understand all of the parameters. And  
23 maybe five years from now, we'll be able to think of  
24 something like that."

25 Second thing we did, one of our people did a

67

1 research on raven -- non-lethal raven dispersal  
2 devices and we came up with a whole series of devices  
3 all the way from a handheld laser thing -- these are  
4 all in use and proven. A handheld laser device to  
5 keep pigeons off of William Penn all the way to

6 military devices that cover 40 acres to disperse  
7 birds from aircraft landing sites that can be  
8 programmed to put out the sounds of predators and  
9 after a while the raven or whatever the bird is,  
10 after awhile, that bird decides it's not a good place  
11 to live because the place is loaded with predators.

12           We give a whole list of those. In fact, at  
13 one of the DMG meetings I suggested we could probably  
14 implement a couple of those in our desert tortoise  
15 concentrated areas for less than it costs to send the  
16 scientists to the meeting. They didn't appreciate  
17 that too much.

18           Another thing on this disease problem,  
19 whenever they find a diseased tortoise, currently,  
20 the only place they can assess the problem with that  
21 diseased tortoise is in a lab in Florida as I  
22 understand it. So a sample has to be taken from the  
23 tortoise and sent to Florida and maybe in a week or  
24 two we get a result back about that particular  
25 individual tortoise.

68

1           We have learned that the military has  
2 developed a portable testing station device that can  
3 be hauled around to the field and right there on the  
4 spot test the tortoise for the level of disease  
5 problem.

6           We have offered, you know, to even invest  
7 money and have our volunteers take those things

8 around where biologists are working at desert  
9 tortoise sites, you know, and help implement this  
10 disease testing program. All of that has been  
11 ignored. We are concerned some people think it's a  
12 conspiracy because if we start breeding tortoises  
13 tomorrow and they breed like they did in that Nevada  
14 program or if we go out and disperse ravens or even  
15 do something at their nests, I mean we've seen  
16 pictures of ravens' nests with hundreds of baby  
17 tortoise shells under the raven or where ravens nest.  
18 I have yet to see a picture of tortoises killed by  
19 OHV use on trails, for example.

20 I have seen one picture in the entire five  
21 years of a tortoise who was run over by a vehicle and  
22 if you look at the truck, it's an earth mover. It  
23 has these big herringbone tracks about that wide.  
24 That's not an off-road vehicle.

25 I keep asking, give us some evidence, give

69

1 us some pictures of the fact we're out there killing  
2 tortoises and we'll be the first ones to say we  
3 shouldn't be in that area.

4 Finally, I got a copy of your letter  
5 requesting input from stakeholders and we've got a  
6 program that started in 1994, it's 11 years old and  
7 you're talking about having a plan to do something  
8 about the problem in the next five years, this letter  
9 requires input by April 15th. I mean this month,

10 April 15th, isn't that a little unrealistic?

11 I guess my whole point is what you guys are  
12 doing --and I'm not addressing this to you, this is  
13 nothing personal. What I'm telling you are things  
14 that have actually taken place and I can show you  
15 what I'm talking about we have actually done and we  
16 have actually proposed.

17 I'm asking you to, you know, if you're going  
18 to be the focal point, I think it's great that they  
19 finally feel it's important enough to have a whipping  
20 boy that we can all pick on. I hope it's not that  
21 way, I mean we really want to help, we really want to  
22 help, we're willing to put volunteer effort in  
23 resources, we're even willing to find money, if money  
24 can make a difference. If we can come up with the  
25 money to implement a program on the ground that is

70

1 going to release some of these public lands back to  
2 public use, you know, we're there to do whatever we  
3 can to help. But we have to really consider the  
4 short-term effort and I mean ask us for input, we  
5 have a lot of input, as I am pointing out to you, but  
6 asking us for input in 15 days is a little  
7 unrealistic. I hope you'll take another look at  
8 that --

9 ROY AVERILL-MURRAY: With specific regard to  
10 that, the April 15th date is less of a deadline than  
11 a target date that we were just trying to stimulate

12 early comment work. We're not cutting off comments  
13 on April 15th. We want to hear from you whatever  
14 throughout the process. This was just the first stab  
15 and as I mentioned early, the mailing list grew so  
16 large that we didn't even get, I mean you got the  
17 letter before anyone else did at another meeting, but  
18 a lot of other people are just now getting it, so the  
19 deadline if you look at it as a deadline, is even  
20 worse for them. So that was kind of an unfortunate  
21 glitch in us even getting the letter out.

22 But that was -- the April 15th should not be  
23 viewed as a deadline but as a -- as just an effort to  
24 get people thinking about this and, you know,  
25 communicating with us sooner rather than later in

71

1 this process, but recognize that it's not a closed  
2 deal. We fully expect to hear and work with people  
3 throughout.

4 ROY DENNER: -- may I read the sentence  
5 here? It says,

6 "Please send your comments and  
7 suggestion preferably on regional  
8 or desert wild life management area  
9 basis to Roy Averill desert tortoise  
10 coordinate -- recovery coordinator  
11 in this office by April 15th."

12 That doesn't leave a lot of room for --  
13 you're going to be getting a lot of comments about

14 that deadline, they're going to interpret it as a  
15 deadline?

16 CHAIRMAN KEMPER: Okay. I'm going to try to  
17 hurry everything along here a little bit.

18 Paul?

19 PAUL SMITH: I'm Paul Smith, the  
20 representative at large.

21 Among other hats that I have, I'm president  
22 of the Morango Base and Innkeepers Association and we  
23 would have input to make on that, so I'll give you my  
24 card to get on your mailing list.

25 The second thing as part of our concern has

72

1 to do with making some large issues and I wish you  
2 could elaborate briefly. Namely, sometimes we look  
3 at what's going on with the desert tortoise is not  
4 just dealing with the desert tortoise, but it's a  
5 larger indication of a problem with biodiversity  
6 throughout the deserts.

7 Could you elaborate on the importance of the  
8 desert tortoise beyond the tortoise itself.

9 ROY AVERILL-MURRAY: Someone mentioned on  
10 the committee that it's kind of positioned as a  
11 flagship species or something to that effect and  
12 that's true. Its -- its role in the desert in  
13 creating burrows that are used by other species and  
14 even its position on the lower end of the food chain  
15 in the case of, you know, normal predators and things

16 like that, it's -- it's definitely, you know, a key  
17 component of the Mojave desert ecosystem. It's been  
18 there for a long time and so from that aspect of the  
19 biodiversity of the Mojave desert, it's an important  
20 cog in the ecosystem.

21 PAUL SMITH: Thank you.

22 CHAIRMAN KEMPER: Thank you, Paul.

23 Roy Denner.

24 ROY DENNER: Roy Denner.

25 An important thing I forgot in discussions

73

1 with, I'm a little disappointed to see the makeup of  
2 this advisory committee in discussions with the state  
3 director, Steve Thompson, and with the Washington  
4 office, assistant secretary, Creg Manson's office, we  
5 were led to believe this new effort was going to  
6 involve a much higher level of participation by  
7 stakeholders. We obviously can't read DNA, but we  
8 can certainly talk about what I've already talked  
9 about, things that can be done on the grounds that we  
10 are aware of like tomorrow.

11 And I agree with Ron that the core of this  
12 organization are the very people who developed this  
13 plan that we don't have confidence in the first place  
14 and we're seeing no other stakeholder input.

15 I think there needs to be more than a  
16 scientific committee, it needs to be an advisory  
17 committee that includes all types of stakeholders.

18 We think we have some significant input.

19 ROY AVERILL-MURRAY: We're trying to address  
20 these things from two different directions. We  
21 definitely want the stakeholder input and that's  
22 where these work groups -- that's where we're  
23 bringing the stakeholders in and specifically  
24 soliciting this input and want to incorporate that  
25 input directly into the process.

74

1 The science advisory committee, we wanted to  
2 keep that fairly outside of that process as a purely  
3 scientific committee to bring their expertise at a  
4 different level and from a different direction, but  
5 the stakeholder groups, I mean we view that as a  
6 critical element to the success of this from the  
7 buy-in perspective as well as the contributions and  
8 the things that you're talking about being able to  
9 use those and further the entire recovery progress.

10 ROY DENNER: But in your flow chart that you  
11 put up on the screen, you have the MOG at the top and  
12 you have the science advisory committee, but there's  
13 no block on there that I recall that said it was a  
14 high enough level to say that we consider  
15 stakeholders' input important.

16 ROY AVERILL-MURRAY: Stakeholders were in  
17 all of the bottom boxes and so they're integrated  
18 into the process through each of the -- the state or  
19 regional level processes and they're very

20 specifically included and will be.

21 CHAIRMAN KEMPER: Bill Betterly.

22 BILL BETTERLEY: Thank you.

23 Ray, in your presentation, did you not say  
24 or did I understand it wrong that two of the  
25 scientific groups have already been appointed?

75

1 ROY AVERILL-MURRAY: Five out of the six  
2 people have accepted.

3 BILL BETTERLEY: And one of those are the  
4 ones that you were talking about. And I'm not too  
5 sure you're creating the wheel. You're just fixing  
6 the tire and rolling with the old one.

7 ROY AVERILL-MURRAY: Well, our rationale and  
8 makeup of the committee is to include those  
9 individuals but waive the committee towards the  
10 outside scientists so that we have, you know,  
11 nationally recognized scientists that do not have a  
12 vested interest in the --

13 BILL BETTERLEY: You've already appointed  
14 two of those that do have -- that might be approved  
15 by you, but certainly not the public -- don't approve  
16 them because we've heard them in front of this body  
17 before at Desert Hot Springs.

18 ROY AVERILL-MURRAY: We -- we chose to -- we  
19 did not want to have a science advisory committee  
20 that lacked desert, Mojave desert tortoise expertise  
21 and --

22 BILL BETTERLEY: No, but you have that today  
23 with ones that opinions are already made up and have  
24 no peer review whatsoever.

25 ROY AVERILL-MURRAY: And that's why we're --

76

1 that's why the majority of the committee is dominated  
2 by people with -- without a vested interest so that  
3 even within the committee and not just outside the  
4 committee, we hope to provide some influence and --

5 BILL BETTERLEY: Well, maybe this committee  
6 right here has more input than what those people do,  
7 but --

8 JIM BUGERA: Yeah.

9 BILL BETTERLEY: Personally, in my own  
10 personal opinions, I think you have the wrong ones on  
11 your --

12 JIM BUGERA: Right.

13 CHAIRMAN KEMPER: Jim Bugera.

14 JIM BUGERA: Jim Bugera.

15 You know, the people you have on this  
16 advisory committee you say are experts, yet we have  
17 11 years of failure. We have absolutely no useful  
18 information and this one person in particular who  
19 will not allow peer review will sit there politely  
20 for hours and listen to what every scientist and  
21 person in the world has to say and then do exactly  
22 what she's been doing for the last 11 years.

23 These are people who have already made up

24 their mind and they're of no use to us on an advisory  
25 committee and we will not accept any findings from

77

1 people who will not show us how they arrived at those  
2 findings.

3 ROY AVERILL-MURRAY: I respect that and I  
4 think that's a valid standpoint as far as research  
5 and that's what I've been reiterating over and over  
6 throughout my presentations, that we want to get the  
7 scientists in here and make it visible and apply it  
8 to adoptive management.

9 As far as the makeup of the -- the kind of  
10 makeup of the science advisory committee, I would  
11 just ask for a little patience in how we --

12 JIM BUGERA: Eleven years.

13 ROY AVERILL-MURRAY: No, I understand that,  
14 11 years, but this is a new approach and the  
15 issues --

16 JIM BUGERA: Same people.

17 ROY AVERILL-MURRAY: The issues that you're  
18 raising here, I mean, we didn't select these people  
19 blindly in ignorance of what you're bringing up,  
20 believe me. There's a method to our madness, so to  
21 speak, and we hope that we're able to use the  
22 committee to get this stuff out and -- and make more  
23 progress and if it's ineffective, then we're not  
24 committed to maintaining a committee that's not  
25 working, and so.

1 CHAIRMAN KEMPER: Let me say to you that I  
2 believe this entire counsel would be extremely  
3 appreciative in your efforts if they succeed in  
4 getting all the data that has been collected  
5 regarding the desert tortoise and its recovery  
6 released for peer review.

7 ROY AVERILL-MURRAY: I will, too.

8 CHAIRMAN KEMPER: Thank you, sir.

9 Okay. With that, I'm going to call a  
10 ten-minute break to give our reporter a little bit of  
11 a break. We do have some questions from the crowd  
12 and I will take those after the break.

13 (Recess.)

14 CHAIRMAN KEMPER: We're back on the record.

15 (Discussion open to the public.)

16 CHAIRMAN KEMPER: The first person I'm going  
17 to call upon handed in a slip, Jerry Hillier, who had  
18 some questions, I believe, and comments.

19 MR. HILLIER: Thank you, Mr. Chairman.

20 H-i-l-l-i-e-r.

21 I'm appearing today on behalf of QuadState  
22 County Government Coalition, an organization of the  
23 government for which I am the executive director, and  
24 I had both some comments, I hope I can get through  
25 them fairly quickly, recognizing the time frame and

1 not wanting to engage in a dialog, and, Roy, you  
2 really do have a tiger by the tail. I don't envy  
3 you.

4 One of the things that struck me in your  
5 presentation and this won't be very well organized  
6 because it kind of occurred as a stream of  
7 consciousness as presentation, but it sounds really  
8 like these recovery action plans are still  
9 fundamentally going to rely on the '94 recovery plan  
10 and that is a concern to me.

11 I don't look on the GAO report as an  
12 indication of the service and agencies. Two things I  
13 think that were very pointed in that is that they  
14 identified that about a hundred million dollars had  
15 been sent in ten years on tortoise and up to that  
16 time, December 2002, there hadn't been any showing  
17 that there had been any recovery at all.

18 We're now three years more down the road and  
19 I still don't think that there's much in the way of  
20 showing that anything has been recovered.

21 To move forward on recovery action plans,  
22 which seem to rely on the '94 plan without having a  
23 basis of what the efficacy of implementation has been  
24 to date seem to me a cart before the horse.

25 Four specific areas that come to mind:

1 First, Washington County and Utah and I'm speaking  
2 here and now of QuadState and drawing regional wide,  
3 that's one area that has been 100 percent  
4 implementation of the recovery plan.

5 Two years ago there was a disease outbreak,  
6 nobody studied it. The opportunity for ground level  
7 epidemiology work was there, though Nader told me  
8 yesterday that they budgeted some money, but somebody  
9 from Utah from the wildlife resources said it was  
10 too expensive and they ended up missing the  
11 opportunity, which was a sad thing. They're down  
12 about 45 percent in population and nobody knows why.  
13 They don't even know why the disease erupted.

14 Second, Clark County HCP and more life  
15 species conservation plan, nothing has been done  
16 there. I talked to Bill Gorman [PHONETIC]. His  
17 study for the DMG also opened up the door, "How much  
18 have you done over at Clark County?" They don't know  
19 or they had no data.

20 Here in California, in fact, right here in  
21 west Mojave it was presented yesterday in 1990, the  
22 sheep were taken out of category one and two  
23 habitats, which is basically the critical habitat  
24 north and west of Barstow.

25 To my knowledge, no one from BLM or anyone

81

1 else has ever gone back out on the land and

2 determined what changes in vegetation, what changes  
3 in habitat have occurred nor have they determined  
4 whether there has been any recovery of tortoises as a  
5 result of that action, which at the time generated  
6 jeopardy opinion. Sheep were gone. Did the  
7 tortoises come back or were their population stable?

8           A fourth area that also is here in the west  
9 Mojave, Ord-Rodman, a seemingly anomaly. All the  
10 data Roy had up on the screen and from also that is  
11 available is that Ord-Rodman is a relatively stable  
12 tortoise population and yet it has continuing  
13 livestock use within it and other kinds of human  
14 activity.

15           Why has that remained stable and other areas  
16 crashed? We don't know. We don't have a clue. So  
17 it seems to me there has to be some analysis of  
18 efficacy and there has to be some analysis of these  
19 existing plans and decisions so that we understand  
20 these anomalies before any of us as stakeholders can  
21 move forward to recommend recovery plan  
22 implementation actions.

23           Let's see, Roy, the MOG essentially failed.  
24 It was organized in 1988. It was composed of the  
25 agency heads who were high enough on the food chain

82

1 to make decisions, allocate resources. One of their  
2 primary reasons for being in their charter was to set  
3 and research priorities and determine whether that

4 was effective. The MOG has existed through the  
5 listing, through the cohabitat designation, through  
6 the recovery plan. And up until now, they failed.

7 How is your organization now that you're  
8 doing Desert Tortoise Recovery Office going to differ  
9 from the MOG? Because you and your boss, Bob  
10 Williams, don't even have the line management  
11 authority over the agencies to direct their funds to  
12 research.

13 You may want to answer that or may not or do  
14 you want me to get through and then respond in total?

15 ROY AVERILL-MURRAY: I'm already on the  
16 list.

17 MR. HILLIER: Maybe three questions were  
18 rhetorical, and you and I can discuss it. I'm just  
19 concerned there that you're organizing another  
20 bureaucracy when a bureaucracy that's already been in  
21 place since 1988, hasn't succeeded.

22 I'm also disturbed over the organization of  
23 the advisory committee. Judge Manson, in a March  
24 11th letter to the QuadState attorney, Stephen  
25 Quarrels [PHONETIC], committed to the stakeholders

83

1 that there would be stakeholder involvement in every  
2 step of this process and we now see the science  
3 advisory committee, which is going to play a very key  
4 and critical role in this entire solution over the  
5 coming months. And we, along with everybody else,

6 were completely left out of the process.

7           So it appears the service is moving on its  
8 own agenda without regard to what your assistant  
9 secretary of the interior committed to our  
10 organization two weeks ago. And that is a concern.

11           And one -- and a specific question, again  
12 related to stakeholders, I'm really confused from an  
13 operational standpoint what the work groups are going  
14 to do. You have a deadline of 4/15 to get input from  
15 your entire mailing list basically, on recovery  
16 action plan items.

17           At that point, how are you going to organize  
18 these work groups or are they going to just simply be  
19 all of your mailing list? Are they ever going to  
20 come together and evaluate and discuss this and if  
21 this input that's due April 15th is going to go to  
22 the agencies, what's their motivation not just to  
23 defend the status quo and their current programs as  
24 opposed to accepting any new proposals that may be on  
25 the table or generated by stakeholders, but that's

84

1 one question I think really you do need to answer is  
2 operationally, how are the work groups going to  
3 function when indeed the input is affronted.

4           CHAIRMAN KEMPER: Roy.

5           ROY AVERILL-MURRAY: Should I start with  
6 that one and work back?

7           MR. HILLIER: No, just do that one and I'll

8 go on with the list. That seemed to be a good break  
9 point.

10 ROY AVERILL-MURRAY: The work groups and the  
11 stakeholder involvement will begin with this input  
12 we've requested by April 15th. As I mentioned before  
13 as the letter states that the April 15th is not --  
14 first, it's not an ultimate deadline where it was  
15 intended although perhaps not as clearly expressed as  
16 I had hoped to be a target date that would get input  
17 flowing sooner rather than later into the process at  
18 the front end, but we do want to encourage people to  
19 contribute beyond April 15th. I mean we're not  
20 closing the mailbox at that date, so that's  
21 important.

22 As far as the, you know, beyond that, also,  
23 that's not the last opportunity and the last stage of  
24 stakeholder participation. The work -- the core work  
25 groups as, Jerry, you've mentioned in the past, in

85

1 order to be effective need to be composed of a  
2 relative small number of people just so we can get  
3 some progress and then bring that back to the table  
4 and have some direct interaction through  
5 correspondence and actual face-to-face meetings.

6 So we definitely plan on having that level  
7 of interaction with stakeholders as these things are  
8 developed from ground zero where we are now to the  
9 draft recovery action plans, draft revised -- as

10 those are integrated across the range into a draft  
11 revised recovery plan and so we're going to be  
12 meeting and corresponding on those things all along  
13 the way.

14 Let's see, you also asked about the --  
15 MR. HILLIER: The MOG.

16 Let me run through the list and then you can  
17 respond or not. They're treated as rhetorical. I  
18 want to get through this fairly quickly.

19 Another item in Judge Manson's letter to our  
20 organization besides the commitment to stakeholders  
21 was also a very strong statement relative to the fact  
22 that the service was no longer going to recognize the  
23 recovery units and the DWMAs that flowed from the  
24 recovery units that they hadn't been designated  
25 properly and that the service did not intend at this

86

1 point to spend money to do that, and yet your March  
2 16th letter, which, by the way, and for the record,  
3 our organization has yet to receive, but I have seen  
4 it, still continues to use the DWMAs and these 14  
5 replications from the six recovery units all across  
6 the desert and we remain concerned about that.

7 Going back to the MOG the research needs, I  
8 had an occasion a month ago to evaluate the  
9 recommendations of the recovery plan, I actually went  
10 back and dug it out. I found that virtually none of  
11 the research that had been called for in 1994 had

12 ever been initiated. Despite a lot of work, a lot of  
13 reporting that goes on in the desert tortoise counsel  
14 meetings, the fact of the matter is that researchers  
15 are opportunity oriented, they apply whatever  
16 interests them, the army, national science foundation  
17 and a variety of others, but there is really nothing  
18 on the table to really focus on the needs that were  
19 even identified in '94. And we're concerned there  
20 that you're again moving ahead with implementation  
21 without even doing the research that was called for  
22 11 years ago.

23 Last, I really believe that to address  
24 recovery and research without initiating an  
25 epidemiology study and I mean really a comprehensive

87

1 study. I've had an opportunity to talk to the  
2 veterinarians, microbiologists in Florida, recently  
3 the dean of Ag and Natural Resources school,  
4 University of Reno, all of them agreeing that the  
5 epidemiology information is absolutely essential to  
6 moving ahead with any kind of a program. And one of  
7 things that you had need to encourage whether it's  
8 from the science advisory committee or from the  
9 stakeholders is that we develop some strategy for  
10 intervention with the disease.

11 There seems to be a philosophy in the  
12 tortoise community that well, we've got the disease,  
13 isn't it terrible, now let it run its course and

14 we'll see what happens or we got the disease, it must  
15 be caused by people and cows and sheep, even by the  
16 center for biological diversity statement that 90  
17 percent of the livestock use on corus crapal  
18 [PHONETIC] habitat is now gone. And yet we still see  
19 disease outbreak like we did in Washington County  
20 there in the Red Cliffs reserve where the cattle had  
21 been gone hundred percent implementation, we still  
22 got a disease outbreak.

23 We missed an opportunity for understanding  
24 the epidemiology and we feel very strongly that this  
25 basic information needs to be done before we really

88

1 talk further about more implementation that -- that  
2 costs money and affects people's lives and affects  
3 the economy and affects local government's ability to  
4 maintain rodents and provide infrastructure. So  
5 that's just kind of a general comment and obviously  
6 would be in further communication, we will try to  
7 meet that April 15th deadline.

8 CHAIRMAN KEMPER: Roy, if you feel the need  
9 to respond, you can or not.

10 ROY AVERILL-MURRAY: I think there's a  
11 larger -- a question here that I can't address as far  
12 as the recovery planning process and relationship to  
13 the MOG and effectiveness monitoring. All of these  
14 things I think all are fundamentally related to the  
15 second issue and that's the fact that the hundred

16 million dollars or however much has been sent towards  
17 recovery programs, and we don't know where we are or  
18 we don't have anything to show for it as far as the  
19 tortoise being closer to being delisted.

20 That is the -- the basic reason that the  
21 Desert Tortoise Recovery Office exists now is to try  
22 to harness that and coordinate that more efficiently  
23 so that the money we are spending is being directed  
24 to some of that at least. Much of it is being  
25 directed towards effectiveness research.

89

1 So if we -- when management action is  
2 implemented, we know we're actually measuring the  
3 value of that and how well it's working or not. We  
4 hope by doing this we will be able to provide more  
5 specific guidance to the MOG so that the higher level  
6 managers have a dedicated voice towards recovery that  
7 will allow them to make those high level decisions  
8 especially with regard to funding and things like  
9 that, to keep making effective decisions based on  
10 effectiveness and a new, more coordinated recovery  
11 effort.

12 And that gets into the recovery planning  
13 process and the need for the effectiveness research  
14 to demonstrate what works and what doesn't work in  
15 planning.

16 Well, as Bill Boreman's report indicates,  
17 the studies just really aren't there to provide that

18 hard data that we need at this point and so the  
19 recovery plan, in revising the recovery plan, that's  
20 going to -- you'll see that as a very prominent  
21 component of the recovery action plans and the  
22 recovery plans or whatever recovery actions are  
23 recommended that there's specific guidance that this  
24 needs to be evaluated and the recovery office then  
25 will be doing everything it can to insure that that

90

1 is actually happening as in contrast to the '94 plan  
2 where the list of research recommendations were made  
3 and then, you know, everyone kind of went out and did  
4 their whatever research was in their heads or however  
5 loosely or not tied to those recovery actions.

6 And so that's where we, again, are intending  
7 to channel things more directly and so that this  
8 recovery plan revision is implemented and includes  
9 the effectiveness research very specifically so we  
10 can provide the recommendations to the MOG at a high  
11 level and lower local level with agencies.

12 CHAIRMAN KEMPER: Thank you, Roy.

13 Jim.

14 JIM BUGERA: Jim Bugera.

15 How about -- you know, every time I build a  
16 highway, I can build a \$98,000 job and it's going to  
17 cost me \$1,980,000 because about a million on every  
18 job is now going to desert tortoise protection out  
19 here in the desert. We haven't been able to build

20 our high school that was supposed to be built three  
21 years ago in California City due to the desert  
22 tortoise and the changing rules of what kind of fence  
23 that they want. And how about before you get  
24 started, the first thing you do is open up all these  
25 lands and get rid of all of these things that have

91

1 proven not to have helped preserve the tortoise.

2 We can take down our fences and put up a  
3 high school. We can knock a million dollars off of  
4 every single Caltrans job that goes up for desert  
5 tortoise. I had to pay a biologist \$84,000 for four  
6 months to sit on my job and just watch for tortoises.

7 How about we get rid of that? By the way,  
8 he's a contributor to this. How about we just do  
9 away with all of the closing down and fencing off all  
10 of this land and let the American people have their  
11 desert back until we get concrete evidence that we've  
12 done something to harm this tortoise?

13 ROY AVERILL-MURRAY: I think the answer to  
14 that is, is basically, it's the flip side of the coin  
15 as far as demonstrating the effectiveness of an  
16 action or a threat as we know certain things do kill  
17 tortoises, we don't know to what degree the impact is  
18 and I don't think implementing wide scale management  
19 actions without determining their effectiveness is  
20 the answer in removing everything and starting from  
21 scratch isn't necessarily the answer, either.

22 JIM BUGERA: It might be, let's find out.  
23 The beginning of your research is to say,  
24 okay, we've done this for 10 years. We've had these  
25 fences up and we've restricted growth and we've

92

1 restricted all of this. Let's take it down and see  
2 if anything happens. I mean it's the only new  
3 approach I've heard. We're just recycling the same  
4 old data and now you're building a new empire to do  
5 the same thing.

6 ROY AVERILL-MURRAY: One of the critical  
7 things in that everyone will see and how research  
8 progresses is evaluating the threats and looking at  
9 the -- how management and threats interact multiple  
10 threat and what is effective and what we can truly  
11 learn about what is effecting the tortoise and if  
12 something's not a big deal, then that's just as valid  
13 a component of adaptive management as applying  
14 restrictions as relieving restrictions where they're  
15 shown not to be necessary.

16 CHAIRMAN KEMPER: Thank you, Roy. I'm going  
17 to go ahead and close the comment period for the  
18 counsel. I'm going to let the folks from the  
19 audience -- so we can move on. We've still got quite  
20 a bit to do.

21 The one thing I'll assure you, Roy, and I've  
22 made this offer many times before, is as a livestock  
23 producer in the desert, any time you need help

24 raising tortoises, if I can raise cattle in the  
25 desert, I think I can raise tortoises.

93

1 JON McQUISTON: Mr. Chairman?

2 CHAIRMAN KEMPER: Yes.

3 JON McQUISTON: Just a request. I think  
4 there's only a couple of people that want further  
5 comment and we've already over extended our time on  
6 this by an hour -- an hour and a half. Just in  
7 consideration, perhaps allow them, they've been very  
8 patient.

9 CHAIRMAN KEMPER: Mr. Mathews.

10 MR. MATHEWS: Thank you, Mr. Chairman.

11 Dave Mathews, Ridgecrest.

12 I have one question, possibly three  
13 suggestions. I'll start with the suggestions first.

14 Number one, when we have a presentation like  
15 this with the PowerPoint, don't turn it off until all  
16 the questions have been asked because there may be  
17 reference that we need to go back and look at and see  
18 why maybe when I ask my question.

19 The one other comment is that during the  
20 presentation, all the maps that we saw were within  
21 California and the Mojave desert and I understand  
22 that's mainly what this group is interested in.

23 However, the turtle or the tortoise  
24 situation covers four states and I have seen very few  
25 maps that ever show the entire population of the

1 desert tortoise. Now, I know that there is some  
2 genetic differences in some of those populations, but  
3 it might be useful if at least to start with we see  
4 the whole area and maybe some of the changes or some  
5 of the differences that are occurring in those other  
6 areas. Maybe what we need to do is take the turtles  
7 out of the Mojave desert and put them in Colorado, I  
8 mean Utah or Arizona. Who knows.

9           The other suggestion is that as far as many  
10 particularly related to the disease of the tortoise,  
11 maybe it would be advisable if the agency came up  
12 with five -- ten million dollars and put it up as a  
13 prize for somebody who is qualified and they can  
14 determine the qualifications necessary, that comes up  
15 with a cure or a cause or whatever the cause is of  
16 this disease. I think they know what the cause is, a  
17 cure would probably be the thing.

18           Now, for my question on the first map I  
19 think in the presentation, you had the red, the green  
20 and the blue squares and you have had probabilities  
21 assigned to those. Where did those probabilities  
22 come from? I mean, you just didn't go out and say  
23 this is zero, this is high, this is low, this is  
24 medium. That must have been on some kind of data  
25 before.

1           ROY AVERILL-MURRAY: The -- those -- the  
2 maps I presented here were just two of a number of  
3 maps that were in the recovery plan assessment that  
4 were example analyses that did illustrate towards  
5 probabilities across -- from across the range.

6           So those were in a recovery plan assessment  
7 and as we continue in the future, you'll be seeing  
8 more of that kind of stuff on a large scale and not  
9 necessarily so focused on one particular area. The  
10 probability, the data that went into that were the  
11 transect data so the probabilities were determined by  
12 the overall results of finding tortoises on those  
13 transects and so it's -- there's spacial statistical  
14 analyses based on the transect data that determined  
15 the, you know, given the set of transects, your  
16 chances of finding a live tortoise --

17           MR. MATHEWS: Previous transects --

18           ROY AVERILL-MURRAY: -- of the data from  
19 2001.

20           CHAIRMAN KEMPER: Thank you, Roy.

21           Yes, sir.

22           MR. MATTHEWS: Of the --

23           CHAIRMAN KEMPER: Mr. Matthews, if you have  
24 a comment, you have to go to the mic, sir.

25           MR. MATTHEWS: I was just wondering if the

1 presentation is available on-line or do you have  
2 actually a hard copy of the presentation?

3 DORAN SANCHEZ: Roy has provided me a copy  
4 of it. I'll make it available to the counsel and  
5 anyone else once I get back to Moreno Valley.

6 CHAIRMAN KEMPER: Thank you, Doran Sanchez.  
7 Yes, sir, in the back, and I apologize. I  
8 don't remember your name from yesterday.

9 MR. BUDLONG: That's all right. I'll tell  
10 you what it is. Tom Budlong here.

11 Roy, the maps that you showed, the data that  
12 was on there stop at military boundaries. That's  
13 question one. Maybe you can say something about  
14 that.

15 Two is last summer -- this is related to  
16 last summer the north base of the weapons center put  
17 up 40 miles of what looked to me like tortoise proof  
18 fence and I'm wondering if you're aware of that and  
19 if you can comment on it.

20 ROY AVERILL-MURRAY: The transect data from  
21 the maps are based on the range-wide monitoring  
22 program, which in those cases it's primarily limited  
23 to the currently identified ACES or desert wild life  
24 management areas, it's a critical habitat more or  
25 less and so those transects -- that's where the

97

1 transects were targeted.

2 The fencing, I'm not -- I don't have a  
Page 91

3 specific knowledge of right now. There's a lot of  
4 things going on out there that are in the Mojave  
5 desert that I'm still trying to get caught up on.

6 MR. BUDLONG: I guess my question really  
7 was --

8 CHAIRMAN KEMPER: Tom, you'll need to come  
9 to the mic, sir.

10 MR. BUDLONG: I guess really my question is  
11 does the military cooperate with you and do you  
12 cooperate with them, you talk about range-wide  
13 analysis and the military owns a lot of range out  
14 there, that's really my question.

15 ROY AVERILL-MURRAY: Yes, we do cooperate  
16 with -- with military and some of the differences in  
17 transects and things like that are due to different  
18 missions of DOD lands compared to other multiple use  
19 lands, things like that. But the military is an  
20 important partner in this whole process and is  
21 involved in groups like DMG and in funding a lot of  
22 the monitoring work, you know, including transects  
23 and work outside of the their lands as well as work  
24 inside.

25 CHAIRMAN KEMPER: Thank you. Any more

98

1 comments or questions from the public?

2 Okay. Is Dick Crowe here? I'm sorry, Dick,  
3 I didn't see you there. Do you need to set up for  
4 your presentation or are you ready to go?

BLM - final

5 DICK CROWE: If Doran's ready, I'm ready.

6 CHAIRMAN KEMPER: Doran, are you ready?

7 DORAN SANCHEZ: Give me three.

8 CHAIRMAN KEMPER: We'll go off the record  
9 for three minutes.

10 (Brief Recess.)

11 CHAIRMAN KEMPER: If everybody will take  
12 their seats. We're back on the record.

13 PAUL SMITH: Okay. Shall I start this off,  
14 Ron?

15 CHAIRMAN KEMPER: Sure. Surprise Canyon.

16 PAUL SMITH: This comes from the Surprise  
17 Canyon technical review team and it might help if I  
18 sort of clarify what our presentation today is about.  
19 It's not about whether we're for or against a  
20 particular alternative that's disclosed in the  
21 environmental impact statement. Rather, what we're  
22 here to do today is to evaluate to the best that we  
23 can to what extent are we properly disclosing the  
24 various different alternatives, so you have to put it  
25 in your pocket, your decision as to what the best

99

1 alternative might be and instead, evaluate whether  
2 these alternatives that are going to be set forth  
3 properly disclose what the public and interested  
4 parties should see.

5 So it's going to be lead off Dick Crowe and  
6 Harry Lewellyn has some film and some slides or

7 whatever to show us to describe the canyon again.  
8 And then Harold Whiley [PHONETIC] and I will briefly  
9 discuss and tell you about what we learned when we  
10 walked up the canyon with personnel from Hector &  
11 Hector's office a little over a week ago.

12 So, Dick Crowe, you're on.

13 DICK CROWE: Thank you, Paul. Can you all  
14 hear?

15 This EIS for Surprise Canyon, let me recap a  
16 little bit, is to focus on two decisions. One is the  
17 designation of the route that was previously  
18 designated open in the mid 80s, but to reconsider  
19 that designation as opened, close or limited.

20 The other decision has to do with wild and  
21 scenic river suitability. It's basically a  
22 two-decision EIS, a very small piece of geography  
23 compared to the kind of normal planning that we had  
24 been doing for the last 10 or 15 years.

25 It's Surprise Canyon on the west side of the

100

1 Panamint mountains in Panamint Valley. The lower  
2 half of the canyon is managed by the Bureau of Land  
3 Management; the upper half of the canyon is managed  
4 by Death Valley National Park.

5 The road that is part there, part erased now  
6 due to flash floods and lack of maintenance and  
7 closure since 2001, originally served the mining boom  
8 town of Panamint City that has long since played out

9 130 years ago or so, so that's the setting.

10 The BLM started to kick this off with the  
11 park service with scoping public meetings, even the  
12 advisory counsel entertaining us a couple of years  
13 ago and since then, which included a field trip up a  
14 very small part of Surprise Canyon and since then  
15 we've -- staff had been writing on this impact  
16 statement. The writing is not done so we -- I'm not  
17 sure that it's appropriate to get into the normal  
18 kinds of discussions of data, data analysis,  
19 decisions and so forth. As Paul said, that's  
20 premature.

21 However, we are at a point that the array of  
22 alternatives that we should consider for public  
23 review is probably not as settled as we think it  
24 should be and before we continue the writing in the  
25 document, we probably need to revisit those

101

1 alternatives and make sure that it's going to present  
2 a -- an array of alternatives that the public would  
3 want to be considered in the draft.

4 Now, backing it up even further, I want to  
5 show you two videos, because most of you have not  
6 been in Surprise Canyon and haven't seen it, you  
7 might have seen snapshots, some of you are very  
8 intimate; most of you are not. If I'm prejudging  
9 that, I apologize.

10 We have a helicopter over flight, which I

11 will narrate, that takes you from, in the brevity of  
12 time from Chris Wicht Camp, which is at the end Inyo  
13 County maintained road, which is kind of a de facto  
14 trail, it starts there and goes all the way to  
15 Panamint City about five miles.

16 This will be followed by another video,  
17 which will be presented by a fellow behind me, Harry  
18 Lewellyn, which shows you what the nature and the  
19 passion of the rock crawling or the technical  
20 four-wheel drive, driving, if you will, up and down  
21 Surprise Canyon so that you can better picture just  
22 what that's all about. It's for the part of the  
23 informed decision-making, if you will. So with that,  
24 let me start the helicopter overview.

25 This is not the beginning of the project

102

1 area, but is the beginning of let's say the  
2 controversial part of the project area. As we spin  
3 around Chris Wicht Camp here you see the  
4 County-maintained road that's very prominent there  
5 that ends where those vehicles are parked next to  
6 those trees and that's the historical unpatented mill  
7 site claim called Chris Wicht Camp.

8 Chris Wicht lived there in the early 1900s.  
9 As we move up the canyon you'll see a stream of a  
10 ribbon of water that's a dark strip in there various  
11 riparian vegetations, mostly willows, a few cotton  
12 woods, a lot of rock, a lot of gravel sandbars, very

13 narrow canyon, very rocky, steep, and it gets  
14 narrower and narrower as we go up.

15           You can see the dark area again, that's  
16 water. This is what we walked before. We stopped  
17 walking a couple of years ago in December right  
18 there, right where the dark dike comes down to the  
19 bottom of the wash. That is also the beginning of  
20 the segment we call falls. The falls are very  
21 narrow, the road's completely washed out, it's  
22 totally in shade there and not very visible. Wait  
23 until the helicopter turns around, then you'll see it  
24 better.

25           That is the top of the falls, but we're

103

1 going to make another loop here and hopefully nobody  
2 is getting air sick.

3           Now you can see the falls section a little  
4 bit better; again, very, very narrow, hardly the  
5 width of a vehicle at the bottom, very rocky. It's a  
6 series of six or seven waterfalls that terminate in  
7 the gravel sandbars there. That originally was a  
8 ramped up road with a lot of fill and it blew out in  
9 1984, and has never been -- that material's never  
10 been replaced. This used to be two-wheel drive  
11 accessible, believe it or not.

12           The fall section is about a thousand feet.  
13 At the top of the falls there, it's back to a more  
14 stabilized stream, a little bit more open, there's a

15 very tall set of willows, actually willow trees, not  
16 willow shrubs with flowing water. You can see the  
17 road on the left. It's in varying degrees of side  
18 cutting and washing out. This is also a dry section  
19 again. It's intermittently wet and dry in this  
20 canyon. That's a lone willow tree there that just  
21 went out of view.

22 Now we're about to pick up an area of  
23 flowing water below what we call Lime Kiln Springs.  
24 Fairly solid willows. The road is probably the only  
25 evidence from the air by the absence, a thin absence

104

1 of willows. Roads on the left of the canyon, they  
2 are dry at this point in time. Out of the riparian,  
3 the roads ultimately in and out of the riparian.  
4 We're going to make another loop around Lime Kiln  
5 Springs here so Lime Kiln Springs above and below the  
6 spring water surfaces and there's quite array -- an  
7 area of riparian, the road is that thin ribbon to the  
8 left again right at the edge of the riparian. The  
9 shadow of the helicopter is right on the road over  
10 there.

11 It was a wagon road, a jeep road, at times a  
12 two-wheel drive, a four-wheel drive, and it's in  
13 varying degrees of condition from totally erased to  
14 fairly totally intact as well, as see you later.

15 This, again, is Lime Kiln Stream. Water  
16 emerges high on the mountain and flows down. It has

17 a lot of native grapevine and native hair fern in the  
18 grotto at the base of that vertical swatch of green  
19 there. The road is -- okay, now we're moving on  
20 again. Now we go through a mile of dry canyon, the  
21 road's on the left of the wash for the first half a  
22 mile and right in the center there it crosses to the  
23 south side of the canyon and on the south side of the  
24 wash. The road in here is still fairly intact,  
25 though. You roll a few rocks out of the way and

105

1 it's very drivable.

2           And we are just about on top of the BLM Park  
3 Service boundary. At this point right where the road  
4 disappears is where the boundary cuts across the  
5 canyon more or less at right angles to the canyon.  
6 So now we're on park service.

7           And we pick up water again. This is the  
8 outflow from what we call Brewer Springs. Again, the  
9 road is prominent mostly out of the riparian, but as  
10 the canyon narrows up just out of sight here the road  
11 and riparian merge along with flowing water. Brewer  
12 Springs, again, is on the park service. It's an  
13 enormous amount of water that comes out. I  
14 understand it's one of the highest production springs  
15 in the desert. I think it's a few hundred gallons a  
16 minute.

17           The road in there has probably disappeared  
18 into the riparian. In the days of driving, the road

19 tunneled through the riparian. They pruned on the  
20 sides and over the top.

21 From Brewer Springs all the way to Panamint  
22 City now the road is fairly obvious as a road fairly  
23 intact and Panamint City is just beginning to come  
24 into view way up ahead. That's a side canyon called  
25 Woodpecker Canyon. A road went up there for a mile;

106

1 I believe the park service has closed it.

2 We're beginning to pick up Panamint City.  
3 Panamint City is probably a mile, a mile and a half  
4 long stretched all up and down the canyon. You'll  
5 see it maybe not here on the film so much a few scars  
6 of spare roads, a few rock-building foundations, the  
7 green is Pinyon Juniper. You're biologically sort of  
8 out of the Mojave desert and into the great basin, if  
9 you will, or Bill Plesch might correct me if I'm  
10 incorrect there, but it's kind of an island in the  
11 higher parts of these mountains of great basin, sage  
12 brush and juniper trees.

13 The hey day of Panamint City was 1872,  
14 roughly to 1876 or -'7. The silver was very rich but  
15 very thin and it depleted very quickly, then  
16 everybody moved over to Darwin. This is a side  
17 canyon in Panamint City area called Sourdough Canyon;  
18 also, a lot of structures, foundations, as well as a  
19 cemetery that has about 52 graves. This is some  
20 elements of modern mining, modern that is 1970s and

21 80s; otherwise, most everything in the way of mining  
22 is historic back to the 1870s and some intermittent  
23 resurgence of mining exploration probably in 1890s,  
24 1920s, 1940s.

25 So there was a lot of wooden buildings right

107

1 down there in that flat that just disappeared.

2 So that's it. Before I get into the second  
3 video of while they're still fresh in your mind you  
4 might want to ask a question or two. I forgot to  
5 point that out it went so fast. Probably can't back  
6 that up, can you?

7 Right before the picture disappeared, if you  
8 were looking closely you saw kind of a spire. It's a  
9 red brick chimney that dates to that 1876 mill. It's  
10 one of three chimneys and it's still standing, it's  
11 about a hundred feet tall. That's really the single  
12 visual spectacular element what's left of Surprise --  
13 Panamint City when you get up to the city area.

14 CHAIRMAN KEMPER: That chimney was part of a  
15 smelting system.

16 DICK CROWE: Yes, Ron?

17 RON SCHILLER: I just want to know, you  
18 mentioned that the road was washed out in '84.  
19 Actually, it was washed out to two-wheel drive in  
20 '84, but it was passable by four-wheel drive up until  
21 '92. In '92, it washed out again making it require  
22 technical equipment to traverse.

23                   DICK CROWE: That's probably a good point.  
24 This has, as you can tell from the narrowness or  
25 might suspect and flash flood, it has a history of

108

1 road, non road, good road, no road, back and forth,  
2 and as you saw visually in the lower canyon below the  
3 falls and in the falls is completely erased. Above  
4 the falls it is intermittent depending on whether the  
5 water's flowing all year round or not.

6                   I might add to the flowing water the  
7 riparian in terms of probably the biological data or  
8 values and effects assessment that that's going to be  
9 a focus of impact analysis. You know, there's not a  
10 lot of repairing, there's not a lot of flowing water  
11 in the desert so that lower canyon biological issues,  
12 species and habitats, it is probably a focus of  
13 discussion.

14                   In the upper part of the canyon, mostly dry  
15 but not entirely and particularly in the Panamint  
16 City area, it's more of an historical cultural values  
17 and effects of analysis on that.

18                   CHAIRMAN KEMPER: Are we waiting for the  
19 other film?

20                   DICK CROWE: Are you ready to go? Okay.  
21 Well, let me -- yes, go ahead and let me introduce  
22 Harry Lewellyn. Harry is representing the fellow  
23 that took the film that you're about to see, but he  
24 can't be here so Harry's his second.

25 (Harry Lewellyn's video presentation.)

109

1 HARRY LEWELLYN: Thank you, Dick.

2 Let me go ahead and start the film and let  
3 me give you a brief instruction on myself. Since  
4 about 1984, my business has revolved around using  
5 four-wheel drive vehicles. I own eco4wd. We lead  
6 tours. I've lectured at 31 different colleges  
7 throughout southern California.

8 I had a contract from the state of  
9 California to map the entire state's off highway  
10 vehicle system and produce a book, the California OHV  
11 guidebook and Rick asked me to substitute for him at  
12 the last minute so I'm coming in half cold on this.

13 I've seen the video. Our intent here is to  
14 I think show you that there is a -- a technical and a  
15 hobby aspect of this sport. This has even gone  
16 beyond when this film was made to where there are now  
17 professional rock crawling championships where people  
18 get a chance to show what these vehicles can do.  
19 It's kind of like different strokes for different  
20 folks. If you have to ask, you probably won't accept  
21 the answer is the way I look at it.

22 Let me tell you a little story. I worked at  
23 the Anza-Borrego Desert State Park for 12 years as a  
24 docent. And on one occasion, I had an opportunity to  
25 take some Ford dealer owners out. I could show them

1 things like agavee [phonetic] roasting pits, bed rock  
2 mortars, rock circles, pretty sensitive, neat stuff.

3 At the end of the day, one lady said, "What's the  
4 point?" Now that's really hard for me to conceive.

5           The same goes for this kind of activity.

6 What these guys have done is construct vehicles that  
7 are very technically capable, they have a lot of  
8 modifications to them to achieve this kind of thing,  
9 you don't do this in a stock vehicle and, I think I  
10 have two bragging rights: One, I've been up this  
11 canyon in a Volkswagon bus in the early 70s, and the  
12 other one is I call it my chest thumping bragging  
13 rights where it was on this video or portions of this  
14 video where Rick Rustle helped me and I had a tour of  
15 ten vehicles, the way I describe it, I'm an engineer,  
16 numbers describe it. Ten vehicles, eight hours, 200  
17 yards. Well, that's the thousand feet Dick was  
18 talking about. And you say why? It's kind of a  
19 personal achievement thing. I don't know how to  
20 bring that into perspective unless I could go through  
21 each one of you and look at your hobbies.

22           I divide the world into two camps with  
23 regard to hobbies and activities like this. One of  
24 them is the camp of where it's a means to an end, and  
25 the other is it's an end itself. These guys are in

1 the end-itself mode. I can say I did it. It's not  
2 my bag. I lead history flora fauna geology-type  
3 tours. We use four-wheel drives to lessen the impact  
4 on the areas we travel and not necessarily have to  
5 have them to get there. These vehicles, like I say,  
6 are very tricked out. These guys are challenging  
7 their equipment, their skills of sensitivity like is  
8 this vehicle really going to roll, do I continue?

9           The process, which I missed the start of, is  
10 that you basically get one vehicle nailed into the  
11 mountain somehow. They've used existing core holes  
12 or put wedges between rocks and use protection  
13 devices and that vehicle goes up and it's a daisy  
14 chain from there where the vehicle behind hooks onto  
15 the vehicle ahead, so on it goes back.

16           The equipment varies. It's usually -- if I  
17 said Jeep, you would get a picture of a seven barred  
18 military Jeep that has generated into the vehicles  
19 you see now, but it varies from that type of vehicle  
20 to pick-up truck and even some SUVs get up there.

21           When I did it, it was about I think 1994,  
22 and haven't been up since then, but I can tell you  
23 it's an enjoyable area, it would be of great value to  
24 us to be able to give you a tour and show you this  
25 hundred foot smelting stack and the essence of

1 civilization back in 1870.

2           That's about the end of the video. I'm open  
3 to questions and happy to entertain those.

4           DR. WILLIAM PRESCH: I have a question. The  
5 video shows you going up. What about coming down,  
6 are they the same kind of --

7           HARRY LEWELLYN: That's a very good  
8 question, and it's the same thing. Basically, you've  
9 got a vehicle tethering the vehicle that's going down  
10 and so on that daisy chain goes until you get to the  
11 point where the last vehicle has to use the attach  
12 points that he was using to get up. And sometimes  
13 they'll even experiment. It's not a matter of  
14 driving these things, it's a matter of using your  
15 skill and deciding whether you're going to drive it  
16 or whether you're going to use a tethered method with  
17 a winch.

18           So you are literally winching vehicles down  
19 so everyone's pointed forward and you can picture  
20 that the guy behind has winch control speed and so on  
21 for the vehicle that's going down. They do  
22 experiment with it. Rick does in his video have one  
23 scene of where he did a pretty steep fall and hit the  
24 bottom, and you can see where the vehicle, if I'm  
25 coming down this way, it looked like it was going to

113

1 go rear end over front end, but he had the skill and  
2 sense developed with time where he pulled the power

3 around a little bit, pulled the front wheels out,  
4 kept the back from going over the front, so that's  
5 how you do it.

6 Any other questions?

7 Yes, Paul.

8 PAUL SMITH: Harry, that's an impressive  
9 performance. Two things which I know would be of  
10 import, one thing is the preliminary environmental  
11 impact statement has some blank spaces in it and one  
12 of them has to do with noise and questions have  
13 arisen as to when these vehicles go into these  
14 canyons, how long does the noise last? In other  
15 words, so you're leaving Chris Wicht, how long does  
16 it take you to get to the top of the falls, for  
17 example.

18 HARRY LEWELLYN: The top of the falls,  
19 that's what I call eight hours for ten vehicles.  
20 With regard to noise, what's missing and Rick did  
21 have some music over the other, we didn't have the  
22 music on it, but what's surprising, I give a tour  
23 called lunch in Lucern where we go out into the high  
24 desert area here.

25 We start in Lucern Valley, we immediately go

114

1 to Means Dry Lake and we look at the World War II  
2 practice bomb craters, and then we go on up to the  
3 Hammers. These are infamously beyond Super Bowl  
4 quality four-wheeling, not quite at this level, but

5 pretty darn close, and I take my yup mobiles is what  
6 I'm quite frankly leading tours, totally stocked SUVs  
7 and so on.

8           We park and we walk and one of the first  
9 things I start describing is notice the finesse and  
10 lack of noise. These guys are not out to impress you  
11 with a Nascar quality of sound and baaroom. These  
12 guys are out to get from one little point to another,  
13 and you'll find there's just a high degree of  
14 mufflers used, it's not a noise thing, and a lot of  
15 finesse, you don't see a lot of wheel spinning, you  
16 don't see a lot of rock throwing, you see a lot of  
17 skill and finesse that goes into this, you just  
18 finesse your way quietly over it.

19           PAUL SMITH: The second question, one of the  
20 off-road vehicle books that I looked at describe this  
21 challenge again and it said something to the effect  
22 of if you're going to do this, be sure to bring along  
23 a complete set of spare parts including an axle and a  
24 skilled person in repairing vehicles, which has  
25 raised a lot of questions, namely to what extent from

115

1 your experience and you might tell us how many items  
2 you've gone up there also that might help. To what  
3 extent do you see leakage of various different things  
4 ranging from break fluid, which I think has a lesser  
5 impact to motor oil to gasoline to hydraulic fluid,  
6 comment on those things?

7 HARRY LEWELLYN: I've made one trip up there  
8 with regard to this level of trip. I can't tell you  
9 how many times I've done it prior to that in  
10 literally two-wheel drive.

11 Breakages occur. You can look at the  
12 severity of what they're doing and you know things  
13 are going to break. Typically, what happens is a  
14 break is not environmentally impactful. In other  
15 words, you break an axle, you don't break an axle  
16 housing so the housing -- so the housing still  
17 contains all the fluids and so on.

18 The brakes can fail, but very seldom is it  
19 the hydraulic portion of the brakes, it's the  
20 mechanical portion of the brakes. Honestly, on the  
21 trip that I had, we had one vehicle that went over a  
22 rock and put a hole in the gas tank. I want to say  
23 scuffed the gas tank. It put a hole in the gas tank.  
24 We immediately went about and have the means to  
25 immediately fix that.

116

1 One, he was pulled off to the side of the  
2 trail; two, somebody got under there with a rag and  
3 now there are epoxys available, for example, that can  
4 be applied to a hole in a wet gas tank and achieve a  
5 fix like you wouldn't believe, and that's true of a  
6 lot of the things that would begin to inhibit or  
7 degrade or damage the environment.

8 So these guys are thinking about those

9 things. It's not like they're going in blind and  
10 they actually need these fluids. They'll carry lots  
11 of spare parts, but, for example, one of the tricks,  
12 you break an axle, you may have to take the third  
13 member out of the differential or take the third  
14 member out of the axle housing, and what they'll do  
15 is they collect the oil because they don't carry oil,  
16 they may carry parts, but they don't necessarily  
17 carry all the oils they need, so they will collect it  
18 in a plastic bag, and as silly as it sounds, when  
19 they're reassembling it, they'll put the plastic bag  
20 back in. It's like the plastic bag never has to be  
21 put into a container and then pumped back in.  
22 They'll put the plastic bag containing oil back into  
23 the differential, bolt the thing up and just the  
24 process of running breaks the bag and puts the oil  
25 back into circulation and doesn't hurt the system

117

1 whatsoever. So they've got lots of trick ways to  
2 handle the environmental impact of what's going on.  
3 Is it perfect? No, but do they take it into  
4 consideration? Yes.

5 CHAIRMAN KEMPER: Thank you.

6 HARRY LEWELLYN: Thank you.

7 PAUL SMITH: We'll sort of conclude the  
8 morning session on this. We'll come back this  
9 afternoon with some discussion as to the different  
10 alternatives.

11 Carol Wiley and I were able to go up in the  
12 canyon about a week and a half ago and I thought I'd  
13 just share a couple of things we observed.

14 One, we had great help from Hector's staff.  
15 Hector's was with us as well as Jeff Aardahl from his  
16 office, Marty Dickey, who's the recreational  
17 wilderness person for Hector's office, and Sherry  
18 Ellis is a biologist, and they were -- it was very  
19 helpful to have that sort of technical expertise with  
20 us.

21 The first thing they pointed out and you  
22 want to bear this in mind is once you leave Chris  
23 Wicht, you've got wilderness on each side of the  
24 Cherry Stem Road. And the Cherry Stem Road, the  
25 legal right of way for it is like 60 feet wide so you

118

1 look to the center line and it was measured back in  
2 1994, from the center line of the road at that time  
3 so it would be 30 feet on each side. So that's a  
4 pretty tight quarters for the road, particularly what  
5 we observed we had been up there with the DAC several  
6 years ago, and between Chris Wicht Camp and the base  
7 of the falls we did not recognize that area, it had  
8 changed so much primarily due to these last winter  
9 storms that it was hard to tell where the old route  
10 was.

11 And what that means is that there was a lot  
12 of meandering and changing of course that goes on

13 with the water through this area, Dick Crowe's  
14 comments on that, so you have to take that into  
15 account when you look at a very narrow strip of land  
16 60 feet wide in which the road goes.

17           The other thing we noticed, you saw Panamint  
18 daisy plants, they were very high up off the canyon  
19 floor. From our standpoint, it would look like that  
20 they weren't at risk and the biologist seemed to  
21 confirm that the Panamint daisies weren't occurring  
22 down at the bottom. There were many places where the  
23 road was actually in the stream and you were driving  
24 up the stream. Above the falls it was an area of at  
25 least a half a mile long where the only place to walk

119

1 and proceed up the canyon was in the stream, so  
2 stream and the roadway were in exactly the same  
3 places.

4           We had wet tennis shoes from just outside of  
5 Chris Wicht camp all the way up to Lime Kiln Springs,  
6 which is where we stopped. We had a chance to see  
7 the proposed -- under one of the proposals, we had a  
8 chance to see a parking, camping turn-around areas  
9 under one of the proposals.

10           Since we went up, it's our view that since  
11 we went up several years ago, there's actually a  
12 formation of a small new waterfall between Chris  
13 Wicht and the base of the falls, which right now  
14 would have an elevation of six feet, five or six feet

15 and would be very challenging I think to Harry.

16           The information that we got from the  
17 scientists who were with us is that based upon  
18 studies that had been in connection with the  
19 preparation of the EIS, the invertebrate species  
20 within the water are very healthy, it's a very  
21 healthy invertebrate. Those are the bottom of the  
22 food chain, the whole biota that goes on there.

23           And then they also pointed out that these  
24 trails, when vehicles are going up and down these  
25 trails they tend to straighten out the stream channel

120

1 and that will be mentioned and dealt with extensively  
2 in the environmental impact statement, you'll see  
3 that when that is really ready for dissemination.

4           That has its own biological and geological  
5 impacts. It causes a greater runoff, a greater speed  
6 of the flow and also has a greater impact on the  
7 invertebrate populations which works its way up the  
8 food chain. It was absolutely, breathtakingly  
9 beautiful when we went up there and I'm sure that it  
10 will always be a beautiful area.

11           Does anyone have any questions on our field  
12 trip that Carol and I -- I should turn this over,  
13 Carole, do you have anything to add to that?

14           CAROLE ANNE WILEY: Just one thing, that  
15 there's a difference in what's described as the road  
16 on the lower portion than what we actually saw, I

17 guess, due to the water this past year. There was  
18 like very little evidence of any kind of road left to  
19 almost Lime Kiln and the stream. You could see where  
20 the stream has changed numerous times, the course has  
21 moved from one side to the other, the middle and  
22 back. It's been changed recently, I think, in the  
23 last probably year due to the weather.

24 CHAIRMAN KEMPER: Paul, I have a question or  
25 concern. You had several members on your TRT. Did

121

1 everybody have an opportunity to participate in the  
2 field trip or did they decide not to?

3 PAUL SMITH: It was just different  
4 scheduling problems. I'm not sure why Lorelei  
5 couldn't make it.

6 LORELEI OVIATT: County business. It was on  
7 a Monday during the day, so I was not able to make  
8 it. I'm not sure that Ron knew about it.

9 RON SCHILLER: I didn't know about it.

10 LORELEI OVIATT: So I think there was some  
11 coordination issue. Sorry, Lorelei Oviatt.

12 PAUL SMITH: So what we'll do is this  
13 afternoon we'll discuss, then, the various different  
14 alternatives that are proposed in the environmental  
15 impact statement, the draft of it now, and I think  
16 our task here will be to provide advice to the BLM as  
17 to whether we think that this range of alternatives  
18 is the proper range of alternatives to show. It

19 doesn't indicate that you're for or against any  
20 particular alternative, so we'll probably stress that  
21 here.

22 CHAIRMAN KEMPER: Okay. Any comment from  
23 the counsel or questions?

24 HOWARD BROWN: You said that the  
25 invertebrates were healthy. That's what, mosquitoes

122

1 and flies or what?

2 PAUL SMITH: That would be a very minute  
3 species that don't really have a -- they're  
4 invertebrates. It would include the insects you're  
5 talking about.

6 HOWARD BROWN: How could you tell they were  
7 healthy?

8 PAUL SMITH: I couldn't, apparently. The  
9 scientists -- apparently there's been some studies.  
10 Maybe Dick Crowe can answer that.

11 DICK CROWE: The bulk of the discussion of  
12 invertebrates has to do with those that live in the  
13 water, you know, the kind of things that fish feed on  
14 and frogs feed on and so forth. We weren't so much  
15 talking about butterflies and things flying around in  
16 the air. As to the array of invertebrates there and  
17 their health, we have a study that was conducted a  
18 couple of years ago and we have a report on it so  
19 it's just like an inventory, a survey, and the  
20 expert, not to be flip or short here, but I think he

21 knows a healthy system when he sees it and we have a  
22 report on to the degree that the system is healthy.

23 To provide additional perspective, if you  
24 recall the canyon was closed in July of 2001, or May.

25 LORELEI OVIATT: May.

123

1 DICK CROWE: May of 2001, and so it's had  
2 several seasons of natural flowing other than foot  
3 traffic to become pretty natural like. So it's a  
4 good -- it's a good, healthy system; in fact, it's  
5 recovered quite quickly or it's changed quite quickly  
6 since the closure went into effect.

7 HOWARD BROWN: But was it healthy before the  
8 closure?

9 DICK CROWE: That's a good question.

10 HOWARD BROWN: Because you mentioned  
11 recovering implying that it wasn't healthy before.

12 DICK CROWE: Let me say this, to the degree  
13 that it might have been different -- I can't even say  
14 that. We don't know. We don't have a pre-closure --  
15 we don't have the same pre-closure survey of the  
16 invertebrates. We do have pre-closure survey of  
17 amphibians, reptiles and on up that go back years and  
18 years.

19 Bill?

20 DR. WILLIAM PRESCH: In 1976, when I went up  
21 that canyon there was actually crayfish in that  
22 stream? Is there still some now, I guess not,

23 obviousl y.

24 DICK CROWE: I don't recall that being in  
25 there. You know your crayfish, so that's new to me.

124

1 DR. WILLIAM PRESCH: That's a long time ago.

2 CHAIRMAN KEMPER: Doran, would you please  
3 remind the counsel members to state their name before  
4 thier comment to help the reporter.

5 Ron.

6 RON SCHILLER: Ron Schiller. Actually, I  
7 have kind of a two- or three-part question.

8 First, how many of the species in this  
9 canyon are listed? My second, how do you measure the  
10 health? When you say this is healthy now?

11 And third, what's unique about this canyon  
12 that's not -- that's not included in Hall, Jail,  
13 Tubor or any other canyons that are recently closed?  
14 What is unique about this canyon that's not  
15 represented in these already preclosed canyons?

16 DICK CROWE: We do have an element of this  
17 document that we'll look at although not to the same  
18 degree, but we'll look at the nature of those other  
19 canyons, riparian water, they will probably speculate  
20 to what extent those canyons are similar or different  
21 than Surprise.

22 And when I say speculate, we don't have, and  
23 we're not putting in the same level of walking up and  
24 down and inventorying and so forth in those canyons

25 that we are in Surprise, although we do have

125

1 inventory of various critters from years past, but we  
2 are trying to basically, what my point is we are  
3 trying to put Surprise in perspective with those  
4 canyons on the nature of the different aspects of  
5 biota.

6 The first part of your question was --

7 RON SCHILLER: Listed species.

8 DICK CROWE: There are some species of birds  
9 that have been sighted in the area, but -- and I'm  
10 not sure if I'm going to articulate this right, so  
11 far, we don't know that they are resident in terms of  
12 all year round or all year around presence nesting in  
13 particular. Birds on fly away tend to drop in  
14 because the water and the riparian and stay, fatten  
15 up and then move on. So we have the southwest willow  
16 flycatcher, Least Bell's Vireo, and there's been  
17 recent sightings of the Inyo brown towhee, but  
18 they -- which are listed. But we, so far all we know  
19 is that they tend to be there for some period of  
20 time, but there's no observed nesting.

21 RON SCHILLER: Right. It's not part of  
22 their critical habitat as according to plan, recovery  
23 plan.

24 DICK CROWE: Critical habitat is probably a  
25 technical term under the endangered species act so

126

1 there is no critical habitat designated for anything  
2 in the canyon.

3           RON SCHILLER: How do you measure the health  
4 of the canyon as compared to what it previously,  
5 what's quantifiable to make the statement the health  
6 is improving.

7           DICK CROWE: We are looking at past bird  
8 surveys, surveys that go back to the development of  
9 the desert plan. We have the recent invertebrate  
10 survey just mentioned, we have the big horn sheep  
11 counts in the Panamints. We have mapped the area of  
12 the different plant communities that are in proximity  
13 to the road particularly riparian, and I don't know  
14 for want of a better word, observation of biologist.  
15 We have water quality readings.

16           I think all that together gives us at least  
17 more than a good enough or minimal enough assessment  
18 on which to base a decision on. And Bill, I saw him  
19 nodding and this and that. Maybe you'd like to chime  
20 in --

21           DR. WILLIAM PRESCH: I was going to say, I  
22 don't work on aquatic systems, but there is a series  
23 of criteria that a real aquatic biologist who's  
24 familiar with fresh water streams and rivers looks  
25 for based on a long history in the literature of what

1 a healthy river or stream contains. And so you kind  
2 of take that as a guideline and generalization and if  
3 an individual is well trained and knows -- has lot of  
4 experience with this, they can go into a stream or  
5 wet lands area and they can look at it and they look  
6 for particular species both within the water and  
7 along the water course and outside the water and if  
8 they see those, then they generally have some opinion  
9 as to the health of the stream.

10 So this is a technique that has been  
11 developed over the years more so in the east,  
12 obviously, than the west, but it gives you a  
13 guideline, and if you're missing some of these  
14 particularly species, then it's a -- whether they're  
15 a plant or animal, then that's kind of an indication  
16 that there might be something going on so you might  
17 want to take a closer look and it might not be quite  
18 as healthy.

19 It is, but admittedly, somewhat of a  
20 subjective view, but with a well experienced  
21 individual who knows what he's talking about, it's  
22 probably something you can rely on it. I would rely  
23 on it, but I'm a biologist, so I may be biased.

24 CHAIRMAN KEMPER: Bill Betterley.

25 BILL BETTERLEY: This study that you're

2 60-foot strip?

3 DICK CROWE: Well, the decision applies to  
4 the road; open, close or limit on that road, so  
5 that's --

6 BILL BETTERLEY: Why are we looking at the  
7 birds up on the hill?

8 DICK CROWE: We are looking at the birds  
9 mostly down at the bottom of the canyon as well as  
10 other species. The further you go up the side of the  
11 hill we tend to look less at what's there and less as  
12 a wide ranging mobile species like big horn sheep,  
13 for instance, but some plants, particularly rare  
14 plants that tend not to be on the bottom of the  
15 canyon, they're not part of a -- the focus area.  
16 We're trying to limit it just to what would be  
17 effected.

18 CHAIRMAN KEMPER: Dave?

19 DAVID CHARLTON: I have two quick questions.  
20 One of them is should any discussion involving the  
21 alligator lizard, and the second one is,  
22 approximately how many trips a year would be  
23 involved?

24 DICK CROWE: The alligator lizard is one of  
25 the special status species being considered. In

129

1 fact, there are several plants as well as several  
2 animal species. That's one of them.

3 The array of alternatives, I don't know if  
Page 121

4 we are getting ahead of ourselves a little bit, but  
5 one would be most of them are fairly obvious, and one  
6 alternative at least there would be close route.  
7 Another one would be open route.

8           Where we get a little complicated and maybe  
9 where the analysis will be interesting to see is  
10 limited route designation where you might have  
11 vehicles in there seasonally and right now the  
12 proposal is that during the spring hatching, nesting,  
13 lambing period of the time, the limited alternative  
14 right now is designed not have vehicles in there and  
15 they would be there in the fall through the late  
16 winter or early spring.

17           Now, so then the question would be comparing  
18 open route all year round and limited route seasonal,  
19 what does that do or not do for those biological  
20 parameters?

21           CHAIRMAN KEMPER: Ron Schiller.

22           RON SCHILLER: Continuing on my previous  
23 question, I'm curious to know what you use as a  
24 standard or a base to evaluate the impact on the  
25 health of the canyon that vehicles may or may not

130

1 have?

2           In other words, you don't have any baseline  
3 information from before other than I am aware of one  
4 water quality study that was done during a -- an  
5 organized division. Other than that, what do you use

6 as a standard baseline to determine the vehicle use  
7 on the -- on the health and what degree it's  
8 effected.

9           DICK CROWE: To some degree, I'm probably  
10 not going to be able to answer your question. We do  
11 think we know pretty much what's there and what the  
12 quality of the different values are or the integrity  
13 of those values. As to the effect, and that varies  
14 from alternative to alternative. There's going to be  
15 a lot of citations brought in from research papers,  
16 there's going to be the judgment of the people  
17 writing the document and then the whole process of  
18 the flow of this document is going to bring in fish  
19 and game, the county, the park, the counsel, the  
20 public and they're all going to weigh in on did we --  
21 have we defined the standards and have we defined the  
22 analysis or done the analysis correctly, have we  
23 missed some point.

24           But by knowing what's there and the judgment  
25 as to what the effect the vehicles would have, we're

131

1 going to come up with a list of things that -- that  
2 vehicle use would do to move the integrity of those  
3 systems away from totally natural. Now that's only  
4 part of the analysis.

5           Then the next part of this is the so what  
6 question. So what if it's, say, 10 percent altered  
7 or 75 percent altered, what does that mean? The

8 bottom line is we want to maintain the ecological  
9 integrity of the canyon. What degree of preservation  
10 or simply conservation in terms of -- well, in other  
11 words how far can we set that back periodically and  
12 still maintain that integrity, that's really the  
13 sixty-four-thousand-dollar question.

14 CHAIRMAN KEMPER: William.

15 DR. WILLIAM PRESCH: Presch, Bill Presch.  
16 You have two different agencies. BLM at the bottom  
17 and BLS at the top.

18 Is the EIS that's going to come out be a  
19 cooperative single document that the park is going to  
20 buy into the possible alternatives and will accept a  
21 particular I would prefer alternative and is there a  
22 possibility that BLM may have a different preferred  
23 alternative in the plan and that in the final  
24 analysis, part of the canyon's going to be one way  
25 and the other part including Panamint City is going

132

1 to be in a different kind of jurisdiction or is there  
2 going to be an agreement that this whole area is  
3 going to be one unit?

4 DICK CROWE: Linda's going to weigh in on  
5 some of this. Right now, this is a jointly developed  
6 document. In other words, where each agency, the BLM  
7 park services are coauthoring the EIS and so far it's  
8 been totally integrated in terms of scoping the data  
9 collection analysis. Some staff in Death Valley are

10 handling certain topics like hydrology and cultural ,  
11 for instance, and another staff in Ridgecrest office  
12 primarily are handling the other usual suspects, if  
13 you will.

14 To some degree, staff of like kinds,  
15 particularly wild life and plants have gotten  
16 together from both agencies and hammered out some  
17 things. And the alternatives development so far has  
18 been joint. One of the alternatives in there right  
19 now is a, let's say, agree or disagree kind of  
20 alternative where vehicle use would be in the BLM  
21 portion, in the lower portion, but not in the upper  
22 portion on the park. That is not necessarily arrived  
23 at simply because we want something they don't. It  
24 had to do with other things, but it just kind of fell  
25 out that way.

133

1 What happens in defining a preferred, let  
2 alone a decision, I'll let Linda -- unless Linda  
3 doesn't want to --

4 LINDA HANSEN: Linda Hansen.

5 Well, Dick is right and we have developed  
6 this as a joint document. Park service and BLM are  
7 cooperators in the EIS at this point in time. The  
8 park would use this document as a basis for decisions  
9 and it would become a decision that would be part of  
10 their plan for the overall park as this would become,  
11 you know, part of our overall desert plan.

12           That doesn't necessarily mean that we can't  
13 have different levels of decision made -- decisions  
14 made through one EIS. And when we started this  
15 document, decided to make it a joint document, talked  
16 about what it would mean, you know, to BLM and the  
17 park service because the canyon is one continuous  
18 canyon, and in much of the desire of the people to go  
19 up the canyon was to actually reach the park to get  
20 to Panamint City, which is now under the park's  
21 jurisdiction and it made sense to look at it that  
22 way, but the outcome can be a split decision, if you  
23 will. Our agency can make a decision based on the  
24 document. Park can make their decision based on the  
25 document and it may not be totally cohesive or

134

1 compatible. But we're hoping that it can be because  
2 we're looking at the system as a holistic kind of  
3 system. So -- but it can be two separate decisions  
4 in the end, if it has to be.

5           CHAIRMAN KEMPER: Roy Denner.

6           ROY DENNER: I have to get my two cents  
7 worth in on this one.

8           I see us spending another million dollars  
9 for an EIS to make sure that we concern ourselves  
10 about the eco-integrity of this canyon in that we're  
11 going to have biological studies and we're going to  
12 compare all these alternatives and we're going to  
13 have all these open forums and meetings, and at some

14 point in time we're going to come up with a decision  
15 or plan to regulate what happens in this canyon? And  
16 then within the next five years Mother Nature is  
17 going to decide to come along with a giant rain storm  
18 and is going to have -- we're going to have a flash  
19 flood down that canyon that's going to wipe out all  
20 of the ecological integrity that we see there now and  
21 Mother Nature may even decide to reconfigure that  
22 canyon so Harry can drive his Volkswagon bus up there  
23 again and we're going to have it closed to protect  
24 all of those ecological resources. Something's wrong  
25 here.

135

1 CHAIRMAN KEMPER: Ron Schiller.

2 RON SCHILLER: Just one last brief question.  
3 Listening to the discussion about the joint  
4 management plan, I assume there must be some  
5 memorandum of understanding signed between the two  
6 agencies.

7 DICK CROWE: There is.

8 RON SCHILLER: There is? Thank you.

9 DICK CROWE: And I guess I owe you an  
10 apology for you not getting a copy of what the other  
11 TRT team members got, but I distinctly remember  
12 putting your name on an envelope.

13 RON SCHILLER: I got a copy, but I didn't  
14 get it until after the fact.

15 DICK CROWE: Well, I apologize for that. I

16 should also maybe offer that since Hector's here and  
17 a lot of his staff was on that field trip and are  
18 writing on this, you might want to chime in or answer  
19 something. I don't want to hog the show here.

20 CHAIRMAN KEMPER: I'm sorry. Bill?

21 DR. WILLIAM PRESCH: I just wanted to ask  
22 Harry how many of those technical trips go up that  
23 canyon in a year, let's say?

24 HARRY LEWELLYN: Very simple answer. I  
25 don't know. It tends not to be something like the

136

1 Rubicon where you have a daisy chain of vehicles  
2 never ending. It is so technical and needs so much  
3 experience that I -- I think I have a lot of  
4 experience. My parents homesteaded property up here  
5 in 1952. I've been out in the back country a lot and  
6 four-wheel drive was a way of life.

7 It wasn't a fun thing, a hobby. And I chose  
8 not to do it on my own. I chose to get somebody to  
9 guide us that had the experience with it. I think  
10 that would be the case of most people that there  
11 would be an element of one person's experience being  
12 experienced to lead another group of people up there.  
13 And even when you go to the Hammers in Johnson  
14 Valley, you'll find that there's always somebody that  
15 has some experience with the trails so it's not like  
16 people take on the rubicon on their own.

17 So I can't answer your question. My belief

18 is there wouldn't be that many and, you know,  
19 regulating them is acceptable to me. I think it  
20 contributes to the enjoyment of the people that are  
21 there rather than being in this long freeway  
22 congestion environment with some yo-yo that doesn't  
23 know what he's doing and you all got to go up and  
24 assist the guy, but it would be relatively limited, I  
25 believe.

137

1 DR. WILLIAM PRESCH: Thank you.

2 DICK CROWE: I think Hector probably has a  
3 better idea in answering your questions -- if numbers  
4 are permitted.

5 CHAIRMAN KEMPER: Hector?

6 HECTOR VILLALOBOS: Well, numbers are  
7 permitted. I think for about ten years there might  
8 have been one permitted event that we knew that came  
9 through Panamint Valley days and I think the number  
10 of vehicles involved was around 30 some odd vehicles  
11 going up and down the canyon. To the best of my  
12 knowledge, that's what I understand was happening.

13 However, at that time the canyon wasn't  
14 closed so it was open to other casual use, which did  
15 occur. But I don't know the numbers of that casual  
16 use. And we never really tracked it. And that was  
17 just maybe a few small groups of people that weren't  
18 organized, that didn't come in for a permit and they  
19 were basically not fitting into our special

20 recreation permit system and so there was casual use  
21 that occurred, we don't know how much that was.

22 CHAIRMAN KEMPER: Thank you, Hector.

23 HECTOR VILLALOBOS: Dick, we took a wild  
24 guess just based on a little bit of information that  
25 we got from the local people that lived there and off

138

1 the top of their heads maybe around 250 vehicles per  
2 year, but that's based on their limited -- not even,  
3 you know, account or anything like that. That was  
4 just kind of like them thinking about how many  
5 vehicles they observed here and there through on the  
6 average.

7 CHAIRMAN KEMPER: Thank you, Hector.

8 Ron Schiller, you have had a question.

9 RON SCHILLER: Just a response, don't worry  
10 I've been up the canyon a number of times. I think  
11 as Mr. Lewellyn I have bragging rights, too. I have  
12 gone up there in a 1960 Oldsmobile with my  
13 grandparents and still have photographs of the area  
14 so I really don't need a tour. Thank you, though.

15 CHAIRMAN KEMPER: Paul Smith.

16 PAUL SMITH: Maybe, Dick, you can comment  
17 because I believe that when we talk about  
18 alternatives we're going to talk about limited use up  
19 there and I believe that the BLM as the managing  
20 authority would have the discretion to limit the  
21 number of groups going up there, the seasonality of

22 it so they can avoid the birthing and mating season  
23 of the big horn sheep.

24 Could you comment on that.

25 DICK CROWE: Well, I did say to the extent

139

1 that we had limited use and various alternatives.  
2 Now it was seasonal closed basically from spring to  
3 early fall. We also have elements in there, and  
4 again this is all in progress, by permit only a  
5 certain number of trips per month, a certain number  
6 of vehicles per trip. Having the organized groups  
7 involved kind of like what Harry Lewellyn described  
8 where you have expertise, coaching, and a minimal  
9 risk of breakdown and so forth as well as avoiding  
10 groups coming from opposite directions and meeting in  
11 the middle of the falls, you know, things like that.

12 So it's -- the proposal on limited is  
13 totally and very controlled. No -- basically, no  
14 casual use.

15 CHAIRMAN KEMPER: I had a few questions if  
16 it's okay.

17 In the studies that are being done now, has  
18 there been any consideration given that this was a  
19 cherry stemmed right away, cherry stemmed by  
20 Congress, number one.

21 Number two, that it falls under the RS 2447  
22 rights for road; and, number three, that there's  
23 personal property that can only be accessed by

24 vehicle even though it may be a technical route for  
25 those people and their claims to their personal

140

1 property by that, is that being given any  
2 consideration whatsoever?

3 DICK CROWE: Absolutely, in a word. Yes, to  
4 all those.

5 CHAIRMAN KEMPER: Okay. I know that the  
6 four-wheelers love to go up and down the canyons, but  
7 my concerns are for personal property rights holders.  
8 If we decide that it's more important that all those  
9 holdings be held in the public trust, then I believe,  
10 you know, we should complete our foreclosure. We  
11 should go in there, do an eminent domain taking, pay  
12 these people for their property and then we can  
13 decide whether it's going to be limited use or non  
14 use.

15 But as long as you have people that have  
16 personal property there, I don't know how you can say  
17 you're only going to access your property on certain  
18 days of the month or certain months of the year. I  
19 would remind everybody in this room that from  
20 Victorville to Las Vegas is a cherry stem that passes  
21 through public land so people can access their  
22 personal property. Does the populous have more  
23 rights than individuals? I don't think that's what  
24 this country is based upon.

25 DICK CROWE: One of the points we make in  
Page 132

1 the tee up to the alternatives in Chapter 2 is that  
2 the scope of the decision as far as route --  
3 accessibility in the route is, open-close limited is  
4 a casual -- has to do with casual use recreation or  
5 casual use, forget recreation, just casual use of the  
6 route. The scope of the decision does not get into  
7 the arena of any rights and any mineral or private  
8 property right. That is completely outside the scope  
9 of the EIS.

10 If somebody came in and wanted to apply for  
11 right of way, we've said the environmental analysis  
12 that's in this document might be used to entertain  
13 that consideration, but we are not specifically  
14 addressing any particular access. For one -- well,  
15 we're just not.

16 JON McQUISTON: Mr. Chairman?

17 CHAIRMAN KEMPER: Jon McQuiston.

18 JON McQUISTON: I have not read it in some  
19 time and I may have interpreted it wrong, but it was  
20 kind of my recollection that with the desert  
21 protection act it created a cherry stem that was a  
22 clock started by which the agency were to determine  
23 things like potential for mineral exploration, et  
24 cetera. You just mentioned that that's not a part of  
25 the environmental impact statement. Where is that

1 study been done and who's conducted it?

2 DICK CROWE: There is some work on that and  
3 Hector's much more familiar than I.

4 HECTOR VILLALOBOS: Hector Villalobos, field  
5 manager, Ridgecrest. Didn't say that last time.

6 The area of study that you're talking about  
7 is south of Happy Canyon. We've just completed and I  
8 understand the state director signed a letter  
9 transferring a mineral report to the Washington  
10 office on that study that was completed. The --  
11 basically, we looked very carefully at the language  
12 in the act Section 106 interpreted -- not  
13 interpreted, looked at the maps that were referred to  
14 in that section and the area of study starts around  
15 Happy Canyon south to Mangily [PHONETIC] Canyon.

16 It's about 40 thousand acres and we did do  
17 the mineral study in there, and it includes mostly  
18 the Briggs plains and the exploration area, too, so  
19 that's the area of study. And I think there has been  
20 an interpretation that because Surprise Canyon is  
21 mentioned in that language that Congress gave us to  
22 study, but it's -- Surprise Canyon was a much larger  
23 area, wilderness area and it extended to the south of  
24 Surprise Canyon as we know it and I think that's  
25 where we're looking, but anyway, the interpretation

1 is there. I think that study is going to be  
2 available as I understand from the state office for  
3 public -- well, for public disclosure.

4 JON McQUISTON: It would be informative to  
5 have it briefed here, but I guess and, again, I read  
6 this from time to time and as a layperson reading the  
7 legislation, the fact that the road was cherry  
8 stemmed out and the verbal connection between that  
9 and minerals or potential for minerals would seem to  
10 imply that that specific area should be considered in  
11 addition to anything else referenced; otherwise, why  
12 cherry stem out the road.

13 HECTOR VILLALOBOS: We looked at the  
14 language that was provided in the references that  
15 Congress gave us map-wise and it's very clear that  
16 the -- that cherry stem is not related to that -- the  
17 requirement for the stem.

18 JON McQUISTON: Refresh my memory, whoever,  
19 the cherry stem certainly on the BLM lands were not  
20 included in wilderness with respect to the park  
21 lands, did the cherry stem that 60 foot corridor, was  
22 it exclude from park land or not?

23 HECTOR VILLALOBOS: No, it extends all the  
24 way through BLM to park lands and in fact on the park  
25 land side it excluded from wilderness portions that

144

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 were the old mining patents.



4 We'll take comments and questions from the  
5 audience.

6 Mr. Hillier, sir.

7 GERALD HILLIER: I don't see the microphone  
8 so I'll just stand here. I'm Jerry Hilliar. I'm  
9 here with QuadState County Government Coalition  
10 today.

11 I just had a question relative to both the  
12 TRT and/or the field trip and wonder whether anybody  
13 from Inyo County or Inyo County local government was  
14 involved and is involved in either of those and if  
15 not, why not it?

16 It would seem to me before, you know, as  
17 this is being discussed and resolved, that certainly  
18 Inyo County has a stake in this and should be  
19 involved and I'm surprised that no one -- that that  
20 input doesn't seem to be sought.

21 CHAIRMAN KEMPER: Paul.

22 PAUL SMITH: Yes. One of your comments are  
23 quite appropriate and quite valid that the TRT is  
24 essentially a DAC focused group. It's not part of  
25 the larger group which will be dealing with this so

JONNELL AGNEW & ASSOCIATES

146

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 this is really designed just for DAC purposes. I  
2 know that when the meetings are again held and the  
3 deliberations go on that they will definitely involve  
4 Inyo County and that's beyond the scope of what we  
5 were doing.

6 DICK CROWE: Okay.  
7 CHAIRMAN KEMPER: Mr. Matthews  
8 DAVE MATTHEWS: Dave Matthews, Ridgecrest.  
9 First of all, I don't see him here now, but  
10 I'd like to thank the presenters for taking me on a  
11 helicopter tour of the canyon and also a technical  
12 tour.

13 I was in the area and I've been in the area  
14 up there long enough that I remember people talking  
15 about going up there and four-wheel -- I mean  
16 two-wheel drive vehicles and I was planning for years  
17 to do that myself. Never quite got around to it with  
18 work and family and other things and then in '84 when  
19 the first big flood came along and I heard it was  
20 four-wheel drive vehicles, I started buying  
21 four-wheel drive vehicles; still never got out there,  
22 not today. There's no way I could afford to buy one  
23 of these technical things.

24 So what I'm trying to say is that I think  
25 I'm one of a typical group of people that have a

JONNELL AGNEW & ASSOCIATES

147

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 right to go up in there and visit a historical site  
2 and also the beauty of the canyon. You could see  
3 that from both of those films. And I just want to  
4 make sure that that segment of the public is  
5 considered and I agree that it does fall under the  
6 RS 2477 because that road is almost ancient history.

7 Now, why or how it was up kept before the

8 '84 flood, I'm not sure, but I would suspect that in  
9 the beginning Inyo County used to have a lot more  
10 funds available than it does these days and that  
11 perhaps some of that was some of their priorities or  
12 they were able to maintain that road to some extent  
13 as well as people that were living up there and I  
14 know I understand that there were people living there  
15 fairly recently.

16 So -- and there still are some residents  
17 down at the bottom. So I just want to make sure that  
18 this segment of the public is considered when these  
19 decisions are made.

20 Thank you.

21 CHAIRMAN KEMPER: Any other comments from  
22 the audience?

23 CAROLE ANNE WILEY: I have a comment. I'm  
24 not the audience, but I have a comment.

25 CHAIRMAN KEMPER: Yes, Carol.

JONNELL AGNEW & ASSOCIATES

148

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 CAROLE ANNE WILEY: Like Mr. Mathews, I  
2 enjoyed these aerial views and the technical films,  
3 because hiking up there, you kind of wonder how do  
4 they do that. It's very interesting. But a view  
5 that wasn't given was an on-the-ground view, pictures  
6 of what that looks like in the canyon because the  
7 aerial view doesn't show that. Just to point out,  
8 that that view is missing.

9 CHAIRMAN KEMPER: Did you find the viewing

10 of the vehicles during their technical climbs being  
11 fairly accurate as to what you saw when you hiked?

12 CAROLE ANNE WILEY: Yes.

13 CHAIRMAN KEMPER: Okay.

14 Paul or -- are you ready for the rest of  
15 your presentation?

16 PAUL SMITH: We're very close. Following up  
17 on Carol Wiley's comment, recognize when we did our  
18 hike up there we recognized that the aerial views  
19 wouldn't do justice to what it was like on the  
20 ground. So we did take some wide angle shots down  
21 there that would show the density and dept of the  
22 foliage and the condition of the banks and that sort  
23 of thing, so hopefully that will come out when we get  
24 the images properly processed. If not, I think -- I  
25 don't know how images are going to be used in the

JONNELL AGNEW & ASSOCIATES

149

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 environmental impact statement, if at all, but if  
2 they are, then we should remember to include that  
3 aspect of it; okay.

4 At this juncture, I think we're waiting for  
5 Dick Crowe to come back. The way we thought we would  
6 do this is Lorelei Oviatt, who is part of our  
7 technical review team, would sort of review what our  
8 recommendations are together with Dick Crowe who can  
9 pick up the explanation for any detailed questions  
10 you might have.

11 So Lorelei, why don't you --

12                   HOWARD BROWN: When you say -- I'm sorry,  
13 Paul, when you say your recommendations that's  
14 relative to the alternative that are being  
15 considered?

16                   PAUL SMITH: That's correct. Maybe that's  
17 worth restating again. We're not dealing with the  
18 merits of any alternative versus another alternative.  
19 The purpose of this, and Lorelei can state it far  
20 better than I can. She worked with these issues a  
21 lot.

22                   The purpose of this is to make sure that the  
23 public disclosure documents, the environmental impact  
24 statement fully discloses all of the different  
25 alternatives that can be up there and I think they

JONNELL AGNEW & ASSOCIATES

150

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 respond to the last gentleman's, you know, request in  
2 terms of don't forget those of us who would like to  
3 go back up there again.

4                   Lorelei.

5                   LORELEI OVIATT: Lorelei Oviatt, Kern County  
6 Planning Department. Okay. I'm representing  
7 supervisor McQuiston on this TRT. Dick is outside  
8 making copies.

9                   DICK CROWE: I'm here.

10                   LORELEI OVIATT: Are they --

11                   DICK CROWE: Doran's out there.

12                   LORELEI OVIATT: Doran's out there making  
13 copies.

14 The reason we're making copies is the  
15 presentation that he loaded on here didn't quite  
16 represent the situation. So what we're going to give  
17 you is one page that has the right now seven  
18 alternatives on them. They won't be full  
19 descriptions, but they'll be -- you can look at them  
20 by name.

21 Just as a background, I've been on the TRT  
22 with Paul Smith in a changing array of DAC members  
23 since the beginning of this process. These  
24 alternatives were developed through a series of very  
25 lengthy meetings that involved the TRT members along

JONNELL AGNEW & ASSOCIATES

151

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 with the Bureau of Land Management staff, Linda  
2 Hansen and the national park service staff and team  
3 and JT Reynolds, who's superintendent of the park.

4 The intention in putting these alternatives  
5 together was to look at the two -- I'll remind you of  
6 the two decisions that need to be made.

7 One decision is a designation for the route  
8 and that is limited, opened or closed, and it could  
9 be a combination of any of those on the different  
10 parts of the segments, the national park service  
11 segment and the Bureau of Land Management segment.

12 The second decision is a suitability under  
13 wild and scenic river act. Remember, a suitability  
14 recommendation designation has to be made by  
15 Congress. So we looked at a combination of how to

16 fit all of those decisions into a series of  
17 alternatives based not just on the criteria, but the  
18 comments that had come out of the scoping meeting and  
19 the various public hearings that had been held to  
20 take public comment.

21 So that's the whole background and why we  
22 ended up with these seven when normally in an EPA  
23 document you might see three or four. Still, no  
24 handouts, so we'll walk our way through.

25 The seven -- and they're a little

JONNELL AGNEW & ASSOCIATES

152

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 complicated, which is why we want this handout. The  
2 seven alternatives that we have, the first is  
3 called -- see, perfect timing.

4 The first is a no-action current management.  
5 That would be an open route eligible for wild and  
6 scenic river on the BLM portion.

7 The second alternative is open route  
8 unsuitable for wild and scenic river designation.

9 The third alternative is open reconstructed  
10 route, which means we would rebuild the road and it  
11 is unsuitable for wild and scenic river designation.

12 Fourth is a closed route suitable for WSR.

13 Fifth is a limited route unsuitable for --  
14 did I say that right -- closed route suitable, sorry,  
15 for WSR. Five is limited route unsuitable for WSR.

16 Six is limited route, three segments would  
17 be suitable for WSR, and the brewery segment would be

18 not suitable.

19           And the seventh is limited close route, some  
20 combination of those suitable for WSR.

21           During these discussions that we had, these  
22 three lengthy meetings, Inyo County was an active  
23 member. Inyo County is a collaborator on this and  
24 they did have a representative there who's actively  
25 involved in this process.

JONNELL AGNEW & ASSOCIATES

153

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1           A lot of questions came up about wild and  
2 scenic river, and what that means and the Bureau of  
3 Land Management, the park service had a specialist  
4 come. If my memory serves, I believe they also made  
5 that presentation to the DAC.

6           And one of the issues is that when people  
7 think of wild and scenic river they think only of the  
8 wild part. It's actually a designation called  
9 recreational usage that permits other sorts of uses  
10 that if it's designated wild, it's not permitted. So  
11 after a lengthy conversation, that's one of the  
12 reasons that we came up with these alternatives that  
13 you possibly could have a portion of the segment open  
14 with vehicular access and still qualify for wild and  
15 scenic river because it would be a recreational  
16 segment designation, not a wild designation. So,  
17 that just complicates it.

18           So the TRT, what Dick brought to us was are  
19 these the right alternatives. He brought us some

20 questions from his team, which when I say team means  
21 the Bureau of Land Management/park service team  
22 that's putting together and writing the analysis.

23 The first question was: Do we really need 1  
24 and 2? Isn't 1 and 2 really one alternative? And  
25 the TRT looked at this. We discussed this and the --

JONNELL AGNEW & ASSOCIATES

154

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 the reconfiguration of this would be that the  
2 no-action current management would actually be open  
3 route unsuitable for wild and scenic river. That  
4 this is really one alternative, not two separate  
5 ones, because the decision for eligibility for wild  
6 and scenic river on the BLM portion is covered by  
7 other alternatives.

8 So we kind of thought this through and came  
9 to the conclusion that we'd like to recommend that;  
10 one, the first and second alternative actually be  
11 turned into one alternative called no-action current  
12 management open route unsuitable for WSR. So that's  
13 the first recommendation we'd like to have you  
14 discuss.

15 The second recommendation that was brought  
16 to us was that the team is having problems with  
17 number 3 in coming up with details, you know, how far  
18 do we need to go in order to talk about rebuilding  
19 the road. They're not engineers. They're not quite  
20 sure how many details they can come up with. The  
21 team discussed this.

22 We recommend that this remain as an  
23 alternative because we believe that it is something  
24 that the public wants to see that we're there, we're  
25 public scoping comments could say, why don't you

JONNELL AGNEW & ASSOCIATES

155

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 rebuild the road, what would that take and other  
2 local government officials have put that in the  
3 record.

4 Once again, these are just recommendations  
5 from the TRT and we expect a discussion from the full  
6 DAC counsel on this, but our recommendation is: To  
7 leave this in, put whatever details you can put in  
8 there, and there are certain reasonable details that  
9 you should be able to put in there, you know, the  
10 terrain, what kind of equipment might you have to  
11 bring up there, what kind of use would you get out of  
12 it, how much camping might occur if people could  
13 drive up to the top.

14 Those are all reasonable assumptions that  
15 the team with some thought could put into the  
16 document and then through the public review more  
17 details would become clear and that's the whole  
18 purpose of having a draft environmental impact  
19 statement go out.

20 The last comment was this comment that he  
21 had brought from the team that there was some thought  
22 on the team that a recreational segment of a wild and  
23 scenic river designation was not compatible with

24 vehicular use. When we were presented this, we had  
25 worked all the way through this and we were under the

JONNELL AGNEW & ASSOCIATES

156

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 impression on the -- on the TRT members that were  
2 there that this had been resolved.

3           So our recommendation back is that if the  
4 Bureau of Land Management or the park service or  
5 someone else feels that there's more discussion about  
6 what actually is allowed in a recreational  
7 designation, then that's what the EIS is for. Lay  
8 out your concerns or your thoughts on the  
9 interpretation on the Wild Scenic River Act in the  
10 document and we'll have an open discussion with the  
11 public on that designation.

12           It's a complicated act and there's a lot of  
13 different interpretations that can be made of it. So  
14 at this point we're recommending that it be reduced  
15 from seven to six alternatives.

16           That concludes the TRT's -- my presentation.

17           Paul or Carol or Ron, if you have anything  
18 else you'd like to add.

19           CHAIRMAN KEMPER: Ron?

20           RON SCHILLER: Yeah, I did bring up another  
21 issue not necessarily with the alternative itself,  
22 but with the way the alternative is titled or  
23 described.

24           I felt that the use of the term limited in  
25 item -- in alternatives 5, 6 and 7 was a little

## CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 misleading to the public. I heard Paul mention  
2 earlier and then just a while ago again that he  
3 wanted to make sure this was publicly disclose --  
4 disclosure to the public where they can understand  
5 and Dick earlier in his description used the term,  
6 very controlled. And I think that's more of an  
7 appropriate description.

8 I see under alternative 3 in parentheses  
9 there's a further clarification saying reconstructed  
10 and what I would suggest is adding a set of  
11 parentheses behind the limited to say controlled use  
12 rather than limited use or in addition to or further  
13 clarification. I think that says something different  
14 to the public than the term limited.

15 PAUL SMITH: Dick, could you comment on  
16 that?

17 DICK CROWE: The normal array of  
18 designations in route designation is open lose and  
19 limited, I'm sure you're aware of that. In limited,  
20 we usually don't go into too much detail to the  
21 public because we don't have that many limited  
22 routes; however, we do say that limited could mean  
23 speed, season permit, various kinds of controls. The  
24 details on these 7 or 6 whatever alternatives will  
25 explain all that that I think was giving you concern

1 there, but when you title something, you try to --  
2 you try to get as few words as possible and even at  
3 that, these titles are kind of long.

4 RON SCHILLER: Right. If I recall  
5 correctly, it states that you will designate areas as  
6 open, limited or closed.

7 DICK CROWE: Areas and routes, actually.

8 RON SCHILLER: However, in the public  
9 looking at this and seeing the term limited, when I  
10 think of a limited use area, I think of areas in some  
11 cases where the use is limited to existing routes or  
12 the route is limited or -- the area is limited to  
13 designated routes.

14 I think just for clarification to the  
15 public, I think adding just like you've done in item  
16 3 where it says reconstructed for clarification  
17 behind the term limited, I wouldn't see that there  
18 wouldn't be much problem in adding in parentheses and  
19 saying controlled.

20 DICK CROWE: You know what, what I would  
21 like to recommend is let us continue to write this  
22 thing and we'll catch this in the admin draft review.

23 RON SCHILLER: That's fine. I'm just for  
24 the record making my comment.

25 CHAIRMAN KEMPER: Bill Presch.

1 DR. WILLIAM PRESCH: Bill Presch.

2 I've got two questions, I guess, relative to  
3 the limited alternatives.

4 In any one of the three that would be 5, 6  
5 or 7, would that include any restructuring of the  
6 road?

7 DICK CROWE: Do you mean realignment or  
8 upgrading?

9 DR. WILLIAM PRESCH: In three, you have open  
10 and reconstructed route, would any 5, 6 or 7 include  
11 reconstruction of the route?

12 DICK CROWE: No.

13 DR. WILLIAM PRESCH: Even though it's  
14 limited?

15 DICK CROWE: No. It would be the kind of  
16 rock crawling and limited pruning of willows and so  
17 forth that you saw in that video.

18 DR. WILLIAM PRESCH: And my other question  
19 is within the limited, would that still guarantee  
20 private property owners and their guests access to  
21 their property whenever they wanted to go?

22 DICK CROWE: It limits the public to certain  
23 time of year. But like I explained further or tried  
24 to, if somebody has a specific right of access, use  
25 authorization request, that is completely independent

1 of this whole exercise, this plan amendment and NEPO  
2 exercise. They come in and say I want to get to my

3 property or whatever a mining claim on this such and  
4 such date, if it's outside the scope of what this  
5 would provide, then the BLM and the park service  
6 could deal with them separately on that matter.

7 In other words, and I don't know what the  
8 outcome of that would be because I don't know what  
9 the circumstances of the proposal or anything would  
10 be.

11 CHAIRMAN KEMPER: Dick, to date, have you  
12 had any such request?

13 DICK CROWE: I'd have to refer to Hector.

14 PAUL SMITH: Oh, Hector's here.

15 CHAIRMAN KEMPER: Hector, to date, have you  
16 had any such request for access for people to get to  
17 property they own?

18 HECTOR VILLALOBOS: Oh, yeah. Well, you're  
19 all aware of all the requests we've received from the  
20 time the new property owners acquired property up  
21 there after the closure.

22 CHAIRMAN KEMPER: And you process those  
23 requests and given them access.

24 HECTOR VILLALOBOS: We have not processed  
25 any request. We told them basically, that they would

JONNELL AGNEW & ASSOCIATES

161

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 have to get a right-of-way from us and that we were  
2 doing this EIS and after we do the EIS we would  
3 consider the right-of-way application.

4 CHAIRMAN KEMPER: Does that answer your  
Page 151

5 question?

6 HECTOR VILLALOBOS: I believe there's been  
7 one real right-of-way application that we've received  
8 in the office.

9 CHAIRMAN KEMPER: Can you define what's  
10 real and what isn't.

11 HECTOR VILLALOBOS: Through an application  
12 form. In other words, one party has come in and  
13 applied for a right of way. Other parties requested  
14 a key, basically, and then we told them, well, we  
15 can't give you the key until -- and the proper way to  
16 get access would be go through our process of getting  
17 a right of way and I believe there's only been one  
18 party that has requested it officially through a  
19 right-of-way application.

20 CHAIRMAN KEMPER: Thank you. Jim Bugera.

21 JIM BUGERA: Isn't this the one we discussed  
22 at the meeting before last where it's been a couple  
23 of years that this person has been trying to get  
24 their property unlocked.

25 HECTOR VILLALOBOS: That's correct.

JONNELL AGNEW & ASSOCIATES

162

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 JIM BUGERA: Do you see it happening within  
2 the next couple years?

3 HECTOR VILLALOBOS: No, just after the EIS  
4 is done, then we will consider their right-of-way  
5 application.

6 The concern that we have is that we're going  
Page 152

7 to go and ask this party to do, then some separate  
8 environmental analysis for that right-of-way  
9 application that's put in and why should -- we  
10 probably will be going through the same process of  
11 evaluating the environmental impacts to access  
12 through the exercise that we're doing right now.

13 So rather than to go back to that party and  
14 say, okay, you're going to have to do an EIS in order  
15 to get your right of way, we went back to the party  
16 and said, we're going to do the EIS through this  
17 process and then we will consider your right of way.

18 JIM BUGERA: So then any kind of action we  
19 take other than just plain opening it is kind of,  
20 well, taking this person's property rights away?

21 HECTOR VILLALOBOS: I won't say that  
22 because --

23 JIM BUGERA: But is it true, though?

24 HECTOR VILLALOBOS: I'm not going to speak  
25 for the park service because they're another party

JONNELL AGNEW & ASSOCIATES

163

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 that has to provide access and the party that you're  
2 talking about has got property that's on that other  
3 side of the line. So I'm not going to speak for the  
4 park service on what they think about giving access  
5 and --

6 JIM BUGERA: Is this the part of the line  
7 with JT Reynolds on it?

8 HECTOR VILLALOBOS: Yes.

9 JIM BUGERA: Okay. If you want to get  
10 screwed, right.

11 HECTOR VILLALOBOS: I'm not going to say  
12 that.

13 DR. WILLIAM PRESCH: So conceivably, BLM  
14 could give authorization for the person to go onto  
15 his property, but the park service can stop him at  
16 the line and say no.

17 HECTOR VILLALOBOS: I think it's a very  
18 complex right-of-way application and has to go  
19 through two agencies, the access from point A to  
20 point B. It starts on BLM land, ends on park service  
21 land, that's the access; the same access that we're  
22 talking about doing the --

23 CHAIRMAN KEMPER: As a point of  
24 clarification, it ends on private land?

25 HECTOR VILLALOBOS: That's -- that's --

JONNELL AGNEW & ASSOCIATES 164  
CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 yeah. But I don't have -- they have to go through  
2 park service land to get there and beyond.

3 DR. WILLIAM PRESCH: Well, it's going to go  
4 to court.

5 JIM BUGERA: Yeah.

6 DAVID CHARLTON: First, I have two  
7 questions. First, is reconstruction of the road is  
8 it going to be a two-wheel drive or four-wheel drive  
9 access when it's done? I know it's all theoretical.  
10 And the other question, is the actual end point is

11 not the end of BLM land it would be Panamint City.  
12 It would be difficult to have that vehicle access I  
13 guess at the gate and then if people want to go to  
14 the real end point, they'd have to walk.

15 DICK CROWE: I think we're mixing a couple  
16 topics here. EIS is addressing all the way to  
17 Panamint City.

18 DAVID CHARLTON: I'm talking about these  
19 alternatives.

20 DICK CROWE: Some of the alternatives get  
21 you to Panamint City; some of them don't in terms of  
22 vehicle access, but that's part of normal exercises  
23 you go through.

24 What Hector's talking about is if we were to  
25 entertain the use authorization now to get to private

JONNELL AGNEW & ASSOCIATES

165

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 land, all anybody could do is take it to the boundary  
2 and then have to go to the park service to get from  
3 the boundary to the private property, which is  
4 another two to two and a half miles. And in terms of  
5 getting to the property, that varies with which  
6 alternative you want to speak to and some  
7 alternatives, it's no; some, yes; and some seasonal.

8 CHAIRMAN KEMPER: Dick, I'm going to  
9 apologize. I have side tracked the discussion and I  
10 apologize to everybody. But you had said that there  
11 was a way for private citizens currently to get  
12 access to their property. I just wanted it on the

13 record that that process is not working currently.

14 Ron?

15 RON SCHILLER: Along the same line, the BLM  
16 has been careful to follow the stipulations to a T  
17 accept for this one. If you read this stipulation,  
18 this stipulation says property owners will have a key  
19 to the gate in a sense. That's what the stipulation  
20 from the CBD lawsuit says.

21 So -- so I don't understand why we're not  
22 following that aspect of the stipulations when all  
23 the other ones are being followed.

24 DICK CROWE: Part of the answer to that that  
25 Hector gave is the timing of request relevant to the

JONNELL AGNEW & ASSOCIATES

166

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 timing of this project. But the settlement and the  
2 key stipulation the judge made in the lawsuit talked  
3 only to BLM land, it didn't -- they didn't know and  
4 didn't even have at the time a park service closure.  
5 So the park service element was not a part of that  
6 stipulation, that settlement stipulation.

7 RON SCHILLER: I really don't understand why  
8 it matters since it was already -- since it was --  
9 since it was stipulated at that time and agreed to.

10 DICK CROWE: Because the lawsuit was only  
11 with BLM, not the park service.

12 CHAIRMAN KEMPER: John McQuiston.

13 JON McQUISTON: Two questions: When did the  
14 right of access end and by what action? And where

15 I'm coming from is prior to the '84 flood there was a  
16 right of access that existed. Was there a permit  
17 required for that? Is there any historical  
18 information on the record? When did that right of  
19 access end and what action terminated it?

20 DICK CROWE: The possibility that there was  
21 a right of access or to the degree that there was a  
22 right of access including to what degree it's  
23 appropriate to get vehicle access --

24 JON McQUISTON: I'm not talking about the  
25 ability to access, I'm talking about the right of

JONNELL AGNEW & ASSOCIATES 167  
CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 access. Apparently --

2 DICK CROWE: Well, nothing's changed.

3 JON McQUISTON: Then why did they have to  
4 file for right of access?

5 DICK CROWE: Because we have this temporary  
6 closure and the park service has a temporary closure.

7 JON McQUISTON: So it's an administrative  
8 discretionary decision that is being imposed?

9 JIM BUGERA: How long is the temporary  
10 closure?

11 DICK CROWE: Oftentimes when a designate  
12 route's open they go to private land and a person can  
13 enjoy -- or mining claims they can enjoy access  
14 without having to file because the route designations  
15 already provides for access. In other cases you can  
16 have a closed route or a nonexisting route in which

17 case an entity has to apply for access and because we  
18 have these temporary closures by both agencies  
19 wherein I think in an application, a need situation.

20 JON McQUISTON: Well, we've have plenty of  
21 time as this thing unfolds, but the parts I can't  
22 connect the dots on are is the right of access  
23 existed when the wilderness was formed both in park  
24 and BLM lands the route specifically excluded, which  
25 acknowledges, I would think by the Congress a right

JONNELL AGNEW & ASSOCIATES

168

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 of access.

2 The only thing that has changed is two: One  
3 is the ability to access because of the flood. And  
4 the second thing is the court order that said, you  
5 know, stop it, but allow access.

6 So I'm having difficulty understanding the  
7 administrative processes or procedures that are in  
8 play. But I'll save that discussion as this  
9 continues.

10 But when you're talking about the seven  
11 alternatives, can we assume that when you say open  
12 route unsuitable for wild and scenic river, let's say  
13 it's the number one option or take any of them by  
14 themselves, can we assume that that is a consensus  
15 between the park service and the BLM or is it  
16 possible for BLM to say we're going to choose option  
17 one and the park service says we're going to choose  
18 option 4?

19           DICK CROWE: At this point in time, the  
20 array of alternative is consensus between the two  
21 agencies but this is -- or whatever we end up with is  
22 an array of alternatives that by no means is meant to  
23 prejudge the decision on the EIS.

24           JON McQUISTON: Personally, and I'll  
25 complete my remarks and I'll go back to the first

JONNELL AGNEW & ASSOCIATES

169

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 issue about this public right of access, I would like  
2 to see at the next meeting some sort of discussion or  
3 presentation that goes from there was a right of  
4 access, there was an exclusion by law. And that --  
5 that exclusionary area or call it cherry stem or  
6 whatever else you want to call it, when did the right  
7 of access terminate and by what action, and in terms  
8 of what's happening now, some sort of understanding  
9 of the administrative discretionary process and  
10 rational behind that.

11           DICK CROWE: Let me just say right of access  
12 has not changed. We have actually, I failed to  
13 mention one -- two situations. We have the temporary  
14 closures, but we also have the wild and scenic river  
15 finding, which also occurred since the judge's  
16 decision and under wild and scenic river eligibility,  
17 we have a --

18           JON McQUISTON: You have --

19           DICK CROWE: -- help me out, wilderness  
20 management, in wild and scenic river it's -- all of a

21 sudden I forgot the term, but it's equivalent  
22 inter-management and wilderness, and we have to  
23 protect those barriers that were found to be there  
24 until we come to a conclusion in the planning  
25 process, which is what this would do.

JONNELL AGNEW & ASSOCIATES 170  
CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 So I have both those situations and while we  
2 have both those situations, we're not saying the  
3 access, the right of access doesn't exist, it's just  
4 we're saying we have to go through a process, a  
5 deliberative process and I think that's what  
6 Hector's --

7 JON McQUISTON: I think you may have  
8 answered my question because I heard one of your  
9 comments there and I recall, thank you for refreshing  
10 my memory, but once you begin the process of  
11 considering wild and scenic designation, you have to  
12 manage it to that until a suitability determination  
13 is made; is that not correct?

14 DICK CROWE: Thank you. I think you found  
15 that out in the Kern River.

16 JON McQUISTON: Right. Once the suitability  
17 determination is made, if it's determined not to be  
18 suitable, then that would relieve that restriction,  
19 would it not?

20 LINDA HANSEN: That's correct.

21 DICK CROWE: It would certainly define what  
22 the next step might be, yes.

23 LINDA HANSEN: It would define our  
24 recommendation for the management of the river.

25 PAUL SMITH: Let me just reiterate so that

JONNELL AGNEW & ASSOCIATES 171  
CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 we don't lose track of what we're doing here. The  
2 TRT is really recommending like a full range of  
3 alternatives from open with so far as the BLM or we  
4 could exercise any jurisdiction or recommend the  
5 exercise or jurisdiction it would be wide open  
6 reconstructed all the way down to closed where it  
7 would be totally closed off so that the full range of  
8 alternatives would then be presented in the draft  
9 environmental impact statement.

10 So we're limited in what we're trying to do  
11 today, although I think a lot of the discussions is  
12 worthwhile discussion, which deals a lot with the  
13 merits of what we should be doing. But in terms of  
14 what we're doing here is making a recommendation on  
15 all the different alternatives that should be  
16 disclosed here, so we don't want to lose sight of  
17 that track.

18 We'll be talking about the merits --

19 DICK CROWE: Dick Crowe, again.

20 I forgot to answer -- who asked the  
21 question, but would it be open if it were  
22 reconstruction, are we talking about two-wheel drive  
23 access or four-wheel drive access?

24 And the answer is, the way it's written up  
Page 161

25 now, it would put it back to acceptability by all

JONNELL AGNEW & ASSOCIATES

172

CERTIFIED COURT REPORTERS/VIDEOGRAPHERS

1 vehicles other than those vehicles that might be  
2 limited to a steep incline, but basically two-wheel  
3 drive, yes.

4 CHAIRMAN KEMPER: Bill Presch.

5 DR. WILLIAM PRESCH: Yeah, I'm -- the  
6 alternatives of 7 and 4, 4 as closed route suitable  
7 for WSR and 7 is limited/closed route suitable for  
8 WSR. Does that divide up the route or the canyon in  
9 some way, some parts limited, one part closed? Is  
10 my interpretation of that correct?

11 DICK CROWE: Alternative 4 is entirely  
12 closed. Now, you don't have a lot of information  
13 here. One of which is up to the point of Chris Wicht  
14 camp, which is a maintained county road, that would  
15 not change under any alternatives.

16 DR. WILLIAM PRESCH: I understand that.

17 DICK CROWE: So closed route from that point  
18 up to Panamint City is what number 4 is.

19 Number 7 is from Chris Wicht camp to what  
20 Paul described as this area of turn around just above  
21 the falls, 1500 feet above the falls. It would be  
22 limited from the turn-around area further up to  
23 Panamint City would be closed and that's why it would  
24 say limited close. So that's the sort of  
25 agree-to-disagree alternative issue that would be --

1 it isn't just an agency thing, it has to do with  
2 other values that -- but it could be construed to be  
3 the park service then would be closed and BLM -- at  
4 least part of BLM would be open.

5 CHAIRMAN KEMPER: Jim Bugera.

6 JIM BUGERA: Which one of these would just  
7 open it up and restore it to the way that Congress  
8 originally had put it so that these property owners  
9 can access their properties?

10 From what I'm seeing, all seven of these is  
11 just a different lawsuit.

12 DICK CROWE: Well, there would be  
13 unrestricted or unlimited access for whatever rights  
14 situation under -- if we're combining 1 and 2 now  
15 under that one, as well as No. 3. Under all other  
16 situations, it's either closed or it would be  
17 seasonally limited and very difficult access, the  
18 rock crawling you saw. The only easy two-wheel drive  
19 would be the No. 3.

20 JIM BUGERA: The rock crawling that we saw  
21 is the absolute only way? There's no other trails on  
22 either side of that.

23 DICK CROWE: No. This canyon is the only  
24 way in and out of the upper part of the canyon where  
25 the private properties are.

1           JIM BUGERA: So then if we do open it to the  
2 property owners, it would pretty much be up to them  
3 how they got there?

4           DICK CROWE: Other than what might be  
5 stipulated in a use authorization, probably yes.

6           JIM BUGERA: It just seems that that would  
7 eliminate a problem. Say, yeah, you can use that  
8 route, but you got to figure out how. That would  
9 eliminate any kind of problems for us?

10          DICK CROWE: That's probably true.

11          LINDA HANSEN: That's the current situation.

12          CHAIRMAN KEMPER: Everybody, hang on. Only  
13 one person talking at a time, please.

14          DICK CROWE: In fact, under one scenario, we  
15 can select alternative 4, closed route from Chris  
16 Wicht camp up, they can come in and get a use  
17 authorization and get it approved and they would be  
18 the only one going up and down.

19          JIM BUGERA: Okay.

20          DICK CROWE: But it would be completely  
21 outside the consideration of what we're doing here  
22 other than the NEPA consideration might the same.

23          JIM BUGERA: I get it. Thank you.

24          CHAIRMAN KEMPER: Roy Denner.

25          ROY DENNER: I guess I don't understand,

1 Dick, why the reconstruction option would bring it up  
2 to a level of a two-wheel drive road? I mean I've  
3 been up other canyons out there in my Jeep that are  
4 fairly difficult to get up and down.

5           Why do we take the canyon that is a high  
6 technical difficulty passage canyon and take it from  
7 that level up to a two-wheel road? I mean I can  
8 already see if that option happened to be approved,  
9 BLM is going to say there's no way we have resources  
10 to build a two-wheel drive road up to Panamint City  
11 where to make it a canyon equivalent to the other  
12 canyons would simply mean a couple of truckloads of  
13 rocks placed in strategic locations along that canyon  
14 and the average four-wheel drive vehicle could get up  
15 there just like they can up the other canyons.

16           Why would we ever think about bringing that  
17 canyon all the way up to a two-wheel drive road? It  
18 seems ridiculous.

19           LINDA HANSEN: Let me -- Dick, let me try to  
20 settle a little bit of this.

21           If you all remember, we had a meeting in  
22 Ridgecrest and it's probably been about a year and a  
23 half ago and this counsel specifically stated they  
24 wanted to see an alternative that could potentially  
25 reconstruct the road. I think John even offered to

176

1 go and find me someone from core of engineers who  
2 might rebuild it for me, John, didn't you?

3 JON McQUISTON: If you'll give me  
4 permission, I will happily --

5 LINDA HANSEN: That's exactly what you said  
6 last time. So in order to address this counsel and  
7 other comments from the public's concerns about  
8 having a road that was similar to what used to be  
9 there prior to the event of 1984, which started  
10 wiping out what was there, this alternative was  
11 crafted.

12 It is in specific response to the counsel,  
13 and, I guess I could go back and get minutes out for  
14 you, Roy, but that's why it's here.

15 ROY DENNER: Maybe what I'm recommending is  
16 we have a 3a and a 3b where the --

17 LINDA HANSEN: And you already have that, I  
18 think, if you kind of let the array of alternatives  
19 maybe work for you a little bit.

20 We talk about limited use. There is a suite  
21 of potential parameters, I guess, that could be put  
22 in there including rolling rocks back into the road  
23 bed as a part of activities that could occur on  
24 recreational opportunity basis. So it's in there.  
25 You've got a 3a, you've got 3b and you've got a 3c, I

177

1 think. But I think today, you know, and I guess this  
2 discussion Paul says, you know -- but I don't want to  
3 get wrapped around, excuse the pun, about making sure  
4 that everything is dotted or not dotted. I think

5 that what you've been presented and I think the  
6 recommendation that is in front of you by the TRT and  
7 by a lot of kind of, you know, cheerful work on the  
8 part of some pretty raw staff from time to time  
9 trying to figure out the appropriate way to lay out a  
10 set of alternatives that's going to address the  
11 complexity of this canyon.

12           Let's face it, it's not just another route.  
13 So I think the array of alternatives that they are  
14 offering to you has had a great deal thought put into  
15 it about all the imaginations that we could go  
16 through that will allow a variety of levels for  
17 things to happen in the canyon to give all of that  
18 the best opportunity to make some decision later on.

19           We don't want to print out those decisions.  
20 I don't think the park superintendent does, either.  
21 We both agreed early on we would have the best  
22 document we could to make those decisions within the  
23 future. So I think for right now all we're really  
24 looking for is some acknowledgment, if you will, that  
25 these alternatives will provide a good basis for

178

1 analysis of as much as we can think of right now that  
2 might need to be done in the canyon, and with that,  
3 Ron.

4           CHAIRMAN KEMPER: If you, I have -- I have  
5 just a comment for clarification, Roy, and if I'm  
6 wrong, Dick, please correct me. You had mentioned

7 that the cost of BLM for improving the road. I don't  
8 believe that at any time in the history of this road,  
9 which is over a 100 years, that the BLM has ever  
10 maintained the road. Either the private property  
11 interests have maintained the road or the county.

12 Jim Bugera.

13 JIM BUGERA: Linda, I didn't realize until  
14 about five minutes ago that we were even discussing  
15 this same thing that we had discussed a year and a  
16 half ago. I build roads, but because of all of the  
17 add ons to each one of these, I was confused. It's  
18 like it was a different subject and I'm not saying  
19 that's bad; I'm just saying I didn't realize it was  
20 the same one. You know, every time you talk I always  
21 feel like I've been to the principal's office.

22 CHAIRMAN KEMPER: Bill Presch.

23 DR. WILLIAM PRESCH: Before this document is  
24 finished, will there have been a determination about  
25 the wild and scenic river designation?

179

1 DICK CROWE: That is concurrent with this.

2 DR. WILLIAM PRESCH: With the document.

3 DICK CROWE: This document technically is a  
4 plan amendment. You go through your wild scenic  
5 river eligibility and credibility, their  
6 determination process, amending your land use plan --  
7 eventually amending your land use plan and this would  
8 be the document for the vehicle to do that.

9                   So when we get done with this either we have  
10 a -- well, one of the seven or six scenarios. If  
11 it's recommended suitable as one of the decisions,  
12 then that suitability would get written up, packaged  
13 with the EIS and sent to Congress. It is only  
14 designated through Congress as per wilderness.

15                   DR. WILLIAM PRESCH: I see. So Congress, if  
16 it is recommended that it's suitable, then the  
17 alternative that comes out of this document will have  
18 to be essentially determined by Congress because some  
19 of these will have to automatically be removed.

20                   DICK CROWE: Not necessarily. That's what  
21 we're trying to search for if we want to make sure we  
22 have consistency within each one of these  
23 alternatives. And that's why the third item that --  
24 Lorelei has her hand up on -- I've got eyes in the  
25 back of my head -- vehicle access and suitability for

180

1 recreation or scenic. If we think that that works,  
2 that's the way the recommendation's going to go to  
3 Congress.

4                   DR. WILLIAM PRESCH: So you will have a  
5 preferred alternative in this?

6                   DICK CROWE: Oh, yes.

7                   DR. WILLIAM PRESCH: Even though the  
8 suitability of the river hasn't been determined.

9                   DICK CROWE: Yes, and we're not there yet.

10                   DR. WILLIAM PRESCH: One other question. In

11 any of these limited or open alternatives is there  
12 anything in EIS that would discuss the addition of  
13 facilities because of public use whatever level in  
14 the canyon you get to? In other words, are you going  
15 to bring in an SST or -- sweet smelling toilet, or  
16 are you going to pave a parking lot or these kinds  
17 of -- anything like that mentioned as a part of an  
18 alternative?

19 DICK CROWE: The document right now suggests  
20 that whatever the decision, if it's hiking only,  
21 vehicles only, both, there needs to be some  
22 recreation implementation thinking what we call  
23 recreation management plan that that's appropriate  
24 probably no matter what the decision, and that would  
25 be the vehicle to address facilities. Not to say

181

1 that if we think that they would be needed, we might  
2 not -- we would probably mention them, but we would  
3 defer to a post EIS, you know, ROD, additional  
4 thinking before we got into the specifics.

5 DR. WILLIAM PRESCH: Okay. Thank you.

6 PAUL SMITH: Lorelei?

7 LORELEI OVIATT: Lorelei Oviatt, Kern County  
8 planning.

9 Just to help focus again a recommendation of  
10 the TRT.

11 The decision that this document's going to  
12 be used for is: What segments, either all or some

13 combination of this road from the bottom of the BLM  
14 all the way through the park service to the top of  
15 Panamint Valley, for limited opened or closed or some  
16 combination of those and a suitability analysis to  
17 recommend to Congress that it be designated for wild  
18 and scenic river.

19 Now, I'm going to ask Dick to distinguish  
20 what he distinguished for the TRT on why his team  
21 would like us to consider collapsing one and two into  
22 one -- one alternative because the recommendation  
23 from the TRT is to collapse those, but I do want to  
24 make clear that if we take out the word eligible for  
25 WSR, and we only say, alternative 1 is no action

182

1 current management open route unsuitability for WSR,  
2 if they recommend an eligibility for WSR, then the  
3 route cannot be opened. That alternative would not  
4 be in the mix. It would then be a limited or closed  
5 route for a WSR. That was the original reason that  
6 we came up with this. Dick came with a persuasive  
7 reasoning, which I'm going to ask him to present  
8 again on why that didn't matter.

9 DICK CROWE: Okay. The problem with the way  
10 the no-action alternative is worded now and it's even  
11 in the title there you have on the sheet, it says,  
12 open route, eligible for wild scenic river, but  
13 eligible is the first of a two-part process on wild  
14 and scenic river study.

15 First, you do eligibility, which is your  
16 inventory. Second, you do your suitability, which is  
17 your decision whether it's appropriate or not for  
18 designation. And right now on the BLM portion of the  
19 canyon, we have an eligible under recreation for part  
20 of the canyon, and under scenic for part of the  
21 canyon that was done in the northern eastern Mojave  
22 Desert plan that ended two years ago. And  
23 eligibility kind of leaves you hanging. It's like  
24 having a permanent WSA out there somewhere. It's not  
25 wilderness, but it's not something else. And so the

183

1 advice from on higher than our level is combine those  
2 two alternatives because otherwise those number one  
3 and number two are identical. Just combine them and  
4 even under no action, which is a -- it kind of  
5 freezes current management in place. Let's just say  
6 we've got to get -- we've got to finish off that  
7 before we started on the BLM portion of the canyon  
8 for the purposes of defining an array of  
9 alternatives, find that unsuitable, combine the two  
10 and save yourself a little writing time.

11 CHAIRMAN KEMPER: Lorelei?

12 LORELEI OVIATT: Why wouldn't you say  
13 no-action Kern management open route suitable for  
14 WSR? Is the use of the word eligible? You've  
15 already determined it's eligible. Why wouldn't you  
16 have an alternative that says it's an open route, but

17 we're recommending it's suitable as a recreation  
18 designation under wild and scenic river. I noticed  
19 that's the only place that eligible occurs on this  
20 list. Perhaps the word is suitable, not eligible.

21 CHAIRMAN KEMPER: Mr. Crowe?

22 DICK CROWE: Other than trying to get to a  
23 reasonable -- a minimum number of reasonable  
24 alternatives, I'm not sure if I have a good answer.  
25 I guess it could be open route, suitable -- now,

184

1 don't forget Lorelei, below Chris Wicht Camp the  
2 eligibility is recommendation. From Chris Wicht Camp  
3 to the boundary at scenic, so it's not just all  
4 recreation.

5 Now, having said that, it might have to do  
6 with the scenario of what can happen under open --  
7 more -- deleterious things could perhaps happen under  
8 open route where you're not out there and you're not  
9 permitting and so forth, then if you were permitting,  
10 which would be under 5, 6 or 7, there is not a whole  
11 lot of difference I guess either way. Other than  
12 that, I don't know that I have a good answer.

13 CHAIRMAN KEMPER: Hang on, Paul. The  
14 principal would like to talk.

15 LINDA HANSEN: Nice. I have really a  
16 question for you that kind of goes to all of the  
17 discussion we did with getting to the wild and scenic  
18 stuff. But it's my understanding do we have to have

19 a true no-action alternative in this document?  
20 Normally, we do under your scenario. So a true  
21 no-action alternative under this document would  
22 include eligibility, not a suitability, because  
23 current situation is that it's eligible that was done  
24 in a prior document.  
25 So it seems to me that a true no-action

185

1 alternative, Lorelei, to get back to your question,  
2 would have to say, open route, eligible for wild and  
3 scenic. Now, in the ability to combine alternatives,  
4 if we can show that that analysis is exactly the same  
5 in the document, is there a process that we could use  
6 to say we don't need to belabor this any further,  
7 that the analysis from here on out will look the same  
8 for these two alternatives given the same things  
9 would happen under each of the alternatives, but  
10 somehow in the beginning in the document it seems to  
11 me in the array of alternatives, we will have to  
12 display what is the true no-action alternative.

13 DICK CROWE: That's true and kind of under  
14 the umbrella of explanation or alternatives,  
15 considered but not carried forward. We would have to  
16 explain all that, absolutely. It's -- so far our  
17 planning NEPA expert at your next higher level in  
18 Sacramento says he thinks you can combine them and be  
19 okay in terms of NEPA, but we certainly have to  
20 explain that.

21 CHAIRMAN KEMPER: Jon McQuiston.  
22 JON McQUISTON: If we do what Linda  
23 suggested, no action, which would be an open route  
24 current management eligible for WSR on BLM land, how  
25 do we, then, ever proceed beyond the stalemate that

186

1 we're in now going back to my earlier discussion  
2 about right of access? Because the right of access  
3 terminated with the eligibility of the -- the wild  
4 and scenic river.

5 How do we get beyond that?

6 DICK CROWE: That's probably the best answer  
7 to why we should combine these two because it's just  
8 a miserable situation to try to explain and leave it  
9 and it's just not even -- I'm not sure of the  
10 words -- appropriate or it's just not a good way to  
11 go.

12 JON McQUISTON: Then why not to take  
13 Lorelei's suggestion: No action, current management,  
14 go to the next step of saying it's either suitable in  
15 this case here or suitable --

16 HOWARD BROWN: Either/or -- suitable or not  
17 suitable. Two separate choices.

18 DICK CROWE: I think --

19 JON McQUISTON: Because we're combining the  
20 wild and scenic river along with a typical  
21 environmental impact statement, it's hard for me  
22 to -- you know, this no-action alternative, I'm

23 trying to get where you were, Linda, and so if you're  
24 going to do a no-action alternative, it seems to me  
25 the no-action alternative ought to have two

187

1 junctures: One, it's either suitable for wild and  
2 scenic or it's not suitable. You want A and B, if  
3 you will.

4 LINDA HANSEN: Excuse me, Linda Hansen.  
5 Current management, however, is eligible for wild and  
6 scenic. That is current management right now. And  
7 that is and would be if we did nothing. If we  
8 weren't sitting here talking about anything for  
9 Surprise Canyon today, that's where we would be.

10 I think what I was suggesting is that  
11 there's good cause to want to move on and deal  
12 obviously with the question of suitability. We don't  
13 want to leave it hanging and I think that when you  
14 start talking about impacts in an analysis format,  
15 that can be done in a very kind of neatly combined  
16 way to come up with a suitable or non suitable  
17 recommendation. But I think if you just want to  
18 state there purely what the current situation is, the  
19 current situation would be existing management. And  
20 existing management is eligibility with no  
21 suitability. That wouldn't necessarily be where I  
22 would want to leave it and I don't think any of us  
23 do, but I think that's the description of current  
24 management.

1 Planning. Distinguishing out the no-action current  
2 management, I concur with Linda. The no-action  
3 current management is just supposed to say if this  
4 whole project went away, what would be there now?  
5 No new decision, no new action, no changes. So  
6 that's correct.

7 But, now the question becomes, even though  
8 the TRT originally as you can tell this took more  
9 than one lunch, we only had a lunch. Now I'm  
10 wondering maybe we shouldn't combine No. 2. Now that  
11 Linda has explained it in more detail, I don't see  
12 that open route unsuitable for WSR is the same as No.  
13 1 and I'm still left with whether open route suitable  
14 in all these alternatives?

15 And if you don't have that alternative, then  
16 essentially what you're saying is as soon as they  
17 make the determination that it's suitable for WSR,  
18 that means you automatically have to go to limited or  
19 close. So you forestalled one of the alternatives  
20 and one possibility is to put it in No. 2. Do an  
21 analysis that says open route suitable or unsuitable  
22 for WSR. That's one possibility I'd like to offer  
23 you.

24 CHAIRMAN KEMPER: In the hopes of moving  
25 this on, I think we're kind of stuck, I would ask the

1 TRT to maybe even consider an eighth route, which is  
2 you can start off with as it's written, a no-action  
3 current management open route eligible, which is the  
4 current situation. The second one could be replace  
5 eligible with suitable, and the third one being  
6 unsuitable.

7 I would ask that you consider that just for  
8 the hopes of moving on. This isn't final document,  
9 not a final working --

10 JIM BUGERA: Here, here.

11 LORELEI OVIATT: Here, here.

12 CHAIRMAN KEMPER: Is everybody in agreement?

13 (Unanimous reply): Yes.

14 PAUL SMITH: Does that create any -- Paul  
15 Smith -- does that create any unusual problems for  
16 you, Dick, that we're not talking about here? Other  
17 than having to draft more language?

18 DICK CROWE: It sounds like what you're  
19 suggestion is what Ron just said and that is we  
20 should have eight alternatives.

21 JON McQUISTON: One of them being an --  
22 essentially, an open route suitable.

23 PAUL SMITH: We then would truly have the  
24 full array of alternatives.

25 JIM BUGERA: Yes.

BLM - final

1 LINDA HANSEN: We hope.

2 DICK CROWE: No. We still got a problem  
3 because we have the park service part. The  
4 eligibility we have in place now is for the BLM  
5 portion of the canyon only. If we include -- if you  
6 say open route suitable, BLM only, then that would  
7 work. But if you -- if you had -- you have two  
8 segments on park that are wild -- are going to drop  
9 in these other alternatives as wild eligible, I don't  
10 think you could -- with a good face could put access  
11 into a wild section.

12 JON McQUISTON: Are you suggesting that the  
13 park services have already made their determination?

14 DICK CROWE: No, it's part of this --  
15 they've done the field work and the writeup but it's  
16 otherwise a part of this EIS. I'm sorry for the  
17 complexity of this thing but in BLM, we've done  
18 eligibility park hasn't, but park's going to catch  
19 up, then we're going to vote proceed to suitability  
20 in this one document.

21 PAUL SMITH: Let me make a suggestion. All  
22 that we're able to do here is to make a  
23 recommendation to the BLM, so if we recommend  
24 suitable together with open, and if you're in  
25 negotiations or discussion with the national park

191

1 service indicate that they're not going to make it

2 suitable for the example in the national park service  
3 or they won't even make it open, then our  
4 recommendation would still stand insofar as the BLM  
5 land is concerned.

6 DICK CROWE: Yeah, and we could simply not  
7 carry -- not even begin to process on the part of  
8 the -- aside of the line for that particular  
9 alternative.

10 PAUL SMITH: So if we left, our advice to  
11 you, then, we're giving you the authority to do what  
12 we think is a full range of alternatives, and if the  
13 national park service blocks a part of it, that's too  
14 bad, but we've done what we could do.

15 So maybe we should entertain the thought  
16 that we have item No. 1 and then we have item  
17 No. 1.5, which is a whole new one, which is just open  
18 route suitable for wild and scenic.

19 Does that bring us closer to a consensus?

20 JON McQUISTON: Concur.

21 CHAIRMAN KEMPER: I think that will solve  
22 the problem. I think you'll end up with eight  
23 alternatives, but I think that addresses all issues.  
24 Everybody in agreement?

25 JIM BUGERA: Agreed.

1 CHAIRMAN KEMPER: I do have one comment and  
2 I'll direct it towards Hector and maybe Dick will  
3 have a comment in this. I'll make it as brief as

4 possible.

5           Hector, my memory is different than yours.  
6 I believe we had the congressional record read into  
7 the record here at one of our meetings. My  
8 recollection of that reading of the congressional  
9 record was that Cherry Stem was actually tied to a  
10 starting date and had a clause in it for mineral  
11 exploration or access for mineral exploration.

12           One of my concerns for those of you that  
13 think that ought to be closed is, I think we're  
14 running into a little bit of problem in that now for  
15 four years it's been effectively closed though  
16 Congress guaranteed they would be open for mining  
17 exploration. So are these people being sunsetted or  
18 are they getting an extension on the Cherry Stem?

19           Now, what I'd like to challenge the TRT and  
20 staff to is at the next meeting bring a copy of that  
21 congressional record and we can read it back on the  
22 record, but my recollection is that it was tied to  
23 mineral exploration and it could be revisited -- the  
24 Cherry Stem could be revisited if no mineral  
25 exploration had occurred in a certain amount of

193

1 years, but that access was put there primarily for  
2 mineral exploration, and if we have closed that  
3 access, should not that time be extended?

4           Okay. If we can move on to the next --

5           JON McQUISTON: Mr. Chairman, may I?

6 CHAIRMAN KEMPER: Yes, sir.

7 JON McQUISTON: On that, it's a little  
8 unclear to me the distinction between minerals  
9 assessment that the BLM may be doing and mineral  
10 exploration that industry may want to do. And so  
11 this time clock that began, was it limited to simply  
12 an assessment by BLM or was there the opportunity for  
13 the industry to go in and do its own minerals  
14 exploration or assessment and have they, in fact,  
15 been afforded that opportunity in light of the road  
16 not being accessible?

17 HECTOR VILLALOBOS: Hector Villalobos,  
18 field manager, Ridgecrest.

19 We have reviewed the congressional intent  
20 and the requirement for the ten years to allow  
21 exploration to occur and it has and the primary  
22 mining that has occurred is related to Briggs Mine  
23 and we've also summarized all the other activity  
24 that's occurred in the area. But primarily, it's  
25 outlined on maps that Congress told us to look at and

194

1 we've done that, and it's the area south of Surprise  
2 Canyon and we don't have any real reference than  
3 Congress or Dianne Feinstein that any deal was made  
4 with regard to the Cherry Stem and its relationship  
5 to -- exploration.

6 Basically, the area that we've been able to  
7 define from the congressional record is from Happy

8 Canyon south and it does include portions of Surprise  
9 Canyon wilderness, which extended to that area.

10 CHAIRMAN KEMPER: Hector, I may be really,  
11 really confused or you may be confusing me.

12 HECTOR VILLALOBOS: I think so.

13 CHAIRMAN KEMPER: But here a little bit  
14 earlier you mentioned there wasn't anything tied to  
15 exploration. However, you just testified that the  
16 ten years has expired. I don't know if it's ten  
17 years or 20 years.

18 HECTOR VILLALOBOS: Yes, the ten years has  
19 expired.

20 CHAIRMAN KEMPER: So there was ten years  
21 originally?

22 HECTOR VILLALOBOS: Yes.

23 CHAIRMAN KEMPER: Okay. I thought you  
24 testified earlier that it had not been tied to any  
25 exploration.

195

1 HECTOR VILLALOBOS: Maybe at the time when I  
2 was talking about this originally, the ten years  
3 wasn't quite up, but it's up now and we've completed  
4 the report. It's going to be public and it's a  
5 mineral report done by mineral examiners by the BLM  
6 and, we're forwarding it to the state offices  
7 forwarding it to the Washington office.

8 CHAIRMAN KEMPER: My question to you is is  
9 the private industry not having access for the last

10 four years --

11 HECTOR VILLALOBOS: We haven't been  
12 requesting the access as far as on the BLM side. I  
13 don't -- I can't speak for the park service. I don't  
14 know what kind of exploration was occurring there at  
15 the time. All I can tell you is from the floods that  
16 occurred, after the floods pretty much the mining  
17 activity is stopped in that area, other than the --  
18 what's occurring at Chris Wicht Camp, which is a mill  
19 side.

20 CHAIRMAN KEMPER: Thank you.

21 I'm going to go ahead and call a 15-minute  
22 break, give our court reporter a little opportunity  
23 to -- I'm sorry.

24 Did you have something else?

25 HECTOR VILLALOBOS: I was going to refer

196

1 back to a memo that was signed by Mike Pool and this  
2 memo is available for I guess we could make copies of  
3 it for everybody. And the memo tries to point out  
4 what the Section 106 required us to do.

5 As the best of our knowledge, we have done  
6 what Section 106 of the California Desert protection  
7 Act required us to do, and we fulfilled that.

8 Unfortunately, I think, it's been confused  
9 with that Cherry Stem and I tried to clarify that  
10 before but I wasn't able to and I apologize for that.  
11 But again, if mining company were to -- it's a

BLM - final

12 complex situation because I've asked the park service  
13 about that. What would happen if somebody wanted to  
14 go and mine around Panamint City and they'd have to  
15 deal with a whole bunch of other issues, not BLM's on  
16 the park service side.

17 DR. WILLIAM PRESCH: Yes.

18 CHAIRMAN KEMPER: Okay. Thank you.

19 HECTOR VILLALOBOS: Thank you.

20 CHAIRMAN KEMPER: Let's break for 15  
21 minutes.

22 (Recess.)

23 CHAIRMAN KEMPER: The next item on the  
24 agenda is the grazing consultation policy and  
25 procedure. I'll make it short and sweet. We did not

197

1 meet formally. Linda and I did have one meeting. We  
2 got sidetracked with some other issues and Linda is  
3 going to be providing the TRT with the current rules  
4 and regs regarding consultation and that will give us  
5 a starting point. And the TRT will meet before the  
6 next meeting to work on that. So that's all we have  
7 on the grazing.

8 Now, according to the agenda, we can all go  
9 to lunch.

10 BILL BETTERLEY: Ron, before you get off on  
11 that grazing, I'd like to ask Linda a question if I  
12 could. I'm trying to go to the principal's office.

13 CHAIRMAN KEMPER: Let me walk you over to  
Page 185

14 the principal.

15 BILL BETTERLEY: Are you aware of the  
16 University of Nevada Reno's cattle study they made,  
17 the grazing study they made over our entire area? I  
18 know the bureau's very much aware of it because it  
19 was made and you hired a gal to run your New Mexico  
20 office after it was made, but I think that's one that  
21 should be brought because it's quite a thick study.

22 I got that and I'm sure I kept it after I  
23 went off the -- they made quite a study of that for  
24 the California area.

25 LINDA HANSEN: Was that regarding the

198

1 Consultation Coordination and Cooperation Process  
2 bill or -- because there have been a couple of  
3 studies done.

4 BILL BETTERLEY: This was made December of  
5 '04. So it's very quite recent.

6 LINDA HANSEN: It's tied back into the new  
7 rules and an EIS that was done on those range rules,  
8 I believe.

9 BILL BETTERLEY: It's quite interesting.

10 LINDA HANSEN: Okay. We do have that  
11 available and I'll just pull that up.

12 BILL BETTERLEY: I want to make sure I look  
13 at that.

14 CHAIRMAN KEMPER: If you'll provide that to  
15 the TRT, that will be great.

16 Mr. Hillard, you have a comment or question?

17 JERRY HILLARD: Comment on the grazing.

18 Jerry Hillard, and I'm representing San Bernardino  
19 County.

20 One thought that occurred to me, and I  
21 mentioned or I touched this morning when I was  
22 talking about desert tortoise recovery, on one of the  
23 aspects of the tortoise recovery plan when I went  
24 back through and poured over the recovery  
25 recommendations that were contained in that, in a

199

1 number of the DWMAs, in particular, those here in  
2 California that had grazing allotments there was a  
3 proposal for the establishment of experimental  
4 grazing zones and for some reason, and I really have  
5 never understood why, neither BLM or the Fish and  
6 Wildlife Service ever picked up on that option as a  
7 means not only of trying to manage grazing rather  
8 than eliminate it and set up some management systems  
9 in which livestock and tortoises could be managed  
10 that might foster good vegetation management.

11 I'm wondering, as you approach consultation  
12 and my comment is to relook at that even though the  
13 recovery plan may be in the process of review,  
14 certainly the old one is still out there, and as you  
15 approach consultation, might I suggest there that you  
16 look at perhaps that as an alternative to just simply  
17 canceling allotments.

18 CHAIRMAN KEMPER: Jerry, I will share with  
19 you and the rest of the counsel that we had an  
20 extensive grazing TRT before Linda came on board as a  
21 district manager. Participating in that was BLM  
22 staff's biologist range management people as well as  
23 Ray Bransfield, Ed LaRue, I believe a Mr. Avery and a  
24 host of other people, and there was literally  
25 thousands of hours spent and that was one of the

200

1 recommended alternatives for the plan was some  
2 experimental management plans or grazing plans in  
3 DWMAs and it was, I believe, passed by 10-2  
4 resolution of this board.

5 Unfortunately, at the time the staff with  
6 BLM and the existing district manager decided not to  
7 include it as an alternative though it was supported  
8 by this board.

9 CHAIRMAN KEMPER: Okay. We're going to go  
10 to a counsel round table and discussion for general  
11 topics as well as where our next meeting is going to  
12 be. With your guys' permission, I'm going to suggest  
13 that we go off the record for that portion so our  
14 court reporter can take a little break and then we'll  
15 try to get everything else wrapped up. I don't know  
16 if that used to be part of the formal records.

17 Is everybody in agreement? Roy Denner.

18 ROY DENNER: Mr. Chairman, before you go off  
19 the record, I have a motion I would like to make. Is

20 it appropriate now or do you want to wait until our  
21 off-the-record discussion?

22 CHAIRMAN KEMPER: Actually, let's stay with  
23 the agenda items. We're going to come back on the  
24 record for action items; is that okay?

25 ROY DENNER: Yes.

201

1 CHAIRMAN KEMPER: We're off the record.  
2 (ROUNDTABLE DISCUSSION HELD OFF THE RECORD)

3 CHAIRMAN KEMPER: Back on the record.

4 We will have our next meeting on June 24th  
5 and 25th in the Riverside area, Riverside/Ontario.  
6 And the agenda items that have been previously  
7 discussed as well as the updates from the TRTs will  
8 be on the agenda.

9 If counsel members have anything else that  
10 concerns them or they would like to have added to the  
11 agenda, they can get in contact with myself and Linda  
12 and then we'll get in contact with Doran and see if  
13 we can accommodate it.

14 We have a time -- at this time, before we do  
15 our action items for public comment, is there anybody  
16 that would like to give comment to the counsel?

17 Mr. Matthews.

18 DAVE MATTHEWS: Dave Matthews, again, of  
19 Ridgecrest.

20 I was a little bit asleep there. I wasn't  
21 quite sure what you were asking for. There was a

22 question raised yesterday in discussing the DWMA that  
23 I think it was Mr. Denner asked the question about  
24 what the cost was to put that plan together. That  
25 same question came up a number of times during the

202

1 planning process, and in a sense, there could be  
2 several answers depending on whether you want to look  
3 at just government money, the federal money or  
4 whether or not you want to look at private money  
5 including people that paid gas, you know, out of  
6 their own pocket and their meals and also county and  
7 organizational money because there were a lot of  
8 hours over the years that have gone into that.

9           But right now, I think I've got the answer  
10 in every case and that is who knows. But I think if  
11 we have to go through things like this in the future,  
12 it might be advisable to go ahead and just maybe  
13 informally even keep kind of a summary or slight tab  
14 just to see what it does cost because, you know, many  
15 of you are businessmen and you were talking earlier  
16 in some cases about, well, is this cost effective? I  
17 think the public needs to understand that in general.  
18 Thank you.

19           CHAIRMAN KEMPER: Thank you, Mr. Matthews.  
20           Please come forward, Karl.

21           KARL MC ARTHUR: Yeah, I'm Karl McArthur.  
22 I'm with the University of California.

23           I just want to say in the private sector,  
Page 190

24 things are usually efficient, but politics is just  
25 not efficient and we're involved in politics here,

203

1 but I'm not sure how valid some of this might be, but  
2 we might talk about it at some time.

3 Does that make sense?

4 CHAIRMAN KEMPER: Karl, I hope you're not  
5 calling me a politician. Thank you, Karl.

6 Okay. Now comes a time for action items.  
7 Does anybody have any motions that they'd like to  
8 make?

9 Roy Denner.

10 ROY DENNER: Roy Denner. My action item has  
11 to do with the new Desert Tortoise Recovery Office  
12 and the presentation we were given today by the new  
13 manager of that office.

14 I'd like to make a motion to have the DAC  
15 chairman send the letter from the DAC to the manager  
16 of the new Desert Tortoise Recovery Office  
17 recommending that either: One, the scientific  
18 advisory counsel, SAC, be expanded to include  
19 stakeholder representatives; or two, a stakeholder  
20 advisory group be established at the same level of  
21 authority slash influence as the SAC to provide input  
22 directly to the DTR0 manager.

23 JIM BUGERA: Yeah.

24 BILL BETTERLEY: I second the motion.

25 CHAIRMAN KEMPER: I have a motion and Bill  
Page 191

1 Betterley seconded it. Any discussion?

2 Paul Smith.

3 PAUL SMITH: Yeah, I would be -- my  
4 impression from looking at the organizational chart  
5 is that there was a lot of input from the  
6 stakeholders, which should already be organized to  
7 provide that sort of input assuming they'd follow  
8 through on their organizational chart, I would view  
9 it as unnecessary and I don't -- I am totally in  
10 sympathy with the whole idea of making sure that  
11 there is stakeholders' input. I saw it already  
12 included there.

13 CHAIRMAN KEMPER: Jon McQuiston.

14 JON McQUISTON: Thank you.

15 In light of what this group doesn't have,  
16 but nevertheless, I think can be made available, can  
17 it, Jerry?

18 GERALD HILLIER: Yes, you should have a copy  
19 of it Monday.

20 JON McQUISTON: I will see that members get  
21 it, but it's from Secretary Manson basically insuring  
22 stakeholder involvement as a part of this DTR, Desert  
23 Tortoise Recovery Office. I'm going to support the  
24 motion on the basis that there is in the  
25 organizational chart that we saw today an opportunity

1 for stakeholder involvement, but it's at the very low  
2 level and the stakeholder involvement is always  
3 filtered through some agency or organizational  
4 process such that at the time it gets up to the  
5 assigned advisory counsel or the office manager, it's  
6 gone through filters.

7           And I believe that there ought to be  
8 organization an interface or an opportunity for the  
9 stakeholder groups to sit down and talk one on one  
10 with the science advisory counsel or the manager, but  
11 it ought not be filtered up organizationally and  
12 translated such that the stakeholder group never has  
13 the physical audience and the physical presence at  
14 this high level.

15           So I will support the motion.

16           SHERI DAVIS: I agree.

17           CHAIRMAN KEMPER: Jim Bugera.

18           JIM BUGERA: Jim Bugera, and I agree with  
19 that. I have always looked at this scientific group  
20 as a group in a penthouse office. They hear from the  
21 people down below, but they really don't pay much  
22 attention to them. They've been allowed to make  
23 mistakes and not produce for so long that maybe they  
24 need somebody face-to-face telling them the way we  
25 see it.

1 CHAIRMAN KEMPER: Thank you, Jim.

2 Carol Wiley.

3 CAROLE ANNE WILEY: Yeah. I would disagree.  
4 This committee that they set up is for scientists to  
5 do scientific study and advise. I believe there  
6 should be stakeholder input, but not necessarily on  
7 the science committee. I don't think probably many  
8 of us have the scientific knowledge to guide these  
9 people.

10 I think, you know, maybe there should be  
11 some places where comments are allowed, but you know,  
12 as far as being overseeing the science committee, I  
13 would find that unwise.

14 CHAIRMAN KEMPER: Ron Kemper.

15 Carol, I'm going to agree with you and I'm  
16 going to agree with Jon. I'm going to agree with you  
17 that I probably don't have any business sitting down  
18 and talking to a scientist about science.

19 However, I can share with you that the  
20 California Association of Cattlemen would love to  
21 have their biologist sit down and their scientist sit  
22 down and go over the raw data that is being used to  
23 determine the decisions, and I think there's other  
24 stakeholders that have that same type of scientific  
25 science-based talent available to be represented.

207

1 And so I am going to support the motion.

2 However, I can understand that, you know, I don't  
3 need to be advising scientists about science, but I  
4 do believe that private industries, scientists also  
5 should be represented.

6 JON McQUISTON: Mr. Chairman.

7 CAROLE ANNE WILEY: I would agree that that  
8 should be interjected somewhere in the process, but I  
9 just don't see it on their scientific counsel.

10 JON McQUISTON: Perhaps because of the way  
11 the motion was worded, it's giving some concern. I  
12 don't envision the stakeholder groups being a part of  
13 science advisory counsel. I really think where we're  
14 headed with this is the need for the stakeholders  
15 group as a group to move up and be able to access, if  
16 you will, and have interface and dialogue.

17 So I think I'm more inclined to support the  
18 latter part of the motion rather than be a part of  
19 the science advisory counsel because no stakeholder  
20 group or at least no stakeholder that's not a  
21 scientist could engage at that level.

22 But my concern with current organization is  
23 the stakeholders only get to give input at a very  
24 low working level. And I'll use the desert manager's  
25 group as an example. They have a two-day meeting.

208

1 The first day is open to the stakeholders, the second  
2 day is not, but the substantive matters that  
3 stakeholders ought to have a say in is on the second

4 day and the organizational process right now is  
5 flawed.

6 And so I believe there needs to be some sort  
7 of recommendation that elevates stakeholder  
8 participation to a higher place in the organization.

9 CHAIRMAN KEMPER: Roy, just a second. I  
10 have a couple people in front of you.

11 Jim Bugera.

12 JIM BUGERA: By their own admission today,  
13 the science committee or whatever it's called said,  
14 "I don't know" on several occasions. So that does  
15 put us on the same level with them? Now they've had  
16 11 years of I don't know. So it's time maybe that  
17 some of us brought practical experience. You don't  
18 have to be a lawyer to be a judge.

19 CHAIRMAN KEMPER: Jerry Hillier.

20 GERALD HILLIER: Thank you, Mr. Chairman,  
21 for allowing me to speak. Jerry Hillier, QuadState  
22 County Government Coalition.

23 I actually agree with what several of the  
24 people have said here and having fought through  
25 several of these things, I really and I realize time

209

1 is the essence and it's getting late in the  
2 afternoon, but I would agree with the concept that  
3 the stakeholders need to be organized and what I kept  
4 waiting to hear from Roy today was the small work  
5 groups that were supposed to be organized and I never

6 got the answer from him in terms of a conceptual body  
7 of having small group of people well placed to be  
8 able to interface with the science advisory  
9 committee.

10 By the same token, what really left me  
11 incensed this morning was that the science advisory  
12 committee is being formed without any stakeholder  
13 input even in to the science that are there. Dirt  
14 pack, desert tortoise recovery plan review assessment  
15 committee or whatever the acronym was organized much  
16 on the same basis with a group of scientists pulled  
17 together by -- under Dr. Tracy.

18 Stakeholders were permitted access to that,  
19 but not in our own right, but only if we had a  
20 scientist cleared by Fish and Wildlife who was able  
21 to participate.

22 Our organization, QuadState County  
23 Government Coalition, spent our money and hired an  
24 additional scientist who was able to at least  
25 participate in the last half of those meetings.

210

1 Unfortunately, the meetings dealing with the  
2 epidemiology and the disease had already taken place,  
3 but at least we had somebody at the table who ended  
4 up interfacing and really providing not only input  
5 into dirt pack, but also provided feedback to us as a  
6 stakeholder group.

7 Frankly, what needs to be done is that the

8 science advisory committee as currently proposed, as  
9 embarrassing as it might be to the service, ought to  
10 be scrapped and they start over with and call the  
11 stakeholders for input into the composition  
12 membership and composition of that group and they may  
13 appoint some other people, but at least there would  
14 be a cross section of disciplines and scientific  
15 skills, and then if you wanted to take the second  
16 half of that and organize a small group of  
17 stakeholders to also interface with that at a  
18 parallel level, I think that would be appropriate.

19 But I think what bothered me as a  
20 stakeholder was that they already had five of the six  
21 seated, three of whom I haven't got a clue who they  
22 are, and the other two are very well known and that  
23 gives me a problem that they've already got -- you  
24 know, they've already got the furrow planted before  
25 we ever come to the table.

211

1 JIM BUGERA: I agree.

2 CHAIRMAN KEMPER: Thank you, Mr. Hillier.  
3 Mr. Denner?

4 ROY DENNER: I have a couple of points.

5 First of all, relative to John McQuiston's  
6 concerns about the first part of the motion, when I  
7 said one alternative is for SAC to be opened up to  
8 include stakeholders, I automatically assumed the  
9 name of that group would change. It would no longer

10 be called the science advisory counsel, it would be  
11 the stakeholder or expertise advisory counsel or  
12 something, but the name would go along with change.

13 So it would be one body that would work  
14 collectively. And to those of you who are concerned  
15 about scientists versus non scientists, I gave some  
16 examples this morning. I've been participating with  
17 the desert managers group as has Jerry Hillier in the  
18 the MOG and desert scientist -- tortoise scientist  
19 symposium for some time and I gave an example of some  
20 things that we did research on.

21 I think it's scientific research, I mean we  
22 found bird dispersal devices. We found a portable  
23 disease test station to be taken out into the field.  
24 Call it practical science if you will, and by working  
25 at the same level, I'm not saying -- I'm not

212

1 suggesting that the stakeholders should be an  
2 oversight in the scientific group in any sense. I'm  
3 saying that the preferable way would be for all of us  
4 to sit at the same table and have those of us who are  
5 out there in the field.

6 I mean there are examples of scientists  
7 doing their super high level analysis and coming up  
8 with conclusions, you know, like there's a Prems  
9 Meadow [PHONTEIC] leaping frog that has been listed  
10 now for three or four years. It just recently was  
11 determined to never have existed.

12                   Now, if we leave it to the scientist, you  
13 know, actions were taken based on a species that they  
14 determined was endangered that never even existed. I  
15 admit that's a far-out example, but by the same  
16 token, we have a situation in Peeralt [PHONETIC] sand  
17 dunes. For years scientists have been trying to  
18 predict the health of the Pearson milk fetch plant.  
19 You know what we did? We went out and counted them.

20                   What's more scientific than taking a group  
21 of people on the ground and counting how many plants  
22 there are? That's about as scientifically accurate  
23 as you can get.

24                   So I'm suggesting if we work together in a  
25 committee, we can bring more practical experience to

213

1 the table not to counteract the scientific analyses,  
2 but to add to it, to bolster it, you know, and say,  
3 okay, again, we need a long-term plan, you guys are  
4 working on that, how are we doing to improve the  
5 situation long term? In the meantime, let's get out  
6 on the ground and do some stuff -- same thing with  
7 this kind of committee.

8                   So if we could put that kind of committee  
9 together, that would be my first choice. Change it  
10 from SAC to some other name that's all encompassing  
11 if its so-called scientists are unhappy with having  
12 to work with us common folk, then we have a separate  
13 organization at the same level both reporting with

14 the same level of influence to the desert tortoise  
15 recovery program management. That's the concept.

16 CHAIRMAN KEMPER: Paul Smith.

17 PAUL SMITH: Yeah, I would say that we will  
18 have a confusing motion if you include both of those  
19 concepts.

20 ROY DENNER: I have no problem doing either  
21 or if that's the counsel's preference.

22 PAUL SMITH: I would have no problem being  
23 in favor of the one where there was a separate group  
24 of stakeholders. I do have a problem with things  
25 that can be politicized or tend to even create the

214

1 appearance of politicizing the scientific group  
2 because I think we had too much of that sort of thing  
3 already.

4 ROY DENNER: Where does politicizing come  
5 in?

6 JIM BUGERA: Yeah. Really.

7 PAUL SMITH: By bringing non scientists into  
8 a scientists --

9 ROY DENNER: I like the idea of a peer  
10 science group advisory.

11 CHAIRMAN KEMPER: Jim.

12 JIM BUGERA: I want an opportunity to vote  
13 on that as is and then if all else fails, we can  
14 change.

15 CHAIRMAN KEMPER: Howard.

16                   HOWARD BROWN: I happen to like the  
17 two-prong approach, actually. You had brought up  
18 maybe it wouldn't be appropriate for a non scientist  
19 to sit on the science advisory committee, but there  
20 are industry sponsored scientists who either should  
21 be considered or should be on that committee so that  
22 it has a more well rounded approach to it, maybe even  
23 thinking outside the box.

24                   So I would support both of those things that  
25 Roy suggested that the stakeholders be given equal

215

1 status, and if they have industry sponsored  
2 scientists that are qualified to be on the board,  
3 then they should be considered to be on the board, as  
4 well.

5                   CHAIRMAN KEMPER: John Qui ston.

6                   JON McQUI STON: After listening to some of  
7 the discussion, I'll go back to my notes here and I  
8 think you know I certainly can support option 2. I  
9 can support option 1 in tying Ron's comments with  
10 those we just heard.

11                   A statement was made today that there's 43  
12 pages in the recovery plan and only 1.5 dealt with  
13 interactive threats and yet the science team is  
14 composed solely of biologists. So to the extent that  
15 some of these stakeholder groups may have scientists  
16 that they would like to participate in that, it seems  
17 to me that the science committee should allow

18 scientists from other disciplines or other  
19 stakeholder groups in order to compliment where they  
20 were headed.

21 We need to deal with not just single issues  
22 but interactive issues, and so I'm -- I still support  
23 the motion as made.

24 CHAIRMAN KEMPER: Bill Betterley.

25 BILL BETTERLEY: Mr. Chairman and members, I

216

1 believe I already know what that science is going to  
2 be of because we've listened to a couple of them  
3 address the SAC years before and I do believe that  
4 their minds are all made up.

5 And I believe if you had some industry  
6 scientists or some just laymen, you would get a  
7 better cross section than spending 100 million  
8 dollars in 11 years and having not gotten anything.  
9 I'm not too sure it would be better to have that  
10 input going along with the science so that we can  
11 gain something really constructive in the next 11  
12 years.

13 CHAIRMAN KEMPER: Paul Smith.

14 PAUL SMITH: I have a quick question. I  
15 mean our role is to advise the BLM. How is this --  
16 could you read the motion again. I'm trying to see  
17 how it's couched in terms of our advisory --

18 CHAIRMAN KEMPER: Actually, Paul, if you  
19 look at our charter, our job is to advise the

20 district manager, the Secretary of Interior and  
21 Congress, if needed.

22 ROY DENNER: Do you want me to read it?

23 PAUL SMITH: Yeah.

24 ROY DENNER: Motion is to have the DAC  
25 chairman send a letter from the DAC to the manager of

217

1 the new Desert Tortoise Recovery Office recommending  
2 that either: One, the scientific advisory counsel be  
3 expanded to include stakeholder representatives or  
4 two, a stakeholder advisory group be established at  
5 the same level of authority slash influence as the  
6 SAC to provide input directly to the DTR0 manager.

7 PAUL SMITH: Thank you.

8 CHAIRMAN KEMPER: Dave.

9 DAVID CHARLTON: I wanted to say something.  
10 Being a bit of a scientist, I think that the  
11 problem sometimes is not so much that they have their  
12 opinions made up already, but the way the research  
13 goes is based on how they get funding and it's kind  
14 of chaotic and so the conclusions and the outcome are  
15 chaotic.

16 And the problem is there needs to be an  
17 oversight committee and there needs to be someone to  
18 watch over the goals to make sure that this chaos of  
19 funding ends up in some sort of a positive process  
20 with an end point that's common sense and the result  
21 is a recovery of the organism.

22 CHAIRMAN KEMPER: Thank you, Dave, and I  
23 thank everybody on the counsel who's in agreement.  
24 The frustration is that they've spent 11 years and a  
25 hundred million dollars and don't know. And you know

218

1 I guess the frustration for me is that we're seeing  
2 the people that spent the hundred million dollars in  
3 the 11 years forming yet another group to continue to  
4 move forward and maybe spend another hundred million  
5 dollars.

6 Bill Presch.

7 DR. WILLIAM PRESCH: I'm concerned that such  
8 a letter from DAC will tend to upset any kind of  
9 cooperation that might be possible with the desert  
10 office, desert tortoise office.

11 As pointed out, I don't think it's in our  
12 charter to advise this particular group since if it's  
13 anything, it's Fish and Wildlife and it's not BLM,  
14 and I would hate for the office, the tortoise office  
15 to take this as somebody meddling in their affairs  
16 when they haven't even really gotten started yet.  
17 And I would hate to see this as a sore point between  
18 Fish and Wildlife and BLM over the tortoise. I think  
19 there's enough of those. I don't think we need  
20 another one.

21 Secondly, I'll take some umbridge with it  
22 about scientists living in ivory towers. Sure we do  
23 and we love it, but we do talk to people and there

24 are lots of people out there who you might not  
25 consider to be scientists that certainly know more

219

1 about things than I would as a scientist in some  
2 areas.

3           So I think that it's important to get the  
4 stakeholders involved and I think they could do that  
5 in a -- in a group such as we have outlined, perhaps  
6 their own group to begin with and then have some kind  
7 of a merging or joint meetings with the science  
8 people. It's my understanding from the presentation  
9 that the science people are -- and I may be wrong on  
10 this since there's the two that we know on the panel,  
11 are more involved in looking at the science, the  
12 protocol for how the research is to be done,  
13 evaluating proposals to do research, what may be  
14 missing.

15           I was interested in the fact that one of the  
16 individuals that he mentioned is a whale biologist  
17 from the Smithsonian zoo. She will bring certainly a  
18 much different perspective to the -- to this science  
19 advisory and I think that person is far enough  
20 outside of the influence of two of the individuals  
21 that her science is not going to be swayed by their  
22 particular opinion or their particular way of looking  
23 at things.

24           So as the current motion is, I will oppose  
25 it and vote no on it mainly because I don't think we

1 have the jurisdiction to do it.

2           Secondly, I don't want to cause bad feelings  
3 this early in the office's beginning, and, thirdly, I  
4 think we ought to let the office kind of work these  
5 things out together and see how it goes. He's got a  
6 pretty little diagram up there, a flow chart, but  
7 that's not how it always works, and I would like to  
8 give the guy a chance.

9           ROY DENNER: May I respond to that?

10          CHAIRMAN KEMPER: Mr. Denner.

11          ROY DENNER: Roy Denner. To your first  
12 point, I guess it's time to politicize this thing and  
13 I need you to know that I and people that have been  
14 working with this tortoise issue for years have had  
15 discussions directly with Steve Thompson who is the  
16 state by state director for Fish and Wildlife who is  
17 this gentleman's boss's boss.

18               In addition, I have sat across the table  
19 from assistant secretary of interior, Craig Manson,  
20 in Washington DC where he has insisted that he wants  
21 our help. He wants stakeholder input. It's his  
22 idea. We were excluded from the DMG for a long time  
23 until we had those kinds of discussions at the  
24 Washington DC level and all of a sudden we started  
25 getting E-mail from the DMG and the MOG requesting

1 that we get involved in participating and give our  
2 input.

3           So we may cause some ripples at a level  
4 where people don't want us to play, but when we go to  
5 the people who are really in charge, they're asking  
6 for our help. They had been begging for our help and  
7 I suspect it could go the other way. If we don't  
8 raise a fuss about this, they are going to feel like  
9 we didn't follow through on what they have been  
10 asking us to do now for several years.

11           And in terms of your approach, Bill, there  
12 are different kinds of scientists, you know. The way  
13 you suggest the problem should be tackled is -- I  
14 happen to have an advanced degree in engineering. I  
15 could consider myself somewhat of a scientist in a  
16 somewhat different discipline and there is a  
17 scientific way to look at things and that's what  
18 you're talking about when you say let's give these  
19 guys a chance.

20           Let me remind you it has been since 1994,  
21 that these very same people have been saying the  
22 words you just said, this is the way we have to  
23 tackle this problem and here we have a guy that says  
24 we don't know any more now than we did when they  
25 developed that plan in 1994.

1           You want to give them another chance? You  
2 know if that's what the counsel's option is, I mean,  
3 we obviously will go along with it, but I think all  
4 we were going to do is give them another 10 years.

5           CHAIRMAN KEMPER: Jon McQuiston.

6           JON McQUISTON: On the jurisdictional issue,  
7 and I will refer to Linda, but I believe that the law  
8 that created this group says we give advice to the  
9 secretary of interior. We do it through the district  
10 managers, so I don't see any jurisdictional issues  
11 here insofar as Fish and Wildlife falls under DOI.

12           CHAIRMAN KEMPER: Any more comments or  
13 questions?

14           Carol Wiley.

15           CAROLE ANNE WILEY: Yeah. I'm not sure  
16 that's a fair assessment to say that the last ten  
17 years or whatever that nothing has evolved.

18           ROY DENNER: That's what he said.

19           JIM BUGERA: That's what he said.

20           CAROLE ANNE WILEY: Not exactly. There has  
21 been many studies, lots of information, lots of --  
22 lot's of -- a lot of stuff that has happened.

23           The impression that I got that what this  
24 organization is supposed to do is to try to put  
25 things together in a sensible manner and see what's

1 missing, what needs to be done to bring it all  
2 together. He wasn't saying they were going to start

3 new and do all new research. It's too -- use some of  
4 what's gone beforehand and try and put it together  
5 for some conclusion and to see what -- you know, what  
6 steps need to go farther for recovery.

7 CHAIRMAN KEMPER: Thank you, Carol.

8 I'm going to have a comment and I'm not sure  
9 it's on point and I'll let the principal slap me if  
10 it's not.

11 My real concern as a participant in this  
12 counsel isn't necessarily this motion. My concern is  
13 that I'd like to see the problem resolved. I'd like  
14 to see private industry invited at the table. I'd  
15 like to see a science group made up not of status  
16 quo, but of people from several disciplines from  
17 several -- from the private sector that are used to  
18 solving problems and not chasing grant money.

19 So I'd like everybody to give that a little  
20 bit of thought. I know it's not part of the motion,  
21 but amongst all of the money being spent, people are  
22 making a living off the death of a tortoise, the  
23 tortoise continues to decline or at least we're told  
24 it is.

25 I don't believe that the tortoise's problem

224

1 is so complicated that a few people from a few dozen  
2 ones can't resolve it in short order. But then  
3 again, I'm from private industry.

4 Do we -- any more comments?

BLM - final

5 JIM BUGERA: Can I make a motion to end  
6 discussion and vote?

7 CHAIRMAN KEMPER: Call for the question.

8 JIM BUGERA: Actually, he's made a motion.  
9 Do I have a second?

10 BILL BETTERLEY: You don't need one.

11 DR. WILLIAM PRESCH: You don't need one, you  
12 call for the question and then you must vote.

13 CHAIRMAN KEMPER: All in favor by signifying  
14 and raising their hands for a count.

15 Nine Is.

16 All opposed?

17 Three opposed.

18 Any abstentions?

19 Motion carries 9 to 3.

20 Any other action items?

21 PAUL SMITH: Yes.

22 CHAIRMAN KEMPER: Paul Smith.

23 PAUL SMITH: Two things deal with Surprise  
24 Canyon: One, to put into motion the recommendations  
25 that we're making to the Bureau of Land Management.

225

1 Resolve that BLM's advice to include the following  
2 alternatives in the environmental impact report for  
3 Surprise Canyon:

4 One, no action, comma, open route, comma,  
5 WSR eligible on BLM lands.

6 Two, open route hyphen suitable WSR.

BLM - final

7 Three, open route hyphen unsuitable WSR.  
8 Four, open route, paren, reconstruct, close  
9 paren, hyphen, unsuitable WSR.  
10 Five, close route hyphen suitable WSR.  
11 Six, limited route hyphen unsuitable WSR.  
12 Seven, limited route, hyphen, three segments  
13 suitable WSR, comma, unsuitable segment at Brewery  
14 Springs.  
15 And then, eight, limited slash closed route,  
16 comma, or hyphen suitable for WSR.  
17 CHAIRMAN KEMPER: I'll second.  
18 Any discussion?  
19 DR. WILLIAM PRESCH: Question.  
20 CHAIRMAN KEMPER: Who said "question"?  
21 DR. WILLIAM PRESCH: Calls for question.  
22 CHAIRMAN KEMPER: All in favor signify by  
23 raising their hands.  
24 Any opposed?  
25 Motion carried is unanimously.

226

1 PAUL SMITH: Another housekeeping item, to  
2 clean up the members of the Surprise Canyon TRT, that  
3 the following members be confirmed: One, Paul Smith  
4 as chair, Ron Schiller, Carol Wiley, Lorelei Oviatt,  
5 and a new member, Dave Charlton.  
6 LINDA HANSEN: Point of order. Ms. Oviatt,  
7 is not a member of the advisory counsel and  
8 therefore, even though she has worked diligently with

9 us on development of this information and I have no  
10 objection to her continuing to do that, I want it  
11 noted that she does this not as a member of the  
12 counsel, but as an outside interest for the Kern  
13 County, for Kern County.

14 Would that be correct, Lorelei?

15 LORELEI OVIATT: As staff to supervisor  
16 McQuiston, a county supervisor.

17 LINDA HANSEN: However, that is appropriate.

18 CHAIRMAN KEMPER: Question. My  
19 understanding was originally that Jon McQuiston,  
20 which was part of the TRT, but he's asked Lorelei to  
21 stand in instead.

22 Is that not correct.

23 JON McQUISTON: That's my understanding.

24 LINDA HANSEN: And maybe this is just a  
25 technicality, but the TRTs for the DAC where you have

227

1 DAC members appointed to these TRTs should be I  
2 believe DAC members. And although I have -- again, I  
3 will restate I have no issue with Lorelei working on  
4 these things. I believe that the TRTs for the  
5 advisory counsel should be consistent of DAC members  
6 on the counsel.

7 I hope you don't take this personally. It  
8 is just a point of order for me and how I have to  
9 interface with and how we look at interaction between  
10 the counsel and the bureau.

11 PAUL SMITH: I'd like to amend the motion to  
12 indicate that Lorelei would be an ex officio member.

13 CHAIRMAN KEMPER: Question.

14 JON McQUISTON: I think the way to clarify  
15 is to make me a member.

16 CHAIRMAN KEMPER: But you are a member.

17 JON McQUISTON: And if she attends, she's  
18 welcome.

19 LINDA HANSEN: It would show you as --

20 JON McQUISTON: Right, and that's my  
21 understanding of the original composition anyway.

22 CHAIRMAN KEMPER: So Jon McQuiston is a  
23 member of the TRT. Lorelei is simply staff for the  
24 county who provides input.

25 JON McQUISTON: And that's very consistent

228

1 with what we try to set up with the adopt-a-cabin. I  
2 was appointed to that TRT and made the comment  
3 yesterday that, you know, I may have to have staff  
4 assist me in that effort.

5 PAUL SMITH: I have no problem with that, so  
6 Jon, I've got you listed in the motion that way so  
7 amend the motion so that Jon McQuiston --

8 BILL BETTERLEY: Read all.

9 CHAIRMAN KEMPER: Please start over.

10 PAUL SMITH: Sure. Paul Smith is the chair,  
11 Ron Schiller, Carol Wiley, John McQuiston and David  
12 Charlton.

13 JON McQUISTON: Second.  
14 CHAIRMAN KEMPER: Any discussions and I'll  
15 call the question, all in favor signify by saying  
16 aye.  
17 Any opposed?  
18 Motion carries.  
19 I'm not sure why we did that by motion.  
20 Typically, the TRTs are appointed by the chair.  
21 PAUL SMITH: That's fine, but we had a lot  
22 of confusion as to who's on the TRT, so I think  
23 you're right.  
24 CHAIRMAN KEMPER: Roy Denner.  
25 ROY DENNER: Mr. Chairman, we've been

229

1 tripping over this terminology several times. I  
2 thought we had discussed this in the past and decide  
3 that when a group composed of DAC members was formed  
4 for a particular purpose, it should be called a  
5 subcommittee because we already have several  
6 instances.  
7 For example, the Imperial sand dunes TRT,  
8 which is authorized by this organization and we have  
9 a representative from this organization's signature  
10 on that TRT, but the TRT is composed of people who  
11 are involved in that particular issue. We're talking  
12 about doing the same thing at Dumont Dunes at El  
13 Mirage.  
14 And it might be more clear for everybody if

15 we have two categories: When it's a subcommittee, we  
16 call it subcommittee; when it's an outside  
17 organization, a review team composed of people with  
18 expertise needed to provide that advise, we call it  
19 the TRT.

20 CHAIRMAN KEMPER: My only real experience  
21 was the grazing TRT, Roy, and what I can share with  
22 you is that as far as the TRT was concerned, the only  
23 people that voted in the TRT were the DAC members.  
24 However, they were able to pull in all the outside  
25 disciplines, listen to all the information and

230

1 consensus down to consensus item and kind of vote on  
2 it. And in the case of the grazing TRT there was two  
3 we never did get consensus on, but we were able to  
4 take in a lot of information and the TRT was able to  
5 come back to the DAC with their recommendation.

6 ROY DENNER: Well, if that was the case with  
7 the Imperial sand dunes TRT, I could call the shots  
8 on everything because I'm the only council member.  
9 That TRT, every member on them votes on the issues.

10 CHAIRMAN KEMPER: What's your question,  
11 Linda?

12 LINDA HANSEN: I believe that whether  
13 they're called subcommittees or whether they're  
14 called TRTs, the definition of what that group exists  
15 for is what determines the length of time they're  
16 active or what their sole purpose is.

17           The TRTs for Imperial sand dunes was  
18 chartered for a specific purpose intended to be very  
19 long term to deal with a fee area specifically. And,  
20 yes, they are, I guess, sub chartered, if you will,  
21 by the district advisory counsel and as such they  
22 are a member of the district advisory counsel on that  
23 group as liaison to this counsel.

24           I've worked with both and I guess it doesn't  
25 matter to me whether you call yourself the

231

1 subcommittee of this counsel, which you can do very  
2 quick, very specific work, bring it back to the  
3 counsel, formulate a recommendation and go on.

4           I think in areas like the plan where we have  
5 specifically taken people off the counsel for the  
6 purpose of helping to develop as per your charter  
7 that plan, then I think that does truly either  
8 work -- it can work either as a subcommittee or it  
9 can work as a TRT. I think it's just nomenclature  
10 we've gotten used to and --

11           ROY DENNER: That's not the problem. It's  
12 the outsiders. When they hear the word TRT, most of  
13 them think about what's going on in the sand dunes.  
14 That's been the longest one, at least in my community  
15 that people think about and in their mind they want  
16 to step up and volunteer for that TRT, hey, if you're  
17 going to have a TRT for this subject; where, if we  
18 said subcommittee, they would recognize that it is

19 the subcommittee of the DAC -- composed of members of  
20 the DAC, and it's easier for the rest of the world to  
21 understand.

22 LINDA HANSEN: I guess the only question I  
23 am going to ask, then, is are you going to call it a  
24 subcommittee, are you limiting involvement from  
25 outside personnel that you might want to have in --

232

1 are providing input to the subcommittee?

2 ROY DENNER: I don't see why. I mean, the  
3 grazing TRT hasn't called a subcommittee. It still  
4 could have taken input. I mean --

5 CHAIRMAN KEMPER: We did. I mean we called  
6 it a TRT, but we literally had probably 40 people  
7 involved.

8 ROY DENNER: Why would that change if you  
9 called it a subcommittee? The subcommittee are the  
10 only people who could vote. Just like the TRT in the  
11 Imperial sand dunes, takes input from a lot of  
12 people. Only the members vote.

13 LINDA HANSEN: And none of their decisions  
14 come back to this council for final authorization if  
15 you think about that. That TRT works solely  
16 independently for the sand dunes and brings  
17 recommendations back here. And what we talked about  
18 in any of these others is that the smaller group work  
19 is just to formulate recommendations that then come  
20 back to the full council.

21 CHAIRMAN KEMPER: The former principal has  
22 his arm up.

23 GERALD HILLIER: Jerry Hillier, QuadState.  
24 Sometimes with bureaucratic organizations  
25 can reek havoc. And I think this will may be one of

233

1 those things where actually ambiguity may be to your  
2 benefit. It strikes me that if you declare it as a  
3 subcommittee, then you then risk coming under FACA,  
4 the Federal Advisory Committee Act, and begin having  
5 to publish notices of meetings, provide for public  
6 input and a whole bunch of other things.

7 And whether TRT, it's an informal ad hoc  
8 group that comes together for a specific purpose and  
9 disbands and has no permanent standing.

10 So I guess my advice, and you haven't asked  
11 for it is to leave the ambiguity and just deal with  
12 it under TRT.

13 CHAIRMAN KEMPER: The other thing that I  
14 share with you is even though the TRT sometimes vote  
15 and tries to find consensus and bring it forth, it's  
16 still the DAC that does the final act.

17 Do you have a motion on the floor?

18 ROY DENNER: No, I just brought it up for  
19 discussion.

20 CHAIRMAN KEMPER: Any other motions? Any  
21 other action items?

22 We're adjourned.

(Proceeding ending at 4:06 p.m.)

23  
24  
25

234

1 R E P O R T E R ' S C E R T I F I C A T E

2  
3

4 I, Numia N. Bounds a court reporter in and  
5 for the State of California, do hereby certify:

6 That the said proceeding was taken down by  
7 me

8 in stenotype at the time and place therein stated  
9 and was thereafter reduced to printing under my  
10 direction.

11 In witness whereof, I have hereunto  
12 subscribed my name this day of ,  
13 2005.

14  
15  
16

Numia N. Bounds  
Court Reporter

17  
18  
19  
20  
21  
22  
23  
24

