1 BEFORE THE
2 FEDERAL ENERGY REGULATORY COMMISSION
3
4
5 IN THE MATTER OF:)
6)
7 LAKE CREEK HYDROELECTRIC PROJECT) PROJECT No. 2594-009
8)
9 NORTHERN LIGHTS, INC.)
10)
11
12
13
14 Three Rivers Ranger District
15 Troy Ranger Station
16 1437 North Highway 2
17 Troy, Montana
18
19 Wednesday, August 9, 2006
20
21
22 The above-entitled matter came on for agency
23 meeting, pursuant to notice, at 1:35 p.m.
24
25 MODERATOR: SEAN MURPHY, FERC

1 A P P E A R A N C E S
2
3
4 Sean Murphy, Quentin Lawson, Allan Creamer
5 personally appeared on behalf of the
6 FEDERAL ENERGY REGULATORY COMMISSION.
7 Jay Maher, Randy Dorman
8 personally appeared on behalf of
9 KLEINSCHMIDT & ASSOCIATES.
10 Mark Contor
11 personally appeared on behalf of
12 NORTHERN LIGHTS, INC.
13
14
15
16 AGENCY REPRESENTATIVES:
17 Amee Rief;
18 Douglas Spaeth THREE RIVERS RANGER DISTRICT
19
20 Paul Hanna U.S. FISH & WILDLIFE SERVICE
21 Kevin Greenleaf KOOTENAI TRIBE OF IDAHO
22 Christian Levine MONTANA DEPARTMENT OF
23 ENVIRONMENTAL QUALITY
24
25 Mike Hensler MONTANA FISH, WILDLIFE & PARKS

1 P R O C E E D I N G S

2 MR. MURPHY: What we're going to start with
3 today is, we're going to have Kleinschmidt present a
4 history and some of the -- and the proposals for the
5 project, and then we can get into the specifics after
6 that where you guys tell us what you're all thinking.
7 The agency meeting is pretty much unstructured.
8 We go through the project step by step if we all want to
9 do that, and we can discuss what you need -- you see as
10 necessary for studies or recommendations for how the
11 thing should be done. And with that we can just go
12 ahead and step into the presentation.
13 MR. MAHER: But for the record, I'm Jay
14 Maher with Kleinschmidt Associates for Northern Lights.
15 And we are assisting them with the relicensing of the
16 project. So we'll run through a couple things. Some of
17 you have already seen parts of this.
18 Okay, Randy, why isn't the up button -- aha,
19 background. Well, real quickly, if you don't know,
20 Northern Lights is a rural electric cooperative. Read
21 this, you know it's nonprofit, serves parts of Montana,
22 Washington, Idaho, purchases most of its power for
23 distribution. Lake Creek is its only generating source.
24 Real quickly, Lake Creek headwaters at Bull
25 Lake which is what, 15 miles, roughly, give or take, a

little bit upstream. Discharges to the Kootenai River here, half a mile below the powerhouses right here outside of Troy. There are a series of waterfalls just below the dam. Those of you who were out there today saw those. Those first a series of small waterfalls and then there's the one big drop that goes down into the plunge.

The dam, I don't think there's any reason to go into details on the technical stuff here. Thirty surface acres. The estimated gross storage capacity now is 150 acre feet. Originally it was 260 or something like that. But obviously, since 1915 there's been some sedimentation take place in there.

The project is completely surrounded by private property. There's very limited public access. Even the access to the dam is across a road that has an easement. Northern Lights doesn't own the access. It's not a public road; it's an easement that allows them to get in there.

The powerhouses. First powerhouse was finished in 1917. I think they started construction in 1915, but it took them a couple years to get going. The second powerhouse, 1949. Combination -- I think the FERC capacity is four-and-a-half megawatts of capacity and about 26,000 megawatt hours of power a year.

1 Pictures; that almost looks like the tour
2 today.
3 Where are we on the process here and the
4 relicensing? And I made a very shortened, a very
5 shortened timeline here to show you. Last year in July
6 we held public informational meetings, one here in Troy,
7 one over in Sagle, and one in Libby for the agencies and
8 for the public. We also sent out a questionnaire to the
9 agencies and the public that requested information. The
10 idea was that Northern Lights would start this process
11 early, gather as much information as we could which is
12 the whole idea of the Pre-Application Document to
13 collect the readily available material about the
14 project, which we found out there wasn't a whole lot.
15 But that's what we did.
16 Then since last year we gathered that
17 information and folks wrote the actual PAD. We had a
18 number of contacts with those of you in the agencies and
19 with FERC and so on and put together the Pre-Application
20 Document which was filed May 31. And then on June 30th,
21 FERC issued the Notice of Proceeding, and we're actually
22 at this stage right now. This is FERC's meeting, the
23 scoping meeting. We're also, in this process right now,
24 conducting early studies. If you went through and
25 looked at the formal process for the ILP, we would be

1 going through this scoping, then I would be
2 presenting -- or Northern Lights would be presenting a
3 formal study plan which we'll do eventually anyhow, and
4 then we would sit down and hash through that. And then
5 by next spring we would get ready and initiate the
6 studies in the field. Instead, what we have done is
7 kind of shortened that process, met with you all ahead
8 of time to figure out what the likely issues were so
9 that we could get the process started this year.
10 Northern Light's goal is to complete this
11 relicensing early with a minimum of fuss, and so we
12 started that. And I have all of the studies that have
13 been initiated. I have copies up here. They're also in
14 the PAD. And I think most of you have gotten them by
15 e-mail from me at one time or another. But those are
16 all there.
17 The cultural resources is essentially complete.
18 They did the field work back in May -- early May. We
19 had tribal representation just after the actual -- the
20 formal field survey with the CSKT. Josie Shotana of the
21 Kootenai Tribe of Idaho, though, was consulted and, for
22 physical reasons, she couldn't walk the area where they
23 did the survey. But she was involved in setting that
24 up. And now I think that our consultants are just
25 writing up the cultural resource part. All the other

1 ones are ongoing.
2 Water quality study -- Chris, you may have to
3 help me -- started in April. They wanted to get early,
4 before the high flow, so we started really early. And
5 the first grab samples for water quality and they're
6 basically taking samples above the reservoir, in the
7 reservoir, and then below the powerhouses. And we used
8 the criteria from the Department of Environmental
9 Quality. Did I say that right? Because I'm sorry. I
10 apologize because I get confused. Because in some
11 states it's DEP and in some it's DEQ. And we used their
12 criteria for collecting that data. And so far to date,
13 I haven't seen anything that's jumped out as being
14 unusual. There were some elevated iron levels there
15 during the high flows but, otherwise, I can't recall
16 anything being unusual in the water quality.
17 The other studies, the field studies, are
18 ongoing right now. Guys are out there as we speak and
19 they're mapping the wetlands. They did electroshocking
20 and mapping of the bypassed reach the last couple days.
21 They set gill nets last night and brought those in this
22 morning with the help of Montana Fish, Wildlife and
23 Parks. And we have -- they are going to be yet this
24 week, taking some physical -- additional physical
25 measurements of the reservoir.

1 What else? Is that about it?
2 MR. DORMAN: That's about it.
3 MR. MAHER: Yeah, I think that's about it.
4 And I know I'm way ahead of myself. But it seems like
5 an appropriate time to talk about. I think, as we've
6 done these studies, nothing has turned up unusual except
7 that A, we found lots of brown trout, some sizable brown
8 trout in the reservoir which, I think, was disappointing
9 to Montana Fish, Wildlife and Parks, though you
10 suspected they were there. Now, we know that they are
11 there. And they electroshocked juvenile bull trout in
12 the bypassed reach. And we think, although we haven't
13 talked to the researchers of any detail, I think we have
14 at least two year classes of juvenile bull trout. I
15 don't know anything about numbers or exact location of
16 where they were other than they were in the
17 bypassed -- the bypassed reach, and they came up with
18 what we believe are torrent sculpin. But again, I
19 haven't talked to the researchers to know exactly. So
20 that's kind of the summary.
21 I don't anticipate -- the wetland mapping
22 should -- that's, you know, just a physical process.
23 There's not going to be a lot of information revealed
24 from that.
25 And then there will be additional water quality

1 samples -- one additional water quality sample taken in
2 late September, early October, something as a baseline.
3 And that will wrap up this year's studies.
4 So that's where we are today. There is going
5 to be, then, comments submitted to FERC on this scoping
6 and the notice, and those are due the 29th of August.
7 And FERC issued an errata which I think I e-mailed to
8 all of you -- not to the Forest Service but to the rest
9 of you -- because there was some confusion as to the
10 dates. The agencies have until September 28th to be a
11 participating agency.
12 MR. MURPHY: Cooperating agency.
13 MR. MAHER: Cooperating agency, yes. But
14 August 29th is when any comments on the PAD or the
15 scoping are due. So that's just three weeks from today.
16 What goes on next year? This is now pretty
17 sketchy here as I've laid it out here. Perhaps some
18 additional studies. We're going to have to look at the
19 data that the researchers are getting out there. We're
20 going to have to do some more discussions with Montana
21 Fish, Wildlife and Park about the bull trout that are
22 out there so we can get a handle on numbers and
23 potential origin and age classes and things like that.
24 So there may be some additional studies. The potential
25 for these meetings for folks to come up with some things

1 that we didn't think of on the seven studies or so that
2 we already have underway. May need some additional
3 information. So that would take place in 2007.
4 I guess I skipped in there because I
5 abbreviated this, we actually will file a formal study
6 plan with FERC 45 days after this. Is that the correct
7 timing? I think it's 45 days. The day isn't really
8 important here, but we'll file that with FERC. That
9 will be basically the studies that we've already
10 presented to you all. Unless you have some additional
11 comments or additional changes to those, that will be
12 the study plan that Northern Lights is going to submit
13 to FERC, and then FERC will comment on that.
14 MR. MURPHY: I have October 15th.
15 MR. MAHER: End of October?
16 MR. MURPHY: October 15th.
17 MR. MAHER: Okay; October 15th for our
18 formal study plan.
19 Then, you notice there's a jump here between
20 2007 and 2009. The license -- the current license
21 expires in 2011; okay? And the application for that
22 license is supposed to be filed no later than two years
23 before license expiration which is in 2009. Northern
24 Lights's goal right now is, based upon where we are in
25 the studies and the remaining work that we need to do,

1 that they'll be filing for that application much earlier
2 than two years before the license expiration. So
3 although my dates don't reflect it on here, these would
4 be the regulatory dates as we have them staggered out
5 there. Chances are, assuming things progress the way
6 they are, we'll be making that application to FERC in
7 early 2008. The agencies and folks will have another,
8 you know, chance, then, to look at that application
9 then.
10 So that's the goal. That's where we are right
11 now in terms of the schedule. I should ask are there
12 any questions? I'm just kind of blowing through this.
13 MR. MURPHY: It's a small group. I think
14 they'd raise their hand.
15 MR. MAHER: Or yell.
16 Okay. What we have submitted in May was the
17 PAD, the Pre-Application Document that identified the
18 issues and information needs. Most of those were
19 actually derived at our meeting in February with the
20 agencies; a few discussions. We had another FERC
21 project manager prior. Steve had suggested some
22 additional studies and work that we might do. So those
23 were incorporated into the PAD too. And so it
24 identified those issues and information needs, probably
25 have these reversed, and it provided the background

1 then, what information we could gather from the agencies
2 and from general literature searches out there regarding
3 the operations of the project. That's what that PAD is.
4 And you all have copies of it, and I'm sure you've read
5 it word for word.
6 Summarizing it, what we heard and what we
7 determined were the information needs were water
8 quality, wetlands, species use, which fish, birds,
9 mammals, terrestrial herps, that kind of thing, habitat
10 in the bypassed reach, that quarter-mile, half-mile
11 whatever it is between the dam and the powerhouses.
12 Didn't know much about that. And the cultural resources
13 we didn't have a handle on. So those were the
14 identified information needs.
15 When we sat down and tried to boil this down
16 and said Okay, we know we need some information on that
17 to handle, but what are the real issues here, these were
18 the two that jumped out to me; endangered species which
19 would be the bull trout, because I don't think
20 Paul -- while we have the potential for all the others,
21 I don't remember five or six species I listed -- I don't
22 think they're going to be affected by project
23 operations. We listed them nonetheless; grizzly bear,
24 lynx, water howelli, bald eagles; trying to remember.
25 We had a pretty good list of species in there. And bull

1 trout. And now we've confirmed that bull trout are
2 within the project area would be the main issue. And
3 then water quality which DEQ had pointed out to us that
4 the last baseline data we have is in the 1970s, which
5 was quite a while ago. Mines have come and gone.
6 Things have gone on in the watershed, so we needed to
7 get another baseline data on the water quality, so we're
8 doing that as well. So those were the issues that were
9 identified.
10 Just got ahead; there's the list. What the are
11 the T and E issues? Really, in my mind, it's come down
12 to bull trout. If there is something else, we'd rather
13 know about it sooner than later. But I think we've
14 pretty much ruled out all of these. The plants, the
15 habitat or the range just isn't there in the project
16 area.
17 So as I say, we do have bald eagles
18 occasionally using it. We don't have any nesting right
19 there within the immediate project area. So while we'll
20 probably need to take care of that in a biological
21 assessment, I assume it's going to be probably a
22 no-effect kind of -- yeah.
23 MR. HANNA: One of the other species that
24 you may consider is sturgeon. I don't anticipate any
25 effects occurring from sturgeon.

1 MR. MAHER: In the Kootenai?
2 MR. HANNA: Correct. But they are within
3 the watershed of the Kootenai, and you're about a half
4 mile up. So you'll probably get to a no-effects --
5 MR. MAHER: You know, we talked about it.
6 We didn't address it, but we certainly can.
7 Well, we know more about this today than we did
8 when I put this slide together which is guess what?
9 They're in there. I don't think the guys found any
10 spawning gravels or habitat in there that -- but it's
11 probably going to bear a little closer look now. Some
12 of us walked up there today. And again, you don't see
13 what I think of as bull trout or any kind of salmonic
14 spawning. There's certainly rearing habitat, I don't
15 know, in there. But the fish are there.
16 Water quality. We're conducting studies now to
17 set the baseline associated with that in the
18 Pre-Application Document. Northern Lights has
19 said -- you know, some of the issues that were raised
20 early or some of the potential issues we decided just to
21 take care of right away. One of those is sluicing. One
22 of the former owners of the reservoir occasionally used
23 low-level sluicing to move sediment out of there which
24 put potential bad effect on the habitat below there.
25 Northern Lights doesn't see any reason to do that. The

1 project is run of river. So unless there's a structural
2 problem with the dam or an issue when 40 or 50 years
3 from now when the sediment is up on the dam and causing
4 problems, in which case to go through a consultation
5 with FERC and the agencies and determine what best
6 management practices would need to be employed to go
7 through and remove that sediment. But in terms of
8 normal operations, Northern Lights is committing -- or
9 going to offer in their licensing application that
10 there's not going to be any unilateral sluicing of
11 sediment or use of those deep gates for moving any
12 sediment operations.
13 MR. HENSLER: As part of their -- you never
14 say never. Is there -- are you planning on coming up
15 with alternatives to sluicing, like dredging, coffering
16 a portion of the water and dredging that? I'm just
17 curious.
18 MR. MAHER: I can speculate. Mark is the
19 owner, but I can speculate right here that in my mind,
20 what we were thinking of is that there would be a FERC
21 article that just basically says You aren't going to do
22 this unless you come to us and you have a full
23 consultation. And at that time, I would assume that you
24 would go through the process and say What are the
25 alternatives? If we can't sluice this, can we pump

1 dredge it, can we clamshell dredge it? You know, what
2 is the problem? Is the problem stability? Is the
3 problem sediment blockage? And then address it that way
4 at that time, depending on what it is. So I looked at
5 it more as a license article that says You can't do this
6 without going through special hoops. That's how I was
7 anticipating it.
8 MR. HENSLER: Was sediment quality part of
9 the baseline measurements out of this in addition to the
10 water quality?
11 MR. MAHER: We have the sediment samples
12 from 1996 --
13 MR. DORMAN: No, it was about 2002.
14 MR. MAHER: Oh, 2002. So we have those
15 baseline. And they aren't -- I wouldn't say that -- I
16 don't know how to say this on the record. They weren't
17 as bad as I thought they could have been. I've worked
18 in other areas where you have mine waste coming
19 downstream and being deposited over the last fifty or
20 sixty years. But Chris, you looked at it too.
21 MR. LEVINE: Well, it was sluiced out, part
22 of that.
23 MR. MAHER: Well, it could have been done
24 before; you don't know. We didn't see anything go up
25 when we had that high runoff this spring. And that's

1 why we got out there ahead of time and took the
2 baseline. And then we took that second water quality
3 sample when it was running at whatever the peak flow
4 that you had after that warm spell and took it then, and
5 we didn't see any spike in any of the heavy metals or
6 anything. That doesn't mean there isn't some buried
7 there.
8 MR. CONTOR: The other thing we did do, we
9 did take some soil samples out of that spoils pile where
10 they dredged that years ago. And we did take some
11 samples out of that, just to compare them. And those
12 looked fine too. That kind of depends on where you dig,
13 I suppose.
14 MR. MAHER: But that' a pretty good range
15 of where they took samples across the reservoir. I was
16 pretty pleased. Because I don't know that it was set up
17 by consultants specifically looking at that. That's a
18 pretty good sample.
19 The other part of this potential water quality
20 issue is run of river. And this actually came about
21 with some discussions with FERC staff where we operate
22 the reservoir now as a run-of-river facility. There's
23 very little fluctuation in there. Talked to some FERC
24 staff and they said Oh, yeah, but how is it defined?
25 And we said It's not. And I've seen -- you know, I've

1 been around enough other projects to see run of river
2 being defined for the project, and it isn't. And said,
3 Okay, well, what we probably need to do in the license
4 discussion is to define what that means, what sort of
5 fluctuation. And this is to avoid big changes in water
6 elevation in the reservoir and then the resultant flows
7 in the bypassed reach of being high or low or having
8 fluctuations. Because what we have right now is a
9 pretty even, everything seems to be pretty stable. And
10 so the thought is you want to avoid any big increases or
11 decreases in flows and any big increases or decreases in
12 the reservoir elevation. And so in the license -- the
13 draft license application, you'll see a proposal for a
14 defined run-of-river operation. It's probably going to
15 mimic what's out there right now which -- I don't know
16 how to say it. It's run of river. It's a true run of
17 river.
18 Studies, I already talked about this. We
19 implemented the early studies. Additional studies are
20 needed based upon initial findings we probably need to
21 talk about today, bull trout in particular. What are we
22 going to do with that study information? We're going to
23 use those reports for development of our reports in the
24 license application, obviously. If we find resources
25 that need additional protection or consideration, then

1 that's what those are going to be for.
2 We already talked about those that have studies
3 that have started.
4 What's next? The license application. As I
5 say, I anticipate that probably after next year and
6 finishing up any studies and putting things together,
7 then we'll actually sit down and write the license
8 application. We'll use the existing information from
9 the PAD, the information we collect from you all, from
10 the agencies, the tribes, and the public, results of any
11 studies. We will include in there the description of
12 operations we just talked about, any protection
13 mitigation enhancement measures related to the project.
14 And of course, there will be an environmental analysis
15 so that FERC can plagiarize it and develop their EA.
16 No; oh, it's on the record. I keep forgetting that; I'm
17 sorry.
18 Analyze additional proposed measures in the
19 PAD. Beyond those two that we mentioned, the run of
20 river and the no sluicing.
21 Programmatic agreement, we've been talking with
22 the SHIPO here, and for some reason this isn't following
23 the -- you know, I had figured FERC enters into the
24 programmatic agreement with the state and whatever. But
25 the State of Montana SHIPO has been very supportive of

1 what we've done so far, so there will probably have to
2 be some sort of programmatic agreement followed by a
3 historic property management plan which is actually
4 going to be developed early and filed with the
5 application rather than waiting for a licensed article
6 to describe. We'll probably file it right with it.
7 Commitment to improve the fishermen access.
8 You saw today down there, already, that they put up the
9 guardrails there by the one powerhouse. The one side
10 was up and the other piece was laying there so we have
11 some additional protection for those guys and safety
12 measures for those guys that are fishing there at the
13 powerhouses.
14 One of the other things that we had proposed or
15 will propose is the exclusion of the western shore. I
16 think that it is wrong in some document. It says
17 eastern. The PAD actually says eastern. It's that
18 western shoreline across from the powerhouses. Looked
19 at it; FERC staff has asked some questions about that
20 today. Right now, our proposal is we'll probably
21 exclude that as being not essential to project
22 operations. There isn't any recreational benefit
23 because it's private property and there's no access.
24 And -- but there is private property there below it
25 which just seems to make sense to remove it from the

1 license so that it doesn't become a problem in the
2 future. That, right now, is one of the proposals that
3 Northern Lights is making.
4 Otherwise, contact information, we'll go
5 through there for Mark, for myself, and for Sean. Do we
6 have it all right on there? I didn't run that by you.
7 MR. MURPHY: Yeah, that's right.
8 MR. MAHER: And all of this information is
9 available on Northern Lights's website. This PowerPoint
10 will be posted there. The PAD is posted there. The
11 background information associated with the PAD, the
12 bibliography, is accessible through there. So you can
13 get PDFs of any of the documents we use through the
14 website as well.
15 Randy, things that I missed.
16 MR. DORMAN: As far as the references on
17 the PAD, there are a couple that we used that aren't on
18 the website just because they were copyrighted material,
19 you know, manuals to birds and things like that. But
20 really, only a handful of items. Most all of the
21 references we used are available on the website.
22 MR. MAHER: Mark, anything on operations?
23 MR. CONTOR: I think you pretty well
24 covered it.
25 MR. MAHER: Sean, anything I missed that

1 you wanted me to cover?
2 MR. MURPHY: No, I think you pretty well
3 covered it.
4 MR. MAHER: Okay.
5 MR. MURPHY: Thank you.
6 I thought we'd just step through the resources.
7 You guys can yea or nay if we want to discuss them any
8 further. I know we're going to spend some time on a
9 couple of them, but I'll just start at where we usually
10 start in our environmental documents.
11 MR. LEVINE: Sean, just before you get into
12 that, Jay mentioned the cooperative agencies. Now, are
13 these the agencies that have filed for intervention, or
14 is this something different?
15 MR. MURPHY: No. Cooperating agencies
16 basically become part of FERC.
17 MR. CREAMER: They help us write the NEPA
18 document.
19 MR. LEVINE: This is for purposes of
20 editing and things like that.
21 MR. MURPHY: Well, they become one of the
22 authors. They work with us on the document itself. I
23 think they have to give up the right to be intervenors.
24 MR. CREAMER: If you're a cooperating
25 agency, you cannot be an intervenor. If you want to be

1 an intervenor, you don't want to be a cooperating
2 agency. It's one or the other.
3 MR. LAWSON: Of course, the deadlines for
4 intervention haven't been sent yet, as the application
5 hasn't been filed. There's no formal proceeding. That
6 will come later. But you do, obviously, have a choice.
7 It's an important choice to be made.
8 MR. LEVINE: Can somebody give me a brief
9 description of the difference? Because I've heard of
10 the intervene -- you know, the intervention and the
11 status that it provides the agency.
12 MR. MURPHY: Well, if you're an intervenor,
13 you have the ability to ask for rehearing once the
14 license order is issued. If you're a cooperating
15 agency, you lose the right to request that rehearing of
16 the license, and you would have to hope that one of the
17 other agencies, if you had a problem with it for some
18 reason, who were intervenors, requested a rehearing. So
19 it's a legal thing that I'm just not --
20 MR. MAHER: But the advantage is that you
21 become an author of the document.
22 MR. CREAMER: Right. As a cooperating
23 agency, you are, technically, an author. You're an
24 author as well as FERC being an author of that document.
25 MR. LAWSON: You have the opportunity to

1 essentially help shape the issues, I suppose, which can
2 be fairly critical in the proceeding.
3 MR. LEVINE: Our department being 401
4 certifying agency's already got --
5 MR. LAWSON: Well, you retain that
6 statutory right.
7 MR. MURPHY: Yeah. We don't take away your
8 mandatory conditioning authority under the 401. That's
9 separate.
10 MR. CREAMER: And as an intervenor, you
11 still have the right to review the draft documents and
12 comment through the draft EA and then ready for
13 environmental review document.
14 MR. MURPHY: But as a cooperating agency,
15 you might be given the water quality section to write.
16 (Laughter).
17 MR. MURPHY: Is that the answer you were
18 looking for?
19 MR. LEVINE: Thank you.
20 MR. MURPHY: Sure.
21 So issues, we usually start off talking about
22 geology and soil resources. I had a feeling that that
23 would an real hot topic for this one.
24 Water resources. In that section we discuss
25 water quality and water quantity. We've seen where

1 they're going with the water quality studies. Did you
2 want to discuss water quantity?
3 MR. LEVINE: Well, the quantity issue is a
4 DNRC, a different agency, and I assume is all taken care
5 of with the proper water rights. The only quantity
6 issue is the bypassed reach. And that's going to be,
7 I'm sure, with WEP and DEQ.
8 The only quantity issue I've got would be the
9 bypassed reach, and that's the fisheries and stuff.
10 MR. MURPHY: Water rights. Do you guys
11 have that in there someplace?
12 MR. MAHER: It's in the PAD.
13 MR. MURPHY: Great; covered. Did you want
14 to discuss water quality or just include that in the
15 quantity, assuming more is better?
16 MR. LEVINE: As far as -- you mean in a
17 separate section, or what do you mean?
18 MR. MURPHY: Well, we're going to discuss
19 water quality as a section of the water resources in the
20 EA. And they're doing the studies to look at the metals
21 and stuff. But we actually are more interested in the
22 dissolved oxygen and the temperature for the trout.
23 MR. LEVINE: Those would be quality issues
24 as well as fisheries. I think in a lot of respects,
25 fisheries and our -- the DEQ water quality issues are

1 going to overlap quite a bit. So I think --
2 MR. HENSLER: They were designed to. It's
3 hard to tease them apart.
4 One of the things that Chris kind of brought up
5 and then, you know, I guess we would be asking the
6 potential of, is more water be available in the bypassed
7 at all times of the year. In other words, right now
8 it's leakage. So that's -- I guess that's an issue.
9 And it's a habitat thing in the bypassed reach.
10 MR. MURPHY: Just to keep it simple for our
11 reporter, if you use a piece of jargon, you might want
12 to explain it. So like CFS, cubic feet per second.
13 MR. GREENLEAF: I'm just curious. Kevin
14 Greenleaf for the Kootenai Tribe. Montana doesn't have
15 any establishment minimum stream flow standards?
16 MR. LEVINE: No, we do not. There are
17 requests. And some -- FWP and the state has some -- for
18 some streams minimum flowability, you know, if we can
19 make a call on a water right. But Lake Creek isn't one.
20 MR. HENSLER: We have wetted perimeter
21 information for both streams in this region. This
22 bypassed reach is not one of them. If that's what
23 you're looking at also.
24 MR. GREENLEAF: I know what you're getting
25 at.

1 MR. HENSLER: And we've got no water rights
2 up here other than way offsite.
3 MR. LAWSON: By way off, how far?
4 MR. HENSLER: Above the reservoir. Above
5 the other reservoir, the big one.
6 MR. CREAMER: The Environmental Assessment
7 will look at the water quality issue from two
8 standpoints. One will be your state water quality
9 standards and whether or not those standards are being
10 met and whether the project affects the ability to meet
11 the standards. The second part will be the aquatic and
12 the fisheries and how well -- you know, what flow is
13 necessary to protect that resource. So the EA,
14 Environmental Assessment, is going to look at both of
15 those -- both of those avenues.
16 MR. LEVINE: The one thing that -- as far
17 as water quality that is coming and will be here well
18 before this license ever gets renewed again, that will
19 be nutrient water quality standards; total nitrogen,
20 total phosphorus. I suspect there are two to three,
21 maybe five years out. But that's well within the
22 license. So what I would, I guess, like to see would be
23 some sort of discussion on nutrients in that small
24 reservoir wetland complex. Is it a nitrogen producer?
25 Does it produce phosphorus? Because eventually, when we

1 get nutrient standards, they would apply to that and we
2 would want to have operation and water level controls in
3 that reservoir so that we don't produce more nutrients
4 than we have to.
5 And I think some of that is -- you know, with
6 the water -- there was some nutrients monitoring this
7 year in the study. So it probably will need nutrient
8 monitoring next year just to get some type of a
9 handle-ability to address that within the EA.
10 MR. GREENLEAF: When is the TM supposed to
11 be out?
12 MR. LEVINE: As far as I know, there are no
13 TMs scheduled for the Lake Creek.
14 MR. GREENLEAF: I was asking about the TMDL
15 for Lake Creek. It's indicated in the PAD, and it's
16 talking about TMDLs for nutrients and metals.
17 MR. LEVINE: I don't know when the schedule
18 is. The new TMDL list is coming out in 2006. Should be
19 out October, I believe. And that should have an updated
20 assessment of Lake Creek and the Kootenai Basin. And
21 when that list comes out, Lake Creek may or may not be
22 on it; I don't know. Fortunately, I don't do that part
23 of things anymore. But -- yeah, and that's a very good
24 point.
25 Because if a nutrient team were to come out and

1 load reductions were necessary, or we would be -- they
2 would be looking at that pond and other sources,
3 including the mine, the Troy mine, upstream from there.
4 So those would be things that would need to be discussed
5 someplace along the line.
6 MR. MURPHY: Let's talk about water
7 quantity when we get into the fishery stuff, since it's
8 all going to be a lump discussion when we get there.
9 And I'll actually jump over that section to the
10 terrestrial resources.
11 MR. HENSLER: I want to reiterate over and
12 over about the sediment deal, the dredging, and just
13 ensuring that -- you know, I heard something like in
14 stone kind of a thing. And it was a -- it was a big
15 deal when that was sluiced out ten, eleven, twelve years
16 ago or whenever it was. There was some dramatic impacts
17 on the fishery all the way down into Lake Creek. And I
18 want to be sure, from at least from our perspective,
19 that that is -- that there is a plan in place before
20 there's anything -- any licenses are issued, because
21 there should never be an emergency from this.
22 And that's the thing that I'm most nervous
23 about, is that in other arenas we tend to get things
24 where they don't do anything until Oh, it's an emergency
25 and then bad things happen. So I just wanted to

1 ad nauseum, I guess, as part of water quality.
2 MR. LEVINE: I'd like to add to that. I
3 think -- I guess this would be the time to be looking at
4 additional studies, and that would be probably one,
5 would be how much sediment is coming in? What can be
6 done kind of a contingency plan. Because a flush or
7 using the sluice gates would be, quote, "a violation" of
8 water quality standards. And that, of course, would
9 most likely be an element of the 401 certification that
10 that doesn't happen. So it might be a good idea, then,
11 to take a look at that now as to how things would be
12 handled if sediment were to become an issue on the face
13 of the dam.
14 MR. MURPHY: I think the emergency that
15 they were discussing would be some other kind of
16 emergency. It wouldn't necessarily be a sediment
17 emergency. But if the sediments we're getting to that
18 point, they would start the consultation process and
19 start working on a plan to remove it either by dredging
20 or hydrodredging or the other possibilities that they
21 listed.
22 The emergency they were discussing would be
23 something like -- were you thinking more of dam
24 problems, something along that line?
25 MR. MAHER: Yeah, earthquake. I don't

1 know; the extreme would be something like that.
2 MR. CONTOR: Emerging crack in the dam and
3 failure was imminent and you're trying to protect life
4 and property.
5 MR. HENSLER: I'm just being cynical.
6 MR. MURPHY: That's okay. That's what this
7 is for. You bring it up, and we make sure that it gets
8 addressed when it --
9 MR. HANNA: Well, from a T and E point of
10 view, we also have concerns about the sediment going
11 into the Kootenai. So, you know, we're on the same page
12 with Mike.
13 MS. RIEF: Does your study plan include any
14 kind of stream surveys in Lake Creek or like bank
15 erosion anything that you could model how much sediment
16 is coming down so you'd know how much was going to fill
17 up in your reservoir and when you'd have to dredge it?
18 MR. MAHER: Are we -- they're out there
19 right now essentially mapping the perimeter of it and
20 doing the wetlands.
21 MS. RIEF: What about of Lake Creek itself?
22 Can you monitor --
23 MR. MAHER: We haven't done anything
24 outside of the project boundary.
25 MS. RIEF: You would know how much sediment

1 was coming downstream then.
2 MR. HANNA: So you're not going to try to
3 model future sediment flow.
4 MR. HENSLER: You guys ought to
5 mention -- and we talked about this several months
6 ago -- is that you really have no intention of ever
7 dredging, because that's what you said, that you felt
8 the thing doesn't really seem to need it. And I'm not
9 exactly sure why they did it before. So I guess that's
10 the answer to that question; they never intend on doing
11 it. My point to make is just to make sure that -- I'm
12 not so sure that's going to be the case. It might
13 happen again, and that there is a plan in place for
14 that.
15 MR. MURPHY: Could I ask a question about
16 upstream land use? Are there farms upstream?
17 MR. HENSLER: Not of any --
18 MR. MURPHY: Is there anything between here
19 and Bull Lake?
20 MR. HENSLER: Anything what?
21 MR. MURPHY: Like that would create
22 sediment? I'm just curious.
23 MR. MAHER: Lumber.
24 MR. MURPHY: Lumber?
25 MR. HENSLER: Well, I wouldn't put it all

1 on lumber. It's land management and eroding.
2 MR. MURPHY: So there's stuff going on.
3 MR. HENSLER: Absolutely.
4 MR. CONTOR: They're subdividing 20-acre
5 parcels all the time.
6 MR. MURPHY: Do they ever sluice any
7 sentiment out of Bull Lake?
8 MR. HENSLER: No.
9 MR. MURPHY: Terrestrial.
10 MR. HANNA: I guess from a T and E
11 terrestrial standpoint, you know, obviously address all
12 the species, make an effects determination. But you
13 don't need to tell us if you make a no-effects
14 determination. You just need to make it yourself
15 internally and justify it.
16 In terms of the terrestrial species, we would
17 consider the bald eagle to be one that you want to look
18 more closely at. I know that you don't own the land
19 around the reservoir. But if your project affects any
20 roosting trees or roosting trees even in the bypassed
21 itself, that may be a concern to look at. We have a
22 bald eagle management plan that we can get Kleinschmidt
23 and FERC.
24 In terms of -- just real quick, in terms of
25 your increasing fishing access down here at the

1 powerhouse, I wouldn't leave trash cans around just
2 because of the bear issue. I don't anticipate any griz
3 coming down because there's very few in this country,
4 but you may have black bears coming through.
5 MR. MAHER: We've currently looked at it
6 and there isn't a trash problem there. You've seen it.
7 MR. HANNA: But if you're going to start
8 promoting fisheries there, you know, people may come
9 with picnics. And I would just say be aware that you
10 might start getting trash buildup, and trash cans should
11 be bear proof. More black bears than anything else.
12 MR. MURPHY: Terrestrial, actually, is more
13 wetlands and that sort of discussion.
14 MR. HANNA: Never mind then.
15 MR. MURPHY: We'll get there for
16 recreation.
17 MR. HANNA: I'm very focused.
18 MR. MURPHY: That's all right. We do
19 discuss wildlife and the vegetation and the wetlands.
20 They're out there mapping the wetlands now which, going
21 back to water quality, is probably the major sync for
22 nutrients.
23 Nobody has any issues for the wetlands?
24 You want to discuss some more recreation stuff?
25 MR. HANNA: You've already shot me.

1 MR. MURPHY: That's not what I intended.
2 MR. HANNA: No, no. The only thing that I
3 really address is the T and E issues and then as it
4 relates to the impacts, you know. From a recreational
5 standpoint, I've already mentioned the fisheries.
6 MR. MURPHY: Is it legal to fish for bull
7 trout?
8 MR. HENSLER: Not really.
9 MS. RIEF: Are there going to be any signs
10 that if there are bull trout there?
11 MR. CONTOR: You must put up signs, don't
12 you, Mike?
13 MR. HENSLER: The warden.
14 MR. HANNA: If you guys are going to
15 promote fishing there, I assume it's probably going to
16 be the snag fishing, mostly, because my guess is that
17 people don't show up there much other than to swim other
18 than that. Is that what you're talking about?
19 MR. CONTOR: That's all I ever see people
20 do is snagging.
21 MR. MURPHY: And that's kokanee fishing?
22 MR. HANNA: Yeah. And that's September
23 15th till probably the middle of October.
24 MR. MAHER: I want to ask the question
25 about promote because, certainly, we weren't suggesting

1 in the PAD promoting that. The problem with the upper
2 reservoir is there's no public access surrounded by
3 public property. There's an easement for that road.
4 The owner allows people to come in, and folks do come in
5 there. It's closed to the dam. It's fenced off. But
6 they can go in there and fish. And Larry Managhan
7 allows people to come in and fish. But it's not
8 Northern Lights's intention to promote that because that
9 would be promoting trespassing and that kind of thing.
10 And down at the powerhouse, I don't -- again, Mark,
11 please jump in here -- which is I don't know that it's
12 as much promoting it as it is making what is there safer
13 and more accessible.
14 But I don't think that we want -- there's
15 enough other resources out there in this area that we
16 don't want to look at that and promote it, both because
17 of a safety -- we're dealing with powerhouses. We're
18 dealing with some fast water. We've got electrical
19 currents and transformers and things like that. So
20 there's an element of safety and security there. Folks
21 can use it. We want it to be safe. We want it to be
22 clean. But I don't think that we're looking to promote
23 it in the sense -- FERC may have some different ideas.
24 We aren't looking to promote it just because of those
25 issues. The nature of the property that Northern Lights

has is very limited. So I don't think it would be wise to encourage use of some of those areas.

MR. HENSLER: Well, you are. It's just a choice of words you're using right now. And that's fine. It's a neat thing that Northern Lights is allowing that. But you know, if nothing else, it's going to be an attractive nuisance, because they will use it.

MR. LAWSON: With regard to public safety, have any public safety concerns been expressed or identified that you can -- other than --

MR. MAHER: Other than where you see we're putting in the railings and that. And I think, Mike, you brought that up.

MR. HENSLER: That was probably the biggest deal.

MR. MAHER: Do you hear anything, guys, around here? I mean, I don't know. There haven't been any incident reports for FERC.

MR. HENSLER: It's pretty small potatoes.

MR. MURPHY: So you're not going to put out those posters for the kokanee snagging derby? Okay; no derby.

MR. CREAMER: No signage, as we would call it.

1 MR. MURPHY: Any other recreation uses that
2 come to mind?
3 MR. HENSLER: I have a question. If
4 Managhan all of a sudden decides he's thinking about
5 getting out and selling, is there any intention on
6 Northern Lights's part to change that easement into a
7 permanent section of land? Not section, that's not the
8 right word, but piece of land.
9 MR. CONTOR: I don't think we've really
10 considered Managhan selling, but it could happen. There
11 is property around there that sells. And you're always
12 going to wonder who's going to buy it when they do.
13 MR. HENSLER: And that brings up the
14 recreation issue. If, in fact, he allows it, it's not
15 really their thing. But if, in fact, it becomes your
16 property sometime in the future, is that something that
17 you guys intend to continue? Because you'll
18 have -- your issues are different once you own it. And
19 I know people will want to go there.
20 MR. HANNA: Well, and I think that, you
21 know, as an intervenor -- I assume the state is going to
22 be an intervenor.
23 MR. HENSLER: I have no idea. I just found
24 out about it.
25 MR. HANNA: I mean, if that does happen,

1 would that be a clause to reopen the license in terms of
2 getting recreational resources issues addressed?
3 MR. LAWSON: Well, if the license, you
4 know, clearly identifies certain activities as project
5 recreational purposes, then, of course, the licensee has
6 to have the legal -- sufficient rights to, you know, to
7 maintain it, support those purposes. So I suppose,
8 arguably, yeah, that could happen. But of course, we
9 don't have the final product here yet.
10 MR. HANNA: I mean, because, you know, I
11 think, you know, it would be a great opportunity for,
12 you know, a recreational resource for duck hunters and
13 anglers alike on that reservoir. And right now, you
14 guys don't control that access. And that's the baseline
15 right now. But will there be an opportunity to address
16 those issues should the baseline change, should
17 you -- should that property become available and -- I
18 mean, there's a lot of ifs.
19 MR. CONTOR: Right now, I don't
20 see -- we're not planning on buying anything. It would
21 be just pretty much shoreline management right now is
22 what we would -- we're worried about. And I don't think
23 we would restrict access any more than what we do where
24 you can come down and snag fish right now.
25 MR. HANNA: For current historically use

1 purposes.
2 MR. CONTOR: Right.
3 MR. LAWSON: As it's been used.
4 MR. CONTOR: Right.
5 MR. HANNA: And I guess I'm just saying is
6 there going to be a place in the license to allow for
7 this to be addressed in the future.
8 MR. LAWSON: Well, standard articles do
9 allow for that kind of reopening, of course, notice and
10 opportunity of hearing, yeah. I think there's room for
11 that.
12 MR. HANNA: And that's really -- because I
13 mean, with the length of the license, you want to have
14 those open clauses to be able to.
15 MR. CREAMER: I think another thing, too,
16 none of us here have a recreation background. But I do
17 believe all of our projects now fall under the Form 80
18 requirements. And what that is, every six years they
19 have to file a recreation assessment or they -- you
20 know, it's basically, you know, what's going on and do
21 the access currently meet needs and is there something
22 else needed, that type of thing. So that occurs every
23 six years. And I'm not sure -- I think all the projects
24 now fall in. And it never used to be. It used to be
25 five megawatts or more. I think they all fall under

1 that requirement now.
2 MR. MAHER: On the record but don't quote
3 me on this, I believe that Northern Lights has an
4 exemption to the Form 80.
5 MR. CREAMER: That's in the current
6 license. That goes away under the new license.
7 MR. MAHER: Oh, I see what you're saying;
8 under the new license.
9 MR. CREAMER: So if in fact the new license
10 is issued, if you were looking to extend that, you would
11 have to ask for that again.
12 MR. MURPHY: And the gentleman who's
13 allowing access now, doesn't have to sell to stop
14 access. He just has to decide that he doesn't want
15 people on his property anymore.
16 MR. CONTOR: And he does that occasionally.
17 If he doesn't like somebody, he says no.
18 MR. MURPHY: That's the only route to get
19 to the reservoir other than coming downstream in a boat?
20 MR. CREAMER: You know, public access
21 recreation is a project purpose. And the Commission
22 will look at that. And if there is a need for it, the
23 Commission could require Northern Lights to go out and
24 do something to provide that.
25 MR. LAWSON: And it may only need be a

1 formal easement agreement. That might be sufficient.
2 MR. MURPHY: We don't have to have your
3 okay on that today.
4 MR. CONTOR: I'm aware.
5 MR. HANNA: How you doing there, Mark?
6 MR. MURPHY: It's something that may occur.
7 (Laughter).
8 MR. MURPHY: Cultural resources. I'm not
9 sure where the survey went and all that. I'm certainly
10 not an expert on that part.
11 MR. CREAMER: I'm not an expert on it
12 either, but I have had a little bit of experience. The
13 APE which is the Area Potential Effect includes project
14 boundary but sometimes can extent outside the project
15 boundary, depending upon the effects of the project and
16 where those effects extend. So that's one thing to keep
17 in mind as you're doing your surveys. You need to take
18 a hard look at where those effects are.
19 But what will probably happen -- you know, the
20 Commission will do the consultation, produce the PA. If
21 the HPMP comes in in draft form, that will be attached
22 to that PA and there will be -- generally with the PA
23 there's a -- a license article basically says Implement
24 this PA that was executed on so and so date between the
25 Commission, the SHIPO and the Advisory Council, if the

1 Advisory Council wants to get onboard. So it's a very
2 simple article. And that HPMP is a part of that PA. So
3 it's a very simple process.
4 MR. MURPHY: I was just smiling because of
5 the acronyms.
6 MR. CREAMER: HPMP is Historic Preservation
7 Management Plan, I believe.
8 MR. MAHER: Historic Properties Management
9 Plan. And the other thing I was going to add on the PA
10 I'm assuming that the tribes would be invited to
11 participate in the PA as well.
12 MR. CREAMER: Yeah, the tribes would be as
13 well. Historic Properties Management Plan; you're
14 right.
15 MR. MURPHY: Aesthetic resources? People
16 want to hike out and see the waterfalls. That's --
17 MR. MAHER: Good luck.
18 MR. CREAMER: As we discovered today.
19 MR. MURPHY: Not a nice hike.
20 MR. LAWSON: You're saying that access is
21 very limited to the quality resources.
22 MR. MAHER: I would say access was pretty
23 limited. The area around the powerhouses, people can
24 see, you know, comment on the aesthetics.
25 MR. CREAMER: Did they blend in with the

environment they're in; the paint job, everything.

MR. LEVINE: They did a cammo paint job on the pet stock.

MR. CONTOR: We'll include that in security plan too.

MR. MURPHY: It's amazing what you can find on the Internet.

MR. MAHER: Makes CII just....

MR. MURPHY: All right; let's jump all the way back to water quantity, aquatic, endangered species, and that part.

What's our estimate for the current flow in the bypassed reach when it's just leakage?

MR. MAHER: One-and-a-half to two.

MR. MURPHY: CFS.

MR. MAHER: That's the leakage and flow around the dam.

MR. HANNA: And those are -- they have been maintained for several years historically, those flows? You haven't been releasing, doing controlled releases, historically.

MR. CONTOR: Other than if we have to shut something down for something, we'll open a gate, you know, increase them, but....

MR. HANNA: And there's no ramping

1 involved.
2 MR. CONTOR: Well, kind of. They do it
3 with an old drill, and they're small gates.
4 MR. HANNA: Manmade ramping.
5 MR. MURPHY: This one doesn't operate like
6 a light switch.
7 MR. HANNA: Well, I guess from water
8 quality and instream flows, really, we look at a lot of
9 temperature issues, DO. And I believe the current
10 studies are addressing those two in the bypassed reach.
11 So there's -- you know, as I mentioned, there's really
12 two T and E aquatic species that we're looking at; bull
13 trout and sturgeon. Sturgeon should be a nonissue, but
14 it does need to be addressed.
15 MR. MURPHY: Which species of sturgeon?
16 MR. HANNA: White.
17 MR. CREAMER: White sturgeon.
18 MS. RIEF: Mike, have you guys surveyed
19 that lower region in Lake Creek? Have you ever found
20 any sturgeon or anything down there?
21 MR. HENSLER: You're talking about in Lake
22 Creek?
23 MS. RIEF: Yeah, in the lower part.
24 MR. HENSLER: No.
25 MS. RIEF: You haven't?

1 MR. HANNA: That's why I think it's a
2 nonissue. I doubt they'll be in Lake Creek, and I doubt
3 the effects from the hydro will carry on down to the
4 Kootenai. But if say you do a sediment flush, then it
5 will carry on down into the Kootenai. So....
6 MR. MURPHY: So normal operations would
7 pretty much be benign for sturgeon down that far?
8 MR. HANNA: That's what I'm guessing.
9 Mike, can you look at --
10 MR. MURPHY: We're looking at dramatic
11 changes in project operation.
12 MR. HANNA: I can't imagine they'd be
13 affected. I think it's more of one of those hoops
14 you've got to jump through rather than biological issue.
15 But the sediment flush could affect it.
16 MR. MURPHY: Did you want to talk about
17 quantity?
18 MR. HANNA: Well, the quantity will -- you
19 know, in the bypassed reach we don't know what the
20 instream flows are necessary for bull trout because we
21 don't even know if the bypassed reach is a bull trout
22 fishery. Because --
23 MR. HENSLER: I need to interrupt you here,
24 because, truthfully, it's not a bypass. That's the
25 stream. The bypass is the water that's going through

the pipe. This is Lake Creek that we're talking about. The bypass is the -- we're not putting water through it anymore.

MR. LAWSON: The bypassed reach.

MR. CREAMER: That's why we call it a bypassed reach.

MR. HENSLER: Oh, bypassed reach.

MR. CREAMER: That's the term we use.

MR. MAHER: It gets shortened to bypass.

THE COURT REPORTER: P-a-s-s-e-d not p-a-s-s.

(A discussion was held off the record.)

MR. CREAMER: I understand that, and we know what you're talking about. You're right, the creek is the bypassed reach. It's the actual creek itself.

MR. MURPHY: And that's how it gets written into the documents. It's just for the discussion it's faster to say bypass rather than bypassed reach every time we want to refer to that section of stream.

MR. HENSLER: I'm clicking.

MR. HANNA: So I guess the bypassed reach is -- it's unknown the use of it by bull trout. We're out there getting information right now. I don't know if Mike has any information about bull trout use in the lower reach below the barriers. But it's also a native

1 fisheries stream too. So not just from a T and E
2 standpoint but from a native fisheries. That needs to
3 be addressed as well.
4 Mike, help me out here. I know kokanee are
5 native from the Kootenai.
6 MR. HENSLER: Actually, kokanee are native
7 below the falls. Whether or not these particular fish
8 are considered to be native, we don't know, because they
9 are native to Kootenai Lake.
10 MR. HANNA: So I'm going to assume they're
11 native until genetics says otherwise. But what about
12 red bands? Are red bands found in lower lake?
13 MR. HENSLER: I couldn't tell you that. We
14 consider Lake Creek above the dam to be west slope
15 cutthroat trout.
16 MR. HANNA: Okay. So there's native fish
17 issues there too, including the cutthroat. You know,
18 both our agencies, at least I speak for Mike, we're
19 looking for to protect. So not just bull trout.
20 So that said, a lot of information needs to be
21 gathered still. And I think the studies are gathering
22 it to determine, you know, whether or not instream flows
23 are going to have to be addressed in the bypassed reach.
24 So....
25 MR. HENSLER: I have several things to say

about it. And that's to bring up the issues that we talked about so long ago the last time we met. One is entrainment of adults. The other is entrainment of juvenile fish. And to identify the ability -- let me back up just a little bit.

These fish -- we do have some genetic analysis from these bull trout. They are a -- apparently a long-since separated group from the Kootenai system. They are unique, even as bull trout go. So the ability to keep them in the system is a good thing, from our standpoint.

And in those terms, then, the question becomes do adults -- are adults entrained and juveniles entrained? We're pretty sure the juveniles are. Because there's really no indication, based on your surveys, that there's the kind of habitat necessary for them to spawn in the lower reach. And we have fry and at least fry and I think at least one-year-old that he showed us that got captured down there. So from my perspective is to identify what it would take to keep juveniles from going -- from being entrained and keeping adults from being entrained; that's bull trout.

The other issue is the Lake Creek below the dam above the powerhouse, what we're calling the bypassed reach. And that is to identify if that's -- if the

1 flows are going through there are impeding fish from
2 using the system like they could be using it. I guess
3 my point to that is identifying the maximum amount of
4 water that could be available in that reach for these
5 fish while still being able to perform your functions as
6 a hydro dam.
7 In Montana, the standard has generally been for
8 streams is what's called wetted perimeter technique,
9 wetted P. There are lots of others out there; instream
10 flow incremental methodology. Lots of acronyms that I
11 don't even want to tell you. So I think that would be a
12 quality study is to identify that. If it's
13 one-and-a-half to two right now, will three CFS improve
14 the amount of habitat available to those fish down
15 there, including bull trout, west slope cutthroat trout,
16 potentially red band trout. They do exist in the lower
17 river. Whether or not they use that reach, that's what
18 I don't know. Those are all -- though they're not
19 endangered, those other two are considered species of
20 special concern by the American Fisheries Society,
21 Forest Service, Montana Fish, Wildlife and Parks, as are
22 torrent sculpins if, in fact, that's what they found.
23 Which, by the way, are supposed to be an indicator of
24 high water quality which is good. I think that's all I
25 have to say about that right now.

1 MR. MURPHY: This is going to be hard to
2 get out, because we've got all this information that's
3 just teetering on the brink of coming in.
4 MR. HENSLER: Well, the wetted P thing is
5 something that I don't know that you guys are working
6 toward. We've talked about how much water is going in
7 there. We haven't really talked about Well, if more
8 water is in there and it doesn't cost you that much, is
9 it that big of a deal to have it in there?
10 MR. HANNA: Are there going to be spawning
11 surveys this fall? Are you guys going to be doing red
12 surveys this fall?
13 MR. MURPHY: Where?
14 MR. HANNA: In the reach above the
15 powerhouse outlet.
16 MR. HENSLER: For bull trout?
17 MR. HANNA: Well, for bull trout and --
18 MR. MAHER: Below the waterfall and above
19 the powerhouse.
20 MR. HANNA: Yeah.
21 MR. MAHER: We don't have anything
22 currently scheduled.
23 Mike, you had said --
24 MR. HENSLER: If we have time, we'll get in
25 there. We do it every year at Keeler Creek which is the

one that we know is, quite likely, the only source of bull trout spawning habitat.

MR. HANNA: Well -- and the only source would be from the Kootenai River. So if they are of fluvial population, they got flushed down from the Bull Lake population and trying to get back up. Interesting to know.

MR. CREAMER: I was kind of curious. Where in the bypassed reach were the bull trout picked up from?

MR. HANNA: I don't know.

MR. HENSLER: You've got to talk to Jesse. He's the one that got the information.

MR. CREAMER: I'd be kind of curious.

MR. HENSLER: He found them the first day. If you know where he was the first day, that's where he got them. Actually, the morning of the first day because he came out in the afternoon.

MR. MAHER: If they ever come in from the field, we'll find out.

MR. HANNA: Monday morning he was just doing a habitat survey.

MR. CREAMER: I mean, I'm thinking if they were pulled up and found them above the falls, then you've got drop-down fish.

1 MR. HANNA: Right. And that's what I'm
2 saying, there's a lot of information.
3 MR. CREAMER: If they were from below the
4 falls, they could be coming from two sources.
5 MR. HENSLER: Could be, but it's not
6 likely, not fry.
7 MR. CREAMER: You're right.
8 MR. MURPHY: We were just down there. I
9 really didn't see anything that looked like it was close
10 to spawning habitat.
11 MR. HENSLER: There was a lot of real
12 angular rock.
13 MR. HANNA: A lot of that shale belt
14 materials.
15 MR. MURPHY: Looked like good nursery
16 habitat is what it looked like. I don't know how many
17 sculpins are down in there in the holes waiting for the
18 trout to come down in there.
19 MR. HANNA: I couldn't imagine that they
20 came from below. But it is something that I'd like to
21 know.
22 MR. HENSLER: One of the things that we
23 probably -- that I'll probably do, if I get a chance, is
24 we told you guys that it was pretty unlikely we were
25 going to find any adult bull trout this time of year

1 because they've already -- if they were in there, they
2 moved out and they're either spawning, getting ready to
3 spawn. So they're usually out of the system. We'll
4 probably come back, maybe October/November after they're
5 done and maybe do the same net series to get an idea if
6 they are actually using the reservoir.
7 So I'll try to get ahold of you, Mark. I don't
8 imagine these guys are going to come back from Maine to
9 do that, but you never know.
10 MR. CONTOR: You never know. You know, I
11 think if it's needed, I think we're willing to, you
12 know.
13 MR. HENSLER: For the record, if Jesse
14 comes back, he's going to need to tie better knots.
15 (Laughter).
16 MR. HENSLER: As part of this -- I assume
17 that's part of this summer of 2006 thing that we can add
18 for you.
19 MR. MURPHY: This is actually a rare
20 situation where you have an applicant collecting a bunch
21 of data to walk into the study meetings with and say
22 Okay, what do we need to do to better this, this data
23 set. I'll tell you, this is a good situation.
24 MR. CREAMER: It doesn't happen very often.
25 MR. HANNA: I'm excited about it.

1 MS. RIEF: Are there going to be additional
2 habitat surveys in Lake Creek? I know that some of the
3 data bases you write up on were stream like 1988, I
4 think. Is there going to be anything more recent?
5 MR. MAHER: You mean in Lake Creek above
6 the project?
7 MS. RIEF: Uh-huh.
8 MR. MAHER: I don't have any intent to go
9 up there.
10 MR. LEVINE: I was listening to discussion
11 about flows and the reach below the dam. It might be
12 good to consider a study as to how to retrofit the flash
13 boards over the dam itself to allow for a regulated
14 quantity of water. Like if it turns out they need four
15 CFS -- you're leaking about two -- how do you get the
16 other two?
17 MR. HENSLER: I think this -- some kind of
18 wetted perimeter assessment would go a long way to
19 identify that.
20 MR. LEVINE: And at the same time you might
21 just as well, you know, at least start thinking about
22 how to do it. Because like, not this project but Mystic
23 Lake project, they have what they call a fish valve that
24 releases water from the penstock. And they're also
25 doing a study in engineering to design a valve system so

1 if the penstock were to get broken and shut down the
2 entire facility, that they can release water into the
3 bypassed reached there. Because the only
4 way that -- that one doesn't leak that much water. The
5 flashboards are pretty low. And when they draft the
6 reservoir, it -- they're below the flashboards, there's
7 no water and they have a lot of fish in there. It's a
8 horrendous number of fish. They're all little fish, but
9 they're in there. So I think that would be something to
10 consider for this; not necessarily a big valve or
11 something, but how to get a regulated amount of water
12 through the system.
13 MR. MURPHY: A notch in the flashboards, if
14 you maintain a good consistency of reservoir elevation
15 is a good way to do it.
16 MR. LEVINE: That would work.
17 MR. MURPHY: Whatever is best for the
18 configuration of the dam.
19 MR. LEVINE: Yeah. You'll have something
20 adjustable too.
21 MR. MURPHY: Based on what looks good for
22 the fish in the stream.
23 MR. HANNA: And just so you know that the
24 Fish and Wildlife Service prefers IFIM studies based
25 upon need to continue. We haven't determined there's a

1 need yet, but hopefully the studies will show something
2 one way or the other.
3 MR. MURPHY: Did anybody have any other
4 issues they wanted to bring up?
5 MR. HANNA: Any other issues regarding
6 water quantity?
7 MR. MURPHY: Any other issues; anything.
8 MR. HANNA: I guess I just would like to
9 reiterate what Mike's already said about entrainment.
10 Obviously, that's a big concern of ours. And I think as
11 we find out more where these bull trout came from in the
12 reach below the dam, then that will start our heads
13 scratching. So, you know, if they are coming down from
14 above, then we may start looking at screening issues.
15 MR. HENSLER: You know, I just -- I guess a
16 point of information, the special projects -- BPA funded
17 special projects and Fish, Wildlife and Parks on the
18 Kootenai has funded a project to look into the genetics
19 of bull trout. And as part of that project, and I think
20 it was with the Fish and Wildlife Service in -- I don't
21 know -- somewhere in Washington, in Abernathy. And they
22 have said that they can identify the natal -- or the
23 population from which a fish came which might -- and
24 they're saying like 90-some percent confidence. So if,
25 in fact, we get in there once this gets a little bit

more refined, we may be able to identify where -- if the individual came from Lake Creek or came from somewhere else.

MR. MURPHY: Is that going to require a take permit to get the fish somewhere to be analyzed?

MR. HENSLER: Well, it's a fine clip, and that would probably be through Fish, Wildlife and Parks with our permit from the Fish Wildlife Service.

MR. MURPHY: So long as it's covered.

MR. HANNA: Yeah. And I've already talked to Mike and to Jesse about using the Section 6 permit from the state, so we should have everything covered with that.

MR. HENSLER: Yeah. We'll add it next year.

MR. HANNA: I'm sorry?

MR. HENSLER: We'll add it to the list this year.

MR. MURPHY: No more issues? Okay.

I just want to reiterate for the study requests, if you want to add new studies, please take Understanding the Study Criteria and page three, very important. Make sure your studies fit the criteria so that there's no question and we can just move it ahead. And then we have the other thing here for participating

1 in the integrated licensing process which will also help
2 you understand how fast we tend to move these things
3 through once they hit that critical mass stage.
4 And thank you very much for coming. Hopefully,
5 we got everybody's stuff out so that we can move
6 forward. And don't forget to put this into your study
7 requests when you pull those together. And don't forget
8 to comment on the scoping document and this meeting.
9 MR. HANNA: In terms of the study requests,
10 the data that's being collected this week is going to
11 generate some more questions, as most data does. The
12 study requests need to be in by the end of this month.
13 Number one, is that data going to be disseminated in
14 time for us to generate new study requests?
15 MR. MAHER: It would be awfully raw, I
16 guess, but we can. I don't have any problem sharing
17 what the guys have.
18 MR. HANNA: Or will we have the opportunity
19 to --
20 MR. MURPHY: Well, there's a study request
21 and then there's a meeting in November. There's a
22 process. It's not a one-time -- it's like Here they are
23 and you hope for the best.
24 MR. CREAMER: Basically, what they're going
25 to do is they're going to put the plan out there, you're

1 going to comment on the plan, we're going to have a
2 meeting to talk about it, and then they're going to file
3 a final plan. So there's a -- still a -- I mean, at
4 this stage of the game, as the formal process is
5 concerned, we're early. You're only within the first
6 three months. I mean -- so there's still another,
7 probably, four to five months in that formal process
8 until you get that approved study plan. And this is the
9 time where things move quickly with this process. It's
10 like things are boom, boom, boom, and you have to kind
11 of keep on track and stay focused. Because otherwise,
12 if you don't, and if you're at a station waiting to get
13 on the train, you may miss it. And you'd be out of
14 luck.
15 MR. HENSLER: Does this have an example of
16 a request?
17 MR. MURPHY: I believe it does. If you
18 have questions, all you have to do is contact us and we
19 can get you study requests from other projects or direct
20 you to them on our E-library system. It's all on line.
21 MR. MAHER: Or Mike, the format we used
22 tracks that. So those that you have, you can just
23 follow those. Or you can call Jesse or me and I
24 can -- and we'll -- the licensee will be happy to assist
25 so that it's done right. Because we don't want a

1 situation where something would be rejected because we
2 didn't do it right or get it done timely. So we'll help
3 out with that.
4 MR. CONTOR: Can U.S. Fish and Montana, can
5 they file like a joint study request so that -- or do
6 they have to be individual? Can they just kind of
7 collaborate together and say No, this covers my --
8 MR. CREAMER: Oh, yeah, sure.
9 MR. CONTOR: Then they maybe wouldn't have
10 to duplicate --
11 MR. MURPHY: Right. If they wanted to be
12 intervenors, they have to file separately. But
13 everything else, if they want to.
14 MR. MAHER: And we in the study plan
15 meeting, Mark, we'll sit down and consolidate it with
16 ours.
17 MR. HANNA: And I think most of the study
18 plans that we would like to see have already been
19 proposed by Northern Lights and are being implemented
20 this summer. So I assume those are going to be carried
21 forward to the final study plan.
22 This new information, you know, has me
23 scratching my head to see are we going to be looking for
24 instream flow studies in the bypassed reach? And it's
25 still even early to tell for that with just, you know,

1 one electrofishing sample. It's really tough to say
2 that now. That's what my concern is, you know.
3 MR. MURPHY: To make you feel better, we
4 approve the final study plan in March. That's when
5 we're scheduled to do it. So we have until then to get
6 the data, talk about the studies, have the study's
7 meeting, put in the study comments, file the final plan.
8 MR. HENSLER: But you only have until the
9 end of the month for a proposed study.
10 MR. MURPHY: For the first one, yeah. But
11 you can put in a --
12 MR. CREAMER: The other thing, too, about
13 this process is -- I mean, it's a very formalized
14 process with deadlines and timelines and schedules that
15 need to be met. But there's also an opportunity within
16 this schedule to work behind the scenes, so to speak. A
17 lot of consultation happens between the applicants and
18 licensee or the applicants and resource agencies in
19 between some of these formalized, you know, deadlines
20 and meetings. So, you know, the way this is moving, I
21 kind of see that happening in terms of having a lot of
22 that informal discussion. And some of those things can
23 be resolved in between those formal dates, so to speak.
24 MR. LAWSON: Especially prior to filing the
25 application, of course. After that, then, of course,

1 there are constraints.
2 MR. CREAMER: But the other thing, too, is,
3 is that after the first -- the way the process is laid
4 out, there's -- you get the approved study plan,
5 applicant goes out and does it. A year goes by, they
6 produce a study report. Basically, it's everything that
7 they've done in the studies and what's it show. They
8 file that with us. They file that and they put it out
9 there for comment. We have a study plan meeting,
10 discussions, and maybe that generates some -- you know,
11 some thinking that Well, we might need to tweak this, or
12 we might need to look at something different. And so
13 there's an opportunity, then, to revisit the need for
14 something that maybe wasn't there in the first go-round,
15 depending upon what the results of the first go-round
16 studies show. So I mean, this isn't the only, the only
17 opportunity to get studies done. There will be other
18 opportunities, but Quentin's right. Once the
19 application is filed, you know, it basically comes down
20 to you have to show extraordinary need or something. I
21 don't know what the term is that we use, whether you
22 would do another -- require another study. And this
23 process is designed to get all this done up front. So
24 once the application is filed, is processed and out
25 within a year and a half, 18 months, 17 months,

1 something like that.
2 MR. HANNA: And in order to write my deal,
3 I need to have those questions answered. So it's hard
4 to say what questions I have until I have the
5 information --
6 MR. CREAMER: Right.
7 MR. HANNA: -- from that. So that's where
8 I'm sort of --
9 MR. CREAMER: That's where, hopefully, you
10 know, you work with the applicant, get raw data,
11 something you can look at to kind of help frame what you
12 might think may be needed so you can meet the deadline
13 at the end of this month or whenever that is.
14 MR. LEVINE: As I understand, Northern
15 Lights is the one who would be filing the study plans to
16 getting all this stuff together; right? It's not the
17 agency writing the study plan.
18 MR. MURPHY: Right. You guys have to
19 file -- or they would file, and then you would get to
20 comment -- I mean, you're trying to get studies to them.
21 MR. LEVINE: Right. We get it to Northern
22 Lights and they get it to you.
23 MR. MURPHY: And they're compiling it to
24 us. And then there's a period for comments after it's
25 filed of -- is it 15 days after the plan is filed? I am

1 sorry; the meetings are supposed to occur 15 days after.
2 The comments are 90 days, 45 days, 90 days?
3 MR. CREAMER: Look at your spreadsheet.
4 The regulations provide something, but I know the
5 process scheduled for this was set up a little bit
6 differently and has compressed some things. So some of
7 the dates might not match up with what our regulation
8 dates are.
9 MR. MURPHY: Comments on the study plan are
10 90 days. I was looking between two unrelated numbers.
11 And then they have 30 days after they get the comments
12 to file a new study plan.
13 MR. HANNA: So it sounds like we should
14 probably get our comments in -- or at least our proposed
15 study -- in now and then during the negotiation phase we
16 can drop them or refine them or potentially add to them.
17 MR. MURPHY: That's what the study meetings
18 are for.
19 MR. MAHER: We'll do our best to get you
20 the raw data within the next week or so. They're field
21 guys. You, Mike, probably understand this. I'm hoping
22 that they can get me at least a general report, and I'll
23 share with you whatever raw data they have.
24 MR. HENSLER: I've talked to Jesse.
25 MR. HANNA: See, my concern is that on

1 Sunday I leave for the rest of the month for military
2 duty for the Reserves. So I'm going to be trying to
3 work in the field.
4 MR. MAHER: I understand.
5 MR. HANNA: We'll see if we can't get
6 something out there.
7 MR. MURPHY: Any other concerns, questions,
8 processing questions?
9 I want to encourage you all to speak often and
10 to each other. It's the best way to get through this
11 process. Don't be shy; pick up the phone. And thank
12 you very much.
13 (Proceedings concluded at 3:13 p.m.)
14
15
16
17
18
19
20
21
22
23
24

1 REPORTER'S CERTIFICATE
2
3 STATE OF MONTANA)
4 : ss.
5 County of Flathead)
6
7 I, BAMBI A. GOODMAN, Registered Professional
8 Reporter, Certified Realtime Reporter and Notary Public
9 duly qualified in and for the State of Montana, residing
10 in Whitefish, Montana do hereby certify:
11 That I was duly authorized to and did report
12 the agency scoping meeting in the above-entitled
13 matter.
14 I further certify that the foregoing pages of
15 this transcript represent a true and accurate
16 transcription of my original stenographic notes.
17 IN WITNESS WHEREOF, I have hereunto set my hand
18 this 12th day of August, 2006.
19
20
21 BAMBI A. GOODMAN, RPR, CRR and
22 Official Freelance Court Reporter
23 Residing in Whitefish, Montana
24