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DEIS MEETING
Lewis River Projects

Swift No. 1, Swift No. 2, Yale, Merwin

THURSDAY, OCTOBER 27, 2005

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1 APPEARANCES

2 Ann-Ariel Vecchio, Federal Energy Regulatory Commission

3 Tim Welch, Federal Energy Regulatory Commission

4 James Hastreiter, Federal Energy Regulatory Commission

5 Peter S. Foote, The Louis Berger Group, Inc.

6 Kimberly McCune, Pacific Corp

7 Ramona Monroe, Counsel to Pacific Corp

8 Curt Leigh, Washington Department of Fish & Wildlife

9 Chris Maynor, Ecology

10 Brett Swift, American Rivers

11 Jim Byrne, Washington Department of Fish & Wildlife

12 Ryan Lopossa, Cowlitz County, Clark County,

13 Skamania County

14 Adam Haspiel, Gifford-Pinchot National Forest

15 Joe Hiss, United States Fish & Wildlife Service

16 Lou Ellyn Jones, United States Fish & Wildlife Service

17 Janne Kaje, Cowlitz Indian Tribe

18 Holly Harwood, Pacific Corp

19 Carl Corey, USDA Forest Service

20 Frank Shrier, Pacific Corp

21 Diana MacDonald, Cowlitz PUD

22 Lois Schwennesen, Mediator

23 Christopher Fontecchio, National Marine Fisheries

24 Service

25 Michelle Day, National Marine Fisheries Service

1 WOODLAND, WASHINGTON; THURSDAY, OCTOBER 27, 2005

2 10:00 A.M.

3 MS. VECCHIO: Well, basically, thank you very much
4 for coming everybody. And as you all know, we're here for
5 basically DEIS meeting on the Lewis River projects. And my
6 name is Ann-Ariel Vecchio and I'm project coordinator taking
7 over for Don Francesco who was previously coordinating on
8 the FERC side. With me I have Peter Foote, who is our
9 contractor head, and then over there in the corner is Tim
10 Welch. And then we have James Hastreiter as well.

11 And, basically, just our quick agenda, we'll start
12 with the introductions. Since it's a small group, we can go
13 around and identify each other. I know most of you are very
14 familiar with each other, but just again to get it on the
15 record. Also, today we're here to -- we'll go over the
16 purpose of why we're here today, a quick history of what
17 we've done so far and then explain the basis for our
18 analysis and conclusions in the Draft EIS that we have, then
19 explain the main findings and recommendations that we have,
20 highlight the next steps and then open up for questions and
21 comments.

22 Basically, our purpose today is to receive oral or
23 written comments from all of you and, basically, we want to
24 make sure that we understand what you were proposing in the
25 Settlement Agreement and also get any comments back on if

1 there was a misunderstanding or just basically understanding
2 what your concerns are so that we can consider those in the
3 final that we will prepare.

4 And why don't we do introductions. As I said, I'm
5 Ann-Ariel Vecchio.

6 MR. FOOTE: I'm Peter Foote, Louis Berger, FERC
7 contractor in coordinating, putting together the EIS.

8 MR. WELCH: Tim Welch, branch chief of Hydrowest II
9 at FERC in the division of hydropower licensing.

10 MR. HASTRIER: I'm Jim Hastreiter. I'm with FERC
11 out of the Portland regional office and I work for
12 Mr. Welch.

13 MR. MAYNOR: Chris Maynor, Washington Department of
14 Ecology, 401 coordinator and working on the FERC contract
15 for this project.

16 MS. JONES: I'm Lou Ellyn Jones. I'm with U.S.
17 Fish and Wildlife Service.

18 MR. HISS: I'm Joe Hiss, also with U.S. Fish &
19 Wildlife Service from Lacey.

20 MR. BYRNE: I'm Jim Byrne. I'm with the Washington
21 Department of Fish & Wildlife.

22 MS. SWIFT: Brett Swift with American Rivers.

23 MR. LOPOSSA: Ryan Lopossa. I represent the three
24 counties affiliated with the project.

25 MR. KAJE: My name is Janne Kaje. I represent the

1 Cowlitz Indian tribe. I'm a consultant for the tribe.

2 MS. MacDONALD: I'm Diana McDonald and I'm from
3 Cowlitz PUD.

4 MR. HASPIEL: Adam Haspiel, Gifford-Pinchot
5 National Forest.

6 MR. COREY: Carl Corey from the regional office of
7 the Forest Service.

8 MS. McCUNE: Kim McCune, Pacific Corp, Lewis River
9 Project coordinator.

10 MS. HARWOOD: Holly Harwood, Pacific Corp, record,
11 licensing and implementation.

12 MS. MONROE: Ramona Monroe with Stoel Rives,
13 counsel for Pacific Corp.

14 MR. SHRIER: Frank Shrier, fish biologist and
15 licensed project manager for this project with Pacific Corp.

16 MS. VECCHIO: Basically, to summarize what we've
17 done so far is we had the Yale application come in May 1999,
18 as well as Swift 1 and 2, with Merwin in April of 2004.
19 Scoping as part of the ALP occurred in June 2000. And then
20 certain AIR responses were filed in October of 2004 and then
21 the year following in March and May. Then the -- we had the
22 Settlement Agreement in December of 2004 and all that
23 information we used as the basis for our EIS, which we
24 issued in September of 2005.

25 And the basis for our analysis and conclusions is

1 with most -- with all of our decisions at FERC, the EFA
2 requires us to do an analysis -- independent analysis of all
3 the environmental issues and in that we consider water
4 quality, fish and wildlife resources, as well as recreation
5 and other nondevelopmental resources equally with energy
6 generation and other developmental values. And in that
7 analysis, we give strong consideration to measures that you
8 have developed as part of in a collaborative setting and
9 also terms and conditions by the agencies. Also, all of our
10 conclusions and recommendations are based on the record of
11 the EIS project.

12 And through our analysis, we chose the proposed
13 action of the Settlement Agreement with some staff
14 modifications as our preferred alternative. And, basically,
15 there are three categories of this modification that are
16 part of our preferred alternative. That is, some
17 modifications that we made to the measures that were
18 proposed within the Settlement Agreement, then there are
19 some additional measures that we added and then there are
20 some measures that were part of the Settlement Agreement
21 that we did not include in our recommended action.

22 And right now I'll turn it over to Peter Foote who
23 will explain the measures in the three categories.

24 MR. FOOTE: I'm going to stand up.

25 Okay. As far as the modifications to the proposed

1 action, basically, under the Aquatics Fund and the large
2 water debris enhancement measures, we -- our qualification
3 on those was that they should be somehow tied to resources
4 that are affected by project structures or operations.
5 Similarly, with the culvert replacement, we -- we felt again
6 that -- that it should be only done on those roads that are
7 directly associated with the project in some way. Access
8 roads, for example.

9 Under the weather transmitter, I know, of course,
10 Pacific Corp and PUD had proposed to fund that measure. Our
11 recommendation is that they actually -- actually provide and
12 maintain that -- that transmitter. Now, obviously, if they
13 want to contract it out to somebody, that's fine, but they
14 will have the ultimate responsibility for that.

15 Under the Wildlife Acquisition and Enhancement
16 Funds, we're -- we're suggesting that -- that the lands that
17 are brought in should be somehow tied in to land that's
18 already within the project boundary or associated with the
19 Merwin wild management habitat area.

20 Under additional recommended measures, basically,
21 it has -- it has to do with including certain measures
22 within the project boundary. For example, the roan lands
23 and other lands acquired we're proposing -- or recommending
24 that they be put into the project boundary, as well as the
25 proposed visitor center, any new barrier free fishing access

1 site that's developed. And then the portions of Forest
2 Service Road 90 that -- that actually provide access to the
3 Swift project, we're recommending those be -- that be
4 included also within the project boundary.

5 Under the measures that we're -- we were not
6 recommending be adopted as part of the license, first of
7 all, the -- the In Lieu Fund. We felt that that was kind of
8 such a future unknown, you know, and it also depends on, you
9 know, decisions made by other agencies and we really had
10 nothing in front of us to say exactly what -- what that --
11 that fund would be used for, so we're -- it's such an
12 unknown, we -- we're not recommending it be included.

13 As far as funding for Forest Service -- for the
14 funding -- Forest Service for management of disbursed
15 camping, if those campsites are outside the project
16 boundary, not associated with the project, we're
17 recommending that they -- that funding not be included,
18 again, as a license condition.

19 As far as funding for law enforcement and emergency
20 services, again we felt that if it's not directly tied in to
21 the -- to the project, that it not be part of the license.

22 As far as the gravel study, monitoring and
23 augmentation program downstream from Merwin, based on the
24 information that -- that we saw in the record, it didn't
25 appear that there was a real basis for -- for that at this

1 time, so, again, we're not recommending that.

2 And the five lower river access sites, again,
3 they're outside the Merwin project boundary and we felt were
4 not directly tied to the operations of Merwin, so we're not
5 recommending them as part of the license.

6 MS. VECCHIO: And just to highlight today, just to
7 repeat, we're here to get your comments and concerns so we
8 can add those into our analysis for the Final EIS. And
9 those comments, other than today, are due by November 23rd.
10 Then any pending meeting that is requested would need to
11 happen by December 2005. Then final terms and conditions
12 are due in January. And we will plan to issue our FEIS in
13 February so that we can be ready for Commission decisions on
14 the licenses in April.

15 And now we're ready to open it up for comments and
16 questions. And just for your information, you can also file
17 electronically any written comments that you have online.
18 They can also be mailed to the secretary at FERC or you can
19 submit them to the court reporter and they will be attached
20 to the transcript of today's meeting.

21 Also, just to repeat, since this is being recorded,
22 we want to make sure that you state your name so that that
23 can be clearly identified in the transcript as well.

24 Yes.

25 MR. SHRIER: The form out there, do you want --

1 Frank Shier, Pacific Corp -- do you want a form filled out
2 by everyone that's attending?

3 MS. VECCHIO: Yes, please. And then those forms
4 will be given to the court reporter so we can compile a list
5 of attendees and also identify who was speaking.

6 Also, what we can do is, since we have these three
7 categories of issues, we can go through them in that order,
8 if that works for everybody. If there's a -- if anybody has
9 a preference to do it another way, we can be flexible and do
10 another format, if you like. But if -- going through the
11 resources in terms of our modifications that are additions
12 and then what we did not accept and then any other general
13 comments, if that order works for everybody, we will
14 proceed. And I'd like to open it up for whoever would like
15 to make a comment.

16 MR. WELCH: We have -- we have a podium over there.
17 You can go up there and talk if you want or you can just
18 talk from your chair, wherever you feel comfortable. We're
19 ready for everything.

20 MR. KAJE: Janne Kaje representing Cowlitz Indian
21 Tribe. I -- I would like to do this a little differently.
22 I have a prepared statement that's not -- I'd rather not
23 break it up into different pieces. I don't have to speak
24 first. I just wanted to note that that's not how I'd like
25 to do it.

1 MS. VECCHIO: Would you like to do that first or
2 would you like to do it at the end?

3 MR. KAJE: I'd be happy to do it now.

4 MS. VECCHIO: Okay. And does anybody else -- would
5 anybody else like to say anything beforehand?

6 Go ahead.

7 MR. KAJE: Again, my name Janne Kaje. I'm a
8 consultant for the Cowlitz Indian Tribe. I've been involved
9 in this process for close to five years on this contract.

10 The Cowlitz Indian Tribe is a federally recognized
11 tribe whose ancestral homeland covers the majority of
12 Southwest Washington, including the entirety of the Lewis
13 River Basin. The Tribe has been actively involved in the
14 Alternative Licensing Process for the last five years and is
15 a signatory to and strong supporter of the Settlement
16 Agreement. A testament for the importance and quality of
17 the agreement, particularly as it relates to the protection
18 and enhancement of anadromous fish resources, is the fact
19 that the Tribe signed on in the first place. In an earlier
20 FERC proceeding in a certain neighboring basin, the Tribe
21 chose not to sign due to grossly inadequate protection for
22 anadromous fish resources and for a lack of appreciation for
23 the Tribe's values and interest by both Licensee and by some
24 State and Federal agency representatives. That license is
25 currently the object of a lawsuit brought by the Tribe in

1 the 9th Circuit Court of Appeals.

2 While no Settlement Agreement is perfect from the
3 standpoint of any one participant, the Lewis River agreement
4 was the hard won product of compromise and creativity. It
5 is for this reason that the Tribe has serious concerns about
6 some of the proposed changes recommended by Commission
7 staff. While every signatory is a strong supporter of the
8 agreement, it nevertheless represents a delicate balancing
9 of sometimes disparate interests. My comments today are
10 focused on a few of the most important areas of concern in
11 the DEIS that either undermine key provisions of the
12 agreement or undermine the agreement itself.

13 More detailed comments will be provided in written
14 form. I also have a written copy of these comments that I
15 can give to the court reporter.

16 The first issue I'd like to talk about is -- is
17 really more of a clarification, but it's a very important
18 one. It has to do with what I would refer to as the vision
19 for full anadromous fish reintroduction.

20 Anadromous salmon were historically a centerpiece
21 of tribal sustenance, economy and culture and remain an
22 important part of the modern tribal heritage. The Tribe's
23 principal interest in the relicensing proceeding was to see
24 a future that includes the migration of anadromous salmon
25 past each of the dams, free to select their own spawning

1 grounds, and as free as possible from human interference
2 during their migrations. The agreement achieves this vision
3 to a large extent, though on a protracted implementation
4 schedule. In our view, the Commission's DEIS does not
5 adequately reflect or grasp the "big picture" of fish
6 passage in the Settlement Agreement. To be fair, the
7 agreement itself is complex and possibly hard to interpret.
8 We hope the Final EIS will reflect the key features of the
9 multiple phase fish passage scenario as follows:

10 The ultimate goal of the fish passage plan is to
11 provide for full connectivity throughout the project area
12 for anadromous fish via a system of passage facilities in
13 the upstream and downstream direction. Most importantly,
14 for adult fish, the agreement calls for the utilization of
15 trams, fish lifts or other alternative technologies to
16 achieve full connectivity without the need for traditional
17 "trap-and-haul" using trucks. Specifically, by year 17 of
18 the new license, adult fish will surmount each of the three
19 mainstream dams via lifts or other comparable technologies
20 with human handling limited to requisite sorting and marking
21 where applicable. Trucks, which we consider synonymous with
22 the term "trap-and-haul," are not part of the long-term
23 picture for adult passage. During the first 17 years, due
24 to the phased reintroduction scenario, trucks will be used
25 temporarily by necessity.

1 According to the agreement -- excuse me -- this
2 vision can only derailed in one of two ways. Pursuant to
3 Section 4.1.9 of the agreement, if NOAA Fisheries decides
4 pursuant to a review of new information that one or more of
5 the facilities connecting Merwin and Yale Lakes to Swift
6 Creek Reservoir should not be built, the agreement then
7 invokes the In Lieu Fund as a substitute for providing
8 passage. Importantly, it is implied in the agreement that
9 the current level of information justifies to NOAA Fisheries
10 the need for full reintroduction and associated passage
11 facilities and that new information would have to be
12 sufficient to override this justification.

13 Second, the cost of alternative modes of transport,
14 such as lifts or trams, must not be significantly higher
15 than the cost of traditional trap-and-haul. A preliminary
16 cost study performed by Pacific Corp regarding the potential
17 for a tram facility at Swift No. 1 indicates that the cost
18 of a tram would likely be lower than trap-and-haul,
19 including capital costs as well as O&M. Even if costs turn
20 out to be higher for alternative modes of transport, the
21 agreement includes a provision for other parties to provide
22 funds to make up the difference if they so desire. I can
23 tell you that the Cowlitz Tribe would do everything in its
24 power to ensure the fulfillment of the agreement's vision
25 for non-truck passage.

1 As the mode of upstream passage is a central
2 element of the agreement and was the subject of many painful
3 negotiation sessions and subsequent high blood pressure and
4 gray hairs, we ask that the Commission modify its DEIS to
5 accurately reflect not only the facts but the vision for
6 fish passage in the Lewis River, which sets this agreement
7 apart from many others.

8 I'd like to touch on three shorter issues that to
9 me are conflicts between staff recommendations and the
10 agreement as opposed to simple clarification. First is the
11 In Lieu Fund. As you have likely gathered from the
12 preceding comments, the Tribe sincerely hopes that the In
13 Lieu Fund will never be invoked and that NOAA Fisheries will
14 live up to its obligations for consultation with the Tribe
15 on this important issue. However, the exclusion of the In
16 Lieu Fund from the license would substantially shift the
17 delicate balance of interest in the agreement and could
18 drive certain parties to abandon the agreement altogether.
19 While the Tribe has full faith in the sincere intentions of
20 the Licensees' representatives who have been a part of this
21 process during the last few years, the elimination of the
22 funds would create tempting financial incentive for these
23 Licensees or a future holder of the licenses to exert
24 significant pressure on NOAA Fisheries to decide the passage
25 is not necessary, while leaving the financial consequences

1 undefined. This is simply not acceptable. The Commission
2 or other parties may argue that the In Lieu Fund would still
3 be in the agreement, but the enforceability of the agreement
4 is substantially different than the enforceability of the
5 license.

6 One of the justifications used by the Commission in
7 rejecting the In Lieu Fund was that, quote, it will depend
8 on decisions made by other agencies. I will then point out
9 that the exact same reasoning applies to the review of new
10 information. In effect, by accepting that aspect of the
11 agreement, the Commission requires the Licensees to build
12 these facilities unless NOAA changes its mind. How is this
13 different? While the Tribe is strongly in favor of
14 including both the Review of New information and the In Lieu
15 Fund in the license, we feel equally strongly that the
16 license must include both provisions or neither of them.

17 Second, the gravel study, monitoring and
18 augmentation. The Commission proposes to strike the
19 requirement for a gravel study and the subsequent monitoring
20 and possible future augmentation that may follow. The main
21 argument for doing so is that an effect on gravel has not
22 been demonstrated. In the view of the Tribe, this line of
23 reasoning does not pass the laugh test. While the technical
24 studies to date were unable to adequately quantify the loss
25 of gravel in the river below Merwin Dam due to poor study

1 design and an admittedly complex hydraulic environment, the
2 plain fact is that Merwin Dam has not passed a single morsel
3 of gravel in roughly 75 years and in the meantime a
4 sometimes raging river has been moving through day after
5 day. And from what we can tell, the river has only flowed
6 in a downstream direction. The purpose of the agreement
7 provisions is to establish a proper baseline for the
8 assessment of future effects and to provide a mechanism for
9 augmentation should it become necessary.

10 We also note that the adequacy of spawning gravel
11 for the current population abundance of a single species --
12 Fall Chinook -- is an inadequate surrogate for overall
13 project effects on gravel. Other species that spawn further
14 downstream, such as chum salmon, also listed under the ESA,
15 that may utilize smaller gravel sizes are not captured by
16 the simple rubric. Moreover, gravel has many other
17 important ecosystem functions in addition to providing
18 spawning substrate for the most charismatic fish species.
19 We believe that changes in the abundance, size distribution
20 and spatial distribution of gravel are all direct project
21 effects that should be assessed, monitored and, if
22 necessary, augmented throughout the term of the licenses
23 and ask that the Commission include these elements of the
24 agreement.

25 Third and last, the Aquatics Fund. The Commission

1 staff recommendations appear to restrict the types of
2 projects that would be funded by the Aquatics Fund to those
3 inside project boundaries or those directly associated with
4 projects effects effectively limiting the protection,
5 mitigation and enhancement measures available for fish. The
6 fatal flaw in this line of reasoning is that roughly 75
7 miles of mainstem and tributary habitat are permanently
8 inundated by the project reservoirs and are thus unavailable
9 for restoration actions. Clearly, habitat restoration must
10 happen in other areas that affect the same populations of
11 concern. The terms of the agreement are designed to promote
12 the recovery of key species at the population level by
13 targeting habitat projects in the areas where they can make
14 the biggest difference. We believe we have drawn
15 appropriate boundaries for these activities by limiting fund
16 expenditures to the Lewis River Basin with an emphasis on
17 the North Fork and its tributaries.

18 Moreover, the DEIS suggests that the Commission
19 must approve of fund expenditures on a project by project
20 basis. We find this to be procedurally unwieldy and
21 contrary to the Commission's stance and other recently
22 approved licenses. The fund objectives and disbursement
23 guidelines are clearly stated in the Settlement Agreement
24 and the parties intend to abide by these guidelines in
25 selecting projects for funding. Moreover, annual reports to

1 the Commission regarding the expenditure of funds will
2 provide ample opportunity for the Commission to provide
3 guidance throughout the respective terms of the licenses.
4 We respectfully request that the Commission withdraw the
5 staff-recommended provision for Commission approval of all
6 Aquatics Fund projects.

7 This concludes my oral comments on behalf of the
8 Cowlitz Indian Tribe, except that I wish to express the
9 Tribe's support for those comments made by others that
10 reflect the sincere desire of all Settlement parties to see
11 this hard-fought, high-quality Agreement incorporated in its
12 entirety within the FERC licenses. Thank you.

13 MS. VECCHIO: Thank you very much.

14 Are there any other comments that are prepared that
15 encapsulate more than one issue in particular? And if so,
16 we can go to that comment.

17 MS. HARWOOD: I did have a comment. Holly Harwood
18 from Pacific Corp. I do have general comments, but I would
19 prefer to hear all the other comments first. I may want to
20 modify mine.

21 MS. VECCHIO: Okay.

22 MS. MacDONALD: Diane MacDonald, Cowlitz PUD. I
23 also have a prepared statement that I choose to discuss
24 after we hear other comments.

25 MS. VECCHIO: Are there any others?

1 Then can I ask if there's comments that are
2 specifically addressing the staff modifications to the
3 proposed action? I guess we can start by asking any
4 comments on the Aquatics Fund.

5 MS. JONES: Actually, I -- I don't have a
6 prepared -- my name is Lou Ellyn Jones. I'm with U.S. Fish
7 & Wildlife Service. And I don't have a prepared statement,
8 but my -- we're going to be providing you with some written
9 comments where we're going to go into it in a little bit
10 greater detail. But my comment is simply that we have
11 worked very hard to prepare this Settlement Agreement and
12 it's -- it's an important agreement that appears to do some
13 public -- balancing of public issue interests at -- the same
14 that is required of FERC under the Federal Power Act. So
15 that balancing appears to have already happened with the
16 Settlement Agreement. And we're very supportive of -- of
17 the agreement and incorporating it in its entirety into --
18 into the license. We do have some comments on some of the
19 specific issues that are of interest to us -- of more
20 interest, but -- because they relate to Fish & Wildlife, but
21 that said, the -- the whole agreement is important to -- to
22 incorporate, so we're very supportive of that.

23 MS. VECCHIO: Thank you very much.

24 MR. MAYNOR: Can I ask for a clarification?

25 MS. VECCHIO: Yes.

1 MR. MAYNOR: Chris Maynor, Department of Ecology.
2 I'm asking for clarification. What was your suggested
3 format for this? You had three different --

4 MS. VECCHIO: Right. Since we had identified three
5 categories of issues or topics, one being the staff
6 modifications, the next being our -- our additions and the
7 next being what we chose not to include, if we could discuss
8 those in that order, if that would work for everybody, it
9 seems to be a way that we could organize it. Otherwise, we
10 can just go around and get everybody's comments.

11 MR. MAYNOR: We'll have more general comments.

12 MS. VECCHIO: Are there any other comments?

13 Yes.

14 MR. COREY: This is Carl Corey from the Forest
15 Service. I'm kind of following up what Janne had to say
16 about the Aquatics Fund. I'd like to ask a question of how
17 did Commission staff determine that projects should only be
18 within project boundaries and that the Aquatics Fund, as it
19 is developed and described in the Settlement Agreement, does
20 not focus on populations that are affected by this project?
21 I mean, how did you come to that conclusion?

22 MS. VECCHIO: Basically -- go ahead.

23 MR. FOOTE: Well, typically, of course, any license
24 has to focus on those areas that are within the jurisdiction
25 of the project. And I -- I guess it's always a question as

1 to how far, you know, outside the project you can really go.
2 And I think the -- you know, the current Commission policy
3 has pretty much been, you know, again, try to focus on those
4 areas that are within the project boundary or somehow
5 related to project operations or, you know, structures of
6 the project.

7 MR. COREY: So is that saying that the effects are
8 limited to the project boundary or --

9 MR. WELCH: No. I think -- I mean, there are sort
10 of two aspects. I think you sort of mentioned -- I mean,
11 here's the project boundary and the effects associated
12 within the project boundary and that applies typically more
13 to terrestrial effects. Now, things get a little bit more
14 tricky when you're talking about aquatics because, you know,
15 we -- the Commission has recognized for years the effects if
16 the projects do go beyond the boundaries and we understand
17 that. I think -- and, Pete, chime in here any time. I
18 think when you're looking at some of the examples of some of
19 the projects that were proposed under the -- under the
20 Aquatics Fund --

21 Which we did accept; right?

22 MS. VECCHIO: Yes.

23 MR. WELCH: -- but we sort of had a little
24 cautionary note in there about some of the projects. Some
25 of them seem to be a little far afield from the effects of

1 the project. And the one that sticks in my mind was some
2 kind of a fish ladder replacement of a tributary that was
3 well downstream of the project. And, you know -- you know,
4 I'm not prepared to like debate that particular thing, but
5 that was like an example of -- sort of raised a question
6 mark in our heads like "Well, wait a minute. That seems to
7 be getting a little far -- far afield here."

8 I mean, what the -- I mean, what the Commission
9 likes to see, obviously, the -- the optimal situation is
10 it's some sort of mitigation measure that's right there at
11 the project. That's like the first "Gee, wish it was that
12 way all the time." And then, you know, if -- if that
13 mitigation doesn't seem to be feasible and we talk about
14 maybe some kind of enhancement measures, you know, you begin
15 to move away from the project. Once again, though, those
16 enhancements should be, you know, in the project vicinity,
17 in the project area, somehow tied to the effect of the
18 project being there. But then the farther and farther you
19 get away from that -- and I don't know whether clearly there
20 is a -- there is this -- there is this bright line -- I
21 don't think there is -- then we begin to question things.

22 MS. VECCHIO: Basically, our intent is that -- our
23 task is to identify the project and what project effects are
24 and then determine what are those effects on resources from
25 the project and then what can be done to either mitigate for

1 those effects or enhance habitat or enhance the resource, if
2 there is an effect. And so, basically, what we're saying is
3 that the measures that -- the needs that can be funded by
4 the Aquatics Fund are those that address direct -- that
5 address project effects on that resource. So it's not to
6 say that it has to be only within the project boundary but
7 that there's a clear nexus between the project and the
8 resource and how that mitigation --

9 MR. COREY: Yeah. I would agree that the project
10 boundary really doesn't have much to do with, you know,
11 providing projects to, you know, protect mitigator-enhanced
12 resources that are affected by the project. But -- but I
13 think the parties, when we developed the Settlement
14 Agreement, we feel that we were fairly specific as far as
15 what populations we were going to benefit through the use of
16 the Aquatics Fund. They are populations that are affected
17 by the project and whether it's above the project or below,
18 we can improve the recovery of ESA listed species and
19 improve habitat or to help the reintroduction be successful
20 and those type of things. So we feel that we have a direct
21 tie to the project effects on the population.

22 MR. WELCH: And as clearly as you can possibly
23 articulate that helps us.

24 MR. COREY: Okay. Thanks.

25 MR. SHRIER: I just would like to clarify -- Frank

1 Shrier, Pacific Corp -- that the list of projects that
2 you're referring to were intended to be potential projects
3 for the In Lieu Fund. We didn't go so far as to suggest
4 projects for the Aquatics Fund, so there's a difference
5 there.

6 MR. WELCH: Okay. I'm sorry. That was my -- maybe
7 that was -- that was one of the examples that stuck in my
8 head and maybe it was associated with the In Lieu Fund, so I
9 apologize for that.

10 MR. COREY: This is Carl Corey again. The other
11 thing is Commission approval of each project. I mean,
12 that's something that the Commission has not -- you know,
13 when they've accepted a fund, they had -- as far as I know,
14 it'd be a precedent that the Commission would need to
15 approve each fund or each project. I mean, if the
16 Commission can approve the overall guidance for the fund in
17 the license and doesn't necessarily need to get involved
18 with, you know, this instream structure, you know, and that
19 type of thing, I mean that -- that's kind of something that
20 the Commission hasn't done that I've seen in the past.

21 MS. HARWOOD: Holly Harwood from Pacific Corp. I
22 guess just to follow along what Carl's saying, I think one
23 of the concerns that -- we had some discussions among the
24 parties. I think we all share it, but the concern that that
25 requirement to add the Commission in the loop will just make

1 it more cumbersome to get things happening on the ground, so
2 we're looking for some relief on that so that we can
3 actually make these things happen.

4 MR. WELCH: Tim Welch with FERC. I understand that
5 concern. Would it be -- would it be possible to instead of
6 couching it as Commission approval on each and every
7 project, could it be Commission approval on a suite of
8 projects, so that it wouldn't be like you'd have -- each
9 time you're ready to do a project, you wouldn't have to like
10 get FERC approval and have like several filings in there for
11 like, say, ten projects. Could there be some sort of a plan
12 of "Here's our projects we're proposing over the next, you
13 know, three to five years" or something and present them as
14 a whole suite of projects to let the Commission sort of take
15 a very broad look at. I don't know. Just throwing out a
16 suggestion.

17 MR. KAJE: Janne Kaje for the Cowlitz Indian Tribe.
18 I'd like to comment on that point. The fund is not set up
19 in such a way as to -- for us to sit around and decide on a
20 three- to five-year plan. The fund is set up to make it
21 possible for both parties around the table and local groups
22 who do conservation work in that basin to apply for the
23 funds to be used. And the -- the settlement parties or
24 those who are a part of the Aquatics Coordination Committee
25 together with the utilities select the projects that best

1 meet the criteria that we've set forth in the agreement on
2 an annual basis. One of the real strengths of this approach
3 is that there are lots of other funding mechanisms around
4 the region that also operate on an annual basis and it
5 provides opportunity for leveraging funds and combining
6 sources to really get out some very valuable projects. You
7 know, we -- A, we couldn't, for example, you know, solicit
8 projects, whether it's from the Forest Service or from fish,
9 furs or whoever else and say, "Okay. We think this is great
10 and in three years we'll tell you if you get to do it
11 because we need to turn in these batches of projects to
12 FERC." That doesn't make any sense. We've got -- I mean,
13 we have, I think, very tightly defined criteria for what the
14 projects need to do. We have the most knowledgeable people
15 in the basin thinking about does that make sense, is this
16 project more valuable than that one for the sake of fish.
17 And, I mean, that -- I think that's the only sensible way to
18 run it is that -- you know, we've already prepared the
19 materials to solicit proposals from parties either at this
20 table or -- or external parties who want to do a project.
21 We've got the guidelines. We get to decide which ones get
22 funded and FERC gets a report at the end of the year.

23 As I said in my comments, I think that on an annual
24 basis, FERC would certainly have the opportunity to say,
25 "You know, you selected these projects. They sound good,

1 but it seems to me that this one that you did is maybe
2 straying a little far afield from what we're comfortable
3 with." And that -- obviously, the group will take that
4 guidance, you know, into mind as they're working on the next
5 round. So, you know --

6 I'll stop there, but I think -- I mean, that's what
7 we're envisioning and anything more cumbersome than that --
8 I mean, it's already difficult to get people, you know -- to
9 get people to submit applications and for us to make
10 decisions in a timely fashion and so forth to get money out
11 there working on the ground. And to add sort of a FERC do
12 loop is -- is, I think, totally impractical.

13 MR. WELCH: Tim Welch with FERC. We would welcome
14 suggestions about how you would see the Commission fitting
15 in to some sort of scenario kind of knowing what our
16 concerns are. I think we -- we kind of want it both. We
17 want to make sure, as we explained, that all the projects
18 are very tied to the, you know -- the project nexus there
19 and we want to make sure that that continues throughout the
20 term of the license. While at the same time, we don't want
21 to tie people's hands and we want projects to move forward,
22 as they should. So, you know, if we could find some common
23 ground there in some of your suggestions or any comments,
24 we'd -- we'd like to hear some of your suggestions.

25 MS. DAY: I have a question -- Michelle Day from

1 NOAA Fisheries -- just -- just to clarify and I think I
2 heard the answer to this earlier. If, for instance, the
3 downstream tributary ladder that we're -- to be replaced, if
4 we demonstrated that the group believed, for instance, it
5 would benefit the steelhead population that is all one of
6 the same in the North Fork basin, would that suffice to
7 being a project for connection? Because that's -- that's
8 the type of things we envision and I'm just wondering what
9 kind of information do we need to meet your concern?

10 MS. VECCHIO: I mean, I know -- I'm not -- I'm a
11 directional person, so I can't fully address your question
12 in terms of the details, but I know that from the
13 Commission's end, you know, our task -- what we like to see
14 is also first, you know, identify the effect of the project
15 on the resource. And then once that is determined, then
16 looking for, okay, what can be done to benefit this project.
17 First, you know, as Tim said earlier, you know, finding
18 something that's at the project or very in the vicinity of
19 the project, I mean, that's our first objective is to get it
20 done in the area to most directly benefit the resource.
21 However, if that's not possible, then finding, okay, what is
22 the next measure that makes sense that is closely tied to
23 this project that would benefit the resource that is being
24 affected? So kind of just showing that logical progression
25 in terms of these are the effects on this resource and this

1 is what can be done in order to address and prove this
2 resource.

3 MS. DAY: Let me do a follow-up. Michelle Day,
4 NOAA Fisheries. I believe that's -- that's what we're
5 doing. Maybe we're missing the stuff in between. What we
6 envision is that we'll look for projects that give us the --
7 I want to avoid the bigger bang for your buck, but --

8 MR. WELCH: I knew you were going to say that.

9 MS. DAY: You know, that's what it is. There might
10 be some small project that you could do closer to the
11 project, but your -- its benefits to the resource wouldn't
12 be nearly the same as another project farther away to that
13 same population. So that's the kind of stuff the group is
14 contemplating, so -- do you guys agree?

15 MR. WELCH: We don't understand.

16 MS. DAY: That's not what I was looking for.

17 MS. VECCHIO: I think the more explanation -- this
18 is Ann-Ariel Vecchio for FERC -- the more explanation that
19 shows that, I think the better the chance that our analysis
20 can support that and also the Commissioners would agree with
21 that. And we can make our best recommendation, but it's
22 ultimately the commissioners' decision, so -- and that is
23 their vision. They're very focused on what projects are
24 tied to this project, what can be -- the preference is to be
25 in the vicinity of the project. So I think the best you can

1 articulate and show that logical progression and show, you
2 know, what -- this is in the public interest not to spend X
3 amount of dollars for this benefit. However, if we spend
4 less dollars, we can get an equal or greater benefit
5 elsewhere, so --

6 MR. WELCH: I think -- I think the nexus question
7 is the big one for us. That's all. I mean, we -- we'll say
8 that over and over, but it's the nexus thing. That's our
9 hurdle. That's our -- where we got to -- where we got to
10 get to.

11 MS. DAY: Say it over and over, say it in different
12 ways and then we can address all the different --

13 MS. JONES: Lou Ellyn Jones, U.S. Fish & Wildlife
14 Service. I just want to clarify on the nexus question and
15 the effect to those populations of fish. I mean, that's
16 what I really see as the nexus. And are you
17 saying articulate that on the -- the effects on the
18 populations and then go to the benefits that you will see
19 for those populations? Is that --

20 MR. WELCH: That would help us.

21 MS. VECCHIO: Yes, Frank.

22 MR. SHRIER: Frank Shier, Pacific Corp. I might
23 suggest that the Aquatics Coordination Committee has
24 developed the funding plan and protocol and criteria.
25 That -- would that be helpful if that's submitted as part of

1 the comment on where we -- where we've gone since then? And
2 it certainly lays out the main points of what we'll be using
3 for selecting criteria for the fund.

4 MR. WELCH: That would -- that would be very
5 helpful.

6 MS. VECCHIO: The more detail we have, the easier
7 it is for us to evaluate the different proposals that you've
8 made in our analysis.

9 MR. FONTECCHIO: I'm Chris Fontecchio with NOAA
10 general counsel. I just wanted to ask a question about
11 project nexus for my own education. How direct of a nexus
12 must there be when you are dealing with a population that's
13 been affected in one part of its geographic region but
14 occupies a larger geographic region and where maybe benefits
15 can be had in another part of that region more effectively?
16 You know, is something like providing a benefit in a
17 different part of region for the same species which is
18 affected by the project, is that stretching the project
19 nexus too far or is that still within potentially reasonable
20 bounds?

21 MR. WELCH: You know, it's just hard to talk about
22 it in general --

23 MR. FONTECCHIO: Yeah, I understand.

24 MR. WELCH: -- sort of general terms like that, but
25 it -- you know, the -- I readily admit the nexus question is

1 not an easy one. One person's nexus, you know -- close
2 nexus is another person's "What, are you kidding me?" I
3 mean, we have these discussions all the time, as you do too
4 in your settlement talks, so it's -- you know, it's one of
5 those things. It's -- you know it if you see it and I wish
6 I could be more -- even more bright lined than that.

7 MR. FONTECCHIO: I appreciate that.

8 MR. HISS: Joe Hiss, U.S. Fish & Wildlife Service.
9 I think that at least in the case of bull trout, which our
10 agency is responsible for, there's very little question as
11 to where the fish are and where they can benefit. We have
12 spawning populations above Yale and Swift dams. We don't
13 have any spawning populations downstream. So practically
14 anything that you do to either of those dams, reservoirs
15 and, to some extent, where you manage Merwin Reservoir is
16 clearly going to benefit the bull trout that are entirely
17 dependent on those areas for -- for rearing and growth.

18 I think that it's extremely important that we keep
19 in mind the areas that are outside the stretch of boundaries
20 knowing that there are definite threats to the species that
21 are occurring on lands that are outside the -- are outside
22 of the protection measures that are given by certain
23 government ownership. So we have to definitely look
24 outside -- I would say have to look outside the boundaries,
25 realize that we are working with a population of fish that

1 migrate, that it's very clear to demonstrate very positive
2 effects to proposed projects outside the power project
3 boundaries.

4 MR. FONTECCHIO: I should just clarify that I
5 don't -- Chris Fontecchio, NOAA general counsel. I just
6 want to clarify that I was asking an abstract question, but
7 I actually believe that we won't -- we won't need to stretch
8 the idea of project nexus for this project anywhere near to
9 the length that I think we're starting to discuss. You
10 know, there's things that we're envisioning. We can
11 demonstrate a very clear project nexus and we will be doing
12 so in follow-up comments throughout the licensing project
13 and the life of the license.

14 MS. VECCHIO: Is there anything else on the
15 Aquatic --

16 MR. COREY: This is Carl Corey from the Forest
17 Service. I just would like to add that, you know, as we
18 negotiated this agreement, if there were protection
19 mitigation enhancement measures that could be done at the
20 projects inside the project boundary, those are usually hard
21 obligations in the Settlement Agreement. I mean, if -- if
22 there was something we could do to mitigate for bull trout,
23 for example, at the project, it's in there as a -- an
24 obligation of the Licensees. It's when you get to the
25 Aquatics Fund, you're looking at things that -- you got to

1 look elsewhere to fully mitigate for the effects on -- on
2 bull trout, for example. So we're kind of talking about
3 that next step, you know, outside the project boundary but
4 it's still related to the population. And I -- I agree. I
5 think we can clarify that in our response to the Draft EIS.

6 MS. VECCHIO: Thank you.

7 Yes.

8 MS. SCHWENNESEN: Lois Schwennesen, Mediator on the
9 Lewis River project. This is not a proposal but an effort
10 to kind of get a sense of the flexibility that you might --
11 might have and I'm just perfectly fine to shoot it down.
12 But would you, for example, consider something along the
13 lines of criteria rather than projects where FERC would
14 approve criteria and the parties subsequently select the
15 projects based on that criteria?

16 MR. WELCH: That would be interesting. No, really.
17 I mean -- you know, that would -- that's an interesting
18 suggestion. Well, what do you guys -- you don't have to
19 agree with me if it's stupid.

20 MR. HASTREITER: The first criteria --

21 MR. WELCH: You can say it's stupid.

22 MR. HASTREITER: Well, the first criteria would
23 have to be there's a nexus to the project.

24 MS. SCHWENNESEN: And I guess what I'm getting at
25 is that then it would delegate to the parties that they

1 would have to find that nexus before approval of the
2 project.

3 MR. WELCH: Right.

4 MR. COREY: Carl Corey from the Forest Service.
5 That is generally how other settlement agreements that
6 include funds end up being -- you know, the Commission
7 includes it in the license and it's -- you know, as they
8 include it in the license, the criteria is there for what it
9 would be used for showing the project nexus and that's
10 generally as far as the Commission goes. They don't get in
11 to approving each project and that type of thing because the
12 criteria is -- is there.

13 MS. SWIFT: Brett Swift with American Rivers. You
14 mentioned that you're open to suggestions on how to address
15 some of the Commission's concerns, which I hear primarily to
16 be the nexus question. And in order to help kind of as I'm
17 thinking about suggestions -- we've heard criteria -- it
18 would help me to understand potentially the difference
19 between the Pelten Fund, why the Commission was willing to
20 accept that one and not this one. I see them as having a
21 lot of similarity and I'm wondering if there's something you
22 can point to in that fund that might work for us here
23 because I'm not -- I'm struggling seeing the distinction.

24 MR. WELCH: I -- I'm just going to have to plead
25 ignorance on this one, Brett. I didn't work on Pelten --

1 MS. SWIFT: Okay.

2 MR. WELCH: -- so I -- I can't speak clearly about
3 Pelten.

4 MS. SWIFT: Okay.

5 MR. WELCH: We -- you know, we were aware -- I
6 mean, the Pelten analysis was going on two doors down from
7 me at the same time we were doing our analysis. We talked
8 to the Pelten team.

9 MS. SWIFT: I didn't know if there were additional
10 concerns that have come up kind of in the interim.

11 MR. WELCH: Not specifically --

12 MS. SWIFT: Okay.

13 MR. WELCH: -- you know. We wanted to make sure we
14 were on the same page as them, but -- but, you know, item by
15 item I don't -- I wouldn't be able to speak articulately on
16 that.

17 MS. SWIFT: Okay. Thanks.

18 MR. BYRNE: Jim Byrne, Washington Fish & Wildlife,
19 and I was hoping for a little more clarification on the
20 concept of nexus. I can understand nexus in terms of
21 proximity to a project, but I want to use the example of
22 bull trout since it was brought up previously. For the
23 average adult or subadult bull trout, they would spend five
24 months of the year outside the project boundaries, pretty
25 much the summertime, and then move back into the reservoir

1 during the river -- during the wintertime. So, to my mind,
2 that's some sort of a temporal nexus where they're --
3 they're in proximity and then they're out of proximity.
4 Would they -- would they be covered? To my mind, we would
5 get the best benefit of using Aquatic Fund dollars in those
6 tributaries where these fish are reared and spawned, which
7 would be outside the -- the project boundaries, but yet
8 because the fish, as I say, on a yearly basis are roughly
9 half the year inside and half the year outside, to my mind,
10 that -- that strongly establishes a nexus and I wanted to
11 kind of get your feel on that.

12 MS. VECCHIO: In my mind, the question is, okay,
13 first you identify what resources are in the area. And if
14 bull trout are there in the winter, obviously, they're
15 there. Then the question is, does the operation of these
16 projects affect these trout? And then the answer being yes,
17 figure out, well, how and then what can be done to improve
18 upon the resource if there is an effect or to mitigate for
19 that effect. Does that give you a clarification?

20 MR. BYRNE: Well, I'm still trying to get back to
21 inside/outside the boundaries. When I hear nexus, I'm
22 thinking of proximity to the project and I think in this --
23 this species and some other species --

24 MR. WELCH: Well, when we say nexus, we -- we mean
25 the effects of the operation of the project.

1 MS. VECCHIO: Right. For example, if the fish may
2 be migrating close to the project but the project itself
3 never affected those fish, you know, there might -- they
4 might be close, but if there's no effect of those project
5 operations on to the fish, then there's no nexus. However,
6 if they migrate and they are there and there's that effect,
7 there is a nexus between what the project does to the fish
8 and that is a nexus that we're looking for.

9 MS. DAY: So -- Michelle Day from NOAA Fisheries --
10 to clarify, if the projects block migration of bull trout,
11 which they do, it affects the population size because they
12 aren't able to interact between the two populations and get
13 to other habitat. That's the effect. It lowers the
14 population. If we decide that a tributary action will
15 increase the one population and, in addition, we're already
16 doing measures to transfer fish back and forth between the
17 projects, to me that's a project nexus. It's showing the
18 impact and then showing why we believe our projects are
19 helping reduce that impact.

20 MR. WELCH: I think you would be moving along the
21 right road on this particular knowledge.

22 MS. VECCHIO: Yes, yes.

23 MS. DAY: So it's not just that the fish are there.
24 We have to demonstrate what the impact is --

25 MR. WELCH: Yes.

1 MS. DAY: -- and why we believe our projects are
2 helping that.

3 MR. WELCH: Yes, right.

4 MS. VECCHIO: Yes.

5 If there are no other comments on Aquatics, we can
6 move on to large wooded debris, if there's anything specific
7 there. And then if not, culvert replacement.

8 MR. WELCH: I think he had one more question. What
9 were you just saying?

10 MR. HASTREITER: Well, I was going to say, I mean,
11 you described the nexus situation and -- and that's a key.
12 Then the next thing the Commission is going to look at is,
13 well, how far away are these habitat enhancements from the
14 project itself? The further they're away, the more scrutiny
15 they're going to receive.

16 MR. WELCH: So you're sort of making me level one,
17 but then there's level two.

18 MS. DAY: Right, right. Which is what we talked
19 about earlier where we might explain that we've looked at
20 close field project opportunities and maybe there's this
21 one, but it wouldn't benefit and then we explain why we
22 chose the one that's farther away because it gave more of a
23 benefit to the population. That would help connect that
24 next dot; right?

25 MR. HASTREITER: It gives us information to make a

1 decision. I can't say, you know, that we'd agreed with it
2 necessarily. If it's in the next basin over, we might have
3 a problem.

4 MS. DAY: But we're not --

5 MR. WELCH: That was an extreme example.

6 MS. DAY: Include things to make sure we all agree.

7 MS. VECCHIO: Yeah.

8 MR. WELCH: Right.

9 MR. COREY: Carl Corey from the Forest Service. I
10 think the large wooded debris is pretty much related to the
11 Aquatics Fund discussion.

12 MS. VECCHIO: Yes.

13 MR. COREY: The Commission staff has kind of the
14 same comments there. It is -- actually, part of it at least
15 is part of the Aquatics Fund, so I think it's the same
16 issues.

17 MS. VECCHIO: Are there any questions on -- or
18 comments on culvert replacement, weather transmitter and --
19 or the wildlife funds in that position?

20 MS. HARWOOD: In the culvert replacement -- Holly
21 Harwood, Pacific Corp. Culvert replacement isn't really an
22 item that's called out in the Settlement Agreement. I think
23 we included it in our SPDEA's, so I wouldn't assume that
24 there would be any concerns about the further restriction
25 that's put on those.

1 The weather transmitter, I'm actually glad that you
2 provided this information today because we were wondering
3 why it was in Italics or at least I was. I wasn't getting
4 that what you were saying was it's not funded but it's
5 rather to maintain it --

6 MS. VECCHIO: Right.

7 MS. HARWOOD: -- to provide and maintain. Just so
8 you know, I mean, there -- that transmitter is already
9 there. It's in place. It's operating. And we have an
10 agreement to -- for -- for it to be maintained by NOAA.

11 MR. WELCH: And that's fine.

12 MS. VECCHIO: We have no problems -- this is
13 Ann-Ariel Vecchio. We have no problem with that.
14 Basically, the reason why we changed that instead of fund is
15 just so that the responsibility of its maintenance and
16 existence is clear. Basically, I mean, what's outlined in
17 the Settlement Agreement is fine, but in terms of what we
18 write in our license, it would be in case for some reason
19 NOAA is unable to maintain that and they need, for example,
20 to have a funding cut or something and that's the first one
21 that is to go, then that -- our language saying "provide and
22 maintain" ensures that that weather transmitter continues to
23 provide the benefits and functions for this project. So I
24 hope that clarifies --

25 MS. HARWOOD: Yeah, I guess so.

1 MS. VECCHIO: -- why we --

2 MS. HARWOOD: Funding cut doesn't necessarily make
3 sense to me because, obviously, we would be providing the
4 funding.

5 MS. VECCHIO: Right.

6 MR. WELCH: Well, but they -- but they may not have
7 the personnel to go -- I mean, I don't know. The point is,
8 is that -- the point we're trying to make is that the
9 Licensees are responsible for this weather station. How
10 they choose to make sure that weather station is functioning
11 is your business. If you want to contract with NOAA
12 Fisheries -- or NOAA Fisheries -- NOAA Weathers, that's
13 fine. If you want to contract with the International
14 Weather Association, that's fine. It's up to you.

15 MS. HARWOOD: Yeah. I think we'll provide some
16 written comments now that we understand your position.
17 Thank you.

18 MS. VECCHIO: Is there anything -- anybody have any
19 comments on the Wildlife Acquisition Fund or Enhancements?

20 Okay. If not, we can move on to our additional
21 recommended measures, which are, in essence, basically, just
22 adding anything that is a measure that's part of the
23 project, to include that in the project boundary. If there
24 are any comments on any of those items, we can take them
25 now. And if not, we can move on.

1 So probably, as we've heard before, the most
2 important issues would be what we did not include, so we can
3 go through and discuss these as well. So I can -- I will
4 open -- you know, take any questions, additional comments on
5 the In Lieu Fund. Otherwise, we can go on to the Forest
6 Service Fund.

7 Go ahead.

8 MR. COREY: Can we go back to additional
9 recommended measures?

10 MS. VECCHIO: No.

11 MR. COREY: This is Carl Corey from the Forest
12 Service.

13 I mean, I'm sure we'll have lots of comments in
14 response -- written comments in response to the Draft EIS,
15 but I would like to touch on the Forest Road 90 and -- as
16 far as what's -- what would be the objective of including it
17 in the project boundary -- or in the project boundaries?
18 Considering that it's a funding obligation to the Forest
19 Service, what would be gained by adding it to the project
20 boundary? I mean, the Commission can enforce the funding
21 obligation without adding Forest Road 90 into the project
22 boundaries.

23 MS. VECCHIO: Basically, on other projects, I know
24 that especially -- I think this is an issue that seems to be
25 more -- or, you know, legally an issue as opposed to an

1 on-the-ground issue. And I know in some past projects,
2 basically anything that has been deemed as necessary to the
3 project must, therefore, be included in the project
4 boundary. So we've included certain roads and things in
5 other past projects and I don't think that that would effect
6 your implementation, necessarily, but that's a legal issue
7 in terms of enabling us if it's -- if it's something that's
8 necessary for the project, it, therefore, needs to be in the
9 project boundary so that we can exert any necessary action
10 if, for some reason, an action happens where the measure is
11 not executed so we can make sure that it does.

12 MR. COREY: Yeah, this is Carl Corey again. I can
13 understand, you know, the funding obligations, but the
14 purpose for having it in the project boundary, I'm not
15 understanding what that would accomplish considering that
16 the funding goes to the Forest Service. It's only a small
17 percentage of the overall maintenance. Having it in the
18 project boundary -- I mean, the Commission can't enforce
19 anything other than funding obligation that -- that the
20 Licensees have. I mean, they can't enforce the Forest
21 Service to maintain the road. I mean, it just doesn't --

22 MR. WELCH: Anything where there is an ongoing O&M
23 on any kind of road or anything, in order for the Commission
24 to have jurisdiction, those lands must be in the project
25 boundary.

1 MR. COREY: If -- if the Licensee is doing the O&M.

2 MR. WELCH: That's right.

3 MR. COREY: In this case, they would be just
4 funding a portion.

5 MR. WELCH: No, they would be responsible for a
6 portion of the O&M and they would have to provide those
7 funds to the Forest Service to do that.

8 MR. HASTREITER: It's a similar example to the --

9 MR. WELCH: -- to the weather station. And in
10 order for it to be in the project boundary, it would have to
11 be a road necessary for project purposes.

12 MR. COREY: I think we'll probably just disagree on
13 that at this time.

14 MS. HARWOOD: This is Holly Harwood from Pacific
15 Corp. I just -- I'm trying to understand -- sort of make
16 sure I understand what you're saying in terms of -- the
17 reason why you're proposing that it comes in the project
18 boundary is because there is a funding requirement and
19 because it has -- it has a project purpose?

20 MR. WELCH: Both.

21 MS. HARWOOD: Because of those two elements. So if
22 there wasn't a funding part in the agreement, you wouldn't
23 have proposed this to be in the license boundary; is that a
24 fair understanding?

25 MS. VECCHIO: I think it would be if it wasn't --

1 if it didn't serve project purposes, I think that's more of
2 the key.

3 MR. WELCH: That's more of the overlying --

4 MS. HARWOOD: Because I guess the reason why I'm
5 trying to differentiate in my mind between the rest of the
6 road that serves a project purpose, which is a state road.
7 Forest Road 90 just -- that state road goes and Forest Road
8 90 just keeps right on going. You wouldn't even know that
9 there was a different road if you were on it. So I'm trying
10 to understand the distinction between --

11 MS. VECCHIO: I know that --

12 MS. HARWOOD: It's a multi-purpose road and our
13 purpose is only one small piece of it.

14 MS. VECCHIO: Right. I know that that was
15 something that we were -- in this case, it's obviously not a
16 clear "Oh, this road is only for project purposes." So we
17 kind of had to tease out the -- that those portions of the
18 road do serve project purposes and it seems to be the main
19 access to those sites. If there was maybe another road that
20 people could take instead, then that -- then -- then the
21 project purpose would be a little bit more clear, but in
22 this case, you know, it is multi-use, so because the road
23 still does serve project purposes that it's there.

24 MR. LOPOSSA: Ryan Lopossa with the County's
25 comment on that, that during a part of the year, State Route

1 503, which passes right by this building, is the only way to
2 the projects. Are you including that in the project
3 boundary?

4 MR. WELCH: No.

5 MR. LOPOSSA: Then your -- your -- your logic is --
6 is lost on me.

7 MR. WELCH: Yeah, it's a difficult thing. I mean,
8 you could -- you could tie it back to, you know, every road
9 back to I-5, for that matter. And, once again, it's -- this
10 is not an easy thing. It's not an easy thing to do. But
11 our criteria is that the Licensees would be -- are
12 responsible for all roads for project purposes. Like, in
13 other words, you couldn't get to -- if it were not for that
14 road in that particular area, you would not be able to get
15 to the -- to project facilities. How far back you draw that
16 line I think is just -- is the reasonableness is all. So
17 that's one aspect.

18 The other aspect is if that -- in order for the
19 Commission to have jurisdiction, those -- that road or
20 structure must be within the project boundary, so it's a
21 twofold thing. Once again, if you want to do a side
22 agreement, not in the license with the Forest Service, for
23 the funding of FY90 -- or FY90 -- SF -- or FF90 or whatever
24 it is, feel free to do that.

25 MS. MacDONALD: Diana MacDonald, Cowlitz PUD. I

1 just have a question on project boundary. Are you then
2 envisioning fairly disjunct little sections of project
3 boundary? Because there are -- there are places in this
4 basin where, quote-unquote, facilities, depending on how you
5 define facilities, are some distance apart and there's a
6 road in between them. And so am I envisioning a project
7 boundary here and then a skinny little project boundary that
8 just is the road and then another bigger project boundary?

9 MR. WELCH: Uh-huh.

10 MS. MacDONALD: So you're looking at satellite --

11 MR. WELCH: I mean, we have -- we have -- we have
12 drawn islands of project boundary before and that's what
13 we're proposing for the Cougar Visitor Center.

14 MS. MacDONALD: Okay.

15 MR. WELCH: I think -- I think you would do what
16 makes sense.

17 MS. MacDONALD: Follow-up to that question. What
18 do you consider project facilities? Do you consider
19 wildlife lands project facilities or do you consider --

20 MS. VECCHIO: Yes.

21 MS. MacDONALD: -- a campground a project facility?

22 MS. VECCHIO: Yes.

23 Anything else on this subject? And, also, please,
24 let us know if you have questions that go back, we can
25 answer any questions if those come up along the way on

1 subjects.

2 Yes.

3 MR. SHRIER: Clarification on the barrier free
4 shoreline listing -- Frank Shrier, Pacific Corp -- we're
5 kind of confused about that. It appears that there's --
6 it's added into the Swift license or shown as one of the
7 elements of the Swift license and then it's also shown as a
8 new item underneath that. We're not sure if you're asking
9 for a barrier site -- barrier free site in addition to one
10 that's proposed to be somewhere else in the basin other than
11 the one that Cowlitz PUD is building at the canals. So I'm
12 confused by that. I can go right to the page if it helps.

13 MS. VECCHIO: Sure.

14 MR. FOOTE: I think there was -- Peter Foote.
15 Wasn't there a -- this was mentioned in the Settlement
16 Agreement, that there would be another barrier free site put
17 somewhere.

18 MR. SHRIER: Yes.

19 MR. FOOTE: And I think all we were trying to say
20 is, whether it's put at Merwin or Swift, it just should
21 being within the project boundary. It will be made part of
22 the project boundary.

23 MR. SHRIER: Yeah. And it wasn't -- it wasn't a
24 boundary question. It was whether because of the Swift in
25 the DEIS, it called for one as a staff addition besides

1 what's also listed in the Swift project.

2 MS. HARWOOD: This is Holly Harwood for Pacific
3 Corp. I think maybe what -- we were interpreting what you
4 said as a new barrier free in addition to the one we were
5 already placing. Was the -- the additional recommendation
6 just a modification that we would -- or clarification that
7 that would need to be in the boundary?

8 MS. VECCHIO: I believe so.

9 MS. HARWOOD: So you aren't asking us for two.

10 MS. VECCHIO: Correct.

11 MS. HARWOOD: You're asking us for one.

12 MS. VECCHIO: Which in our modification is that it
13 should be in the boundary.

14 MS. HARWOOD: I think we misunderstood that, so --

15 MS. VECCHIO: Okay.

16 If there's not anything else on our additional
17 recommended measures, we can move on to what we did not
18 accept. I know we've begun speaking about the In Lieu Fund.
19 We can continue with that.

20 Yes.

21 MR. LEIGH: Curt Leigh with Washington State
22 Department of Fish & Wildlife. I have some comments on
23 the -- generally on the measures that were not adopted, so
24 before you go into each specific or maybe after you do
25 specific, whichever way you'd prefer, I'd like to --

1 MS. VECCHIO: We can do the general and then tease
2 out any specific comments and then we can relay back to
3 general comments.

4 MR. LEIGH: Well, I've got some of both, so I'll
5 just go through the whole list and then we'll go from there.

6 MS. VECCHIO: Yes.

7 MR. LEIGH: Well, I wanted to start by saying the
8 Department will be providing written input by the November
9 23rd date, so these are supplementary comments. And I think
10 the most important aspects has been voiced by others as well
11 and that's that we strongly support and are committed to the
12 Settlement Agreement. The communications that we had with
13 the Commission during the relicense process, we got the
14 message that the Commission preferred comprehensive
15 agreements, so we went off and spent three years working
16 together intensively to develop a comprehensive agreement
17 that covered wildlife issues, it covered fishing issues, it
18 covered aquatic issues, it covered flooding, socioeconomics,
19 the whole gamut and -- and the herded cast in the form of
20 five federal agencies and two state agencies and a myriad
21 of -- of nongovernmental organizations, two tribes, to come
22 up with this agreement that -- that we worked together
23 and -- and, quite seriously, developed trade-offs in order
24 to get to an agreement. And the trade-offs resulted in --
25 in a -- in an agreement that, well, is sort of a delicate

1 balance. Then for the Commission to tell us to make an
2 agreement and then exclude components of that agreement kind
3 of threatens that delicate balance and provides an
4 opportunity, a negative opportunity, for some of the
5 stakeholders to no longer support the Settlement Agreement.
6 And if they drop out of the Settlement Agreement, it doesn't
7 mean they're going to go home. It means they're going to be
8 selecting other measures to try and address their issues.
9 And the potential for legal challenge to the license is
10 significantly reduced as long as we keep all the
11 stakeholders together in the Settlement Agreement. So I
12 think that's a message that -- that we want to make sure
13 that you take home is -- is we want to have a process that
14 doesn't turn into another Cushman.

15 MS. VECCHIO: Hi, this is Ann-Ariel. I just wanted
16 to interject, not to interrupt your statements, but just to
17 also clarify that because we did not adopt it, it does not
18 mean that it cannot happen. We're not saying that this
19 should not be part of the Settlement Agreement, but that it
20 just isn't appropriate for the -- the project licenses. If
21 we can get to a point where it makes sense where they can be
22 included, that would be wonderful for everybody, but just to
23 emphasize, all the measures that are part of the Settlement
24 Agreement can still occur but just not be specified in the
25 FERC licenses. And I'm sure people will want to respond to

1 that a little bit later.

2 MR. LEIGH: Well, and then we get to some of the
3 areas in the DEIS that are of concern to the Department that
4 were recommended to exclude and we talked a little bit about
5 the In Lieu Fund and there will be additional discussion
6 about that. But some of the other measures include the
7 gravel monitoring measures, enforcement and maintenance of
8 the lower river fishing access sites. And specific to the
9 gravel monitoring, it's an adaptive measure plan to ensure
10 that we can continue to have that spawning gravel that's
11 there today through the full life of our license. So the
12 importance of that spawning gravel, I think, has been well
13 spoken to in terms of the anadromous fish populations that
14 use it and I think the measures that we came to might be not
15 well communicated because it is -- it is intended to be an
16 adaptive management approach to protect the resources there.
17 And I think those gravel recommendations you've identified
18 as a topic for 10(j) dispute resolution. And the Department
19 has -- has -- by my discussion, they're formally requesting
20 that we have a meeting to resolve that issue.

21 Another important measure to the Department end of
22 the local community is law enforcement. And many places in
23 the DEIS conclude that environmental and public safety
24 benefits would be the result of additional enforcement in
25 the project area. The utilities themselves understand the

1 benefit of additional enforcement in that they currently
2 have a private security force and fund local enforcement to
3 protect their public -- their project resources. And in
4 spite of this demonstrated project need and I would say
5 nexus, the DEIS recommends that protection of public safety,
6 project features, project security should not be a component
7 of the new license. But it doesn't seem to disagree that
8 increased enforcement presence protects public safety,
9 environmental resources and project security. So I'd like
10 to maybe clarify some additional points.

11 We talked about the Fish & Wildlife officer
12 position. It's not just someone to check licenses. The
13 Fish & Wildlife officer has the same authority as a
14 Washington State trooper with the State Patrol and has the
15 authority to enforce all State laws. Many of them have
16 Federal commissions so they also can enforce laws associated
17 with endangered species. Then, of course, that also
18 includes boating safety, our own fish and wildlife
19 regulations, which protect endangered species, and increase
20 the successful potential for our reintroduction program and
21 protect archeological sites and control trespass.

22 The agreement specifies that additional enforcement
23 activity will be restricted to the project vicinity,
24 including oversight of the fishery in the lower river. So
25 the concern that somehow this enforcement effort will be

1 spread across the county, I don't think that's a valid
2 concern because the agreement addresses that. And the DEIS
3 reminds us that -- that we expect an increase in the number
4 of visitors over the term of the new license and that
5 increase will increase the need for public services and
6 visible patrols will help reduce conflicts. Additional
7 enforcement patrols in the more remote areas will also
8 improve management of environmental resources.

9 The contention that the projects pay property taxes
10 and, therefore, local government that receive the tax
11 payments have sole responsibility to provide additional
12 public services is not consistent with the example set by
13 the Commission. The Federal government collects federal
14 income taxes from individuals and corporations like Pacific
15 Corp to fund general government activities, but the
16 Commission still collects a fee from the utilities to fund
17 Commission activities, so I think the -- the connection
18 is -- is somewhat lost on us out here in the state.

19 Then another -- the further proposed exclusion of
20 the lower river access site from the license is the last
21 topic I'm going to address. I want to start with some
22 background. The projects changed the character of the
23 river. They converted over 30 miles of free flowing river
24 into large reservoirs. That change restricted river fishing
25 to 19 miles of river that remains below Merwin Dam and

1 greatly limited the area physically available for fish, for
2 salmon or steelhead, which was and continues to be a hugely
3 popular activity.

4 In recognition of the significance of this lost
5 fishing opportunity and the importance of mitigating for
6 that loss, the existing Merwin license directed Pacific Corp
7 to provide additional fishing access in the Lewis River down
8 through Merwin Dam. Article 52 required Pacific Corp to
9 provide one additional small boat access below Merwin, take
10 over and maintain two existing boat launching facilities and
11 secure three additional bank fishing easements below Merwin.
12 Pacific Corp complied with this license article. And then
13 during the relicense discussions, we addressed lower river
14 fishing access as part of the existing baseline condition.
15 The Settlement Agreement proposes to continue maintaining
16 the fishing access sites to continue providing that
17 opportunity. In recognition of the need to modernize
18 sanitation practices, the Agreement also includes some new
19 outhouses to protect water quality and human health. We
20 recommend that the Commission not apply the limitation of
21 the project boundary as a way to abandon existing measures
22 that address existing project resources and impacts.

23 To close, we ask that you remember the
24 recommendations the Commission made with the Lewis River
25 stakeholders regarding the benefits of a comprehensive

1 agreement. Now that we've gone up and created this
2 agreement, we ask you to incorporate the fruits our efforts
3 of the settlement into the new licenses. And with that,
4 I'll remind you that we're going to provide written comments
5 and that will be coming in by the due date.

6 MS. VECCHIO: Thank you. Are there any --

7 MR. FONTECCHIO: This is Chris Fontecchio with NOAA
8 general counsel on behalf of the National Marine Fishery
9 Service. I want to make one general, if somewhat redundant,
10 comment and then one specific comment beyond that. I don't
11 want to go into a lot of detail on all of our comments on
12 the Draft EIS because we will be doing that in writing and
13 that will be a more effective way to that. And I also want
14 you to recognize that although we are concerned about the
15 gravel augmentation matter, that's the subject of a 10(j)
16 process and we intend to engage in that. Ann-Ariel Vecchio
17 and I have had some preliminary conversations attempting to
18 set up a meeting and we will follow up to set up a phone
19 meeting to deal with that instead.

20 My general comment is that, as a party to the
21 settlement like our settlement partners, we strongly support
22 the Settlement Agreement and -- and are here to ask the
23 Commission to include that agreement in its entirety. I
24 think you're hearing that message from other people as well.
25 And so we are concerned about all of the measures that are

1 not adopted, as has been expressed, and as the Commission, I
2 think, fully understands -- it's experienced with settlement
3 agreements, some agreements -- they are a delicate balance
4 of -- of commitments and concerns and each time a portion is
5 omitted, it -- it threatens that delicate balance and we
6 just want to emphasize that and we know that you guys
7 appreciate that.

8 I wanted to specifically address the In Lieu Fund
9 since my client has a fairly large role in -- in that fund
10 ever coming in to existence. And just to point out a couple
11 of things. We understand the Commission's concern that this
12 may not be something that is easy to evaluate and leave the
13 document in a -- and is -- is somewhat undefined in nature
14 and may make it difficult to include in the license article,
15 but I wanted to point out that we feel this is something
16 that is properly a part of a license article.
17 Notwithstanding the fact that other agencies, including our
18 own, are a key part of the decision making process, there
19 are a number of things that the Licensees themselves have
20 committed to which we think can be captured in a license
21 article. The Licensees are committing to provide the
22 funding at the outset, to organize the meetings, seeking
23 guidance as to how the funds should be spent, causing the
24 expenditure of funds, you know, to specific projects. So
25 although NOAA Fisheries is a large part of the decision

1 making process, it's not particularly unlike all aspects of
2 an adaptive management scheme and we think that there are
3 significant commitments on behalf of the Licensees that can
4 be captured in a licensed article.

5 And I also want to point out that we feel that the
6 In Lieu Fund is something that can be evaluated,
7 something -- granted it's in lieu of something else, it may
8 or may not happen and would involve projects that we can't
9 identify today. However, the Settlement Agreement does
10 identify a standard that those projects are intended to meet
11 and the fund, as a whole, is intended to meet. The standard
12 is that the fund will be spent on measures that collectively
13 contribute to meeting the objective of achieving benefits
14 for anadromous fish populations equivalent to or greater
15 than the benefits that would have occurred by providing fish
16 passage through the Yale or Merwin projects. You know,
17 that's a significant benchmark. That is obviously what we
18 will be trying to achieve in the expenditures of the In Lieu
19 Fund and I think that does suggest that there's a standard
20 of protection that that fund would meet and that is
21 something that the Commission can take into account when it
22 tries to evaluate the environmental effects in general. I
23 understand that it's not very specific and the management
24 of -- of these four projects over the next -- of a license
25 term obviously has a lot of gray areas and a lot of things

1 that we'll come to understand better in time, but I think
2 that there is something that can be evaluated up front now.
3 Thank you.

4 MR. WELCH: Do other people want to speak here?

5 Well, you know, I think you -- you articulated it
6 very well, Chris. We did have trouble evaluating the In
7 Lieu Fund just because it was so undefined. And I think
8 that the two -- and, Pete, go ahead and add to this if you
9 want to. The two things I think -- I think we had
10 difficulty with were the sort of undefined nature of the
11 projects. And we sort of gave that broad goal of what the
12 projects would be, but lacking any kind of specificity of
13 the types of projects -- my comments go back to what we
14 talked about earlier with the Aquatics Fund is, you know,
15 the more specificity of the -- of the projects and -- and
16 their relationship to the nexus of the project, the more
17 that we have, the better we can do our independent analysis
18 in EFA that we're required to do. That was one aspect.

19 The other aspect was the whole sort of decision
20 making process about how the In Lieu Fund would sort of kick
21 in or come about. That was very undefined as well. And it
22 was just -- it was difficult for us -- it was difficult for
23 us to envision a licensed article that would be totally --
24 whose implementation would be almost exclusively under the
25 jurisdiction of another federal agency without any

1 indication of how that agency would make those decisions.
2 So those were the sort of two aspects that I had difficulty
3 with.

4 MR. FOOTE: And it was also a fair amount of money,
5 30 million, to require of the Licensee with those other
6 unknowns.

7 MR. WELCH: So, again, any -- any more level of
8 specificity that you can give us with regards to those two
9 aspects would be helpful.

10 MR. KAJE: Janne Kaje for Cowlitz Tribe. I
11 obviously spoke on the topic, but I'd like to respond to a
12 few of those points. First one suggestion I guess I would
13 make and this is sort of spinning off what we talked about
14 earlier with the Aquatics Fund. It sounds as if -- if we
15 had failed to adequately indicate what criteria would be
16 used for selection of funds and that funds would have to
17 demonstrate a nexus to what they're trying to address.
18 We -- we hear that and I think we can certainly, you know,
19 provide some comments to that effect. However, I guess I
20 would point out that we did provide a schedule, 7.6.2, that
21 did talk about the types of projects that would be
22 entertained under that -- that -- you know, for
23 consideration under the In Lieu Fund, so I think you do have
24 something you can look at that is relatively specific.

25 The most important thing, though, here -- I mean,

1 like I say, I want to put up one question and then a -- I
2 won't call it a warning, but I hope you appreciate the
3 gravity of what the In Lieu Fund is intended to do. It
4 is -- yes, it's \$30 million that would be -- or up to 30
5 million that would be paid in lieu of passage facilities
6 that would cost a hell of a lot more than that. So this is
7 a really important element here. We don't have the In Lieu
8 Fund in place, as I said in my comments, you know, then we
9 have this, you know, Review of New Information that might
10 lead to facilities not being built. And then what? There's
11 nothing there. This is important to holding this agreement
12 together and keeping every party here at the table.

13 MS. VECCHIO: Thank you very much.

14 Are there any other -- and I don't want to -- when
15 I say "Thank you very much," I don't want to make it seem
16 like that we're not empathetic towards your situation at
17 all. I just want to make sure that it's hard -- basically,
18 we're trying to convey that we do have a standard that we
19 need to evaluate the information that we have and the more
20 information we have, the better. So I just want to convey
21 that to you and not make it seem that we don't consider
22 where you are all coming from because it was obviously a
23 difficult agreement to come to over so many years, so I just
24 wanted to acknowledge that.

25 MR. KAJE: If I can continue, I forgot to pose a

1 question that I said I was going to pose.

2 MR. WELCH: Oh, darn.

3 MR. KAJE: You're not done with me yet.

4 You mentioned just moments ago that one of the
5 issues you had with it was that you had trouble -- or that
6 we had not communicated well enough the process that would
7 lead to the agency -- in this case, NOAA Fisheries -- making
8 that decision. How can you then include that step in the
9 license? And this is what I got to when I -- I mentioned
10 this earlier. If you're saying that you can't include a --
11 kind of a vague decision by an outside agency in the
12 license, how can you include the Review of New Information,
13 Section 4.1.9 of the agreement, which is exactly the thing
14 that would trigger the In Lieu Fund? How could you not
15 include the In Lieu Fund but include the vague process that
16 leads to it being invoked? The In Lieu Fund is triggered
17 only by the Review of New Information in a decision by NOAA
18 to say "You know what? We -- we think that building those
19 facilities doesn't serve the best resource. That invokes
20 the In Lieu Fund." You just said that you reject the In
21 Lieu Fund because that step was squishy, I guess, but you've
22 included that step in the license. Or, I'm sorry, not the
23 license, but the DEIS. You didn't strike that part. You've
24 said in the DEIS these facilities will be built unless NOAA
25 makes a decision that they shouldn't be built. You included

1 the thing that triggers the In Lieu Fund without including
2 the In Lieu Fund. That makes no sense.

3 MR. HASTREITER: Maybe that was an oversight on our
4 part.

5 MR. WELCH: Whoops.

6 MR. KAJE: And it is in my comments that I'll
7 submit to you.

8 MR. WELCH: Well, maybe we can take a look at that.

9 MR. KAJE: Again, the Cowlitz Tribe wants both
10 included.

11 MR. WELCH: Understood.

12 MR. KAJE: We're not trying to scuddle any part of
13 the agreement, but both of those impact the interim.

14 MR. WELCH: Understood.

15 MS. SWIFT: This is Brett Swift for the American
16 Rivers. And I guess I would just like to echo that because
17 if you do include the Review of New Information component
18 that would lead to potentially and hopefully unlikely no
19 fish passage, you've left one of the most significant
20 impacts of the project wholly unaddressed. And I know in
21 the DEIS you proposed that parties can -- or the Applicant
22 can propose a license amendment at that time. And I guess I
23 would just like to convey what a wholly and kind of
24 unsatisfactory or insufficient solution that would be to the
25 parties who negotiated that. I mean, it really is a

1 contingency that will never happen to address one of the
2 most significant impacts on the project, but I hear you on
3 the specificity as well.

4 MR. FONTECCHIO: Chris Fontecchio, NOAA general
5 counsel. And I guess I'd just like to pile on -- excuse
6 me -- echo the -- the comments of our settlement partners
7 and to make it clear that in NOAA Fisheries' opinion, it is
8 critical that there is a fund there included in the license
9 in order for us to take the step that -- that triggers that
10 fund and to make the decision that there is a better
11 alternative to providing fish passage. So, you know, the --
12 as our friends are saying, the importance of having that
13 option there cannot be underestimated. Thanks.

14 MS. VECCHIO: Thank you.

15 Is there anything else on the In Lieu Fund?

16 If not, we can go on -- on to more specific topics
17 of the Forest Service funding for disbursed camping.

18 MR. COREY: Yeah. This is Carl Corey from the
19 Forest Service. We'll -- we'll explain in our written
20 comments the nexus and the difference between the disbursed
21 camping that occurs in the National Forest system lands as
22 opposed to developed campgrounds of the project.

23 MS. VECCHIO: Thank you.

24 Yes.

25 MS. DAY: Michelle Day, NOAA Fisheries. I do have

1 to back up and ask a clarifying question on the In Lieu
2 Fund. I think it was Pete that said it's a large amount of
3 money for the Licensees to spend. So? Can you connect the
4 dots for me? Is it -- is it just that it's a large amount
5 of money that you guys didn't have the specificity of how
6 that money was going to be spent? So it's not really about
7 the large amount of money. It's about the specificity?

8 MR. FOOTE: Right, correct.

9 MS. DAY: That's good.

10 MS. VECCHIO: Anything else?

11 MR. WELCH: I would say, though, that the amount of
12 money does make us sit up and pay particular attention to
13 it.

14 MS. VECCHIO: It makes us think that question more.

15 MS. DAY: Right.

16 MS. VECCHIO: Is there anything else on the gravel
17 study augmentation? I know we touched upon that earlier,
18 but if there's anything to add, we can take comments on it.

19 MR. LOPOSSA: Actually, I'd like to go back and
20 talk a little bit about law enforcement. Ryan Lopossa with
21 the Counties.

22 My understanding is, is there was a reluctance to
23 have the law enforcement component in the license articles
24 because there's a feeling that that is a responsibility of
25 the -- the local jurisdictions and it says here "and the

1 federal agencies." I'm not sure what federal agencies
2 provide local law enforcement, emergency services.

3 MR. WELCH: Maybe the Forest Service. I don't
4 know.

5 MR. COREY: Yeah, but we're not involved with
6 the --

7 MR. WELCH: I know. We weren't targeting anyone
8 specifically.

9 MR. LOPOSSA: And you're absolutely correct, it is
10 the responsibility of the counties to provide law
11 enforcement. That's one of the statutory responsibilities
12 that the County is imposed with. Unfortunately, the reality
13 of the fact is that due to massive cuts in funding, both
14 from the State and Federal government, coupled with
15 continually declining revenues from timber that we have
16 relied on in the past to fund those programs, it's simply
17 not a reality that we can provide that type of level of
18 service. In the last five years, Cowlitz County alone has
19 lost nearly 50 employees to funding cuts, many of those
20 coming out of the Sheriff's office. The same applies to
21 Skamania County, not nearly as dramatic with Clark County
22 because they have a much larger tax base and are able to
23 absorb a lot of those cuts. The reality is, is on average,
24 if you were to go out into the county today, you will find
25 four deputies patrolling the entire county. That's in

1 excess of 500 miles of roads, serving in excess of 94,000
2 residents. If something happens up in -- in the project
3 area, the County does respond, but it's on a priority basis.
4 If someone -- you know, if somebody is killing their wife in
5 Longview, we're less likely to make it up to Cougar to deal
6 with a -- you know, a picnic area that's not happening, so
7 that's the sort of reality.

8 We have -- we have provided law enforcement
9 services to the facilities historically on a contract basis.
10 We have -- we have had a presence up there during the
11 summertime, during the peak recreational periods, and
12 that -- that presence has been based on specific agreements
13 with Pacific Corp. That has worked well. However, that
14 arrangement has been solely based on our -- our Sheriff's
15 deputies going up there on overtime because, again, we have
16 limited resources. So they go up there on their scheduled
17 days off and -- and we fulfill that responsibility.

18 As this county continues to grow and this county
19 is -- is growing at a rapid rate, the likelihood of us being
20 able to continue to provide that in that type of arrangement
21 is simply not there. We don't see a -- a light at the end
22 of the tunnel for our revenue forecast. We don't see timber
23 revenues going up. We see them continually declining. We
24 don't see folks being willing to pay more for their license
25 tax. We only see that, you know, going away and, you know,

1 every year we have a new initiative that comes up that finds
2 a way to reduce the revenues and that's just the reality
3 of -- of today's situations. Folks there are having a hard
4 time making the connection between the taxes that they pay
5 and the services that they receive.

6 There is a history of law enforcement being
7 provided on a contract basis, not just with Pacific Corp.
8 We have contracts with the Forest Service to provide law
9 enforcement services in and around the Mount St. Helens
10 National Volcano Monument and that's a very detailed
11 agreement that -- that sets forth how the services are to be
12 provided and how the -- the overall service to that area
13 is -- is given. There's other situations. There's
14 operators of sporting venues, concert venues that we'll
15 contract with the law enforcement agencies to provide
16 specialty services. And, yes, those -- those venues pay
17 their share of property taxes, but, again, they don't --
18 they're not receiving the kind of service that they need
19 without those -- those separate contracts.

20 There was -- there was a comment made earlier, "The
21 license needs to focus on those areas that are related to
22 project operations." We have a significant amount of
23 recreation associated with this project that appears to be
24 supported by -- by the Commission. And with that recreation
25 comes an incredible amount of need for the protection of

1 public, protection of their safety and welfare. There are
2 tens of thousands of visitors to these project areas every
3 year. We have affectionately called the project areas an
4 attractive nuisance. Folks come from far and wide to
5 recreate, to camp, to fish, to explore, you know, whatever,
6 and with that comes the problems that you typically see when
7 you put -- put large groups of people into one -- one place
8 and that's -- that's simply public safety. They use the
9 roads to get there. That was one of the reasons I kind of
10 brought up the boundary issues. And as everyone knows, any
11 time you put people out on the roads, not everyone chooses
12 to follow the traffic laws. But, boy, they're -- they're --
13 they're going to the project area to recreate, so, you know,
14 we feel that there's a definite nexus there.

15 And then, of course, there's just the operations.
16 I -- I feel strongly that Pacific Corp and Cowlitz PUD rely
17 on law enforcement to help protect their employees that work
18 in the project areas and to help protect their
19 infrastructure.

20 We are a big supporter of the Settlement Agreement.
21 I sat through many a discussion. I suffered through many a
22 discussion on things totally unrelated to the County or to
23 my expertise. I'm an engineer and the last thing I'd really
24 like to sit and listen to are things about fish and things
25 like that. I don't dislike fish. I like them very much and

1 I had some last night and it was quite tasty. But we
2 dedicated ourselves to sitting through those discussions
3 because we had a very small issue that we wanted to make
4 sure was addressed. And the utilities stepped up to the
5 plate and addressed it beyond our expectations and beyond
6 our satisfaction and we just simply don't want to see that
7 downplayed. We recognize that the Settlement Agreement
8 exists. We recognize the comment that was made that even
9 though it's not being recommended to be included in the
10 license, that it's still there. We just feel that its
11 existence in the license gives us a little bit more
12 assurance that it will be there in perpetuity or at least to
13 the term of the license. And we would really strongly
14 recommend that the provisions remain in effect as -- as they
15 were set forth in the Settlement Agreement. Thank you.

16 MS. VECCHIO: Thank you.

17 MS. JONES: Lou Ellyn Jones, U.S. Fish & Wildlife
18 Service. And I wanted to tag in on that point about law
19 enforcement and just draw a little bit -- connect the dots
20 between project effects and bull trout, which is our -- is
21 listed under the Endangered Species Act. You have a number
22 of people coming into this area for recreation, use of the
23 reservoirs, and there are also -- there is also a lot of
24 residential development occurring right now that is -- if
25 you look at the brochures, what is attracting these people

1 is big development. They're saying the presence of trophy
2 fish, recreation, the use of the reservoirs, I mean it's
3 all -- it's what we see, people being brought into these
4 areas because of the presence of the projects.

5 And just to let you know, bull trout in this area
6 above the dams are very large. And when they talk about
7 trophy fish, they're referring to bull trout. There have
8 observations of people targeting bull trout. They're very,
9 very visible when these fish come in to stage before they go
10 up into the tributaries to spawn. They're very vulnerable
11 to poaching and to people who may want to harass them.
12 They're vulnerable for habitat degradation that may happen.
13 And we feel that a larger law enforcement presence would be
14 inhibiting on those sorts of things. And so we -- we really
15 support this and feel that it's very important in mitigating
16 that type of project effect. So just wanted to chime in.

17 MR. LOPOSSA: A follow-up -- Ryan Lopossa again
18 with the County. A follow-up to your comment. The -- the
19 funds that we receive from the payment of property taxes go
20 to a variety of services that the County provides, law
21 enforcement being one of them. The other service that those
22 funds help to provide is the implementation of land use
23 regulations and, more specifically, environmental
24 regulations that are aimed at helping to protect all of the
25 species. There's been some comments made recently at some

1 of the aquatic meetings about the inability of the Counties
2 to effectively protect those resources due to the limited,
3 you know, regulations that are currently in place. The
4 taxes that are being paid -- the property taxes that are
5 being paid, we're attempting to divvy those up between
6 those -- those -- those interests, but there's a -- there's
7 a -- a scrap over it. I mean, they -- you know, every time
8 the folks in -- in the Planning Department want to hire
9 another biologist to help implement a critical area's
10 ordinance, the Sheriff says, "Great, I need to hire another
11 deputy." So if we aren't able to take advantage of these
12 outside funding sources, such as what's proposed in the
13 Settlement Agreement, we -- you know, everything suffers,
14 not just the law enforcement. You know, the ability to
15 implement, you know, these -- these environmental
16 regulations to help protect resources would also suffer.

17 MS. VECCHIO: Any other additions?

18 MR. COREY: Carl Corey from the Forest Service.
19 Commission staff identified basically three points of why
20 the various measures were not adopted and the first one
21 makes sense, as far as these measures do not appear to have
22 a third nexus to the project, are not tied to either project
23 effects or purpose. If there is not a project nexus, I can
24 understand why you'd recommend their inclusion. If we can
25 make that project nexus clearer -- which, you know, we

1 intend do in our response to the Draft EIS.

2 The second one is our "located outside of the
3 project boundaries," which I mean, I think we've -- we've
4 had some discussion on that today that it -- outside the
5 project boundary is not as important as having a nexus to
6 the project.

7 And the third one is "appear to be general measures
8 that should be the responsibility of other governmental
9 agencies." And Ryan and others have addressed that, you
10 know, there is a project nexus for law enforcement, those
11 type of things. Whether or not someone feels it's their
12 responsibility to provide law enforcement doesn't, in my
13 mind, make it that it would be a measure that would be
14 recommended against including in the license. I mean, when
15 you look at Section 10(a) of the Federal Power Act, it does
16 not appear that these measures are inconsistent with the
17 Federal Power Act. You know, if they were inconsistent, I
18 can understand recommending against them. I mean, you know,
19 the Commission can include basically whatever, you know,
20 they choose to. By recommending just against them basically
21 in a Final EIS, if -- if we have shown that there is a nexus
22 to the project for one of these other reasons just doesn't
23 make too much sense, in my mind. So I think addressing
24 10(a), you know, in your -- you know, specific to the
25 measures in the Final EIS I think would be helpful to the

1 folks' understanding.

2 MS. VECCHIO: Thank you.

3 Are there any other comments in terms --
4 specifically towards the measures that we did not adopt?

5 MS. SWIFT: I guess just -- Brett Swift with
6 American Rivers. One comment related to the gravel
7 augmentation program, since we can't address it in 10(j)
8 meetings, so I'll comment here. When you look at the -- at
9 the reasons provided for not including it, I don't see that
10 any of them fit. I see that it is directly tied to project
11 impacts. I think as Janne appointed out earlier, there is
12 not agreement with the assertion that the project doesn't
13 affect spawn and gravel and we're talking about up to 50
14 years here and it's really a measure to monitor to see what
15 happens with the spawn and gravel to have an augmentation
16 program ready to go in the event that unacceptable adverse
17 impacts are -- result from project operation. So I really
18 view it as having a direct link to the project. And given
19 the length of licenses, it seems wholly appropriate to
20 include it in the license recording.

21 MS. VECCHIO: Yes.

22 MS. HARWOOD: Just before we leave this topic --
23 Holly Harwood with Pacific Corp. The -- I'm kind of focused
24 on the In Lieu Fund and the discussions that happened
25 earlier. We absolutely support the Settlement Agreement in

1 total. We want -- we think that everything should be in the
2 agreement. I want to make that clear. But if there was any
3 indication that it would be okay to just take both the In
4 Lieu Fund and the Review of New Information out of
5 Settlement Agreement, I need to make it clear that that
6 wouldn't be our interest. And I think one of the real
7 reasons for that is -- one of the other important elements
8 in the Settlement Agreement is a concept called the
9 reintroduction outcome goal. So we have agreed as parties
10 that we'll -- that we really would want to look beyond the
11 specific measures that we were trying to accomplish and
12 really look at what we were trying to accomplish with this
13 whole suite of aquatics measures. And so in order for that
14 reintroduction outcome goal to be achieved, clearly we have
15 to have some passage, so there's a passage at Swift. That's
16 happening for sure. We are -- it's important to us that we
17 have an opportunity to look and see how we're doing with
18 that reintroduction. Passage -- downstream passage of -- of
19 fish at these high head projects can be problematic. We
20 want to make sure we can figure out how to deal with those.
21 There's a whole slue of information that is not available to
22 us today about how -- how these -- how this reintroduction
23 program will go, but we want to have the opportunity to have
24 a look at and evaluate and provide information to NOAA to
25 see -- to make sure that they have determination to go on

1 and build passage at -- downstream passage at Merwin and
2 Yale makes sense.

3 There was some discussion about how much money that
4 is in the In Lieu Fund and it may be helpful -- I suppose
5 you know that from the developmental analysis, but the
6 passage that we would be talking about building if we didn't
7 do the In Lieu Fund is also very expensive. I mean, we're
8 talking much more money than we -- than we have actually in
9 the In Lieu Fund.

10 So it's the -- the ability to be able to -- and, in
11 my mind, this is really adaptive management -- to be able to
12 look at what the actual experience is in the basin with the
13 reintroduction program to gain information about how likely
14 it's going to be successful in Yale and Merwin and to have
15 an opportunity to have -- to have another discussion to see
16 if NOAA Fisheries believes that a different decision should
17 be made based on new information in the future is important
18 to us. And it's all part of that delicately balanced
19 Settlement Agreement that we've all been talking about. So
20 I just encourage you to not take the easy way of saying,
21 "Well, maybe we should take both of them out" because it's
22 not really as easy as it might look.

23 MS. VECCHIO: Are there any additional comments?

24 Yes.

25 MR. MAYNOR: Chris Maynor, Department of Ecology.

1 We are reviewing the DEIS and I don't have specific comments
2 right now, but we'll provide them.

3 We weren't involved in the Settlement Agreement, as
4 you know, but we are wanting to fully support the Settlement
5 Agreement consistent with the Clean Water Act, so we're
6 reviewing the Settlement Agreement and the DEIS consistent
7 to the Clean Water Act. And so some of the things we'll be
8 looking at are basalt gas, temperature, oil spill and also
9 looking at flow and some other things for consistency with
10 the Clean Water Act. So we -- we will be looking at -- at
11 the application for a 401 Water Quality Certification. That
12 will be received on February -- around the 1st of February
13 2005.

14 MR. WELCH: Third.

15 MR. MAYNOR: Third. I actually have several
16 different dates on the things that I have, so I'll -- I'll
17 just say the 1st.

18 MR. WELCH: Okay. Well, there's a comment right
19 there. I'm sorry, Chris.

20 MR. MAYNOR: And -- and we have one year to make a
21 decision. And when we make the decision, we want to have
22 all the environmental information in front of us, including
23 all the comments on the DEIS reflected in a Final
24 Environmental Impact Statement. And that sometimes is
25 problematic. And it will -- it looks like it may be

1 somewhat problematic here. And what -- what has happened in
2 the past about -- very often is -- is the Applicant
3 withdraws the application and reapplies and that means they
4 have another one year -- the one year time line starts
5 again. That doesn't mean we take another year to make a
6 decision. We may be able to turn it around like that, but
7 that's -- that's where we stand right now.

8 And I'm just coming on this project. I've been
9 watching it for a few years, but I haven't been involved, so
10 I'm moving very fast to try to get a draft Water Quality
11 Certification out by December 1st in order for it to go out
12 to people on the FERC service list to review. And I would
13 really welcome your -- your -- your comments or calling me
14 and -- for us to try to work some of these things out. And
15 we may be having a meeting like this to get some comments
16 and -- and discuss some of those things because we're --
17 we're trying to get this out before the license ends in
18 April.

19 MR. WELCH: That would be -- a draft by
20 December 1st would be extremely helpful to the Commission,
21 so we could -- you know, we could analyze it. That would be
22 great.

23 MR. MAYNOR: And just understand that this draft
24 would be -- will be a draft because we got it very -- very
25 quickly.

1 MS. VECCHIO: Thank you for your efforts.

2 MS. MONROE: I have a general comment. Ramona
3 Monroe, counsel to Pacific Corp. And we talked a lot about
4 the specific measures that are in the Settlement Agreement
5 and that FERC staff has recommended either be added to or
6 omitted from the final licenses. And I want to point out a
7 more procedural or technical legal provision in the
8 settlement just to make sure that you're aware of the
9 importance of this to the parties.

10 When the Settlement Agreement was negotiated, the
11 possibility of license -- of licenses being issued that
12 would be inconsistent with the Settlement Agreement was
13 considered and "inconsistent" was defined as a license that
14 either adds measures or omits measures that are in the
15 Settlement Agreement. And it was very important to the
16 parties that all of the measures be included in the license,
17 nothing be omitted and nothing be added. And there is a
18 provision in the Settlement Agreement that provides that if
19 inconsistent licenses are issued, then the Settlement
20 Agreement is deemed modified to be consistent with the
21 licenses, unless a party initiates the ADR procedures that
22 result in some other modification of the Settlement
23 Agreement. So the notion that the parties have agreed to
24 certain items in the Settlement Agreement and even though
25 FERC may not include those in the license, they are still

1 agreed to and binding under the Settlement Agreement, is not
2 the way that this Settlement Agreement is written. And --
3 and that was an important decision and part of the delicate
4 balance that the parties sought to achieve and implement in
5 the agreement.

6 MS. VECCHIO: Did you -- just a follow-up question.
7 Did you set out -- if -- since you foresaw that there could
8 be a difference and then, therefore, deemed modified, were
9 there also next steps that were identified?

10 MS. MONROE: There is an alternative dispute
11 resolution provision in the Settlement Agreement. And so if
12 the licenses are inconsistent and a party objects to that
13 inconsistency, they have the option of -- of entering into
14 that dispute resolution and which could result in some other
15 agreement to modify the Settlement Agreement or if that --
16 if there is not a -- a -- if the dispute is not resolved in
17 that manner, then the parties are entitled to withdraw from
18 the Agreement.

19 MS. VECCHIO: And every -- does -- just a follow-up
20 question. And all parties have the ability to go to that
21 ADR?

22 MS. MONROE: Yeah, I believe so. This is all in
23 Section 15.3 of the Settlement Agreement if you want to take
24 a look at it.

25 MS. VECCHIO: Okay. Thank you.

1 MR. HASTREITER: Just a comment following up on
2 that. Every Settlement Agreement I think that comes in to
3 the Commission has that input, so this isn't something new
4 that's different for the Settlement Agreement. So we're
5 dealing with that as well in other licenses where we're
6 trying to determine what's in the license and what isn't as
7 well, so this isn't something new necessarily.

8 MS. VECCHIO: And if there's any other comments
9 specific to these measures, we can take them. Since we're
10 at noon time, if you'd all like to take a lunch break as
11 well. So, basically, we can decide if there's any comments
12 that anybody would like to put in before lunch, we can do
13 that. Otherwise, we can take an hour for lunch and come
14 back and complete any other comments and answer any other
15 questions at that point. So I just wanted to take a quick,
16 I guess, hand raise in terms of who would -- has -- I guess
17 one who has more comments and questions to make overall in
18 general and then who would like to make comments before we
19 break. Who wants to make sure that we get a lunch break?
20 So just a quick hand raise in terms of who has additional
21 comments. And then does anybody really want to make those
22 comments before lunch?

23 MS. MacDONALD: This is Diana MacDonald from
24 Cowlitz PUD. From what I'm seeing, I'm not sure that -- I
25 know Holly has comments to make. I have comments to make.

1 I don't know if a lot of other people do. And so it may
2 be -- although I'm just as hungry as Tim, it might be more
3 efficient to take care of it now.

4 MS. VECCHIO: Yes. That's kind of why I wanted to
5 get a feeling for if there were additional comments after.
6 So does anybody object to continuing? Maybe we can take a
7 five-minute break and then continue so we can get up, use
8 the restroom, take a break and then we can -- okay. So
9 let's take a five-minute break and then reconvene and finish
10 comments.

11 (Whereupon, a recess was taken.)

12 MS. VECCHIO: Okay. Basically, now that we've had
13 a break, I'd like to go on to the next and comments to
14 complete the DEIS meeting, so --

15 MS. MacDONALD: I'll go first. I have a prepared
16 statement and most of it does not cover topics that we've --
17 excuse me. I will back up. I'm Diana MacDonald from Public
18 Utilities, Swift No. 1, Cowlitz County. And I served the
19 District as manager of environmental and regulatory
20 services.

21 THE COURT REPORTER: I need you to speak up.

22 MS. MacDONALD: I served the district as manager of
23 environmental and regulatory services. I've been in that
24 capacity. I'm responsible for the relicensing our Swift
25 No. 2 project. Cowlitz PUD provides electricity to about

1 45,000 customers in Cowlitz County, including the Cowlitz
2 side of the Lewis River and including this restaurant and
3 the conference center. Our Swift No. 2 power serves
4 primarily our residential load.

5 I'd like to start today by thanking the Commission
6 for coming to Woodland to chat with the parties about the
7 Draft EIS. Today's meeting combined with the site tour last
8 spring and written comments that will be provided in the end
9 of November give the parties the opportunity to explain the
10 complex and comprehensive Settlement Agreement and to
11 clarify for Commission staff some areas that may have been
12 unclear when the Commission staff prepared the Draft EIS.

13 Cowlitz PUD and the other parties negotiated a
14 settlement covering four projects, two licenses and that
15 some of the agreement was a package deal. We asked the
16 Commission to incorporate that Agreement into the relevant
17 new licenses without material modification. Since signing
18 the Settlement Agreement, parties have been working all
19 together and have been implementing a number of measures.
20 If we were to give you only one message today, it would be
21 that Cowlitz PUD stands firmly behind the Settlement
22 Agreement. We believe the Agreement is fair, reasonable, in
23 the public interest and appropriately balances a broad array
24 of resource interests, including the need to provide low
25 cost electricity from Swift No. 2 to Cowlitz PUD's

1 customers.

2 We'd like to thank the Commission for recommending
3 that the Settlement Agreement be approved and be made
4 conditions of the licenses to be issued for the Lewis River
5 projects. In addition to our "We stand united" message,
6 we'd like to offer clarifications on a few of the new
7 measures and staff modifications relative to Swift No. 2 and
8 these come from pages 5-7 through 5-10 and 253 through 254
9 of the DEIS. In these areas, we believe the transition
10 between the Settlement Agreement, the PDEA, the SPDEA and
11 DIEIS may have been unclear.

12 So now we're going to go to the specific measures
13 and all but one of these are items that we have not yet
14 discussed this morning. And our comments focus mostly on
15 the measures that were recommended for our license. And
16 I'll address the measure number first and then provide a
17 short description of how we can get these to the Department.

18 New Measure Number 2 discusses minimum flows from
19 the canal ring. As written, this measure assigns all the
20 responsibility for flows from the Swift No. 2 canal drain to
21 Swift No. 2. Under the Settlement Agreement, both Cowlitz
22 and the PUD have joint responsibilities for this measure.
23 Further, the Licensees have agreed to share the cost of lost
24 generation resulting from providing these flows. To ensure
25 consistency with the Settlement Agreement, we respectfully

1 request that you revise this measure to reflect the joint
2 obligation of Cowlitz PUD and Pacific Corp.

3 New Measure Number Three discusses constructing the
4 upper release point and providing minimum flows from that
5 point as well. As written, this measure also assigns all
6 responsibility for constructing the upper release point and
7 providing flows from that facility to Swift No. 2. The
8 Settlement Agreement, Cowlitz PUD and Pacific Corp have a
9 joint obligation for the upper release point and its related
10 minimum flows. The Licensees under the Settlement Agreement
11 are to determine the location of the upper release point by
12 November 30th, 2005. And we have agreed that the upper
13 release point will be constructed just downstream in Swift 1
14 powerhouse. That is within the Swift 1 project boundary.
15 To ensure consistency with the Settlement Agreement, we
16 respectfully request that the Commission revise this measure
17 to reflect the joint obligations of Cowlitz PUD and Pacific
18 Corp.

19 Still on New Measure Number 3 relates to the bypass
20 of flow schedule. This measure as written requires interim
21 release schedules for flows to bypass be filed with the
22 Commission for approval by the first anniversary of the
23 Swift No. 2 license. The Settlement Agreement calls for an
24 interim flow schedule and a 12-month adjustment period
25 followed by a combined flow schedule, all of which are tied

1 to the completion of the upper release point and the
2 construction channel. The construction of the upper release
3 point must begin within six months after the Swift No. 2 and
4 Swift No. 1 license issuance, whichever is later. Further,
5 the constructed channel, if it's constructed, would be
6 completed after the release point is finished. The
7 Settlement Agreement requires the combined flow schedule to
8 be completed on or before the first anniversary of the date
9 that the constructed channel and the upper release point are
10 both operational or upon approval of the ACC, Aquatics
11 Coordinating Committee, whichever is later. Since it takes
12 time to construct the upper release point and the
13 constructed channel and the Settlement Agreement requires a
14 12-month adjustment period, it isn't possible for us to file
15 an interim flow schedule for combined flow with the
16 Commission by the first anniversary of the issuance of the
17 license.

18 We recognized that FERC borrowed the "by the first
19 anniversary" language from our supplemental PDEA.
20 Unfortunately, some of the finer points in the time of
21 implementation were lost and we regret that. We would
22 respectfully request that the Commission revise this measure
23 to retain the 12-month adjustment period as described in the
24 Settlement Agreement so that the parties can design a
25 combined flow schedule that maximizes the biological

1 benefits of the constructed channel and the flows from the
2 upper release point.

3 Moving to New Measure Number 4, I have two comments
4 on this measure. "Swift Upstream Facility," as written,
5 this measure requires the Swift upstream facility to be
6 implemented once upstream passage is established at
7 downstream projects. Under the Settlement Agreement,
8 upstream passage at downstream projects is provided in year
9 four at Merwin Dam. Therefore, as written, this measure
10 requires that the Swift upstream facility be completed in
11 year four as opposed to year 17 as described in the
12 Settlement Agreement. We believe this change in the
13 implementation time was likely an error that resulted from
14 some other measure. However, to ensure consistency with the
15 Settlement Agreement, we respectfully request that the
16 Commission correct the timing of the implementation of the
17 Swift upstream facility.

18 Second comment on the Swift upstream facility in
19 Measure Number 4, as written, this measure assigns all of
20 the responsibility for the Swift upstream facility to Swift
21 No. 2. Under the Settlement Agreement, construction and
22 operation of the Swift upstream facility is a joint
23 obligation of Cowlitz and Pacific Corp. Further, the
24 location is to be determined in the future. To ensure
25 consistency with the Settlement Agreement, we respectfully

1 request that the Commission revise this measure to reflect
2 the joint obligation of the Cowlitz PUD and Pacific Corp.

3 Moving to New Measure Number 5, "Swift Downstream
4 Facility and Related Facilities," as written, this measure
5 assigns some of the responsibility for the Swift downstream
6 facility to Swift No. 2. Under the Settlement Agreement,
7 Pacific Corp has sole responsibility for the Swift
8 downstream facility and related facilities. Further, the
9 downstream facility will be constructed entirely within the
10 Swift No. 1 project boundary and entirely outside the
11 Swift 2 project boundary. Related facilities such as
12 release ponds will also be constructed outside the Swift 2
13 project boundary. To ensure consistency with the Settlement
14 Agreement, we respectfully request that this measure not be
15 included in any license issued by the Commission for Swift
16 No. 2.

17 New Measure Number 13, "Bull Trout Conservation
18 Covenants," as -- as written, this measure requires Cowlitz
19 PUD to manage conservation covenants, plural, for bull trout
20 in conjunction with Pacific Corp. Cowlitz PUD holds only
21 one conservation covenant for bull trout for which we are
22 solely responsible. Pacific Corp holds two conservation
23 covenants for bull trout for which they are solely
24 responsible. Neither Licensee has an obligation for the
25 other Licensee's conservation covenants. Consistent with

1 the Settlement Agreement and the terms of the conservation
2 covenants, we respectfully request that the Commission
3 revise this measure to state that Cowlitz PUD must manage
4 its double backbone conservations covenants.

5 New Measure Number 15, "Discussions of the Aquatic
6 Fund," and I would have presented two comments on that, but
7 I think we've discussed that at considerable length already,
8 so I'll skip those.

9 New Measure Number 17 is establish a Swift Habitat
10 Acquisition Fund for \$7.5 million and New Measure Number 18
11 is to establish a \$2.2 million Lewis River Habitat
12 Acquisition Fund. As written, these two measures assigned
13 Swift 2 with the responsibility for up to \$9.7 million for
14 wildlife habitat acquisition. Under the Settlement
15 Agreement, Cowlitz PUD has an obligation to establish and
16 maintain a tracking account for the Swift No. 1 and Swift
17 No. 2 land acquisition at that site. However, we do not
18 have any obligation to provide funding to that account or to
19 any other terrestrial account. This apparent inconsistency
20 within the Settlement Agreement is an artifact of dynamic
21 negotiations. We'd also like to take this opportunity to
22 note that while Swift 2 indicates only 61 acres of forest
23 habitat, we own and have agreed to manage 525 acres of
24 wildlife habitat under our wildlife habitat management. To
25 ensure consistency with the Settlement Agreement, we

1 respectfully request that these measure not be included in
2 any license issued by the Commission for the Swift No. 2
3 project.

4 In conclusion, in lieu of the Settlement Agreement
5 is a comprehensive agreement that meets the needs of a broad
6 depth of the parties and balances many and sometimes
7 competing resource needs. The whole of the Settlement
8 Agreement is greater than the sum of its parts and it is
9 very important to maintain the integrity of the Settlement
10 Agreement as a whole. We respectfully request that the
11 Commission incorporate the Settlement Agreement into the
12 relative licenses without material modifications. And we
13 want -- bad choice. Material modification is the word. We
14 again thank you for accepting the Settlement Agreement and
15 we look forward to working with you throughout the rest of
16 the license projects. That concludes my comments.

17 MS. VECCHIO: Thank you very much.

18 MR. WELCH: I have a couple questions -- well, one
19 question for you. You said several different times -- you
20 said the Commission should revise the recommendation to
21 assign joint responsibility. What -- thinking into a
22 license article ahead, what -- what would you mean by
23 "assigning joint responsibility"? What does that mean?

24 MS. MacDONALD: It would say -- our license article
25 would say Cowlitz PUD or the Licensee for Swift No. 2

1 together with the Licensee for Swift No. 1. Pacific Corp's
2 license article would say the Licensee together with the
3 Licensee for Swift No. 2. So the same articles in both
4 licenses.

5 MR. WELCH: Right. I'm thinking, however, the
6 Commission can only enforce a license on -- a licensed
7 article on the Licensee for that particular project. Just
8 because I -- I mean, we --

9 MS. MacDONALD: Okay.

10 MR. WELCH: -- we struggled -- we knew kind of what
11 you were saying there, but -- and in regards to like project
12 structures and stuff, we can only put -- party structure has
13 to be in one license or another license. It can't be in
14 both.

15 MS. MacDONALD: In a number of places -- Diana
16 MacDonald, Cowlitz PUD -- in a number of places in these
17 lists of measures you've used said "in conjunction with"
18 language, so we were -- in places you used it, in places you
19 didn't, so we assumed that you were drawing a distinction
20 and we assumed it was an incorrect distinction. In some
21 places, you can. For instance, the modular service
22 collector, Swift downstream collector, you have said "in
23 our, in conjunction with the Swift No. 1 project. Well,
24 that's wholly built on another Licensee's project.

25 MR. WELCH: Okay. We'll have to look at that.

1 MS. VECCHIO: Did you have another question?

2 MR. WELCH: Yeah, there was -- there was a number
3 of times I -- I couldn't catch what you said. You told us
4 not to include a recommendation at all.

5 MS. MacDONALD: Uh-huh.

6 MR. WELCH: And was this something -- an additional
7 measure the Commission came up with that was not in the
8 Settlement?

9 MS. MacDONALD: No. There are measures in the
10 Settlement Agreement, the Swift downstream collective for
11 one and the two wildlife habitat funds another. They are in
12 the Settlement Agreement, but they're solely Pacific Corp's
13 obligations. They're not Cowlitz PUD's obligations, but you
14 assigned them to us.

15 MR. WELCH: I see. We'll have to look at why we
16 did that.

17 MR. FOOTE: Peter Foote. I think one -- one of
18 those reasons for like the modular collector in Swift 1, the
19 long table that -- Table 214, which we basically pulled from
20 the -- the PDEA or SPDEA and it has the checks marks for
21 Swift 1, Swift 2. You know, the -- the check marks, which I
22 assume we got those from that table, Swift 1 and Swift 2 are
23 both checked.

24 MS. MacDONALD: Right, and we did include that
25 Swift -- we have a voluntary agreement to contribute to the

1 cost of the Swift downstream collective, but that's a
2 voluntary agreement that's wholly outside the Settlement
3 Agreement.

4 MR. FOOTE: That might have been where we -- where
5 that came from.

6 MS. MacDONALD: That's why we included it in our
7 economic analysis.

8 MR. WELCH: So it was -- when you looked at the
9 developmental section, you saw that we included the cost of
10 that particular item under your column?

11 MS. MacDONALD: Uh-huh. And we have agreed to pay
12 a portion of the costs.

13 MR. WELCH: Because we were -- we worked a long
14 time on that developmental section trying to get, you know,
15 everybody's money in the correct column so we can accurately
16 reflect what -- what -- what kind of net benefit each
17 license would -- would have. So, anyway, we'll go through
18 your columns a little more carefully and take a look at
19 that.

20 MS. MacDONALD: Thank you.

21 MS. VECCHIO: Next comment.

22 MS. HARWOOD: My name is Holly Harwood. I'm
23 director of license and implementation at Pacific Corp and I
24 mentioned that before. I was also the lead negotiator for
25 the company in these Lewis River settlement negotiations

1 we've all been talking so much about today.

2 First, I just wanted to thank you guys for coming
3 today. I really didn't know what to expect and I have to
4 commend you for having this be much more inactive than what
5 I had expected. So my comments were prepared thinking this
6 was going to be a very formal, far less interactive
7 discussion, but I think that the format that you chose is
8 actually much more helpful. So I appreciate it. I know
9 it's probably not the safest and easiest way for you all to
10 get input, so I really do appreciate it.

11 I also appreciate that it's clear that in the -- in
12 developing the Draft EIS, you did give a lot of
13 consideration to work we did in the Settlement Agreement and
14 I want to recognize that and let you know that we do
15 appreciate it. It was heartening, I think, for me to -- to
16 read the Draft EIS and realize that, for the most part, you
17 read that the Settlement Agreement measures were a
18 reasonable way to meet the public interest in relicensing
19 this project. We firmly believe that the Settlement
20 Agreement is in our customer's best interests. It is the
21 best way for us to preserve our ability to operate these
22 projects while protecting and enhancing the natural
23 resources in this basin.

24 Under the terms of the Settlement Agreement, these
25 projects can cost effectively provide for energy needs of

1 our customers, provide important flexibility to the grids,
2 such as automatic generation control, low flowing and
3 spinning reserves, and do so in an environmentally
4 responsible way. It's been our experience that each basin
5 has its own unique complexities and, of course, the Lewis
6 River is no different. Some of Diana's comments earlier
7 were what some of the complexity that's involved. We are
8 talking about one Settlement Agreement that covers four
9 projects and two Licensees. It's also complex because it
10 covers four projects that are -- that are operated in a
11 coordinated fashion under four separate licenses, so we --
12 we recognize that that adds a lot of complexity to the
13 agreement and it's added a lot of complexity to our
14 settlement discussions as well.

15 It's also complex because it is so comprehensive.
16 It includes a suite of measures that were designed to finely
17 balance the diverse interests of 26 parties. There were 26
18 parties who signed the Settlement Agreement, each
19 representing a variety of different interests. You've heard
20 from many of those parties today. And I'd just like to say
21 we are really proud, I think, as a group that we were able
22 to come together and find solutions that met the interest of
23 the parties so that all of the parties that began the
24 settlement discussions actually signed on to the Settlement
25 Agreement in the end. That was important to us at Pacific

1 Corp and I think that we, as a group, were very proud of the
2 fact that we were able to find solutions that met interests.

3 Each of the measures in the Settlement Agreement is
4 important to one or more of the parties here. You heard
5 them speak -- many of them speak for the interests that were
6 nearest and dearest to their hearts today. But because each
7 of the measures is important to one or more of the parties,
8 each of the measures is important to all of us. It's a
9 finely balanced agreement and in order to preserve that
10 balance, each and every element must be included without
11 material modification. As Ramona indicated, if this balance
12 is not maintained in the license, the Settlement Agreement
13 allows the parties to withdraw. If new measures are
14 included in the license, it also provides an opportunity for
15 parties to withdraw from the agreement. Loss of this
16 agreement would create significant uncertainty for our
17 customers. Loss of the Settlement Agreement would delay
18 important improvements to benefit endangered salmon. Loss
19 of the Settlement Agreement would delay recreational
20 facility improvements. Loss of the Settlement Agreement
21 would delay new flood management measures. This would not
22 be good for our customers, would not be good for the natural
23 resources or the local communities and would certainly be a
24 waste of a lot of resource that has been put together to --
25 to bring this agreement together.

1 One of the things I wanted to make sure that you're
2 aware of is the parties have been working together already
3 to begin implementing measures in the Settlement Agreement.
4 Many -- there are measures in the agreement that we agreed
5 to do prior to receiving new licenses. We've also began
6 working together to plan and prepare for implementation of
7 the Settlement Agreement measures that happened earlier in
8 the license period. I'm pleased to report that there is a
9 strong sense of collaboration and I think that you probably
10 felt that in the room today. The -- the parties here are in
11 agreement about what's in this agreement and how best to
12 proceed. In order to preserve that spirit of collaboration
13 in the Settlement Agreement, we really can't say it often
14 enough. Diana has already said it a whole lot of times, but
15 I'm going to echo it again. We really do ask you to include
16 all the elements in the Settlement Agreement in the license
17 without material modification.

18 We have substantive comments that we will provide
19 in writing and, in addition, we have been spending a
20 significant amount of time working with the other settlement
21 parties to develop for your consideration draft license
22 articles that we intend to submit on behalf of the parties
23 as comments on our draft -- on the Draft EIS. We hope that
24 those will be helpful in helping you clarify what elements
25 belong in which license.

1 The Commission has been clear that it encourages
2 settlement agreements. The Commission has -- has urged
3 parties to work hard to find solutions, solutions to complex
4 issues that are at the heart of relicensing any hydro
5 project, solutions that would just not be available absent a
6 Settlement Agreement. The parties to this agreement have
7 done just that. This agreement was the result of nearly
8 three years of intense negotiations that followed years of
9 collaborative study and evaluation of alternatives. Pacific
10 Corp spent literally thousands of man hours, significant
11 legal resources and the Cowlitz PUD funded the services of a
12 team of neutral mediators to bring the Settlement Agreement
13 to fruition. Other parties to the agreement also have spent
14 significant staff and legal resources in this endeavor.
15 Local citizens spent countless hours on a volunteer basis
16 participating in negotiations. The results of all this
17 effort, a solid, well thought out and balanced agreement.
18 We strongly ask that the Commission consider this as you
19 evaluate the comments that you hear today and receive in
20 writing. Your inclusion of all of the Settlement Agreement
21 measures in the license without material modification will
22 send a clear signal to us and to others that the Commission
23 values the work that was done here, that the Commission
24 supports settlements and does not wish to unnecessarily
25 undermine them.

1 Again, I want to thank you for your time and for
2 the opportunity for us to all provide comments.

3 MS. VECCHIO: Thank you very much. If there are no
4 other comments, I will close. Basically, I wanted to thank
5 everybody for coming and cooperating to share your comments
6 and clarify anything that we may have misunderstood or else
7 to clarify points about our recommendations. I think we've
8 made -- I hope it's been -- I know it's been helpful for us
9 and I hope it's been helpful for you in terms of knowing
10 where we're coming from. So it's been helpful to know where
11 you're coming from as well. And so I think the next steps
12 towards getting to a solution would be to -- you know, as we
13 were speaking before, to clarify the nexus and decisions
14 that you made in terms of selecting certain measures in
15 terms of Aquatics Fund. Also in terms of the In Lieu Fund,
16 in clarifying the steps between the decision that is -- how
17 the decision is made from looking at fish passage, deciding
18 the fish passage is not feasible or desirable any more and
19 then how you invoke the In Lieu Fund. Your comments were
20 very helpful in that sense, so I think -- I know on our end
21 it would be very helpful and a lot easier for us to analyze
22 and also understand how the transition from fish passage to
23 the In Lieu Fund would happen. And I know that that would
24 be something that the commissioners would be -- I can only
25 speak so much, but if we have that information, that would

1 enable us to convey a message in our recommendations to the
2 Commissioners much more equitably. I think that would be in
3 everybody's interest to work on that. And also in terms of
4 clarifying the nexuses --

5 MR. WELCH: Nexi.

6 MS. VECCHIO: -- the nexi of certain measures to
7 the project and the effects of the project. I think those
8 are basically the key messages that have probably come
9 through in this meeting. And, also, if there's anything
10 else in terms of questions, we'll definitely look at what
11 you said today, but also look forward to looking to your
12 written comments to look at details of what you began to
13 bring up today.

14 If there's anything else? If there's any questions
15 along the way, feel free -- please feel free to contact me.
16 My card is on the table. And just in terms of logistics, if
17 you could please make sure that if you had not already
18 signed the registration form, to give that to the court
19 reporter so that we can make sure that the list is complete.

20 If there are no other comments, then I hope
21 everybody enjoys lunch. And I want to thank you all again
22 for coming and sharing your comments and hope that this will
23 work out in the Final EIS.

24 (Whereupon, the proceedings were concluded at
25 12:40 p.m.)

