

Santa Felicia Hydroelectric Project
March 4, 2008

1 APPEARANCES
2 Tim Welch, Chief
3 Hydro West Branch 2
4 Federal Energy Regulatory Commission
5 Alan D. Mitchnick, Senior Technical Expert
6 Federal Energy Regulatory Commission
7
8 Anthony Spina
9 National Marine Fisheries Service
10 Penny Ruvelas, Coordinator, Section 7
11 National Marine Fisheries Service
12
13 Dan Hytrek
14 General Counsel's Office
15 National Marine Fisheries Service
16
17 Craig Wingert, Supervisor Protected Resources
18 National Marine Fisheries Service
19 John Dickenson, Project Manager
20 United Conservation Water District
21
22 Murray McEachron
23 United Conservation Water District
24 Dana Wi sehart
25 United Conservation Water District

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 APPEARANCES (CONTINUED):

2

3 Steve Howard

4 United Conservation Water District

5

6 ALSO PRESENT

7

8 Mary Larsen

9 California Department of Fish and Game

10 Nica Knite

11 California Trout

12

13 via teleconference

14

15 Dan Blankenship

16 California Fish and Game

17 Sarah Bartlett

18 Metropolitan Water District

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Santa Felicia Hydroelectric Project
March 4, 2008

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ALSO PRESENT

via teleconference

Steve Edmonson

National Marine Fisheries Service, Santa Rosa

Rick Wantuck, Supervisor

National Marine Fisheries Service, Santa Rosa

Eric Theiss

National Marine Fisheries Service, Sacramento

Linda Gilbert, Office of General Counsel

Federal Energy Regulatory Commission

Phil Peters, Office of General Counsel

Federal Energy Regulatory Commission

Mike Sweiger

Counsel to United Water Conservation District

Santa Felicia Hydroelectric Project
March 4, 2008

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I N D E X

Page

Proceedings	6
Announcements	7
Introductions	7
Meeting Objectives	9
Adjournment	198
Reporter's Certificate	199

Santa Felicia Hydroelectric Project
March 4, 2008

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

2 9:24 a.m.

3 MR. WELCH: I'd like to welcome everyone
4 to our ESA section 7 consultation meeting on the
5 Santa Felicia project. My name is Tim Welch.

6 Most of you are used to dealing
7 primarily with the Project Manager Ken Hogan.
8 Unfortunately Ken had an unexpected death in his
9 family and he regrets he wasn't able to come out
10 and be with you today. So, basically you're all
11 stuck with me.

12 I'm the Branch Chief for Ken's branch,
13 Chief of West Branch 2 in the Division of
14 Hydropower Licensing in the Office of Energy
15 Projects at FERC. My name's Tim Welch, that's
16 W-e-l-c-h.

17 And I have with me -- I don't know where
18 he is -- Alan Mitchnick; and Alan's also from our
19 branch, West Branch 2. We have primarily
20 responsibilities of licensing projects in
21 California and a few in the northwestern states,
22 as well.

23 So, as you know, we're in the middle, or
24 we're getting towards the end of the relicensing,
25 FERC relicensing proceeding of the Santa Felicia

Santa Felicia Hydroelectric Project
March 4, 2008

1 project. Really this is our last remaining
2 procedural step before the Commission can proceed
3 with making a licensing decision on this project.

4 So, Anthony provided an agenda here,
5 those of you have it. I would like to add a
6 couple of other items. For those of you on the
7 phone I'll read the agenda items to you.

8 The first will be announcements and
9 introduction. Then we'll talk about objectives
10 for the meeting. And then I would like to perhaps
11 insert two agenda items, just a brief synopsis of
12 FERC's comments on the draft B0. Maybe followed
13 by a brief synopsis of United's comments on the
14 draft B0.

15 And then I thought it would make logical
16 sense for then to go with how NMFS addressed those
17 comments on the biological opinion.

18 So, following that, I'm sure that will
19 probably take, right there will probably take us
20 most of the morning right there. Perhaps a lunch
21 break would be good after that. I don't know,
22 we'll have to see what the time is.

23 Then perhaps this afternoon we could
24 talk about ideas for refining the specific aspects
25 of the RPA sub-elements. And then conclude with

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 NMFS' schedule for issuing the final biological
2 opinion.

3 So let's just go around and I'd like to
4 do sort of the introductions first, and then we
5 can, if anybody has any other agenda items that
6 they wanted to add, we could do so. I just want
7 to get everyone introduced right out of the way
8 first, and then we can talk about any further
9 refinements to the agenda. Okay?

10 So, as I said, I'm Tim Welch with FERC.

11 MR. MITCHNICK: I'm Alan Mitchnick, and
12 I'm a Senior Technical Expert with FERC.

13 MS. KNITE: I'm Nica Knite with
14 California Trout.

15 MS. LARSEN: I'm Mary Larsen, California
16 Fish and Game.

17 MS. WISEHART: Dana Wisehart, United
18 Water.

19 MR. DICKENSON: John Dickenson, United
20 Water. And I am -- have been Project Manager on
21 the FERC relicensing.

22 MR. McEACHRON: Murray McEachron, United
23 Water.

24 MR. HOWARD: Steve Howard, United Water,
25 fisheries biologist.

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 MR. WINGERT: Craig Wingert, National
2 Marine Fisheries Service, the Long Beach Area
3 Supervisor for Protected Resources.

4 MR. HYTREK: Dan Hytrek with general
5 counsel's office.

6 MS. RUVELAS: Penny Ruvelas with
7 National Marine Fisheries Service in the Southwest
8 Region, Section 7 Coordinator.

9 MR. SPINA: Anthony Spina, National
10 Marine Fisheries Service.

11 MR. WELCH: Okay. On the phone.

12 MR. BLANKENSHIP: Dan Blankenship of
13 California Fish and Game; I'm a staff
14 environmental scientist.

15 MS. BARTLETT: Sarah Bartlett with the
16 Metropolitan Water District. Just listening in
17 for the first couple hours or so.

18 MR. EDMONSON: Steve Edmonson, National
19 Marine Fisheries Service, Santa Rosa.

20 MR. WANTUCK: Rick Wantuck, National
21 Marine Fisheries Service, Santa Rosa; hydropower
22 program Supervisor.

23 MR. THEISS: Eric Theiss, National
24 Marine Fisheries Service in Sacramento.

25 MS. GILBERT: Linda Gilbert, Federal

Santa Felicia Hydroelectric Project
March 4, 2008

1 Energy Regulatory Commission, Office of General
2 Counsel.

3 MR. PETERS: Phil Peters, FERC's Office
4 of General Counsel.

5 MR. SWEIGER: Mike Sweiger with Tannen
6 (phonetic) and Sullivan, outside counsel to
7 United.

8 MR. WELCH: Do we have everyone on the
9 phone? Any others on the phone if you haven't
10 spoken up?

11 MR. SWEIGER: My partner, Sam Kalen may
12 be joining us in a little bit. He's also with
13 Tannen and Sullivan, but he's on teaching
14 sabbatical and calling in from Florida after his
15 class.

16 MR. WELCH: Thanks, Mike. Okay, for
17 those of you that are on the phone, we have, you
18 know, one, the spider phone sort of in the middle
19 of a room, and then we have sort of one pod over
20 by Anthony. So I'd just ask that everybody could
21 just speak loudly and hopefully -- have you had
22 any trouble hearing so far? Mike?

23 Okay, I'll take that as an okay.

24 (Laughter.)

25 MR. WELCH: Okay. Our court reporter is

Santa Felicia Hydroelectric Project
March 4, 2008

1 Troy, and Troy asked especially that if you want
2 to speak and say something it's important to
3 identify yourself and your affiliation so it can
4 get accurately reported in the transcript. Mainly
5 on the telephone.

6 What I'd like to do today is go through
7 this agenda, remembering that this is primarily
8 a -- it is a meeting between FERC and the National
9 Marine Fisheries Service. And also because United
10 is our applicant, they are in the conversation, as
11 well.

12 Those of you who are intervenors or not
13 really associated with any of those three parties
14 I would just ask that you kind of maybe hold your
15 questions and comments until sort of the end of
16 the meeting, unless it's just really burning. So
17 I'd just like to ask your indulgence to sort of
18 let this conversation between us and the National
19 Marine Fisheries Service sort of take hold.

20 But, of course, you're welcome at the
21 end. Maybe at the end of the morning session and
22 at the end of the afternoon session, those of you
23 who might want to make a comment, you feel free to
24 do so.

25 Okay, so having introduced everyone is

Santa Felicia Hydroelectric Project
March 4, 2008

1 there any agenda items that I have not mentioned
2 that anyone would like to add to our agenda?

3 Okay, hearing nothing I think we have a
4 pretty full agenda today. As I said, we'll sort
5 of gauge our lunch break accordingly. We'll sort
6 of watch the time, but we'll try to get through
7 our first two or three items at least in the
8 morning session.

9 MR. SPINA: Tim, this might be an
10 appropriate time to segue into some of the
11 announcements that I wanted to make, if that's
12 okay?

13 MR. WELCH: Oh, okay, yep.

14 MR. SPINA: Just real quickly, with
15 regard to lunch. I suggest we break a little bit
16 before noon because the local eateries get busy
17 quickly. So I recommend we break by 11:45 if
18 everyone is interested in --

19 MR. WELCH: Okay.

20 MR. SPINA: -- getting their food
21 quickly.

22 MR. WELCH: Okay.

23 MR. SPINA: With regard to places to
24 eat, there's a cafeteria just out this door down
25 the hallway and to the left. There's also a

Santa Felicia Hydroelectric Project
March 4, 2008

1 couple of restaurants next door, the ground level
2 of the World Trade Center. There's also a few
3 places across the street from the federal
4 building.

5 I don't expect an emergency, but if
6 there is an emergency I will lead you out this
7 door, down the hallway to the emergency exit. And
8 we'll take you downstairs and out the building to
9 a safe zone behind the building.

10 With regard to the mens room and ladies
11 room, it's just out this door, back down the hall,
12 past the elevator lobby, first right.

13 And I would appreciate it if we took a
14 break about an hour and a half into it just
15 because after sitting for awhile I don't do too
16 well, I just need to stand --

17 MR. WELCH: I hear you.

18 MR. SPINA: -- and stretch. So if you
19 can just keep that in mind as we proceed, --

20 MR. WELCH: Yeah.

21 MR. SPINA: -- I'd appreciate it.

22 MR. WELCH: So it's 9:30 now, so
23 maybe --

24 MR. SPINA: About 10:45 or a convenient
25 spot around there.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: Yeah.

2 MR. SPINA: Thank you.

3 MR. WELCH: Okay. So, that moves us on
4 to the objectives for the meeting today. And what
5 I'd like to do is I'd like to kind of go around
6 with each of the three entities, and I'd like to
7 say a little bit about what, you know, what I'm
8 looking for in the meeting. And then I kind of
9 wanted to hear from United and NMFS, as well.

10 What I'm looking for is I think we have
11 an opportunity today just to sort of kind of get
12 all our comments out on the table. We've sort of
13 spent the -- other than the one teleconference
14 that we did have, you know, we've exchanged a lot
15 of paper back and forth. So I think it's good
16 that we have this face-to-face meeting.

17 So today I'd like to just kind of think
18 of it in terms of, you know, getting our comments
19 out there, but then, you know, sort of putting
20 everything on the table. And then just sort of
21 hopefully take a problem-solving approach. Kind
22 of roll up our sleeves a little bit, as biologists
23 and water managers, and just to see if we can come
24 up with at least some sort of a direction or a
25 framework.

Santa Felicia Hydroelectric Project
March 4, 2008

1 I'm not looking to sign a settlement
2 agreement here today, or even not looking -- I
3 mean if that happens, great -- or walk out of the
4 room and, you know, shake hands and go, okay, you
5 know, that's it.

6 As I said, that's fine if that happens.
7 What I am looking for is just sort of if we could
8 all get on the same page or come up with just an
9 informal agreement of something that we can all
10 take back and say, okay, you know, we may agree
11 with this, we may not agree, but let's see what we
12 can do to try to make it happen.

13 So, I'm not going to sit here and hold
14 anybody to, you know, if you say, oh, you know,
15 oh, Tim, that's a great idea, I'm not going to
16 like later on, and then you get back to your
17 office and go, oh, maybe that's not such a great
18 idea. I'm not going to hold you to like, hey,
19 man, at the meeting you said it was a great idea.

20 So, you know, as I said, I'd like to
21 have a little open and honesty, and just say,
22 well, jeez, I really can't live with this because
23 blah, blah, blah. Or, hey, how about this. So
24 I'm just, you know, trying to get a little
25 pragmatic.

Santa Felicia Hydroelectric Project
March 4, 2008

1 You know, I don't know how far we could
2 go with that, but so I'm just looking, as I said,
3 to leave this meeting with sort of like a clear
4 objective and understanding of something that
5 we're going to try to make happen through this
6 biological opinion.

7 Anthony?

8 MR. SPINA: Thanks. I would say that
9 our objective for today's meeting is to listen to
10 FERC and United in regard to their views of the
11 RPA sub-elements; and get from them their ideas
12 for how we could refine those sub-elements for the
13 purpose of getting to something that they believe
14 would be workable from their perspective, while at
15 the same time from our perspective, continuing to
16 insure that the proposed action is not going to
17 jeopardize a species or result in adverse
18 modification or destruction of their habitat.

19 We are aware of the extensive comments
20 on the draft biological opinion. Some of us know
21 those comments better than others. I don't know
22 that going through all the comments would be a
23 productive use of our time, but admittedly there
24 are a couple categories of comments that would
25 probably be worth discussing.

Santa Felicia Hydroelectric Project
March 4, 2008

1 And I believe we're prepared to discuss
2 some of those comments, particularly the
3 substantive ones. So in that regard I would agree
4 that talking about the comments would be
5 appropriate.

6 MR. WELCH: Okay. John, how about you
7 guys?

8 MR. DICKENSON: Sure. I guess primarily
9 we wanted to hear from NMFS. And it strikes me as
10 on the agenda there's an item of how Fisheries
11 addressed, past-tense, comments on the biological
12 opinion. And have you done so yet, or are you
13 doing so here today, or, you know, -- want to hear
14 the comments, again, that's fine. But we're
15 interested in how you're going to address them.

16 So, I'm not sure that having the past-
17 tense on the agenda is right. Is there something
18 I've missed in this proceeding? The comments have
19 been addressed?

20 MR. SPINA: Well, maybe we can wait
21 until we get to that agenda item to talk about
22 that, since it's right --

23 MR. DICKENSON: Okay, well, I thought we
24 were talking about what we wanted -- we're on the
25 objectives for the meeting, and I'm --

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. SPINA: I'm fully aware of that.

2 MR. DICKENSON: -- suggesting that's

3 a --

4 MR. SPINA: I'm fully aware of that, and
5 what I'm saying is it seems like you're starting
6 to compel us in the area of the agenda that
7 addresses how NMFS addressed the comments.

8 MR. DICKENSON: Okay, I --

9 MR. SPINA: And so what I'm saying is it
10 might be appropriate to wait for that specific
11 item on the agenda. That's all I'm saying. If
12 everyone --

13 MR. WELCH: He was just wondering about
14 the past-tense.

15 MR. DICKENSON: Yeah, I'm just saying
16 one of my --

17 MR. WELCH: So to my knowledge there's
18 nothing that you put out that have addressed the
19 comments.

20 MR. DICKENSON: Yes. And my objective
21 for the meeting was to hear that, or have that
22 heard by us. That's all I'm saying.

23 MR. WELCH: Right, so --

24 MR. DICKENSON: It's an objective for
25 the meeting.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: I took that to mean that you
2 probably have them written down on a piece of
3 paper somewhere in your office that you've
4 addressed the comments. And you're going to kind
5 of share that with us today.

6 MR. SPINA: I'm going to share the
7 comments that we've responded to today. Again, I
8 don't see it being a productive use of everyone's
9 time to go through every single comment.

10 MR. DICKENSON: No, no, no, we don't
11 need to do that.

12 MR. SPINA: Because a lot of them, I
13 should say quite a few of them were editorial.
14 And those were quite simple to deal with, just a
15 few minor changes to clear up some interpretation
16 issues.

17 But there are some key comments that I
18 believe United and FERC would like to hear how we
19 responded to those comments. And that's what I'm
20 saying that we would be prepared today to address.

21 MR. WELCH: Okay. Okay?

22 MR. DICKENSON: Thanks, and that fits
23 under our objective.

24 MR. WELCH: Okay. Going on to our next
25 item, I'd just like to just briefly -- like you

Santa Felicia Hydroelectric Project
March 4, 2008

1 say, I'm not going to go through every single one
2 of our comments, but I'd just like to -- our
3 comments sort of fall in three fairly broad
4 categories.

5 But there was a particular area that
6 continues to be bothersome to me. And as I read
7 it on the plane on the way out I just -- I know I
8 kind of brought this up at the teleconference, but
9 I just can't help to just express myself again.

10 That was the statement in the -- our
11 comments do go to this, and it's sort of the
12 statement in the draft BO that sort of, when NMFS
13 attempts to sort of characterize our proposed
14 action.

15 You know, on page -- you know, they put
16 this nice table here on page 4, you know, where
17 they sort of outline, let's see, one, two, three,
18 four, five, six, seven, eight, nine, about ten
19 elements in detail that was our proposed action
20 that we outlined in our EA.

21 And then the thing that bothered me was
22 the statement in here that talks about these
23 measures, those being those ten measures, these
24 measures which essentially consist of monitoring
25 of environmental conditions and evaluating

Santa Felicia Hydroelectric Project
March 4, 2008

1 alternatives will not minimize the effect of the
2 proposed action on critical habitat for endangered
3 steelhead. The effects on the migration corridor
4 due to the current operations of Santa Felicia Dam
5 are therefore expected to continue under the
6 proposed action despite the proposed measures.

7 And I still continue -- I know you're
8 talking about the critical habitat here, but I
9 still continue to be taken aback by that because
10 to be honest with you, you know, your reasonable
11 and prudent alternative, which I still maintain is
12 very similar, not exactly -- there's some
13 differences in wording and things -- to our
14 proposed action, you could almost say the exact
15 same thing about the RPA.

16 So, all I'm asking -- I'm not looking
17 for anything here today about that particular
18 problem that I have. But I would ask NMFS to
19 consider in the draft, or in the final BO to kind
20 of maybe tone that down a little bit. And just
21 give us a little bit of credit for doing some
22 post-license monitoring and evaluating and trying
23 to figure this problem out, which is essentially
24 what I think that you guys are doing, too. So I
25 would like just a little bit more credit for doing

Santa Felicia Hydroelectric Project
March 4, 2008

1 that.

2 And I know there's some elements in
3 there that, you know, you didn't exactly agree
4 with, and you know, I'm fine with that. But I
5 just -- I was really taken aback by the fact that
6 our proposed action and your RPA are very very
7 similar approaches. And to get a jeopardy opinion
8 on our proposed action, when it's so similar to
9 the RPA, was just really mind-boggling to me.

10 So, I would ask that NMFS just maybe
11 take a little bit more care in the final B0 to
12 sort of maybe tone that down, and as I said, give
13 us a little bit of credit for trying, you guys.

14 You know, this is a complex situation
15 and we tried our best to kind of wade through it.
16 Because to be honest with you we don't get that
17 many jeopardy opinions. So I was rather surprised
18 when we got one.

19 To be honest with you procedurally, I
20 think it matters to United. I'm not going to put
21 words in your mouth or anything, but procedurally
22 it doesn't, jeopardy/nonjeopardy doesn't really --
23 doesn't matter all that much to FERC.

24 I mean nobody wants a jeopardy opinion
25 obviously. But as far as procedurally, you know,

Santa Felicia Hydroelectric Project
March 4, 2008

1 whether it's the RPA or terms and conditions
2 associated with take, you know, it'll all go into
3 the license eventually. So it's sort of the
4 outcome is the same.

5 I know you guys have some strong
6 feelings about the jeopardy opinion, which is
7 fine, that's perfectly understandable. As I said,
8 nobody wants a jeopardy opinion.

9 So that's one aspect of our comments I
10 just wanted to get out on the table.

11 The others, you know, I know you've read
12 them and stuff, goes to the -- we had some
13 comments on the genetics analysis and we basically
14 just asked for some further clarification there.
15 As I say, that's a pretty complex situation.

16 So that was mostly our two main thrusts
17 of our comments. We're, you know, just comparing
18 the RPA with our proposed action; and the genetic
19 analysis which led to the listing, which I'm not
20 going to go into in any kind of detail right now.

21 So, that's what I have for as far as our
22 comments go. You guys, I just would ask, you
23 know, to sort of try to have a good synopsis and
24 try to be as brief as you can.

25 MR. DICKENSON: Okay, yeah, of course.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: Talk about broad categories
2 and stuff.

3 MR. DICKENSON: And I hadn't gone
4 through and categorized our comments, but I can
5 try to do that on the fly here.

6 I think primarily there's a few big
7 categories. One is our confusion with the terms
8 being used in that rainbow trout, steelhead, and
9 so forth. And as you know, ad nauseam in here, we
10 say again, you're saying this and you mean this.
11 Some sort of consistent terminology would be much
12 appreciated.

13 And we have a problem and want to hear
14 how that comports with your listing decision. And
15 in respect to animals you're protecting, above or
16 below artificial, manmade impassable barriers. We
17 found that a lot of the hydrologic information was
18 inadequately presented. And there's some cleanup
19 in the hydrology data that we would like to see
20 re-analyzed.

21 And then, you know, evidence of presence
22 or absence. We think there was some evidence
23 that's fairly scant and we think it ought to be
24 appropriately titled and said what the actual
25 evidence is or was. And to that end there's

Santa Felicia Hydroelectric Project
March 4, 2008

1 interpretations of external genetic studies that
2 we have some differences with some of the
3 interpretations of the studies.

4 And all that leading up to that we were
5 unconvinced by your prior information or this
6 document that there was a vibrant steelhead run on
7 Piru Creek that needs to be restored.

8 And so we think that needs to be shown
9 in a stronger fashion so that we can go to our
10 constituents and try to take the money out of them
11 to do programs that Fisheries wants to see there.

12 But then a lot of that has to do with
13 what we'll talk about in the RPA this afternoon,
14 so.

15 MR. WELCH: Okay. That takes us now to
16 our -- man, we are flying through this.

17 MR. DICKENSON: We'll be done by lunch.

18 MR. WELCH: I know.

19 (Laughter.)

20 MR. WELCH: Okay, now we get the hard
21 ones. So, I guess the next agenda item is how
22 NMFS addressed those comments in the biological
23 opinion. So I'd probably turn it over to Anthony
24 at this point.

25 Anthony, I heard John mention three sort

Santa Felicia Hydroelectric Project
March 4, 2008

1 of broad categories. Were they the same or
2 similar to the broad categories that you wanted to
3 talk about? Or did you have more or less or --

4 MR. SPINA: I'd say overall they're
5 similar to what I believe would be appropriate
6 elements to comments to talk about.

7 There was one additional item that
8 United brought up, but I don't have a problem
9 discussing it, giving you some insights to how we
10 addressed it.

11 John, getting back to what you were
12 mentioning during our review of the objectives for
13 the meeting, and your concern over the term
14 addressed. It's true that NMFS has addressed the
15 bulk of United's comments.

16 And what I mean by the term addressed is
17 we have gone through United and FERC's comments on
18 the draft biological opinion. We've carefully
19 reviewed those comments, given them due
20 consideration. Gone into the subject sections of
21 the biological opinion that are the basis of your
22 comments, and we've made a revision to address
23 those comments.

24 Some of the revisions have required
25 simple clarification of the language used.

Santa Felicia Hydroelectric Project
March 4, 2008

1 Whereas other responses required an extensive, if
2 you will, approach to address the comments. When
3 I say extensive, I mean preparation of several
4 sentences to a handful of additional paragraphs.

5 MR. DICKENSON: But --

6 MR. SPINA: What --

7 MR. DICKENSON: I'm sorry, --

8 MR. SPINA: No, go ahead.

9 MR. DICKENSON: Did that include new
10 analysis?

11 MR. SPINA: Thus far there's been no
12 additional quantitative analysis that the
13 Southwest Region has performed. There's been
14 incorporation of literature based on literature
15 reviews to help NMFS determine, you know, the
16 necessary information to know how to address a
17 particular response.

18 In most cases, particularly those
19 situations where more than simply an adjustment,
20 due to an editorial comment, was necessary, we
21 cite United or FERC's comments. And we provide a
22 summary of what the issue is. And then we provide
23 a response. So, it should be fairly simple to
24 track how we addressed those comments.

25 So, now getting back to the specific

Santa Felicia Hydroelectric Project
March 4, 2008

1 agenda item, -- I do want to add one more thing.
2 And that is there are still a few comments that I
3 need to address. And the reason why those haven't
4 been addressed is just because time has been
5 golden. The Santa Felicia project is not the only
6 water project I'm working on, as I'm sure United
7 can attest to. And I haven't had the time
8 available to make a complete sweep of the
9 comments.

10 But there is only, you know, relatively
11 few comments left that need to be addressed. And
12 they will be addressed here in the immediate
13 future.

14 So, Tim, would you like me to delve into
15 this agenda item now, about how NMFS addressed the
16 comments?

17 MR. WELCH: Yeah. One quick question I
18 had before you get into that. In United's
19 comments in what is it, their appendix A, is it?

20 MR. SPINA: Exhibit A.

21 MR. WELCH: Yeah, exhibit A. Exhibit A
22 they present -- well, the first time I've seen a
23 sort of a new water release proposal. Is that
24 something that you -- you indicated that you
25 didn't have any new analyses in there. But, are

Santa Felicia Hydroelectric Project
March 4, 2008

1 you planning on analyzing this in the draft B0?

2 MR. SPINA: Well, I believe what I said
3 specifically was that to date there is no new
4 analyses, but that does not preclude the potential
5 that I might include some new analyses between now
6 and when the final opinion is issued. So I just
7 wanted to make that clarification.

8 MR. WELCH: Okay.

9 MR. SPINA: With regard to what we'll do
10 with that exhibit A, at this point we've been
11 directed by FERC to use exhibit A as a basis to
12 refine the RPA. And so that's how we intend to
13 proceed from here.

14 And that was memorialized in a letter
15 from and to FERC around the beginning of the year.
16 We received a prompt from FERC and we responded by
17 letter --

18 MR. WELCH: What was the date on that
19 letter? Was it January 17th? Was it under our
20 extension of time?

21 MR. SPINA: I don't recall for certain.
22 I just have our letter here.

23 MR. WELCH: Oh, yeah, I see it, I see it
24 now.

25 MR. SPINA: I believe our letter was

Santa Felicia Hydroelectric Project
March 4, 2008

1 dated January 25th or thereabouts.

2 MR. WELCH: Yeah. Yeah. Well, we
3 encourage NMFS to consider the -- okay. So we
4 asked you to look at it, but we didn't say it
5 necessarily constituted a change in our proposed
6 action.

7 MR. SPINA: Right.

8 MR. WELCH: Okay. So procedurally is
9 that okay?

10 MS. RUVELAS: Yeah, to answer the
11 question you're asking, if we analyzed the new
12 opinion, if we're going to treat it as part of the
13 RPA then it wouldn't have an analysis within the
14 main body of the biological opinion. It would be
15 one of the elements of the RPA, you know, one of
16 those three or four sub-elements of the RPA. It
17 would be presented there.

18 But there wouldn't be in the biological
19 opinion, itself, an analysis of those flows.
20 There might be some discussion of it in the RPA,
21 but not in the opinion, itself. It wouldn't roll
22 into our analysis that led to whatever the
23 conclusion might be in the biological opinion. It
24 would be separate.

25 MR. WELCH: But it would be analyzed

Santa Felicia Hydroelectric Project
March 4, 2008

1 somewhere, just not in the main body?

2 MS. RUVELAS: Not in the main body of
3 the opinion, and it wouldn't play into the
4 conclusion of that --

5 MR. SPINA: Of the determination.

6 MS. RUVELAS: -- into that
7 determination, right. It would be a part of what
8 we were saying was avoiding jeopardy through the
9 RPA, but not in the main body of the opinion.

10 MR. WELCH: I understand.

11 MR. MITCHNICK: Just a general question
12 about sort of what the final BO is going to look
13 like. I assume you're not going to specifically
14 write out a response to each of these comments.
15 Just that the document, itself, reflect the new
16 information that you get? There's not going to be
17 an item-by-item response to the --

18 MR. SPINA: That's right. We're not
19 intending to do that at this time.

20 MR. WELCH: So, there's no -- oh, I
21 thought -- actually I thought I heard the
22 opposite. That you were going to comment/
23 response, comment/response. It's not going to be
24 that way?

25 MR. SPINA: Not that way, but within the

Santa Felicia Hydroelectric Project
March 4, 2008

1 opinion it'll be easily noted where a comment was
2 provided and what our response was.

3 MS. RUVELAS: Right. It just won't be
4 sort of the key way --

5 MR. SPINA: Yeah.

6 MS. RUVELAS: -- setup?

7 MR. WELCH: Right. Like one might do in
8 a NEPA document.

9 MR. SPINA: Correct.

10 MR. WELCH: Okay, well, still your turn.

11 MR. SPINA: Okay. So I'll take it as a
12 yes, you want me to go into addressing --

13 MR. WELCH: Yes.

14 MR. SPINA: So if I may I'd like to
15 first start with FERC's substantive comments and
16 tell you a little bit about how we addressed
17 those.

18 Specifically I'm not going to go into a
19 lot of details. I'm just going to provide a
20 summary statement just to give you some insights
21 on how NMFS addressed those comments.

22 One of the substantive comments we
23 received from FERC was, in fact, this very issue
24 that Tim mentioned. That is in their view there
25 was no difference, other than a couple of small

Santa Felicia Hydroelectric Project
March 4, 2008

1 exceptions, between the FERC-recommended
2 alternative and NMFS' RPA.

3 And, you know, in our biological opinion
4 the intention there was not to, you know, not give
5 FERC credit for their hard work, or United's work,
6 in attempting to minimize adverse effects of the
7 proposed action on the species. We acknowledge
8 the hard work and the careful thought that both
9 entities have given into this project and we're
10 very grateful for that.

11 The intention there was rather to point
12 out what the specific issues are that we believe
13 are not conducive to minimizing adverse effects on
14 this critter and its critical habitat owing to the
15 proposed action.

16 So that the text that you read, as well
17 as other passages and narratives in the draft
18 opinion which referenced tabled, it was intended
19 just to do that. It was to highlight some of the
20 reasons why we don't believe that the staff-
21 recommended alternative is going to minimize
22 adverse effects.

23 The revised opinion does expand that
24 discussion to highlight more specific reasons,
25 particularly biological reasons why we don't

Santa Felicia Hydroelectric Project
March 4, 2008

1 believe the staff-recommended alternative is going
2 to contribute to minimizing adverse effects, and
3 therefore avoiding jeopardy adverse.

4 For example, one of the elements of the
5 Commission's EA, the staff-recommended measure,
6 was this notion of focusing on habitats downstream
7 of Santa Felicia Dam as a basis to minimize the
8 effects of the proposed action.

9 Well, one of the issues related to that
10 is focusing only on the habitats downstream of the
11 dam does little, if anything, to minimize the
12 effects of preventing this critter from reaching
13 historical spawning marine habitat upstream of the
14 dam. That's just an example. So, we go into that
15 kind of discussion.

16 Another example is there's reference to
17 a fish passage corridor connectivity study.
18 Again, it only focuses on habitats downstream of
19 Santa Felicia Dam. And the study only proposes to
20 assess fish passage, alternatives, opportunities
21 and constraints relative to the migration
22 corridor. But it does nothing to minimize the
23 effects of the proposed action on the corridor.

24 It just talks about study, but it
25 doesn't commit to doing anything more than study.

Santa Felicia Hydroelectric Project
March 4, 2008

1 And it doesn't commit to saying well, we'll take
2 what we've learned, translate that into measures
3 that actually minimize the effects. And we will
4 implement those measures; we'll monitor the
5 effectiveness of those measures. And if
6 necessary, if we find that those measures are not
7 effective, we'll modify them over time. It's only
8 one step of a very lengthy technical process.

9 MR. WELCH: Well, I have to take issue
10 with that a little bit, because I'm reading from
11 our -- you know, we talked about the fish passage
12 corridor connectivity, like you said. Identify
13 and evaluate fish passage alternatives.

14 And then says, this measure is intended
15 to identify those measures that could be
16 implemented to provide a migration corridor. I
17 mean --

18 MR. SPINA: You see, there's a
19 difference between could and will. And from our
20 perspective, from the ESA perspective, we can't
21 rely on factors or measures that are not
22 reasonably certain to occur, or uncertain.

23 That's just one challenge related to
24 that specific study.

25 MR. WELCH: Could be. Yeah, I guess I

Santa Felicia Hydroelectric Project
March 4, 2008

1 read the could a little bit differently than you.

2 I mean I --

3 MR. SPINA: And, too, there's no
4 specific mention of what those measures will be.
5 And in addition, my recollection of that study is
6 it doesn't actually propose flows to insure
7 passage. What it does propose is some study that
8 will look at existing conditions to know, okay,
9 when would migration be suitable for this critter.

10 But, again, that doesn't address the
11 effects of the proposed action. The effects that
12 would be -- the conditions that would be monitored
13 are, in essence, an artifact of the effects of the
14 proposed action.

15 MR. WELCH: I understand that. I guess
16 I just read that much more broadly than you do.
17 Typically, you know, I guess it's a -- typically
18 in our NEPA documents, our NEPA documents are not
19 records of decision; they're not RODs. They're
20 recommendations to the Commission, you know, the
21 five-member Commission.

22 So, typically we have -- I'm just trying
23 to explain, you know, why we use -- we use words
24 like should and could, and these types of maybe
25 softer words for our EA, because it's not the

Santa Felicia Hydroelectric Project
March 4, 2008

1 decision document.

2 The decision document is the license.
3 And the license will say things like will, shall,
4 you know. So I guess it's sort of like our, I
5 don't know, call it our culture, or the way we
6 sort of have done things in the past because it's
7 not a record of decision.

8 So, I would just ask you to sort of keep
9 that in mind when you kind of go through our
10 things to know that, you know, we could identify
11 flows; we could identify habitat manipulations. I
12 mean, we don't know right now what flows could
13 come out of this. I mean that was our intent
14 here, so just a little bit of clarification.

15 MR. SPINA: Well, I appreciate the
16 clarification. Penny and Dan may have something
17 to add with regard to the EA not being a ROD and
18 so on and so forth. But one thing I want to add
19 is even if staff chose to change the word could to
20 should, I still believe that, in itself, wouldn't
21 reconcile the key issues there.

22 Again, that specific measure is only
23 looking at the existing conditions as represented
24 by effects of the proposed action. There's
25 nothing in it that says, well, we will provide x

Santa Felicia Hydroelectric Project
March 4, 2008

1 flows over this time period for this duration,
2 this rate of change, to effect a migration
3 corridor.

4 It's rather, well, we're going to study
5 what's already out there. Well, I'll tell you
6 what those findings are going to show. Those
7 findings will be pretty similar, if not identical,
8 to what's in the biological opinion, assuming
9 things stay the same.

10 MR. WELCH: That's true, but I don't
11 know how you study anything other than existing
12 conditions in order to get to operational measures
13 to improve those conditions.

14 MR. SPINA: I believe the biological
15 opinion does a great job in documenting what the
16 effects of the proposed action are.

17 So, in our view we know what the effects
18 are. They need to be minimized. And when we look
19 to FERC Staff-recommended measures we just don't
20 see that those are going to be effective readily
21 to minimize the effects of what we're seeing which
22 are documented in the biological opinion.

23 MR. WELCH: Okay.

24 MR. SPINA: So I have other examples to
25 point to, but I don't know how productive that

Santa Felicia Hydroelectric Project
March 4, 2008

1 would be at this time. Maybe I should just
2 proceed on to the other --

3 MR. WELCH: Yeah, yeah, no, you've given
4 me a general flavor of --

5 MS. WISEHART: I wouldn't mind hearing a
6 specific example.

7 MR. WELCH: Okay.

8 MR. SPINA: Well, I've already given
9 one. What I was saying is if you want more
10 examples, I can give --

11 MS. WISEHART: Just one very specific
12 example.

13 MR. SPINA: The fish passage corridor
14 connectivity study wasn't enough? Is that what
15 I'm hearing, or --

16 MR. WELCH: Sounds like they want to
17 hear another --

18 MR. SPINA: You want to hear another
19 example, --

20 MR. WELCH: -- another example of where
21 we sort of missed the mark.

22 MS. WISEHART: I guess I'm looking for,
23 you know, what change as opposed to we're
24 suggesting analyzing and studying it. What
25 specific change would you recommend?

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. SPINA: Well, the changes that we
2 recommended are reflected in the RPA. You know,
3 we're talking about providing a water release
4 schedule that would insure passage and that would
5 insure habitat conditions for juveniles.

6 So, I would just direct United to the
7 RPA to give a --

8 MR. DICKENSON: I think what Dana is
9 looking for is how -- you've said how you see
10 FERC's EA or BA stuff as not being specific. But
11 then Dana's asking where is your specificity in
12 the RPA.

13 MS. WISEHART: Because I --

14 MR. DICKENSON: I think that's what --

15 MS. WISEHART: Yeah, that's what I'm
16 after.

17 MR. SPINA: Yeah, what that specific
18 sub-element of the RPA does, it basically outlines
19 the framework for getting those information items
20 in place.

21 So we talk about that the end objective
22 of that process is to identify those specific
23 quantities of water that are going to be released
24 over time, and the magnitudes and so on and so
25 forth.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: Exactly.

2 MR. SPINA: And in that regard we're
3 looking towards --

4 (Parties speaking simultaneously.)

5 MR. WELCH: So I'm not hearing the
6 specificity in that.

7 MS. WISEHART: Isn't that what you
8 recommended?

9 MR. SPINA: Well, the distinction -- I
10 suppose the issue is not so much the specifics;
11 the issue is the distinction. The distinction is
12 that in our view the FERC-recommended alternative
13 is not going to get us to a point where we believe
14 it would, in fact, minimize adverse effects.

15 By contrast, the sub-element of the RPA
16 does, we believe, going to get us to the point
17 where we're minimizing adverse effects. That's
18 the key distinction.

19 MR. WELCH: Okay. Let me just throw
20 this out to you really quickly. So, that last
21 sentence I read: This measure is intended to
22 identify those measures that could be implemented
23 to provide a migration corridor, what if we had
24 said it this way: This measure is intended to
25 identify those measures that could be implemented

Santa Felicia Hydroelectric Project
March 4, 2008

1 to provide a water release schedule that would
2 provide a migratory corridor for steel head?

3 Is that more what you would be looking
4 for?

5 MR. SPINA: Well, specifically what
6 we're looking for is something that we could point
7 to with some level of certainty that we would
8 believe would be biologically ecologically
9 meaningful for the purposes of providing the
10 necessary flows that would sustain essential
11 habitat functions for this critter over time.

12 MR. WELCH: Okay.

13 MR. SPINA: For all life stages that we
14 would expect to exist downstream of the dam. And
15 so in that regard I don't believe what you just
16 mentioned rises to that level.

17 MR. WELCH: Oh. Why not? I just don't
18 see how much difference --

19 MR. DICKENSON: Maybe I understand it a
20 little bit, is that their RPA things all say that
21 this will be done and approved by the NMFS in the
22 future. And that's what gives you the level of
23 comfort, is that Fisheries gets to unilaterally
24 decide what these would be in the future.

25 And that's the main distinction I see,

Santa Felicia Hydroelectric Project
March 4, 2008

1 that United sees between the EA proposals and the
2 RPA proposals.

3 MS. KNITE: I have some experience
4 working with these kinds of documents where the
5 type of terminology that you're recommending, or
6 that you folks are using, is with all of the best
7 intentions put into place. But without all of the
8 dots being connected, and the outcomes being
9 specified, that leaves what we like to call wiggle
10 room.

11 And it's been my experience that more
12 often than not if there's wiggle room in there
13 somebody will take it.

14 So, instead of saying the intention of
15 these measures, it's these measures are to blah,
16 blah, blah, blah, and will be blah, blah.
17 And I understand your culture, but from the
18 standpoint of enforceability and having something
19 that provides the assurances that the ESA is
20 designed to provide, those nuances do make or
21 break the feasibility.

22 MR. WELCH: I think I understand where
23 you're coming from. However, you know, you did
24 talk about wiggle room a little bit. Now, we're
25 talking adaptive management here. I mean, and you

Santa Felicia Hydroelectric Project
March 4, 2008

1 even kind of -- I don't know if you used that term
2 in yours, in the -- I think you did.

3 With adaptive management there has to be
4 some wiggle room or it's not adaptive.

5 MS. KNITE: But generally speaking, good
6 adaptive management has sideboards.

7 MR. WELCH: Yes.

8 MS. KNITE: So it's adaptive within --

9 MR. WELCH: That's right.

10 MS. KNITE: -- a specific framework.

11 MR. WELCH: Right.

12 MS. KNITE: And so leaving anything
13 open-ended is where I think, if I'm -- I hope I'm
14 not speaking out of turn, Anthony, is where I can
15 see him having concerns and NMFS having concerns,
16 is that there's a little bit too much open-ended.
17 It doesn't connect the dots and specify an outcome
18 clearly enough.

19 MR. WELCH: Well, that's funny because
20 we -- and we don't like open-endedness, either, we
21 like the sideboards. They like the sideboards.
22 And one of their criticisms of them is your thing
23 didn't have any sideboards on it.

24 (Laughter.)

25 MR. DICKENSON: It works both ways.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MS. KNITE: Yes, I --

2 (Parties speaking simultaneously.)

3 MR. WELCH: You know what I'm saying?

4 It does work both ways.

5 MR. DICKENSON: -- in the project, so --

6 MR. WELCH: And, you know, I agree,
7 defining whether your sideboards are here or
8 they're here, that's the challenge. But that's
9 what we would like to get to, you know.

10 But we don't know what the breadth is
11 here. And so you need to give us a little bit of
12 wiggle room so you can get there. And I think
13 that -- I see the RPA doing that. I see our
14 proposal doing that.

15 I just think, Anthony, we are so close
16 on this thing. And really, you've not convinced
17 me that we're like you're over here and we're over
18 here. I think it's like you're here and we're
19 here.

20 MR. SPINA: Well, maybe -- I think this
21 is a great discussion. I'm wondering if it might
22 be more appropriate to have these kinds of
23 discussions later on when we get to that agenda
24 item. Because if it's true that we really are not
25 far away, then I suppose that element of the

Santa Felicia Hydroelectric Project
March 4, 2008

1 agenda item we can move through relatively
2 quickly.

3 But I'm open to how everyone wants to
4 proceed right now. If you want to continue to
5 discuss --

6 MR. WELCH: Well, yeah, I think it was
7 good that we went, you know, we took a little
8 thread off a little bit, but I think it was good
9 that we kind of went there. Because, I think, as
10 you said, it's going to set, sort of set the stage
11 for our later comment.

12 But, they wanted to hear another
13 example. I think you've given another example.
14 So, feel free to move on if it's all right with
15 everyone to move on to the next. So that was our
16 first one.

17 MR. SPINA: Yeah, number one.

18 MR. WELCH: All right, number one done.

19 MR. SPINA: So I believe that --

20 MR. WELCH: Let's go to number two.

21 MR. SPINA: -- another comment of FERC's
22 that we believe was fairly substantive, and that
23 we've heard more than once is this genetics, this
24 genetics question.

25 And I would say that more specifically

Santa Felicia Hydroelectric Project
March 4, 2008

1 it's this whole question about the historical
2 presence of steelhead. That's really the heart of
3 the issue. It's not, you know, the genetics is
4 kind of one mechanism to help some understand the
5 historical presence of this critter.

6 And really the historical presence of
7 this critter, in my view, has two components, you
8 know. Getting at information that will allow
9 everyone to understand the historical presence,
10 has two bits of information I see. One is
11 genetics, one is just ecological information.

12 With regard to the genetics, the draft
13 opinion did cite a study, it cited several
14 studies, I believe, but one in particular was a
15 study by Girman and Garza in '06. And we did
16 receive United's comments and FERC on that study.

17 We did kick this issue back to our
18 science center to get some additional
19 clarification. And we did get a response from our
20 center. And that response included new findings
21 from analyses they performed on the museum
22 specimens from the Smithsonian Institute.

23 And those specimens are particularly
24 intriguing because they were taken back in the
25 late 1800s, early 1900s, is my understanding. And

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 overall, if I may just summarize the response of
2 our science center.

3 They state, they reiterate that the
4 genetic evidence is unequivocal that the O. Mykiss
5 population inhabiting Piru Creek are of primary
6 steelhead ancestry; and the ecological evidence
7 for steelhead presence in Piru Creek is similarly
8 strong.

9 MR. DICKENSON: In answer, when we asked
10 about the Smithsonian sample their answer to us
11 was that they weren't from the region; they did
12 not yield genetic material usable for micro
13 satellite. They did yield mitochondrial. There
14 are not any results. It's completely unrelated to
15 the study of fish populations from basins far to
16 the north.

17 So they're saying there was no Piru or
18 Santa Clara samples, there weren't any. So how --
19 that's a --

20 MR. SPINA: Well, what they're -- my
21 understanding is what they did is they --

22 MR. DICKENSON: -- I mean the answer --
23 I'm sorry.

24 MR. SPINA: No, that's all right. My
25 understanding is they completed those analyses

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 related to the historical specimens. And they
2 used that information to complement the existing
3 extensive data they have on the southern
4 Cal i forni a popul ati ons.

5 My sense of what they did is that the
6 historical specimens represented some stock that
7 they could use to provide further information that
8 would either corroborate or refute their findings.

9 But what they find is that those
10 findings from the historical specimens corroborate
11 their findings. That's my sense.

12 MR. DICKENSON: Okay, we'd love to look
13 at it.

14 MR. SPINA: Yeah, and that information
15 will be included with the final biological opinion
16 presented in the appendix most certainly.

17 MR. DICKENSON: Is there a chance we can
18 review that part of it before you finalize it and
19 comment on it?

20 We have a wildlife population geneticist
21 that has reviewed and looked at this stuff and
22 that forms the basis of some of our comments. And
23 so this is new information. I think we would like
24 the opportunity to comment on it before you put it
25 in a final document that's going to affect us for

Santa Felicia Hydroelectric Project
March 4, 2008

1 30 years.

2 MR. SPINA: Well, let me just add
3 something here before Craig responds, and that is
4 you know, the one new thing you'll see is another
5 document from our science center. A lot of what
6 they're saying is just reiterating a lot of the
7 points they've made in the past.

8 They do provide some additional
9 discussion, if you will; and they do reference the
10 museum specimens. They don't, you know,
11 specifically describe their findings related to
12 those specimens. That is contained in a separate
13 report.

14 So I just wanted to let you know what
15 constitutes their response. And they have
16 provided that final findings report as an
17 attachment to their response.

18 MR. WELCH: Is that report available
19 separately from this consultation? I mean does
20 the Southwest Center put out their own --

21 MR. SPINA: Is it public --

22 MR. WELCH: -- document list on their
23 website or something?

24 MR. SPINA: Well, they do put out a
25 publication list on their website, but this

Santa Felicia Hydroelectric Project
March 4, 2008

1 specific report does not appear to be a technical
2 memorandum. I would have to check to find out if
3 this is public information.

4 I guess if you're asking if you could
5 see the response that we got from the Science
6 Center, if that's really what the question is.
7 You want to see that information.

8 MR. WELCH: I guess that's the
9 bottomline there, yeah.

10 MR. SPINA: Yeah. I mean I certainly
11 don't have a problem with that. I guess I would
12 say that our intent is to -- what I've heard
13 Anthony describe it, want to use that to revise
14 the draft biological opinion, include it as an
15 appendix.

16 You know, I don't think any of us want
17 to see the whole schedule for this thing being
18 delayed interminably. If there's some way to get
19 to a draft opinion that everybody can take a look
20 at and see all this information in the context of
21 that draft revised opinion, you know, that would -
22 - or draft final opinion, whatever you want to
23 call it. Because that would make more sense to
24 me.

25 But, so what I can see happening is --

Santa Felicia Hydroelectric Project
March 4, 2008

1 there's nothing -- I'm not trying to hide
2 anything. You guys take a look at it, you don't
3 agree with something, then we get into a mode
4 where we're going back and forth.

5 MR. WELCH: Yeah, yeah.

6 MR. SPINA: That interferes with the
7 process.

8 MR. DICKENSON: But on the same token
9 Anthony just described something that is night-
10 and-day different than what was already described
11 in your existing -- so you're putting in a new
12 piece of information.

13 MR. SPINA: I don't mean this with any
14 disrespect, John. I suppose I would clarify what
15 you just said by saying I don't believe what
16 they're saying is really new. They're saying the
17 same thing. And that is that steel head got up
18 there historically. And they're still, now
19 they're just not listed, you know. They're not
20 saying that last part, that's what I'm saying
21 because I know you're concerned about the
22 terminology.

23 But, functionally they're not saying
24 anything new. I just wanted to make that
25 clarification for everyone's benefit.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. MITCHNICK: A question on the
2 listing. The population is listed up until the
3 dam. And the populations above are not listed.
4 If fish get up there what sort of a legal status
5 are those fish once they get up there?

6 MS. RUVELAS: You mean if they get past
7 the dam?

8 MR. MITCHNICK: Right.

9 MS. RUVELAS: They would still be a
10 listed fish.

11 MR. MITCHNICK: Okay, --

12 MS. RUVELAS: It's basically --

13 MR. WELCH: Would you have to change the
14 listing then?

15 MR. DICKENSON: No.

16 MS. KNITE: Isn't the ones that don't
17 count the ones that are landlocked? If they have
18 passage then they are not --

19 MR. DICKENSON: Right.

20 MS. KNITE: -- disqualified. They're
21 only disqualified if they're completely landlocked
22 and they can't pass back and forth.

23 MR. MITCHNICK: I appreciate that.

24 MR. HOWARD: Yeah, but that still has
25 an -- that was an interesting question still.

Santa Felicia Hydroelectric Project
March 4, 2008

1 What happens under an ESA when you finally get
2 passage. Because right now it's based at the base
3 of that dam and I don't know if there's been too
4 many projects that have gotten passage to go over
5 those areas where critical habitat stops.

6 When you do finally get passage over
7 those, how does that affect the listed --

8 MR. WINGERT: Well, a listed fish is a
9 listed fish wherever it goes.

10 MR. HOWARD: Right, so still within the
11 listing let's say there was passage over Piru Dam.
12 The listing would still say that all fish below
13 Piru Dam are listed; all fish above aren't because
14 they're considered landlocked.

15 But we're just going to assume now that
16 we have some migratory O. Mykiss up there,
17 steelhead, and that now there's some kind of
18 protection up there. It gets confusing. You know
19 what I'm saying.

20 MR. SPINA: Well, I don't believe we're
21 assuming that there's historical steelhead.
22 There's evidence indicates there were and there
23 are, but --

24 MR. HOWARD: No, I understand --

25 (Parties speaking simultaneously.)

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. SPINA: -- listing. We're not
2 saying that those fish are now protected.

3 MR. HOWARD: Right.

4 MR. SPINA: The listing decision extends
5 to the base of Santa Felicia Dam; and it only
6 covers the -- O. Mykiss.

7 MS. RUVELAS: Once they get passage --

8 MR. SPINA: Once they do get past it --

9 (Parties speaking simultaneously.)

10 MR. WINGERT: -- they have protected
11 status no matter where they go. They have
12 protected status when they go out in the ocean.
13 They have protected status if they go to some
14 other water --

15 MR. HOWARD: So then does all O. Mykiss
16 above Piru Dam, you know, under this situation
17 we're talking about, --

18 MR. WINGERT: I would say no.

19 MR. HOWARD: -- become listed?

20 MR. WINGERT: I would say that's not the
21 case.

22 MR. HOWARD: Okay.

23 MR. WINGERT: We'd have a kind of a
24 commingled population up there -- you've got
25 O. Mykiss above the dam, you know, forgive me for

Santa Felicia Hydroelectric Project
March 4, 2008

1 speaking out of turn, you've got residualized
2 0. Mykiss up there -- I think that's our view --
3 that are of native origin that are derived from
4 steelhead. I think that's what we all think.

5 Yes, there have been fish planted up
6 there, but I don't think that's ever taken. And
7 there's plenty of evidence up and down the west
8 coast that tends to show that when you have
9 hatchery fish planted on top of native populations
10 they tend to not intergress much.

11 And maybe there's debate about that, but
12 that's, I think, our view of the situation up
13 there. Still, those are residualized fish;
14 they're not part of the listed administrative
15 unit.

16 But if you did have, you know, part of
17 the -- just let's say anadromous fish that are
18 currently listed that made it above the dam, then
19 they would be up there commingled with fish that,
20 in my view, as I would define it, are not listed
21 still. You've got those residualized fish.

22 But once they begin to intermingle and
23 breed, if they did that, then you, in theory,
24 would have kind of expanded listed population.

25 MR. WELCH: So why was it, I mean

Santa Felicia Hydroelectric Project
March 4, 2008

1 hindsight is 20/20, but when you --

2 MR. WINGERT: Why weren't they listed?

3 MR. WELCH: Yeah. How come you didn't
4 do this kind of -- I mean didn't it occur to you
5 to do this kind analysis when you were working on
6 the listings? Or is that just something you just
7 never got to, or --

8 MR. WINGERT: I, you know, it's a very
9 complicated, long, politically charged story. So,
10 it --

11 MR. WELCH: Still is.

12 (Laughter.)

13 MR. WINGERT: It is, yeah. But it had a
14 lot to do with the Fish and Wildlife Service's
15 views and debates between Commerce and Interior
16 about who had authority over let's just say non-
17 anadromous forms of O. Mykiss. O. Mykiss is, you
18 know, we call them steelhead, we call them rainbow
19 trout, call them all sorts of different things.
20 But it's a polymorphic species, it does a lot of
21 different things.

22 The National Marine Fisheries Service
23 has got authority over the anadromous forms. Fish
24 and Wildlife Service is -- that they have the
25 authority over the resident form. This has been

Santa Felicia Hydroelectric Project
March 4, 2008

1 debated and kicked around back and forth.

2 And so for pragmatic reasons we've made
3 some of these decisions. I think if you spoke to
4 the biologists, if you spoke to our scientists,
5 and many other folks, you know, think we, you
6 know, based on strictly biological reasons, you do
7 what you suggested we would have defined the
8 O. Mykiss, you know, the issue or distinct
9 population segment to include some of these areas
10 where you had residualized fish.

11 But there were a lot of reasons, as I
12 say, that have to do with the history and the
13 debate between ourselves and the Fish and Wildlife
14 Service. It didn't lead to that determination.

15 MS. WISEHART: Well, I guess I'm
16 confused as to why we're pushing so hard to move
17 this consultation above the dam where there is no
18 listed species.

19 MR. WINGERT: It's got more to do with
20 the historical nature of the O. Mykiss population
21 in that watershed. I mean Anthony should probably
22 be speaking to this, but we certainly believe that
23 steelhead, before there was a dam, whether it was
24 every year or periodically, went up into the upper
25 part of that watershed.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. DICKENSON: And how periodically is
2 enough? Because there are residualized
3 populations in the eastern Santa Clara Basin, in
4 the canyon and so forth. But you don't expect to
5 have a steelhead run come from, and I believe
6 that's the nature of Piru watershed, being very
7 dry with a percolative barrier that was only
8 crossable on the average once every six or ten
9 years.

10 And Anthony's chuckling, but I mean
11 there's --

12 (Parties speaking simultaneously.)

13 MR. SPINA: I'm not chuckling, I'm
14 smiling. I don't actually -- I don't know those
15 technical questions about how frequent --

16 MR. WINGERT: So, I guess my thing is
17 isn't it true, let me just ask the biological
18 question, isn't it true that all resident trout
19 populations are somewhere, in ecological time,
20 descended from steelhead. That's how they
21 expanded their range. You don't know where
22 there's some core rainbow populations up here.
23 It's all coming from the ocean, in nature, natural
24 rainbow populations.

25 MR. DICKENSON: Is that United's current

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 position, or has that been their -- I'm sorry,
2 because --

3 MR. SPINA: Yeah, no, no, this is our
4 understanding. I'm asking you, as a --

5 MR. SPINA: Because that's not reflected
6 in the comments that we got from United. I mean
7 if that was really the position --

8 MR. DICKENSON: No, no, no, yes, it was.
9 Where we talk about, I mean, tongue-in-cheek we
10 say, you know, two steelheads sometime since the
11 Pleistocene create a resident population. Is that
12 something that you practically are going to try to
13 re-establish.

14 MR. SPINA: Well, okay, I'm grateful for
15 your question, Dana, and I completely understand
16 your concern about that. And I think if I address
17 that that might help with some of this other
18 discussion.

19 It's not that NMFS is attempting in any
20 way to extend the consultation above the dam.
21 What we're doing is we are required to assess the
22 effects of a proposed action on a listed species
23 and their habitat.

24 MS. WISEHART: Help me with the proposed
25 action then.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. SPINA: Okay.

2 MS. WISEHART: What is the proposed
3 action?

4 MR. SPINA: I defer to Timothy to tell
5 us exactly what the proposed action is. I don't
6 think it's appropriate for me to describe their
7 proposed action.

8 MR. WELCH: We have 12 -- the proposed
9 action is essentially the relicensing of the Santa
10 Felicia project and the terms and conditions as
11 they pertain to steelhead that we have recommended
12 to be in the license.

13 MS. WISEHART: Okay.

14 MR. SPINA: And so functionally that
15 means that the operations of Santa Felicia Dam
16 would extend into the future.

17 MR. WELCH: Yes. If the Commission
18 grants the license.

19 MR. SPINA: For 50 years, right?

20 MR. WELCH: Thirty to 50 years. It's up
21 to the Commission.

22 MR. SPINA: So, because of that, because
23 the operations of the dam are going to extend into
24 the future then, we have to consider the related
25 effects of that on this critter.

Santa Felicia Hydroelectric Project
March 4, 2008

1 So one of the effects of the operations
2 of Santa Felicia Dam is that it blocks steel head
3 from historical spawning and rearing habitat.

4 And so we then need to consider the
5 effect of precluding this critter from that
6 habitat. What is the effect of the habitat loss
7 and the habitat fragmentation. Habitat
8 fragmentation is a term that refers to basically
9 splitting the habitat into pieces, or breaking it
10 into pieces.

11 And so when we consider the effects of
12 habitat loss and habitat fragmentation, that gets
13 us to a certain point where we, among other
14 things, consider the importance of that historical
15 habitat and the role of that habitat in the long-
16 term survival of the species and the recovery
17 potential.

18 So that automatically gets us to
19 considering these kinds of issues, the habitat,
20 getting the critter back up there and those kinds
21 of things.

22 MS. WISEHART: Okay, I understand that
23 part. So, our first mission then should be to
24 figure out how many fish use that habitat, I would
25 think.

Santa Fel i ci a Hydroel ectric Project
March 4, 2008

1 MR. SPINA: Why do you believe that's
2 the necessary first step?

3 MS. WISEHART: Well, because if you are
4 asking the tax-paying public to spend a bunch of
5 money, they ought to be convinced that there's a
6 reason --

7 MR. SPINA: Well, let me ask you this
8 question. Why not consider the amount of habitat
9 that's up there, rather than --

10 MS. WISEHART: Well, yeah, there may be
11 tons of habitat, but if nobody wants to use it --

12 MR. SPINA: Well, what's your basis for
13 saying no fish would want to use --

14 MS. WISEHART: I have no basis. Do you
15 have a basis to say they do?

16 MR. SPINA: Yeah, we do have a basis to
17 say that they historically got up there --

18 MS. WISEHART: Maybe one or two. And is
19 that --

20 MR. SPINA: What's your basis for saying
21 one or two? I don't mean -- I'm just trying to
22 understand --

23 MS. WISEHART: We don't know, that's the
24 issue.

25 MR. WELCH: I think we're talking two

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 different things here.

2 MS. WISEHART: We don't know.

3 MR. WELCH: We're talking two different
4 things here.

5 MR. WELCH: Yeah.

6 MS. WISEHART: And if you can show me
7 that, you know, there are lots of fish that want
8 to go past that dam, by golly, I told my friend
9 here, I'd be standing there helping them get
10 there.

11 MR. WELCH: I think it's not so much
12 that they're -- I mean I would agree with you, you
13 know, historically, we pointed out in our EA,
14 there's not steelhead in the traditional sense
15 banging their noses against Santa Fel i c i a Dam. No
16 doubt about that.

17 But, --

18 MR. PETERS: Tim, --

19 MR. WELCH: -- I know --

20 MR. PETERS: -- Phil from Washington.

21 The speakers are not always i denti fyi ng
22 themsel ves, so for us that are on the telephone
23 it's somewhat di ffi cul t to follow who's presenti ng
24 what posi ti on.

25 MR. WELCH: Okay, Phil.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. PETERS: Thank you.

2 MR. WELCH: It's me --

3 (Laughter.)

4 MR. WELCH: -- your client. And I'm
5 just trying to clarify -- I'm just trying to
6 clarify things.

7 But what they're saying, and this is
8 something we haven't faced before, at least at
9 FERC that I'm aware of, that there is this
10 population of rainbow trout, O. Mykiss, whatever
11 you want to call them, that has this anadromous
12 component to it.

13 So there are, quote, steel head, above
14 the dam already and utilizing that habitat. And I
15 think what I'm hearing NMFS saying is that we need
16 to protect those fish, as well, because they are
17 listed. They are already up there.

18 And so -- am I speaking correctly? But
19 I think the issue here is, or the debate is the
20 historical nature of those fish. What we're
21 debating is are they truly steel head.

22 Now NMFS has sort of, you know,
23 presented their genetic analysis, and you have
24 sort of -- there's counter-arguments kind of going
25 both ways here. And my understanding is that the

Santa Felicia Hydroelectric Project
March 4, 2008

1 Southwest Fishery Center has sort of, once again,
2 you'd said that they'd sort of reiterated what
3 they said before. But then you also said that
4 they did it based on some new information using
5 some fish from out of the Smithsonian Museum.

6 MR. SPINA: Specifically my
7 understanding is those samples complemented the
8 past analyses. So, our -- I'm sorry, go ahead.

9 MR. HYTREK: Sorry. Let me just try to
10 clarify one point that I thought I heard you say
11 before we move on. And you correct me if I'm
12 wrong, Anthony.

13 But, it's not necessarily saying that
14 the fish up there currently right now above the
15 dam, NMFS is not saying those are listed fish.
16 They're saying that the fact that there are fish
17 up there that are derived from steelhead provides
18 evidence that there is habitat up there that the
19 currently listed fish could use. The fish that
20 are currently listed that are blocked right now at
21 Santa Felicia Dam.

22 And that's what the biological opinion,
23 that's what the RPA calls for, is measures to
24 provide passage for those currently listed fish,
25 the ones that are blocked at Santa Felicia Dam, to

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 get up and use that habitat. That's part of the
2 RPA.

3 MS. RUVELAS: And we can't ask the
4 question of how many are there today who would
5 then go up there and start using the new habitat.
6 Because, in part, we have very few of them today;
7 that's why they're on this endangered species
8 list.

9 We have very few of them today because
10 not only the physical structure of the blockage,
11 but the flows that have been going on in Piru, in
12 the Santa Clara River, you know, all the way down
13 to the mouth.

14 So you have a species, an anadromous
15 species that's currently at a very low level.
16 This is one part of the need for allowing them to
17 continue to persist in that watershed, as well as
18 to start the process of recovery.

19 So, I understand your concern, Dana,
20 because people are going to want to know that. If
21 we're going to spend millions of dollars doing
22 this, how many fish could we get. You know,
23 there's millions, or each one is a \$2 million, you
24 know, fish. I completely understand that.

25 It's just, we can't do it on the basis

Santa Felicia Hydroelectric Project
March 4, 2008

1 of how many have we got in there today, because
2 how many we have there today is an artifact of
3 kind of a conditioned level system as it's been,
4 you know, in the last decade --

5 MR. SWEIGER: This is Mike Sweiger on
6 the phone. Could I ask a question?

7 MR. WELCH: Go ahead, Mike.

8 MR. SWEIGER: You know, for -- I guess,
9 primarily, going back to I think a point that Tim
10 made, if you had salmon, you know, leaping against
11 the dam, and the dam was a barrier to the salmon,
12 who would otherwise be, you know, migrating
13 upstream, that's one thing.

14 But my understanding is that's not the
15 situation we have here. And so I understand that
16 habitat conditions below the dam are also
17 something you're looking at, and that you believe
18 influence whether, you know, how far up the salmon
19 are going to come.

20 But, I mean isn't there at least a
21 timing question about, you know, about when it
22 would be the right time to put in passage to allow
23 fish that are actually in the river and being
24 actively blocked by the dam, as opposed to fish
25 that you think ought to be there if it weren't for

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 downstream conditions.

2 I don't know if that's very clear.

3 MR. WELCH: Yeah, I think that that's
4 definitely an issue. The whole timing issue is, I
5 think, something that we need to clarify. I
6 appreciate your clarification there. That helps
7 me. You're right, I wasn't -- I didn't mean to
8 refer to that, those fish, themselves, as listed,
9 but that was a good clarification.

10 But the whole timing issue -- this is
11 Tim talking -- the whole timing issue is something
12 that I think we need to tackle. Hopefully maybe
13 this afternoon when we talk a little bit more
14 about the RPA.

15 I got a couple of items related back to
16 the genetic study. We asked the specific question
17 in our comments. We requested the final B0
18 identify the sources and strains of the 94,000
19 steelhead that were stocked in Piru Creek between
20 1915 and 1938, because that seemed to be sort of
21 the crux of the argument.

22 And I'm wondering, is that something
23 that the Southwest Fishery Center has now tackled.
24 Or is that one of those questions that we might
25 not be able to get an answer to?

Santa Felicia Hydroelectric Project
March 4, 2008

1 Are you looking at our comments?

2 MR. SPINA: Yeah, I'm trying to --

3 MR. WELCH: It's on page -- top of page
4 3, the paragraph starting with "Therefore, before
5 requiring implementing of cost efficient passage."

6 MR. SPINA: Well, the biological
7 opinion, I believe, makes general reference to the
8 stocked fish. And references the information that
9 United has provided to the administrative record,
10 which, itself, lists those fish.

11 So I'm not exactly sure if that
12 addresses this request.

13 MS. RUVELAS: I think he's wondering if
14 the Science Center ever said, here's where we
15 believe the other 92,000 fish come from.

16 MR. WELCH: That's right.

17 MS. RUVELAS: I guess I don't know if
18 the Center was able to address it, since I haven't
19 read their comments. But, most likely they would
20 have to infer, if there were no documents or
21 records, they'd have to infer from where were the
22 common sources of hatchery fish in that time. If
23 there were even sources in southern California
24 that were producing enough fish for doing that.

25 MR. WELCH: Yeah, because we thought,

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 you know, -- for us that was sort of the whole
2 crux of the argument that sort of created the
3 uncertainty for us on the genetic analysis.

4 MS. RUVELAS: If the other 92,000 fish
5 came from another southern California stock within
6 what's now the Southern California DPS, they still
7 would have the same genetic lineage that led to
8 the steelhead we have today, too. So they would
9 all still be family members.

10 MR. DICKENSON: And or conversely, if
11 the entire ESU was imprinted with the stocking
12 from northern California fish, those markers might
13 be carried out to today.

14 MS. RUVELAS: Yeah. I don't know that
15 there's any evidence that would show that the
16 whole area --

17 MR. WELCH: Well, I don't know. I mean
18 that's what we're asking.

19 MS. RUVELAS: -- black helicopters 100
20 years ago.

21 MR. WELCH: Well, I don't know.

22 MR. SPINA: My general response is that
23 the Science Center did a great job in addressing
24 this and similar comments, where they may have not
25 specifically identified where the other 92,000

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 fish. But they may have discussed the
2 relationship to their findings to other stocks of
3 steel head hatchery and indigenous.

4 So, I --

5 MR. DICKENSON: You need an answer to
6 the one thing here. Dr. Garza's saying the
7 stocking activities described by United are not
8 unique to the Santa Clara River; and similar fish
9 releases has occurred in nearly every major
10 coastal river basin in California.

11 MS. RUVELAS: Oh, yeah. No, I
12 understand that. But as to whether or not they
13 created runs that would have lasted until this
14 day, that's what I'm --

15 MR. DICKENSON: Oh, I don't think they
16 have to run to carry the genetics. They can carry
17 the genetics --

18 MS. RUVELAS: Thanks, John.

19 MR. SPINA: Yeah, and I think this is a
20 good segue into the -- if you remember earlier on
21 I talked about two components of this issue about
22 historical presence of the genetics and the
23 ecological information.

24 And I think John and Penny's exchange
25 here is a good segue into that discussion about

Santa Felicia Hydroelectric Project
March 4, 2008

1 the ecological information.

2 But I propose before we start that that
3 maybe we can take a ten-minute break so some of us
4 can get up and stretch, if that would be okay?

5 MR. WELCH: Is that all right with
6 everybody?

7 (Affirmative replies.)

8 MR. WELCH: Okay, let's reconvene at ten
9 of.

10 (Brief recess.)

11 MR. WELCH: What we're hearing now is
12 NMFS is talking about an idea that they had with
13 the RPA. So, what they want to know and what I
14 want to know is do you guys want to still hear
15 more about how they addressed your comments?

16 MS. WISEHART: Why don't we just cut to
17 the chase.

18 MR. WELCH: Or do you want to just cut
19 to the chase?

20 MS. WISEHART: Yes.

21 MR. WELCH: Okay. I will go report
22 that.

23 MS. KNITE: I thought I'd support that
24 notion.

25 (Parties speaking simultaneously.)

Santa Felicia Hydroelectric Project
March 4, 2008

1 (Off the record.)

2 MR. WELCH: Okay, we're back on the
3 record. NMFS has just come back and I think we're
4 going to suspend right now our discussion of the
5 comments, per se, and with agreement of all the
6 parties in the room.

7 And I will now turn it over to Anthony
8 to -- we're all sitting on the edge of our chair.
9 Go ahead.

10 MR. SPINA: Well, Dana and I, during the
11 break, had a brief discussion. And we discussed
12 an item that I believe has merit. And so I just
13 wanted to let Dana know that I believe that idea
14 we talked about has merit and I'd like to discuss
15 it today.

16 And I believe it's only natural that we
17 do move on to this item and dispense with a lot of
18 the discussion we were having prior to the break.

19 So, Dana, should I go ahead and --

20 MS. WISEHART: Yes.

21 MR. SPINA: Okay.

22 MS. WISEHART: I will jump in if it
23 veers off of what we discussed.

24 (Laughter.)

25 MR. WELCH: I have no doubt.

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 MR. SPINA: And my understanding of this
2 idea is that if you recall there was three sub-
3 elements to the RPA. One involves water release
4 schedules. And it's my understanding that United
5 is comfortable with that sub-element, if I'm --

6 MS. WISEHART: The one that we developed
7 in the ADR --

8 MR. SPINA: With the exhibit A that
9 they're comfortable with --

10 MR. DICKENSON: We attached to this
11 exhibit to our comments, yeah.

12 MR. WELCH: So the exhibit A would be
13 your release schedule that you would propose?

14 MS. WISEHART: Right.

15 MR. WELCH: Okay.

16 MR. SPINA: And we'll need to talk about
17 that exhibit A.

18 MR. DICKENSON: Refine some --

19 MS. WISEHART: Um-hum.

20 MR. SPINA: Yeah, refining. One of the
21 things that stood out was United's commitment to
22 provide it for only ten years. And, of course,
23 the license can go anywhere from 30 to 50 years,
24 so that's something that made us pause. And we
25 can talk about that --

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. DICKENSON: Okay, when -- either now
2 or whenever --

3 MR. WELCH: Is that right? I didn't see
4 that. Ten years?

5 MR. DICKENSON: Yeah. The idea was that
6 we wanted to open the door to having the fish
7 migrate, and then trap and sample there below the
8 dam and see if we can get fish to come up here.

9 MR. WELCH: Okay, I understand.

10 MR. DICKENSON: And so after ten years
11 it seems like the water resource needs might
12 outweigh that, and who knows what the listing
13 would be like in those days.

14 But anyway, it should be renegotiated
15 after some period of time. I don't know if that's
16 10 or 15 or --

17 MR. WELCH: Okay, I understand. You're
18 on a roll there, Anthony, I didn't want to --

19 MR. SPINA: Yeah, we'll need to talk
20 about that. Just as a placeholder.

21 MR. WELCH: Yeah.

22 MR. SPINA: The other sub-element, one
23 of the other sub-elements involved the geomorphic
24 issue. And my understanding is that United is
25 okay with that sub-element.

Santa Felicia Hydroelectric Project
March 4, 2008

1 The remaining sub-element involves the
2 fish passage feasibility study. The one issue
3 there involves timing. And it's my understanding
4 that United would rather not just proceed outright
5 with providing fish passage without first having
6 the benefit of determining that the critter is
7 actually at the dam, ready to migrate upstream.

8 And so because of that they'd like to
9 have some kind of provision or condition included
10 in that sub-element to allow for that. Is that a
11 fair characterization, Dana?

12 MS. WISEHART: Um-hum.

13 MR. SPINA: My response to Dana was that
14 in NMFS' view we would still need to have in place
15 that fish passage feasibility study, we would need
16 to do all that work upfront, so that when the fish
17 does begin to butt its head against the dam we
18 have all the information we need to make an
19 informed decision of how to proceed in that
20 regard.

21 So, overall, I believe NMFS believes
22 that that proposal has merit. And so we recommend
23 that, you know, at this time we move forward with
24 somehow memorializing this concept in that sub-
25 element of the RPA.

Santa Felicia Hydroelectric Project
March 4, 2008

1 And we recognize, based on our
2 discussion a few moments ago, that there's lots of
3 thinking that needs to go into refining that
4 specific sub-element. Particularly how we're
5 going to condition fish passage; what is going to
6 be the response variable to determine when, you
7 know, an objective is met to get the fish above
8 the dam. So on and so forth.

9 So, in concept we believe that that idea
10 has merit.

11 MR. WELCH: Okay, so what I'm hearing is
12 you want to focus mainly to talk about this timing
13 issue on the fish passage feasibility study.

14 MR. SPINA: Well, I'd say for purposes
15 of today's meeting I believe it would be
16 preferable to focus on the types of language we
17 need to have in place in the sub-element of the
18 RPA to capture this concept.

19 With regard to the specific timing,
20 those --

21 MR. WELCH: The specific numbers, you
22 mean.

23 MR. SPINA: -- those -- we envision that
24 those would be worked out and memorialized in the
25 study that results from the fish passage

Santa Felicia Hydroelectric Project
March 4, 2008

1 feasibility review.

2 It would include a bunch of decision
3 criteria, including criteria and conditions for
4 knowing when certain, you know, conditions have
5 been met to allow us to move forward.

6 MR. WELCH: Um-hum.

7 MR. SPINA: So, I don't see, you know,
8 working out the timing today. I see more
9 reasonable to talk about the language we need to
10 include in this sub-element.

11 MR. WELCH: The mechanism, itself.

12 MR. SPINA: Right. To insure that
13 United is comfortable with that sub-element. To
14 insure that we're comfortable with that sub-
15 element moving forward. And continuing to insure
16 that it will, in fact, make sure the proposed
17 action doesn't result in jeopardy to the species
18 or adverse modification of its habitat.

19 MR. WELCH: Okay. That sounds very
20 palatable to me. Let me just -- just a couple
21 questions pop up in my head.

22 Taking the fish feasibility study aside
23 just for a second, when you talk about the water
24 release schedule. And you said that the exhibit A
25 would be your proposal for that water for the

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 schedule.

2 Not looking for a commitment here, but I
3 mean are there elements in there that we would
4 need to talk about today, as well, if we could get
5 to it? Or is that something like, looks pretty
6 good to us?

7 MR. SPINA: I don't believe we're at the
8 point where we can say affirmatively, yeah, it
9 looks good to us.

10 MR. WELCH: Um-hum.

11 MR. SPINA: We're grateful for it; we
12 acknowledge it. I believe it's close. I just
13 want to have a chance to look at it closely.

14 MR. WELCH: Um-hum.

15 MR. SPINA: There's also this issue
16 about the ten-year duration --

17 MR. WELCH: Yeah, that's right, the ten-
18 year thing, the ten-year thing.

19 MR. SPINA: And we'll need to reconcile
20 that with the -- the permit -- the biological
21 opinion basically has a horizon of the license
22 duration, which is right now we're assuming 50
23 years.

24 So it's problematic if we can only look
25 and point to those flows for a period of ten

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 years, you know. It's just not good.

2 MR. DICKENSON: Okay. Well, but we're
3 open, we're open to negotiate that to whatever
4 the --

5 MR. SPINA: Now, getting back to the
6 speci fic flow magni tudes i denti fied in exhi bit A,
7 the one thing I want to menti on because I suspect
8 United's already thi nking about this, is -- and I
9 have to be deli berately vague here -- but, --

10 MR. WELCH: It's okay to be vague.

11 MR. SPINA: Okay. In the past there's
12 been di scussi ons about the types of flows that
13 woul d be needed for mi grati on of steel head, as
14 well as flows needed for base-fl ow condi ti ons.

15 And there was a signi ficant effort in
16 comi ng up wi th those flows that NMFS was i nvolved
17 i n. And NMFS, at that time, was pleased wi th the
18 flows that had resul ted from that effort.

19 One thing that we've l earned, having
20 gone through --

21 MR. WELCH: I'm sorry, when you say that
22 effort, was that the settle ment talks?

23 MS. WISEHART: The ADR?

24 MR. WELCH: Yeah, the ADR thi ng?

25 MR. SPINA: Well, I don't know that

Santa Felicia Hydroelectric Project
March 4, 2008

1 we're supposed to be that specific --

2 MR. WELCH: Well, no, no, you don't.

3 I'm -- well, okay.

4 MR. DICKENSON: Yeah, they were under
5 confidentiality.

6 MR. WELCH: Maybe I shouldn't -- I
7 didn't mean to put you on the spot there.

8 MR. DICKENSON: Yeah, it's not --

9 MR. WELCH: But is this not the genesis
10 of all this? Wasn't that the genesis of -- all
11 right.

12 MR. DICKENSON: Well, there's
13 confidentiality --

14 (Parties speaking simultaneously.)

15 MR. WELCH: Go ahead, go ahead.

16 MR. SPINA: So, yeah, out of respect and
17 courtesy for everyone involved, --

18 MR. WELCH: Yeah.

19 MR. SPINA: -- it's best that we
20 continue to be vague.

21 MR. WELCH: I will put it out of my
22 head.

23 MR. SPINA: So, one thing that we've
24 learned in moving through this consultation, and
25 becoming intimately acquainted with all the

Santa Felicia Hydroelectric Project
March 4, 2008

1 information available about the effects of the
2 project, about the watershed, steel head and so on
3 and so forth is that we've learned a lot.

4 We learned a lot, a lot more than what
5 we thought we knew at the time of those past
6 discussions. So, please recognize that, if and
7 when in the future we come to United and say,
8 well, it's one flow or this flow, it needs a
9 little bit of attention. I just want you to know
10 that's the reason why we'd be coming back, because
11 we know more now than we did before. And I'm
12 hoping that United can at least understand that.
13 Don't expect you to agree with it, but just
14 understand it.

15 MR. DICKENSON: Well, and indeed, you
16 know, as we understand the hydrology of the system
17 to a pretty high degree, there are probably places
18 where trades can be made in terms of that. So, if
19 you --

20 MR. SPINA: Okay.

21 MR. DICKENSON: -- need more here there
22 might be a place --

23 MR. SPINA: I appreciate that.

24 MR. DICKENSON: -- that needs to drop
25 here and so forth.

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 MR. SPINA: I appreciate it. So, I'm
2 sensi ng --

3 MR. DICKENSON: Through FERC, in the
4 future.

5 MR. WELCH: Okay. You're talking off-
6 li cense stuff.

7 MR. DICKENSON: No, no, --

8 MR. SPINA: No, no, no, no, --

9 MR. DICKENSON: -- no, this is li cense
10 condi ti ons.

11 MR. WELCH: Okay.

12 MR. SPINA: Yeah. And I'm --

13 MR. DICKENSON: Yeah.

14 MR. SPINA: -- heartened to know that
15 Uni ted has opened i t up.

16 MR. DICKENSON: Of course, yeah.

17 MR. SPINA: So, okay.

18 MR. WELCH: The only reason I -- and as
19 I say, I didn't mean to pry into the settlement
20 terri tory -- the only reason I'm saying this is
21 because, you know, this exhibit A is new to FERC,
22 okay.

23 MR. DICKENSON: Correct.

24 MR. WELCH: And, you know, I've gone
25 through i t and I've read i t, but we FERC Staff

Santa Felicia Hydroelectric Project
March 4, 2008

1 were not involved in the effort, whatever that
2 was, with the genesis of this.

3 We will need some sort of -- it would be
4 very helpful if you provide some of the biological
5 basis for how you all came up --

6 MR. DICKENSON: To that end there's a
7 draft circulating that I didn't -- I wasn't
8 comfortable sending that to FERC without Anthony's
9 review. And he's had a chance to look at it, and
10 I don't think he's had time to really --

11 MR. SPINA: I haven't --

12 MR. DICKENSON: -- go into it.

13 MR. SPINA: -- I just quickly scanned
14 the exhibit A. I didn't look at the recent
15 information that United sent. I just haven't had
16 time.

17 MR. DICKENSON: Right, I didn't think
18 you had.

19 MR. WELCH: Well, all I'm saying is --

20 MR. DICKENSON: But there's a memo that
21 describes that.

22 MR. WELCH: -- under our NEPA
23 responsibilities we're going to have to perform
24 some sort of an analysis here. And whatever you
25 guys could give us would make our jobs easier.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. DICKENSON: Are you okay with us
2 filing that document with FERC? Or do you want a
3 chance to look at it first or -- that's the backup
4 to this exhibit. It's the exhibit A --

5 MR. WELCH: Well, could it not be --
6 that analysis or what you're talking about, could
7 that not be in some kind of appendix with the
8 final B0?

9 I mean if, in fact, this concept, as you
10 said, you know, you were going to analyze it in
11 the RPA, as part of the RPA, could not the
12 biological basis for it be included as some sort
13 of appendix?

14 MS. RUVELAS: It certainly could be in
15 that.

16 MR. WELCH: Yeah.

17 MS. RUVELAS: Feels like we're heading
18 towards an opinion that's a thousand pages long
19 now. Because of the EIS. But it certainly --

20 MR. WELCH: I know, you already got
21 the --

22 MS. RUVELAS: It certainly could be in
23 there, but if it's already presented somewhere
24 else, then it doesn't need to be.

25 MR. WELCH: Or you could just -- all

Santa Felicia Hydroelectric Project
March 4, 2008

1 right, I mean, whatever. We're just looking for
2 some way of getting it on the record so we can use
3 it for our analysis purposes, as well.

4 MR. DICKENSON: Anyway, think about it
5 and you could let me know whether -- because I
6 could just efile it anytime in the draft form;
7 it's probably okay in a draft form.

8 MR. WELCH: Sure, I mean if it says --
9 you know, it is on the record and we will probably
10 -- we'll need to cite to something, you know, when
11 we do our analysis. Okay, that was just my first
12 question.

13 So, let's figure out where we're going
14 to go for the rest of the day.

15 MR. SPINA: It seems everyone was in
16 agreement with looking at that sub-element of the
17 RPA and coming up --

18 MR. WELCH: Um-hum.

19 MR. SPINA: -- with language --

20 MR. WELCH: Okay.

21 MR. SPINA: -- that would memorialize
22 this timing concept.

23 MR. WELCH: Do you want to --

24 MS. RUVELAS: Passage timing or the flow
25 timing?

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. SPINA: The passage timing.

2 MR. WELCH: Passage timing.

3 MR. DICKENSON: The flow will be easy to
4 work out.

5 MR. WELCH: We can say that -- we can
6 get through that one -- so, I would like some time
7 to go through that RPA, myself, that particular
8 sub-element, just so I can -- you know, I have
9 read it, but I really want to, you know, zero in
10 and focus on it so I can have an intelligent
11 discussion with you all on it.

12 And then maybe, do we have some sort of
13 a mechanism for typing -- you could set up a board
14 and we could --

15 MR. SPINA: I'm just chuckling
16 because --

17 MR. DICKENSON: Or if there's crayons we
18 can draw --

19 (Laughter.)

20 MR. WELCH: Or whatever. I mean, is
21 there some kind of mechanism --

22 MS. RUVELAS: This is not our board --

23 MR. WELCH: -- we could set up for the
24 afternoon where we could kind of say, how about
25 this, and -- and then we see what it looks like

Santa Felicia Hydroelectric Project
March 4, 2008

1 and --

2 MR. SPINA: Well, obviously we're not
3 currently set up to do that. And --

4 MS. RUVELAS: Well, we have the --

5 MR. WELCH: Could you get set up?

6 MS. RUVELAS: -- technology; I just
7 don't know if that's the point we're going to get
8 to. But maybe --

9 MR. WELCH: Okay.

10 MR. SPINA: Yeah.

11 MR. DICKENSON: And I didn't know --

12 MR. WELCH: Because that's what I
13 thought we were kind of talking about here.

14 Because sometimes, you know, when you're talking
15 about, you know, setting up this language and
16 mechanisms it helps if everybody --

17 MS. WISEHART: Looks at it.

18 MR. WELCH: -- looks at it and
19 understands what's going on. Because sometimes
20 you get into trouble when you start talking, you
21 know, up in the stratosphere and people are like
22 what exactly are you talking about here, you know.

23 MR. SPINA: Well, ideally we'd like to
24 use the existing framework that's defined in the
25 sub-element, --

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: Well, that's fine. I --

2 MR. SPINA: -- but just, you know, --

3 MR. WELCH: No, no, no, I'm not talking
4 about starting with a blank piece of paper.

5 MR. SPINA: Okay.

6 MR. WELCH: I'm talking about taking the
7 sub-element, because I'm sure you have this
8 electronically; sticking it up, you know, how it
9 reads now, up on the board. And then, you know,
10 making some spaces and trying to -- I wasn't
11 trying to say --

12 MR. SPINA: Okay.

13 MR. DICKENSON: Tim, I have another
14 option, and it depends on what people want. But I
15 did a --

16 MR. SPINA: Just so happened --

17 MR. DICKENSON: -- flow chart --

18 (Laughter.)

19 MR. DICKENSON: I did a flow chart of
20 RPA-1, and we read it. So I go through and say
21 what we're supposed to do when and what the times
22 and what the permutations are. And I did a flow
23 chart of that.

24 And if you want maybe we could just make
25 -- if there's a way to make copies, we could hand

Santa Felicia Hydroelectric Project
March 4, 2008

1 this out to everyone. And then we could scribble.

2 MR. WELCH: Was that the fish
3 feasibility study?

4 MR. DICKENSON: Yeah.

5 MR. WELCH: Oh, okay, when you said
6 number one I thought that --

7 MR. DICKENSON: Yeah, that's RPA-1.

8 MR. WELCH: Okay.

9 MR. DICKENSON: Is the fish passage.

10 MR. WELCH: Okay. And so maybe we could
11 -- I don't care. I mean I'd just like
12 something --

13 MR. DICKENSON: -- look at it first.
14 Why don't you take a look at it --

15 MR. WELCH: I'm a visual person and I
16 just need --

17 MR. SPINA: That's fine to look at it
18 again. I just -- if we could focus on making, you
19 know, written changes to that sub-element --

20 MR. WELCH: That's fine with me. That's
21 fine with me. So, would you be able to set up
22 something for the afternoon to make that happen?

23 MR. SPINA: I suppose I could check with
24 Jerry.

25 MS. RUVELAS: On paper or

Santa Felicia Hydroelectric Project
March 4, 2008

1 electronically?

2 MR. WELCH: I think electronically would
3 be --

4 MS. RUVELAS: Sorry, I wasn't --

5 MR. WELCH: -- best for our meeting.

6 MS. RUVELAS: Yeah.

7 MR. SPINA: It's probably going to be a
8 challenge just --

9 MR. DICKENSON: Flip chart, -- a flip
10 chart.

11 (Parties speaking simultaneously.)

12 MR. WELCH: I mean how so?

13 MR. SPINA: We can whiteboard it, yeah.

14 MR. DICKENSON: We can whiteboard it.

15 MR. WELCH: Okay. I just thought the
16 electronic thing would be easy to set up. If you
17 just had a projection machine hooked up to a
18 laptop.

19 MR. SPINA: I can check with --

20 MS. RUVELAS: Yeah, like I said, we have
21 the stuff here; it's just getting it down here and
22 setting it up.

23 MR. SPINA: It would be good to take a
24 lunch break and I can go check on getting that set
25 up and --

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: Okay. If you can't, then
2 we'll do something on the whiteboard.

3 MR. SPINA: Yeah, okay.

4 MR. WELCH: We can pick out certain sub-
5 elements of the sub-elements or something and then
6 we could try that.

7 MR. SPINA: How long of a break do you
8 want to have for lunch?

9 MR. WELCH: Well, what kind of time do
10 you guys need to -- I know --

11 (Parties speaking simultaneously.)

12 MR. WELCH: An hour and a half for
13 lunch? Yeah, I think that would be good.

14 Okay, those of you on the phone, it is
15 now 11:25 Pacific. We will be reconvening at 1:00
16 Pacific time.

17 Does everyone understand on the phone
18 what's going to be happening here?

19 (Parties speaking simultaneously.)

20 MR. WELCH: Okay? Okay. Anthony said,
21 are you still awake?

22 MR. SPEAKER: Yeah, thanks --

23 MR. WELCH: Yeah, I know you're multi-
24 tasking.

25 MR. SPEAKER: Yeah, --

Santa Felicia Hydroelectric Project
March 4, 2008

1 (Parties speaking simultaneously.)

2 MR. WELCH: All right, so we're taking a
3 break now and we'll be reconvening at 1:00 Pacific
4 time.

5 (Whereupon, at 11:25 a.m., the meeting
6 was adjourned, to reconvene at 1:00
7 p.m., this same day.)

8 --oOo--

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Santa Felicia Hydroelectric Project
March 4, 2008

1 AFTERNOON SESSION

2 --oOo--

3 MR. WELCH: We have a quorum now here.
4 So just for those of you on the phone what we have
5 now is RPA-1A is up on the board in an electronic
6 format. And it's preparation and implementation
7 of a plan that will guide the conduct of a
8 steel head passage feasibility assessment.

9 This is what we're going to be focused
10 on this afternoon. Actually it's on page 71 of
11 the draft B0. For those of you following along at
12 home.

13 My understanding is that what we're
14 going to focus on primarily with RPA-1A is the
15 timing, is that correct?

16 MR. DICKENSON: No, I think we're going
17 to be talking about RPA-1A, B and C, correct,
18 Anthony? And the timing of those as they --

19 MR. WELCH: Got' cha.

20 MR. DICKENSON: -- as they flow, right?
21 Because A is just a feasibility analysis. Well, A
22 is developing the feasibility analysis; B is --

23 MR. SPINA: It seems to me that C is
24 really the bread and butter of the --

25 MR. DICKENSON: C is really, yeah.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: Okay.

2 MR. SPINA: -- concern, so the
3 implementation of the preferred --

4 MR. WELCH: Implementation, I got'cha, I
5 got'cha.

6 MR. SPINA: So maybe we could just go
7 straight to that one or --

8 MR. WELCH: Okay. So right now it says
9 within three years from the -- so those of you on
10 the phone we're talking about 1C, preparation of a
11 steelhead passage feasibility report and
12 implementation of the preferred alternative.

13 Within three years from the date of the
14 Commission's issuance of project license to the
15 licensee, the licensee shall prepare and submit a
16 draft feasibility report to NMFS for review and
17 potential agreement from NMFS.

18 MR. DICKENSON: Hold on a second, Tim,
19 if you wouldn't mind. Maybe we could just start
20 going through this whole thing. Maybe we don't
21 need to read it all exactly, but --

22 MR. WELCH: Well, I'm not going to read
23 it. As I turned the page I thought I'm not
24 reading all this.

25 MR. DICKENSON: Okay. But C is the nut

Santa Felicia Hydroelectric Project
March 4, 2008

1 of the thing. But I think if we started with A, I
2 mean we could start with either.

3 One of the things that I found when I
4 gave you that, the other thing I should have
5 pointed out when I showed you that flow chart I
6 made, was that the timelines, the existing
7 timelines that are in here are going to be tough
8 or hard to meet, if even possible, in that if I'm
9 reading this right, after a license is issued if
10 we just add this in six months we have to have a
11 plan. And then you would accept that plan or not.

12 And then regardless of how long it takes
13 to develop that plan, in two and a half years we
14 had to have a final report to you.

15 And I'm wondering if that's one of the
16 timelines we want to discuss here.

17 MR. SPINA: Well, I'm interested to know
18 why you don't believe those timelines can't be
19 adhered to. You know, I'd like to hear what the
20 rationale is.

21 MR. DICKENSON: Okay. Well, I think
22 depending on what -- it depends a lot on what goes
23 into this plan that's developed in A. It's
24 foreseeable that you could develop a plan that
25 would not be possible to complete in two and a

Santa Felicia Hydroelectric Project
March 4, 2008

1 half years, if, for example, you want to receive
2 information regarding a certain climate condition
3 that doesn't happen in those two and a half years.
4 Or in those -- yeah, two and a half years.

5 Or alternatively, if there's components
6 of that that are above the dam, you know, we would
7 have to consult with Fish and Wildlife Service
8 before we monkeyed with that habitat up there that
9 possibly has endangered toads in it. Those kind
10 of things.

11 MR. SPINA: Do those go near the water?

12 MR. DICKENSON: Toads?

13 MR. SPEAKER: Definitely.

14 (Laughter.)

15 MR. DICKENSON: If there's water there.

16 MR. SPINA: I suppose the way we view
17 these timelines, the specific ones referenced in
18 1A is that obviously we believe they're do-able.
19 But my sense is if we do get in these
20 circumstances whether they're predictable or not,
21 if we get in these situations where we believe
22 compliance is not likely, we have a mechanism to
23 deal with that.

24 We deal with that sort of thing all the
25 time in consultations. So we can go back and make

Santa Felicia Hydroelectric Project
March 4, 2008

1 the necessary amendments to make sure that, you
2 know, given that everyone's working in good faith,
3 go back and make the necessary amendments to make
4 sure we're still keeping on track.

5 So, overall we're pretty comfortable
6 with the timelines that are here in 1A. And if
7 there's no strong compelling reason to change
8 them, other than to suggest well, we may not be
9 able to comply with them due to circumstances
10 involving consultations with other agencies or
11 environmental conditions, I would say, well, let's
12 just keep it the way it is.

13 And if we do cross that bridge, if we
14 get to that bridge we'll go ahead and come back
15 and make changes to make sure that United's still
16 in compliance.

17 MR. WELCH: Okay, just remember, though,
18 that, you know, FERC has to grant the extension if
19 there's an extension, time request, FERC has to do
20 that. So, just bear in mind that these will be
21 actually in the license conditions that will be
22 enforceable by FERC.

23 MR. SPINA: Okay, well --

24 MR. WELCH: So, just bear that in mind.

25 MR. SPINA: I mean that sounds basically

Santa Felicia Hydroelectric Project
March 4, 2008

1 procedural. Is that not true? Yeah, okay. So it
2 doesn't sound like it's really insurmountable.

3 MR. WELCH: Well, I'm just looking at
4 under sub-element 1A, sub-element E, task
5 schedules and milestones to monitor and track
6 performance of the assessment of a steel head
7 passage feasibility over time.

8 Is that a task schedule and milestones
9 to monitor the whatever structure? It looks to me
10 like that's a schedule for conducting the
11 assessment. Is that -- am I reading that
12 correctly?

13 MR. SPINA: Yeah, that's -- I believe
14 you're reading that correctly.

15 MR. WELCH: So, does that right there,
16 John, give us sort of the -- it looks like 1A
17 allows -- would allow United to come up with a
18 schedule, subject to everyone's approval, to
19 conduct this.

20 MR. DICKENSON: Okay, well, then that
21 will -- then if you look at C, the first nonbolded
22 sentence says within three years.

23 MR. WELCH: Within three years.

24 MR. DICKENSON: And so that there wrote
25 our schedule for 1A in ink. It inked our schedule

Santa Felicia Hydroelectric Project
March 4, 2008

1 for it, for completion of it.

2 MR. SPINA: I'm sorry, say that again.
3 I was trying to figure out where you were looking
4 here.

5 MR. DICKENSON: Okay, yeah, C, within
6 three years is when we have to have our
7 feasibility report to you. That then fills out
8 the schedule needs of A, or that caps it. That
9 puts it --

10 MR. SPINA: Right, it puts a limit,
11 yeah.

12 MR. WELCH: Well, I'm wondering if a
13 better way of putting it is -- instead of saying
14 within three years, you know, no later than three
15 years.

16 So you're saying that the three years in
17 C sort of drives what they should come up with --

18 MR. DICKENSON: And I'm just saying is
19 that enough, is that --

20 MR. WELCH: So they don't come up with
21 something like, okay, we'll do that in, you know,
22 38 years.

23 MR. DICKENSON: Well, more important is
24 realistically as to what you want us to do.

25 Because you know what it is in here in some

Santa Felicia Hydroelectric Project
March 4, 2008

1 respect and we don't. Can we do what you want us
2 to do in two and a half years, because we won't
3 know what it is we're supposed to do for the first
4 six months.

5 I mean we're going to submit something
6 to you for your approval, and then we can't start
7 on it until you've approved it, according to this.
8 And then once that approval happens, it could
9 be --

10 MR. SPINA: So basically when does the
11 three-year timeframe start.

12 MR. DICKENSON: Yes. And it starts at
13 the license issuance, which we don't do the
14 development until the --

15 MR. SPINA: Um-hum, yeah, I see what
16 you're saying.

17 MR. DICKENSON: Yeah, that's -- there
18 you go. It just isn't enough time.

19 MR. DICKENSON: Yeah, well, I understand
20 that. And I'm personally willing to, you know,
21 come up with some language that provides a
22 sufficient amount of time, that we don't eat up
23 all the time trying to haggle or reach a
24 concurrence over the plan.

25 But at the same time I don't want that

Santa Felicia Hydroelectric Project
March 4, 2008

1 process to carry on. So, you know, if we all --

2 MR. DICKENSON: It's your call.

3 MR. DICKENSON: Yeah, so we're open to
4 considering your suggestions at this point.

5 MR. WELCH: Well, I'm wondering if
6 perhaps the thing to do is, you know, key the
7 first one off the issuance of the license. And
8 then any timeframe that you put in afterwards
9 would key off the previous --

10 MR. DICKENSON: Subsequent milestone.

11 MR. SPINA: Yeah, that --

12 MR. WELCH: Rather than keying C also
13 off the license.

14 MR. DICKENSON: I suppose I would be
15 okay with that. I need to defer to my colleagues
16 and my supervisor about this, as well.

17 But, again my concern is that there
18 would be no disincentive, if you will, if the plan
19 wasn't completed within a certain timeframe.

20 So, to the extent that we can tier
21 compliance incrementally is fine; but ultimately
22 we want to have something in place that says okay,
23 you guys need to either cut bait or fish by this
24 date. Just provides that added incentive for us
25 to collaborate and make decisions in the areas

Santa Felicia Hydroelectric Project
March 4, 2008

1 where there may be some disagreement.

2 MS. RUVELAS: Generally when we have
3 identified the need for the RPA is because we've
4 identified there's some problem that needs to be
5 fixed, or an issue that needs to be addressed.
6 And so the RPA needs to show that it's being dealt
7 with expeditiously and it isn't a sort of long-
8 term or thing that can keep being put off. You
9 know, the solution doesn't keep getting pushed
10 off.

11 So I think that's part of what Anthony
12 is saying here, is put that, you know, within the
13 three years, you know, within five years, within
14 whatever many years, this problem gets addressed.

15 MR. WELCH: And I think you can do that
16 as long as you tee it off of the consecutive
17 milestone, you know. Instead of saying within
18 three years of the date of the Commission's
19 issuance of the project license, it might say,
20 within three years from NMFS' approval of the
21 plan.

22 MR. SPINA: But see, again, this isn't
23 intended to be a criticism of United or any
24 applicant, but what we're concerned about is
25 getting into a situation where, you know, in any

Santa Felicia Hydroelectric Project
March 4, 2008

1 project we're sent something to provide
2 concurrence on, and the document is, for whatever
3 reason, not something that we can concur on.

4 And then there's potentially no
5 motivation to bring it to the point where we can
6 concur on it, for whatever reason. And that
7 process could conceivably continue on without
8 limit.

9 And so that's why I'm saying that, okay,
10 we can tie certain dates to certain things, but at
11 the end we need --

12 MR. WELCH: Yeah.

13 MR. SPINA: -- some firm date that says,
14 okay, --

15 MR. WELCH: I see. I understand.

16 MR. SPINA: -- the plan will be done by
17 three or six months, or whatever, from the date of
18 the license.

19 MR. WELCH: So you want to put some sort
20 of ultimate upper bound --

21 MR. SPINA: Correct.

22 MR. WELCH: -- that it can't go no way,
23 no how past this. And whatever happens in between
24 is like whatever.

25 MR. SPINA: Yeah. If --

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: I mean if you have a total
2 of three years and you get it done within a year,
3 that's fine. If you get it done within two,
4 that's fine. But definitely no how, no later than
5 X.

6 MR. SPINA: Right. And if United thinks
7 that, you know, that whole process of preparing
8 the plan and seeking and acquiring NMFS'
9 concurrence is going to take more than six months,
10 maybe a year, well, then let's talk about that and
11 let's factor that into this schedule.

12 MR. DICKENSON: And that goes back to
13 what I was saying, I'm sort of asking if you have
14 a vision of what you want us to do under this
15 study plan, what actual tasks we need to
16 accomplish.

17 MR. SPINA: I do have a vision --

18 MR. DICKENSON: And is that something
19 we, so it'll be clear --

20 MS. WISEHART: You need to share with
21 us.

22 MR. DICKENSON: -- if we could just put
23 that in here.

24 MR. SPINA: Yeah. I'm sorry, what did
25 you say, John?

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. DICKENSON: Well, I don't know what
2 this entails, right? So I'd be starting cold and
3 sending you something. I'd take a crack at it.
4 I'd take something out of some of our earlier
5 conversations. And modify it to where we think we
6 could do it. And then I'd send it to you.

7 And then you would either like or not
8 like certain aspects of it. And you'd make
9 comments and send it back. We don't know what
10 this is and you do.

11 MR. SPINA: I understand, yeah, I
12 understand.

13 MR. DICKENSON: And so it would be
14 nicer, if that's what you want done in the
15 measure, if it just actually said what it is we're
16 supposed to do, if that's a possibility.

17 MS. RUVELAS: So, for example, you have
18 in here a clear description -- I'm reading from
19 1A, and then B that's kind of mid-paragraph.

20 MR. DICKENSON: Um-hum.

21 MS. RUVELAS: A clear description of
22 science-based investigation of steel head behavior,
23 ecology and habitat requirements, as well as an
24 analysis and a full range of physical steel head
25 passage alternatives, volitional and non-

Santa Felicia Hydroelectric Project
March 4, 2008

1 volitional.

2 So, there, I think is where, Anthony,
3 you're sort of getting at the this is what the
4 plan would encompass is looking at that for them,
5 and then probably still ambiguous or unclear as to
6 well, what about behavior, what about ecology. I
7 mean those --

8 MR. SPINA: Yeah, I completely
9 understand that.

10 MR. WELCH: Yeah.

11 MR. SPINA: I suppose the process that
12 you described to ultimately produce a plan, that's
13 one approach. To me that strikes me as being a
14 little bit inefficient and cumbersome.

15 What I'd much rather do is have a tick-
16 off meeting where we actually identify the
17 specific matrix, the response variables, the
18 methodologies that we want in the plan. Have an
19 all-day work session, if you will, where we're
20 actually outlining what we want in that plan.

21 And then once Steve has a good idea of
22 what's supposed to be in that plan, he can go off,
23 write something up. And I think that would put us
24 much farther along.

25 But overall I do have a vision. I'm not

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 prepared to talk about each little detail I

2 suspect needs to be in there --

3 MR. DICKENSON: No, and that's not what
4 we're here for.

5 MR. SPINA: And I also suspect that that
6 might be a time where if -- I'm not exactly sure
7 about involving Fish and Game. NMFS would favor
8 having Fish and Game involved in those
9 discussions.

10 MR. DICKENSON: We would certainly favor
11 it.

12 MR. SPINA: So that would also be the
13 appropriate time to bring Fish and Game on board
14 and participate in those discussions.

15 MR. DICKENSON: NGOs, too?

16 MS. KNITE: Red-headed stepchild that I
17 am.

18 (Laughter.)

19 MR. DICKENSON: So, okay. All right,
20 that doesn't leave me with what we should do with
21 this in terms of a license condition.

22 MR. SPINA: Well, again, if we think
23 we're going to get a little bit more time let's
24 know that now so that we can make adjustment to
25 that element.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: So, I guess the question is,
2 and maybe this is more a question for Steve, can
3 you come up with all this stuff in six months.

4 MR. HOWARD: Yeah, I don't know about
5 that. Like I say, --

6 MR. WELCH: Six months seems a little
7 short to me --

8 MR. HOWARD: It seems a little short.
9 The kickoff meeting is exactly what John's talking
10 about. I'd love to sit down and have us all hash
11 this out, and then we'll have an idea of the
12 timeframe it's going to take to come up with all
13 these things.

14 MR. SPINA: Okay, I understand that it
15 might be difficult to adequately predict it at
16 this time, but what's your estimate? Eight
17 months, a year?

18 MR. HOWARD: A year.

19 MR. SPINA: So, to produce the draft.
20 And presuming if it reflects accurately the
21 discussions that we've had, it should move through
22 the review swiftly.

23 MR. HOWARD: Good, yeah. And I think
24 this kick-off meeting will help make that
25 timeline, if not make it sooner. With everybody

Santa Felicia Hydroelectric Project
March 4, 2008

1 on board.

2 MR. WELCH: Should we put some language
3 in here about the kick-off meeting?

4 MR. WINGERT: I was going to suggest
5 maybe building some, you know, steps into that
6 process so that, you know, whether you call it a
7 kick-off meeting or whatever, within x number of
8 days there will have been some discussion and, I
9 don't know, scope of the feasibility study is
10 detailed so that we've got those checkpoints along
11 the way. You don't end up whether it's six months
12 or nine months or a year down the road with oh,
13 gee, we need more time.

14 MR. DICKENSON: That's good, let's start
15 with that. Let's say something to the effect that
16 a meeting to discuss the elements of this will be
17 held within, what, 30, 45 days of license
18 issuance.

19 MR. SPINA: Sounds reasonable to me.

20 MR. DICKENSON: Yeah, okay.

21 MR. SPEAKER: Or sooner even.

22 MR. DICKENSON: Yeah.

23 MS. WISEHART: Okay, where are we going
24 to put that?

25 MR. DICKENSON: That's going to go --

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 MS. WISEHART: Up here?

2 MR. WELCH: I think that's one of the --
3 that would just be the first sentence.

4 MR. DICKENSON: Yeah.

5 MR. WELCH: Within 30 days of license
6 issuance the licensee shall convene a meeting with
7 National Marine Fisheries Service, California
8 Department of Fish and Game.

9 MS. WISEHART: Meeting will be --

10 MR. DICKENSON: Scheduled.

11 MS. WISEHART: -- held?

12 MR. DICKENSON: Convened, yeah.

13 MS. WISEHART: Between --

14 MR. WELCH: Among.

15 MS. WISEHART: Among.

16 MR. DICKENSON: Applicant and resource
17 agencies.

18 MS. LARSEN: And NGOs.

19 MR. DICKENSON: And Indians.

20 MS. LARSEN: Indian Tribes.

21 MS. WISEHART: To?

22 MR. DICKENSON: To outline --

23 MS. LARSEN: The scope of work.

24 MR. DICKENSON: Yeah, or the preparation
25 of the study plan.

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 MR. WELCH: The scope, you got to have
2 something in there about scope.

3 MR. SPINA: Yeah.

4 MR. HOWARD: Yeah, speci fic details and
5 scoping on there.

6 MR. SPINA: That's really the issue.

7 MR. HOWARD: Yeah, that's it, yes.

8 MR. HOWARD: Not just the broad scope,
9 speci fic details.

10 MR. DICKENSON: Do you understand where
11 I'm coming from on that is that this could be a
12 little bit of work; it could be the right size of
13 work; or it could be way too much work. And we
14 haven't decided that yet.

15 MR. SPINA: Yeah, after the meeting you
16 may decide, hey, we need to hire a firm to, you
17 know, -- not that Steve can't do it, but he's just
18 so busy doing everything else, that --

19 MR. DICKENSON: Or we'd say we might
20 find, well, what's the point of that, given this.
21 And we might have some --

22 MS. WISEHART: Okay, then do we leave
23 the six months in or --

24 MS. RUVELAS: I would suggest that you
25 leave the six months in as a point at which we

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 might get a draft. I think right now it sort of
2 reads as being -- plan.

3 MR. HOWARD: So that can be one --

4 MR. WELCH: But I think the purpose of
5 the meeting, though, is to -- I mean if you don't
6 know what your scope of analyses are, I think it's
7 diffi cult to put a number in there.

8 MS. RUVELAS: Yeah, we still need to be
9 able to show that we are moving towards solution.

10 MR. WELCH: Well, you know, I understand
11 that, but, you know, --

12 MR. HOWARD: As Craig said, he'd like to
13 see some kind of monuments going as we move
14 through, instead of saying in six years we'll do
15 that.

16 MR. WELCH: You could put some language
17 in there that says, you know, that United and NMFS
18 will agree on, you know, a schedule for conducting
19 the study, or something like that. I mean it
20 would be clear that the schedule for conducting
21 the study would be agreed to at the meeting,
22 subject to NMFS' approval.

23 MS. RUVELAS: But this isn't the
24 schedule for conducting the study. This is
25 getting a study plan written up.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: Understood. That's what I
2 meant to say.

3 Outline the specific details of the
4 study plan and to agree on a schedule for
5 conducting said plan or something like that. For
6 preparing -- starting preparing such plan.

7 MR. HOWARD: Or is it really submittal
8 we're talking about here?

9 MR. SPINA: Thank you.

10 MR. HOWARD: Schedule for submitting a
11 draft plan. Is that what we're looking at, within
12 a certain timeframe.

13 MR. SPINA: We don't need to get too
14 hung up on some of the language here.

15 MS. WISEHART: The concept is --

16 MR. WELCH: Yeah, get the concept --

17 MS. WISEHART: Yeah.

18 MR. SPINA: Yeah, correct. Yeah, thank
19 you.

20 MS. WISEHART: Good enough. This
21 language down here about the six months.

22 MR. HOWARD: Yeah, it sounds like we're
23 going to agree to a schedule --

24 MR. SPINA: We need to have some
25 timeframe.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. HOWARD: So maybe a not-to-exceed
2 thing or something?

3 MR. WELCH: Well, but you've got your --
4 but the thing is, as long as you keep your --

5 MR. SPINA: Again, this pertains to the
6 draft.

7 MR. WELCH: As long as you keep your
8 three years or whatever, you know, your ultimate
9 ultimate, then you're covered. Or you should be
10 covered.

11 MR. SPINA: Well, yeah, again I think it
12 gets back to the issue that John, and perhaps the
13 rest of Uniteds were concerned about, that that
14 process is going to eat up -- could potentially,
15 in theory, eat up that three years.

16 MR. WELCH: Well, I know that. I'm not
17 saying -- I just used it for an example. I don't
18 mean that three is the answer here.

19 MR. SPINA: Okay.

20 MR. WELCH: But x years. Remember we
21 talked about sort of your ultimate cap, so it will
22 never exceed, the whole process will never exceed
23 x.

24 MR. HOWARD: And as I think John was
25 saying, there are some competing species up there,

Santa Felicia Hydroelectric Project
March 4, 2008

1 which I've already talked to Fish and Wildlife
2 about, as far as permitting.

3 And that's going to take some time when
4 we start implementing anything.

5 MR. DICKENSON: Above, yeah.

6 MR. HOWARD: Yeah, above the dam.

7 MR. SPINA: Is it reasonable to expect
8 that a draft time could be produced in eight
9 months? Come on, eight months.

10 MR. HOWARD: I think we can do it.

11 MR. SPINA: Okay, and so what I'm
12 getting --

13 MR. HOWARD: Yeah.

14 MR. SPINA: -- at is how about if we
15 adjust six months to eight months, and factor in
16 that time in the three years limit here.

17 MR. DICKENSON: Yeah, that --

18 MR. SPINA: How would you -- if that is
19 what the concern is.

20 MS. WISEHART: Eight months --

21 MR. DICKENSON: Yeah, no. I'm not so
22 concerned with that as much as the meat of what it
23 is we're going to be doing. And that we'll agree
24 to do some things and then they could expand, you
25 know, in what NMFS wants between what your vision

Santa Felicia Hydroelectric Project
March 4, 2008

1 is now and what your vision is when this thing
2 comes out, might be expanded some, whatever.

3 I'm more interested in limiting our
4 scope of our tasks to specific, do-able, real, on-
5 the-ground functions and --

6 MR. SPINA: Right, and I thought of
7 that, I thought of that as I put ink to paper.
8 And that's, in part, why you see the sideboards
9 here that you do. The sideboards being A through
10 F.

11 MR. DICKENSON: Yeah.

12 MR. SPINA: I mean in our view those
13 define the categories that will guide development
14 of the scope of work.

15 And I know that to some degree these
16 statements are somewhat broad and they can allow a
17 lot of flexibility and creativity. But I can
18 assure you we're not looking to United as a deep
19 pocket. There are very specific items that need
20 to be and should be addressed as far as getting
21 information needed to inform a fish passage
22 feasibility study.

23 So, I understand United's concern, but I
24 want to assure you we're not going to take
25 advantage of anybody and come up with a study

Santa Felicia Hydroelectric Project
March 4, 2008

1 that's not needed. There'll be a basis for
2 everything.

3 So, I don't know if that does you any
4 good --

5 MR. DICKENSON: And to that end you
6 envision, and how would we work this in here, if
7 you think it's a good idea or not, that the
8 results of some investigation might lead you to
9 want additional investigations.

10 MR. SPINA: That is a possibility. I'll
11 acknowledge that. But I suspect we won't know
12 that until after we've started collecting data.
13 And at that time, you know, the study plan will
14 already been defined. And I don't know what that
15 means. I suppose then we'll need to regroup and
16 talk about what we can do.

17 MR. DICKENSON: Yeah, that takes me to
18 what I was getting at there kind of, was, you
19 know, we won't start the study plan until we have
20 this all-encompassing thing all developed, and it
21 is their desire, is it their wisdom. And if we're
22 in agreement with some components of it that we
23 would start doing that, and while we continue to
24 discuss other components of it. Or does it have
25 to be all one study plan package at the --

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 MR. SPINA: Yeah, you know, my
2 preference is that we have a complete singular
3 package. It's just the way I like to do these
4 types of studies, you know.

5 MR. DICKENSON: I'm just throwing that
6 out, yeah.

7 MR. SPINA: Yeah, so --

8 MR. HOWARD: There are problems when you
9 piecemeal studies; some tie into each other.

10 MR. SPINA: Yeah.

11 MR. HOWARD: It's best to have one plan.

12 MR. SPINA: Again, I suppose if we get
13 to a point where -- I'm thinking about the re-
14 initiation, you know. If we're going down a path
15 that United is like, hey, wait a minute, you know,
16 we always have the ability to come back, don't we,
17 and address things.

18 MR. DICKENSON: I believe so.

19 MR. SPINA: Major heartburn, you know.

20 MS. RUVELAS: Yeah, FERC would need to
21 be involved there because it would potentially be
22 affecting their license conditions.

23 MR. WELCH: Oh, yeah, we would be the
24 re-initiator or re-initiatee. How -- I mean you
25 would have to ask us to -- well, we'll work it

Santa Felicia Hydroelectric Project
March 4, 2008

1 out.

2 MR. MITCHNICK: We'd have to go through
3 that route, or if something could be built into
4 the RPA that would allow for --

5 MS. RUVELAS: Right. We can always try
6 to build in adaptive management into the RPA.

7 MR. WELCH: That's what I would -- I
8 would try not to do the re-initiation thing,
9 because that would just introduce a whole new set
10 of procedural hoops that we would have to jump
11 through and --

12 MR. SPINA: The point of my statement
13 was just to provide United with, you know, the
14 added assurance, if you will, that they shouldn't
15 feel trapped. That there's mechanisms to deal
16 with things. And the re-initiation is one such
17 mechanism. The adaptive management, I suppose, is
18 a similar mechanism.

19 MR. MITCHNICK: If I could just talk one
20 minute about sort of how this B0 gets put into the
21 license, and maybe better understand sort of how
22 some of these timeframes, or how Commission
23 involvement may affect some of these timeframes.

24 I mean likely what we will do is, you
25 know, perhaps through an ordering paragraph

Santa Felicia Hydroelectric Project
March 4, 2008

1 basically say the licensee shall implement the
2 RPA.

3 And then sort of as a separate article,
4 we'll go through the RPAs and look at those
5 decision points where the Commission needs to be
6 involved with, whether it's the filing of the
7 final report under 1C or whatever.

8 And so we would set, you know, perhaps
9 30 days after you approve the report they would
10 have to come to us to get our approval. And
11 hopefully that we can turn that around pretty
12 quickly. It's done by a different group.

13 But we would have an article that would
14 target the different requirements and when they
15 need to be filed. Plus also those measures that
16 may require some sort of amendment of license.
17 You know, certainly construction of major
18 facilities is going to require amendment of
19 license.

20 So sort of outline, you know, which
21 measures would require an amendment, that cannot
22 just be done, you know, absent Commission
23 approval.

24 So that's sort of what it's going to
25 look like, you know. We'll require it to be

Santa Felicia Hydroelectric Project
March 4, 2008

1 implemented and then come up with sort of an
2 article that could require certain filings made
3 with us, either for approval or otherwise.

4 MR. WELCH: So we don't really need to
5 mess with inserting ourselves into the RPA, per
6 se, here. We'll just tack on additional
7 requirements for them to come to us on certain
8 things. I guess that's what we're trying to
9 articulate here.

10 MR. DICKENSON: Okay, well, whether it's
11 six months or eight months is fine if Steve thinks
12 we can get that done.

13 MR. SWEIGER: This is Mike. There's a
14 couple of ways that you can put some traditional
15 flag words on there. One would be, and this makes
16 me nervous, because (inaudible) objectives. Makes
17 me nervous because (inaudible) of not even knowing
18 what the objectives are that are going to guide
19 the conduct of the studies. (inaudible) has been
20 worried about settlements, for example.

21 We listed in great detail in the
22 agreement, you know, what the objectives of the
23 study were going to be. Because everybody wanted
24 that comfort to say we're on common ground with
25 what the objectives were going to be.

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 But right now we have no understanding,
2 and certainly no common understanding of what the
3 objectives of this study are. Are they objectives
4 to determine whether you can physically get a fish
5 up there? Are they objectives to determine
6 whether you can establish a self-sustaining
7 population? Do the objectives include doing this
8 in the most economical fashion?

9 I mean what has happened is that, you
10 know, we'll talk about it later.

11 MR. WELCH: We sit in stunned silence,
12 Mi ke.

13 (Laughter.)

14 MR. SWEIGER: Well, I'm just suggesting
15 that one way to get some clarity on this upfront
16 is to identify what we think the objectives are.
17 So we have an understanding.

18 MR. WELCH: Well, I mean the RPA,
19 itself, does say this plan will include a) a clear
20 statement of objectives to guide the conduct of
21 the assessment of steelhead passage facility. So
22 it's almost open to United to define the
23 objectives of the study, you know, subject to the
24 approval of NMFS. So, --

25 MR. SWEIGER: Well, I mean I like the

Santa Felicia Hydroelectric Project
March 4, 2008

1 way that sounds.

2 MR. WELCH: Okay.

3 MR. SWEIGER: Unless you guys have
4 objectives that we don't share, and then we find
5 out later what they are. And therefore, we can't
6 get approval because we don't meet your objective.
7 Are you going to realize that --

8 MR. WELCH: Well, maybe that's -- I mean
9 my understanding is that that's the -- I know you
10 said we'll decide later, but isn't that not the
11 purpose of the kick-off meeting is to get a little
12 bit more specific on things --

13 MR. SWEIGER: No, if the intent of your
14 objective is to get a fish up there at all costs,
15 no. What somebody said earlier, even if it's a \$1
16 million fish, or \$2 million fish. Or, you know,
17 if your envisioning an objective to determine the
18 feasibility of a self-sustaining population.

19 I mean, for example, feasibility,
20 itself, is a vague word. Do we mean if it's
21 physically possible. Do we mean is it feasible
22 from the engineering point of view, or do we mean
23 is it feasible biologically, in that if we did
24 this there's, you know, the possibility of
25 developing a self-sustaining population.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: Well, again, even going to
2 feasibility, the RPA does have some language in
3 there to define feasibility. At least that's what
4 I'm reading. Right?

5 MR. SPINA: Yeah, you're absolutely
6 correct, Tim. You know, with regard to the
7 objectives, item B, which talks about the types of
8 studies, that does give insights into types of
9 things that we have in mind.

10 With regard to the objectives, again
11 that's objectives to guide the study. The purpose
12 of those objectives is to increase the likelihood
13 that the feasibility study would be proper and
14 reliable.

15 This sub-element does specify a
16 requirement to define decision criteria for
17 judging feasibility.

18 MR. WELCH: Okay. John, are you --

19 MR. DICKENSON: Well, yeah, this was
20 where I was headed. And it's both here and then
21 ultimately in C when we get talking about that,
22 big C.

23 The study -- this is probably -- Mike,
24 this is probably what we think is the foundation
25 of what the purpose of the study is, and that's to

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 include, to determine objective decision criteria
2 for judging feasibility. Which is under the --

3 MR. SWEIGER: Yeah.

4 MR. DICKENSON: -- bottom of D there.

5 So, we don't know what that is. I don't know if
6 you know what it is now. Or if we need to conduct
7 this exercise to come up with what those objective
8 criteria for determining feasibility are.

9 MR. SPINA: Well, I know those
10 definitions are out there because they've been
11 used in previous -- my understanding is they've
12 been used in previous fish passage studies.

13 So, we're not looking to reinvent the
14 wheel, so to speak. We're just looking to provide
15 some framework so all the parties know what is
16 feasible and what is not feasible.

17 MR. DICKENSON: Can you provide us with
18 some of those, and they don't necessarily have to
19 go in here, but I'm just -- what do those look
20 like, those criteria, those feasibility criteria?

21 MR. SPINA: Yeah, well, I --

22 MR. DICKENSON: I'm not familiar with
23 them, so --

24 MR. SPINA: Yeah. My intention was that
25 when this plan starts to come together we would

Santa Felicia Hydroelectric Project
March 4, 2008

1 have discussions like this, where people would
2 provide their input of what constitutes
3 feasibility.

4 This is exactly the kind of discussions
5 we had in the past --

6 MR. DICKENSON: Right.

7 MR. SPINA: -- in those forums. And --

8 MR. SWEIGER: Now, the other way to set
9 a (inaudible) also is that agree on a dollar
10 number. In some cases the dollar numbers get a
11 hard cap. In other cases the dollar number has
12 been an estimate to sort of guide people.

13 So that again you have some concept of
14 what you're getting into when you --

15 MR. SPINA: You know, we haven't been
16 inclined to go with cost caps. And I don't see
17 that changing.

18 MR. SWEIGER: Well, again, you know,
19 looking at Oroville, we did (inaudible) have hard
20 caps. So actually some of the fish passage plan
21 had a hard cost cap. That's not in the license.
22 Some of the license articles have what we call
23 soft caps. Which is, you know, basically it's,
24 you know, the parties anticipate that, you know,
25 the cost of the study would not exceed, or the

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 cost of the measure would not exceed.

2 And that's not a hard cap. I mean it's
3 not absolutely binding. And if it costs more, it
4 costs more. Because the reason for having that in
5 there is so that everybody again had a common
6 understanding of sort of the scope of what you
7 were expected to do, rather than a blank check.

8 MR. EDMONSON: This is Steve Edmonson.
9 When the issue of -- caps came up, it was very
10 important to the licensees. But it was one that
11 NMFS had difficulty in raising. As I recall I
12 think the broad comment was the biologists were
13 not trained or -- so that's why we didn't include
14 a hard cost cap (inaudible).

15 MR. SWEIGER: That's true, although
16 there is the -- yeah, I mean, you're right, Steve,
17 although there is an opt-out provision for the
18 length (inaudible) another way of dealing with the
19 sideboard issue.

20 And here, you know, even if you don't
21 agree to a hard cap, I'm just suggesting you think
22 about an estimate. Whether, you know, the parties
23 limit it such that, you know, the cost of those
24 studies would not exceed some dollar figure. So
25 that, you know, we have again some idea of what

Santa Felicia Hydroelectric Project
March 4, 2008

1 you have in mind. If you have anything in mind.

2 Maybe you don't have anything in mind.

3 MR. WELCH: Do you have anything in
4 mind?

5 (Laughter.)

6 MR. SPINA: Well, nothing other than to
7 say we're not inclined to go with a hard cap. The
8 one thing I want to mention here, and I'm looking
9 for it, is -- bear with me here -- I believe it
10 seems to me that in the context of feasibility
11 study cost is going to be an issue.

12 And I suspect, in that regard, there'll
13 be some discussion about cost and what is
14 reasonable and what is unreasonable.

15 But other than that I don't see NMFS
16 agreeing to any kind of a cost cap, because that
17 just creates all sorts of problems.

18 MR. DICKENSON: And that also works in
19 our organization, it relates to the time, as well.
20 That there's more money in longer periods of time
21 because we are charging property owners, well
22 owners taxes to pay for this.

23 MR. WELCH: Could you -- just a
24 suggestion here -- could you perhaps just define
25 feasibility here a little bit more; and just say

Santa Felicia Hydroelectric Project
March 4, 2008

1 something like including objective decision
2 criteria for judging feasibility to include, but
3 not limited to, engineering, cost, fish passage
4 efficiency, you know. Maybe come up with like a
5 little list of things that could be considered in
6 defining feasibility.

7 So that, you know, at least it's sort of
8 memorialized in here that, you know, you will
9 consider those types of things. You know, you
10 could put a whole laundry list in there and just,
11 as I said, you know, to include but not be limited
12 to.

13 MR. DICKENSON: I'm sorry. It is kind
14 of in there, and maybe it's just some rewrite that
15 Anthony would want to try.

16 But under B it talks about science-based
17 investigations, behavior, habitat; and it says
18 analysis full-range of passage alternatives and
19 engineering and cost analyses.

20 MR. WELCH: Where does it say that?

21 MR. DICKENSON: Under B.

22 MS. RUVELAS: The little B.

23 MR. DICKENSON: Little B.

24 MR. WELCH: Um-hum. Oh, yeah, I see
25 that. I see it. Yeah, you're right, you're

Santa Felicia Hydroelectric Project
March 4, 2008

1 right, you may have already done that.

2 MR. DICKENSON: So maybe you could just
3 say after judging feasibility you could say in
4 accordance with the information obtained under
5 item B above or something.

6 MR. WELCH: Yeah.

7 MR. DICKENSON: And, again, we can clean
8 the language up. Does that work for you, Mike?

9 Did we lose him?

10 MR. WELCH: No, he's there. He's
11 probably thinking.

12 MR. SWEIGER: Yeah, I'm going to need
13 a -- yeah, I think that certainly helps.

14 MR. DICKENSON: Okay.

15 MR. WELCH: You guys got a reaction
16 there.

17 MR. HYTREK: No, I think -- yeah, in B
18 you've defined generally what types of feasibility
19 you're looking for. Basically engineering
20 feasibility and biological feasibility. And in D
21 you're just referring back to that. I don't see a
22 problem with that.

23 Is there anything more that you describe
24 in B as far as types of biological feasibility
25 things you would be looking for?

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WINGERT: I was going to raise that
2 issue because clearly there's some discomfort with
3 not having enough specificity. And I just bring
4 this up because I wasn't a part of it. You guys
5 had had previous discussions. I know you talked
6 about some of this stuff.

7 Is there anything that came out of those
8 discussions that we can use to generally better
9 characterize the kinds of studies and the analyses
10 that would be under B, so that they have a greater
11 comfort level with it.

12 And we don't even have to -- we still
13 have to get through this meeting and develop the
14 kind of agreement on a study plan. But if they
15 can at least see the specific kinds of things that
16 we think are critically essential, maybe not
17 limited to those things, but clear elements of the
18 study. If it's based on anything we've discussed
19 before, that you guys discussed before, because
20 that seems to be a good departure point.

21 MR. WELCH: For those of you on the
22 phone, Craig was just talking a little bit about
23 if there's anything out of the, quote, previous
24 discussions that might help inform what we're
25 talking about in regards to feasibility, is that

Santa Felicia Hydroelectric Project
March 4, 2008

1 right?

2 MR. WINGERT: Well, no, actually to B,
3 kind of the scope of what the --

4 MR. WELCH: Well, talking not so much to
5 feasibility but going to what's under little B
6 about the scope of the study. Craig was just
7 asking if there's anything from the previous
8 discussions that could help inform that better.
9 Is that right, Craig?

10 MR. WINGERT: You stated it correctly.

11 MR. DICKENSON: So are those --

12 MS. WISEHART: Could we put hydrology --

13 MR. DICKENSON: Are those the items that
14 you're talking about here?

15 MR. SPINA: Yeah, basically the items we
16 discussed in the past are what I'm thinking of.
17 In terms of like a purpose and objectives. And I
18 think there's been some disagreement about the
19 specific studies, you know, number of samples, the
20 timing and that sort of thing, but --

21 MR. DICKENSON: Kind of devices you
22 would use to --

23 MR. SPINA: Kind of devices, you know,
24 that sort of thing. But overall the concepts,
25 yeah, exactly what I envision here.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. DICKENSON: And that was about 1.4
2 million, was our estimate then.

3 MS. LARSEN: Yeah, but now gas has gone
4 up.

5 MR. WELCH: 2.4 million.

6 MR. SPINA: Actually I understand you
7 build a little house for Steve right on the creek.

8 MR. HOWARD: I've got a tent-trailer I'm
9 trying to unload.

10 (Parties speaking simultaneously.)

11 MR. SPINA: Well, let me just say that -
12 - we're supposed to wrap -- I'm sorry, we're
13 supposed to wrap up by 3:00 today. And I really
14 need to get on the road around that time for
15 childcare. So, I would say functionally we have,
16 you know, --

17 MR. WELCH: Are we okay on A? That's
18 what I was just going to ask.

19 MR. SPINA: We just don't have that much
20 time left --

21 MR. WELCH: For now?

22 MR. DICKENSON: We've talked about it
23 enough to where we can develop --

24 MR. SPINA: Yeah, yeah, I'm -- yeah,
25 right.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. DICKENSON: -- something. Yeah,
2 maybe we can fax things back and forth.

3 MR. WELCH: Okay, all right. Do we need
4 to talk about B? Implementation of the assessment
5 of steelhead passage feasibility. There's not
6 really a timeframe in there, is there?

7 MS. LARSEN: No, it's just based on when
8 they get the plan.

9 MR. WELCH: It just says now you'll do
10 it.

11 MR. SPINA: Just do it, yeah. Just do
12 it.

13 MR. WELCH: Okay. All right, so this
14 leads us to C. Preparation of a steelhead passage
15 feasibility report and implementation of the
16 preferred alternative. So it's sort of a two --
17 we got a kind of a twofold thing going here.

18 You're going to give over the report;
19 and then depending on what that report recommends,
20 then you're going to implement something.

21 And so the first one, within three years
22 of the Commission's issuance of the project
23 license, the licensee shall prepare and submit a
24 draft feasibility report for review and agreement
25 from NMFS.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. DICKENSON: And just --

2 MR. SWEIGER: Well, hold on a second. I
3 think one concept that we're missing here is the
4 concept of biological triggers which I think --

5 MR. WELCH: Yeah, I think --

6 MR. SWEIGER: -- sort of leads
7 informally.

8 MR. WELCH: Yeah, I think we're going to
9 get there eventually.

10 MR. SWEIGER: That's fine if (inaudible)
11 talk about when you would actually do the study or
12 submit a report.

13 MR. WELCH: Yeah, I don't know --

14 MR. SWEIGER: -- doing the study is one
15 thing, but actually spending the million dollars
16 or whatever it's going to cost in doing the study,
17 you know, when there's no fish in the vicinity, is
18 not --

19 MR. WELCH: Yeah. I don't know if John
20 could probably speak to this, but I don't know if
21 you have concerns about --

22 MR. SWEIGER: I'm sorry, I can't hear.

23 MR. WELCH: -- if you have concerns
24 about the report, itself, or --

25 MR. SWEIGER: Well, sure, because

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 they're a part of something you do after you've
2 done all the studies. And we're talking about,
3 you know, establishing some triggers for actually
4 implementing that study plan.

5 MR. DICKENSON: Triggers for the study
6 plan, or triggers --

7 MR. WELCH: No, not triggers for the
8 study plan. I think Mike's talking about a
9 trigger for the report. I wasn't thinking so much
10 of the trigger for the report, I was thinking more
11 along the trigger for the implementation of the
12 preferred alternative.

13 MR. SWEIGER: Yeah, but why would you
14 spend, you know, a million dollars on a fish
15 passage study to have it on the shelf?

16 MR. WELCH: Okay, good point.

17 MR. SPINA: Well, no one's saying it
18 would just be on the shelf.

19 MS. RUVELAS: The overall point of the
20 overall RPA would be helping the population get
21 back to that point that then some time in the
22 future you have --

23 MR. SWEIGER: I'm sorry, --

24 MR. SPEAKER: You guys have to speak up
25 a little bit, close to the microphones, they're

Santa Felicia Hydroelectric Project
March 4, 2008

1 not going to be able to hear you guys.

2 MS. RUVELAS: Okay. Basically if the
3 overall point in the RPA is through flows, through
4 the geomorphology work that we're getting a
5 population that then is getting to the point where
6 it might need passage, we would want to have the
7 study already done so that we knew that at that
8 time when we hit the light that says, you know,
9 just hypothetically the fish are now bumping their
10 noses to get to the dam, you know, now we need to
11 implement it.

12 So we'd already have that study done.
13 It wouldn't be that we hit that trigger point and
14 then it's like now let's spend three years doing
15 the studies and figuring out what to do.

16 MR. WELCH: Right.

17 MR. SWEIGER: Okay, and that's a fair
18 point. But, you know, the fish aren't going to
19 just suddenly appear one day --

20 MR. WELCH: Right, so --

21 MR. SWEIGER: -- without warning either,
22 right.

23 MR. WELCH: -- so could there be some
24 kind of interim step between, you know, the
25 ultimate, you know, for lack of a better term,

Santa Felicia Hydroelectric Project
March 4, 2008

1 they are bumping their noses against the dam, and,
2 you know, spending x dollars on a report?

3 MR. DICKENSON: Well, how about this,
4 you know, because I understand both points, I
5 think. How about one of the components that we
6 should have under A is determining what these
7 thresholds are for implementation. Is that
8 something we should be studying and considering?
9 Or are we going to just --

10 MR. SWEIGER: Yeah, I think that's
11 right, John, I mean that's one element that's kind
12 of missing right there. I mean you could infer it
13 in the sum of those elements, but I think it would
14 be better to state it.

15 MR. SPINA: I see that being
16 particularly relevant to the steelhead passage
17 feasibility report. Not the plan that's going to
18 be guiding the feasibility study.

19 MS. RUVELAS: Meaning you don't think
20 that this is something that's a question that
21 would be answered through more studies or more
22 data that's needed. It would be something that
23 through discussion we would be figuring out what
24 the sideboards were, or the triggers were?

25 MR. SPINA: My understanding is that

Santa Felicia Hydroelectric Project
March 4, 2008

1 what was just proposed was that we define the
2 conditions that would trigger implementation of
3 the preferred alternative; and define those
4 triggers in the study, in the plan that would
5 guide the -- the fish passage feasibility study.
6 Isn't that what --

7 MR. WELCH: Is that right, John? That's
8 what I heard, too.

9 MR. SPINA: Isn't that what I --

10 MS. RUVELAS: So the questions we would
11 ask in the study would be designed to help us
12 figure out if we hit the triggers or not?

13 MR. SPINA: -- say that again?

14 MS. RUVELAS: The questions we ask in
15 the study are questions designed to help us know
16 if we've hit the triggers or not. Or at least it
17 would be some of the questions --

18 MR. SPINA: I would say some of the
19 questions.

20 MR. DICKENSON: It would say, we would
21 ascertain the methods by which we would have
22 whatever measurable thresholds, right? Are we
23 going to have a -- net and somebody checking a car
24 every day. I mean hundreds of things you could
25 use as thresholds that are going to then say,

Santa Felicia Hydroelectric Project
March 4, 2008

1 okay, implement this here, you know.

2 MR. SPINA: I do see the plan that's
3 going to guide the conduct of the fish passage
4 feasibility study specifying the tools and
5 techniques that would be used and the studies that
6 will be undertaken to help inform the overall
7 notion of whether a fish passage is feasible or
8 not. I agree with that.

9 But I don't believe it's appropriate to
10 have in that same study guide, if you will, the
11 conditions by which we will judge it appropriate
12 to move forward with implementation of the
13 preferred alternative.

14 In part because we don't really have all
15 the information we need. We're going to be
16 learning a lot, in my view, from --

17 MR. DICKENSON: Oh, okay.

18 MR. SPINA: -- from those biological
19 studies that are going to be undertaken as part of
20 the broader fish passage --

21 MR. DICKENSON: I think we're saying the
22 same thing.

23 MR. SPINA: Okay. So, I would say, you
24 know, no to specifying the conditions by which
25 we're going to implement the preferred alternative

Santa Felicia Hydroelectric Project
March 4, 2008

1 in the study guide. But maybe that's something
2 that we can look at for --

3 MR. DICKENSON: Oh, I was suggesting the
4 study guide to include the development of those.
5 That's all I was --

6 MR. WELCH: Not define them, but --

7 MR. DICKENSON: Not define them, but
8 that would -- the study would include the
9 development of that information.

10 MR. WELCH: Development of the
11 information necessary to determine --

12 MR. DICKENSON: Implementation triggers,
13 I guess.

14 MR. WELCH: -- implementation triggers
15 of the preferred alternative. And then what I'm
16 hearing, and this report. I heard both --

17 MR. DICKENSON: Okay.

18 MR. WELCH: -- from United. Is that
19 right, John? I heard that from Mike anyway.

20 MS. RUVELAS: Let me ask it maybe this
21 was, using sort of building on our kind of silly
22 hypothetical of those poor fish and their noses.

23 You know, you either start the study
24 with the threshold is going to be when you got
25 fish bumping their noses against the dam. And how

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 do you go about knowing when you've hit that
2 trigger.

3 Or the question is, is the threshold of
4 fish bumping their noses on the dam the right
5 trigger. Or what would be a more appropriate or
6 different threshold for measuring when we need
7 passage.

8 MR. WELCH: Right. You know, I think --

9 MS. RUVELAS: Because I think you don't
10 yet, you don't feel that we, today, know we can
11 say the threshold, the trigger is x.

12 MR. DICKENSON: Right.

13 MR. SPINA: Yeah, yeah. And I seem to
14 recall past discussions on this issue. And I seem
15 to recall that those discussions -- can we just
16 take maybe a five-minute break so that I can
17 caucus with our -- so I can recollect some of
18 those discussions?

19 MR. WELCH: Okay, okay, okay. Not too
20 long, though, --

21 MR. SPINA: Yeah, real quick.

22 MR. WELCH: -- we've only got another
23 hour left, so --

24 MR. SPINA: Just real quick.

25 MR. WELCH: Let's reconvene at, I don't

Santa Felicia Hydroelectric Project
March 4, 2008

1 know, 2:02, is that good enough?

2 (Brief recess.)

3 MR. WELCH: Back on the record. Folks
4 on the phone. So Anthony and Mary went out and
5 talked a little bit, reminisced about old times.
6 And they're back, and go ahead.

7 MR. SPINA: And what I'm prepared to say
8 is that we continue to believe that specifying
9 implementation criteria or conditions, it would be
10 better served after the feasibility study has been
11 conducted.

12 And what we would envision is a stand-
13 alone document that, you know, if it's three pages
14 including the front cover, fine, but a stand-alone
15 document after the feasibility study is prepared,
16 that defines the conditions by which you would use
17 to judge when the time is right to implement the
18 preferred alternative.

19 MR. DICKENSON: Okay.

20 MR. WELCH: So it is --

21 MR. SPINA: So then functionally we
22 would need to add another little D, or big D to
23 sub-element 1.

24 MR. WELCH: Yeah. Where would you add
25 it? You wouldn't add it under A?

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. SPINA: No. It would just be, it'd
2 be 1-D.

3 MS. LARSEN: Big D.

4 MR. DICKENSON: Big D, at the end after
5 preparation of report you'd cross off, and
6 implementation. And now you're going to have a
7 separate thing that's going to be about
8 implementation, yeah.

9 MR. SPINA: Yeah, yeah, that sounds
10 fine.

11 MR. WELCH: Make it its own thing.

12 MS. RUVELAS: Yeah.

13 MR. WELCH: Okay.

14 MS. RUVELAS: Figure out the triggers
15 and then implement.

16 MR. DICKENSON: D, good, I like it,
17 implementation of --

18 MR. SPINA: Criteria or conditions.

19 MS. WISEHART: Well, would -- I'm sorry?

20 MR. WELCH: You mean -- hello?

21 MS. WISEHART: I'm so impressed that
22 this D appeared by itself --

23 (Laughter.)

24 MS. WISEHART: I just hit the enter
25 button and I got the D already.

Santa Fel i ci a Hydroel ectric Project
March 4, 2008

1 MR. DICKENSON: I think you could say
2 implementation of the preferred alternative. And
3 then you'd have some --

4 MR. WELCH: Yeah, yeah.

5 MR. DICKENSON: -- implementation
6 document.

7 MR. WELCH: Yeah.

8 MS. WISEHART: Okay. Tell me.

9 MR. SPINA: So just type implementation
10 of the preferred alternative.

11 MR. HYTREK: This is Dan. I don't want
12 to -- seems like you're going in the right
13 direction here, but I thought you were talking
14 about something even between C and D where you
15 were going to have another sub-element that talked
16 about determining what the triggers were
17 basically.

18 MR. SPINA: That's true. Yeah, I see
19 where you're getting at here. So, yeah, --

20 MR. DICKENSON: Okay, yeah.

21 (Parties speaking simultaneously.)

22 MR. SPINA: Yeah, it's lumping versus
23 splitting. I thought we could just lump, but
24 maybe it would be preferable to split so it's
25 absolutely clear.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MS. LARSEN: I think it needs to be
2 clearer.

3 MR. SPINA: So I suppose one way would
4 have a D and then an E.

5 MS. KNITE: Yeah, but can she make it
6 automatically appear?

7 MS. SPEAKER: Yes, she can actually.

8 MR. DICKENSON: If you could --

9 MS. KNITE: Yes, she can.

10 MS. WISEHART: What?

11 MS. KNITE: Just --

12 MR. WELCH: Wait a minute, wait a
13 minute, whoa. What was the --

14 (Parties speaking simultaneously.)

15 MS. RUVELAS: E would be implementation
16 whereas D is figuring out the triggers.

17 MR. SPINA: Yeah, yeah.

18 MS. SPEAKER: Just put the cursor right
19 between the I and the D and hit enter. The little
20 D and the big I of implementation.

21 (Parties speaking simultaneously.)

22 MR. SPINA: There you go. So back up to
23 D would be development of implementation criteria
24 or something like that.

25 MR. DICKENSON: Yes, yes.

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 MR. WELCH: Trigger things.

2 MR. DICKENSON: Implementation criteria
3 is perfect, yeah. I was going to say you could
4 have that with an and.

5 Well, really, if you think about it when
6 you get to E the title says it, you know. You
7 don't need to write anything under it.

8 MR. WELCH: So how would you -- so you
9 would use the information from C to inform what
10 you come up with in D?

11 MR. SPINA: That's a possibility
12 certainly.

13 MR. WELCH: Okay. So what would we say
14 under D? I mean I think -- we don't have to get
15 it exactly, but I think we do need to put a couple
16 of concepts there just to guide --

17 MR. DICKENSON: Well, we're going to --
18 is that going to be negotiated? Or is that going
19 to be unilateral on your part? Or FERC? Or FERC
20 makes a determination based on --

21 MR. WELCH: Don't throw it at me.

22 MR. SPINA: For D or E?

23 MR. DICKENSON: D.

24 MR. SPINA: Oh, for D.

25 MR. WELCH: D.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. DICKENSON: What are the criteria
2 going to be? Or are we going to come up with that
3 now?

4 MR. SPINA: Yeah, I'm not prepared to
5 come up with those criteria.

6 MR. DICKENSON: Okay, so we need to make
7 a process for how we're going to come up with --

8 MR. SPINA: Right. And I do better when
9 I can think on paper.

10 MR. DICKENSON: Okay.

11 MR. SPINA: So it's not something I
12 think I could do completely today.

13 MR. DICKENSON: I know that. We're
14 going to be --

15 MR. WELCH: That's all right. Let's --
16 if we could --

17 MR. DICKENSON: Let's email back and
18 forth some of these.

19 MR. WELCH: -- if we could possibly just
20 throw a couple of sentences on there, just to say
21 what this is. I mean the licensee shall --

22 MR. DICKENSON: Develop in consultation
23 with the resource agency --

24 MR. WELCH: Develop, yeah, consultation
25 with NMFS, criteria for implementation of the

Santa Felicia Hydroelectric Project
March 4, 2008

1 preferred alternative identified in C above.

2 MR. DICKENSON: And, you know, we did
3 appreciate in here -- I want you to finish this
4 thought first, though, before --

5 MR. WELCH: -- implementation of the
6 preferred alternative identified in C based on,
7 you know, I'm just throwing something out here --
8 based on numbers of migrating steel -- you
9 know, --

10 MR. SPINA: I'd rather leave that point
11 off there for right now.

12 MR. DICKENSON: How about measurable,
13 you know, we already said criteria didn't we,
14 development criteria?

15 MR. WELCH: Yeah.

16 MR. DICKENSON: -- consultation --

17 MR. WELCH: Measurable biological
18 criteria.

19 MR. SPEAKER: Triggers.

20 MR. DICKENSON: Biological triggers,
21 that's good.

22 MR. HOWARD: Yeah, that looks good.

23 MR. DICKENSON: And I don't know how,
24 Anthony, you'll have to work your magic writing,
25 we appreciated that you did have in here that if

Santa Felicia Hydroelectric Project
March 4, 2008

1 the study work finds that this is not feasible
2 that there could be some offsite mitigation.

3 And so you'll have to think of how you
4 work that in here. You know, because there could
5 be separate triggers. If the study determines
6 it's not feasible we don't need triggers probably.
7 We just go right to mitigation somewhere, you
8 know.

9 MS. RUVELAS: -- be the preferred
10 alternative that's being implemented --

11 MR. DICKENSON: Yeah. The preferred
12 alternative would be mitigation instead of the --
13 okay, so then the trigger -- Anthony will work
14 with it; he understands what --

15 MR. WELCH: Okay, what about E. Do we
16 need to do anything more --

17 MR. WINGERT: Just a second. Shouldn't
18 there be a timeframe for this?

19 MR. DICKENSON: Yeah, good point.

20 MR. SPINA: I'm sure I can come up with
21 something that will -- it'll likely be predicated
22 on when the feasibility study is done.

23 MR. WELCH: Right.

24 MR. DICKENSON: Sure, but you got a
25 timeframe for that.

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 MR. SPINA: How about --

2 MR. WELCH: Within x of --

3 MR. DICKENSON: Another six months,
4 yeah.

5 MR. SPINA: Completion of the
6 feasibility, or the final feasibility study.

7 MS. LARSEN: That makes that four years
8 and four months?

9 MR. WELCH: But who's counting, Mary.

10 MR. DICKENSON: When did we get to four?
11 Where --

12 MS. LARSEN: Oh, -- to that, it's four
13 years and two months.

14 MR. DICKENSON: It was three --
15 (Parties speaking simultaneously.)

16 MS. WISEHART: Where do we want that?
17 (Parties speaking simultaneously.)

18 MR. WELCH: Within six months of the
19 completion of whatever it's called, the steel head
20 passage feasibility report.

21 MR. DICKENSON: Is that what it's
22 called?

23 MS. LARSEN: That's good; that works.
24 It's straightforward.

25 MR. SPINA: I'm having flashbacks --

Santa Felicia Hydroelectric Project
March 4, 2008

1 (Parties speaking simultaneously.)

2 MR. WELCH: All right, all right. I do,
3 just a point of order on a time check, I do want
4 to leave a little -- I still want to leave a
5 little bit of time for our last agenda item, which
6 is the schedule. And I think we're going to need
7 to talk about that.

8 MS. KNITE: Well, and there's also, I
9 can't remember what it was now, but John mentioned
10 something when you were out of the room that was
11 important that he was hoping we were going to
12 touch on.

13 MR. DICKENSON: Now I can't remember
14 what it was, too.

15 MR. WELCH: So I'm leaving 15 minutes
16 for that discussion.

17 Okay, implementation of the preferred
18 alternative.

19 MR. SPINA: I propose that just take the
20 relevant language from the existing 1C and just
21 paste it, you know, right there.

22 MR. WELCH: Where is it, what would that
23 be?

24 MR. SPINA: In 1C there's language that
25 pertains to implementation. And what I'm saying

Santa Felicia Hydroelectric Project
March 4, 2008

1 is we just cut that language from 1C and implement
2 it in the --

3 MR. DICKENSON: It starts on page 72; I
4 think it starts down --

5 MR. SPINA: The licensee shall be
6 responsible for funding --

7 MR. DICKENSON: Yeah, so it's about a
8 little more than halfway through that paragraph,
9 and right in the middle of it, it says the
10 licensee.

11 MR. WELCH: Okay.

12 MR. DICKENSON: I think it starts there.
13 And if you cut and paste that --

14 (Parties speaking simultaneously.)

15 MR. WELCH: Yeah, C above --

16 MR. DICKENSON: You go about half way,
17 right in the middle it's going to say the
18 licensee. Almost -- right there. Cut all of that
19 to the bottom.

20 MR. WELCH: But you're going to want to
21 refer to your trigger here, correct?

22 MR. DICKENSON: Yeah, he'll put
23 something like that in there, yeah.

24 MR. WELCH: Okay. Just checking. Put a
25 placeholder there, refer to trigger.

Santa Felicia Hydroelectric Project
March 4, 2008

1 (Parties speaking simultaneously.)

2 MR. WELCH: Why don't you just make a
3 couple of notes there or something, refer to
4 trigger, use language from C or something like
5 that.

6 MS. WISEHART: Okay.

7 (Pause.)

8 MS. WISEHART: Refer to --

9 MR. WELCH: Biological trigger and
10 language from C above.

11 MR. HOWARD: It'll probably change.

12 MS. WISEHART: You think it will?

13 MR. HOWARD: It has a few times.

14 MS. WISEHART: Oh, okay.

15 MR. SPINA: That's fine; I'll know what
16 that copyright part is.

17 MS. WISEHART: Okay.

18 MR. DICKENSON: Is there a way to keep
19 it from doing that?

20 MR. SPINA: Yeah, you backspace and
21 it --

22 MR. WELCH: You just go back and change
23 it. It gets it after awhile like, yes, I know you
24 don't mean to do this.

25 MR. SPINA: Just type it, get the

Santa Felicia Hydroelectric Project
March 4, 2008

1 backspace and it --

2 MR. DICKENSON: Backspace, okay.

3 MR. WELCH: Okay. Is everyone -- let me
4 just go do a quick check -- okay with what we have
5 here? Because we're really done with 1A, or 1-1.
6 Okay.

7 All right, it is now 2:15. We have
8 another 45 minutes and we want to get through one
9 more agenda item. Is there anything else under
10 the RPAs that we want to talk about while we have
11 some time?

12 I know that we wanted to talk a little
13 bit about the water schedule, or do we want to get
14 there right now?

15 MR. DICKENSON: We can talk about that.
16 We can ask in your revamp, Anthony, any specifics
17 that you want to take from our earlier
18 conversations and put them in here.

19 In that Murray asked, and, you know,
20 you'll have to ask your counsels and we'll ask
21 Mike and others whether at some point it wouldn't
22 behoove us to all undo our confidentiality from
23 that earlier process --

24 MR. SPINA: We've been wanting to have
25 that done for a long time. We think we can

Santa Fel i ci a Hydroel ectric Project
March 4, 2008

1 benefit from that information.

2 MR. DICKENSON: We think we could, too,
3 so maybe --

4 MR. WELCH: Who else would you have to
5 talk to about that that's not in this room right
6 now?

7 MR. SPINA: Fish and Game, California
8 Trout, Forest Service, --

9 MR. WELCH: Forest Service and the
10 Board?

11 MR. DICKENSON: State Board, yeah.

12 MS. KNITE: Is there a new person
13 assigned from the Board now to this?

14 MS. LARSEN: I don't know, but we can
15 check with Beth Lawson; she would know.

16 MS. KNITE: Okay. I know --

17 MR. WELCH: I just, to be honest with
18 you, I just met with the Water Board over a bunch
19 of projects that they have water quality certs on.
20 They're not doing a cert for this particular
21 project. So it didn't even come up in our
22 meeting. And they didn't mention it, either. So
23 I don't --

24 MS. KNITE: Well, I just want --

25 MR. WELCH: I don't even know if they're

Santa Felicia Hydroelectric Project
March 4, 2008

1 even focused on it.

2 MS. KNITE: I just made -- well, but
3 it's a matter of for all the changes that they've
4 been through, is figuring out who the staffer is
5 and just getting them to sign off on it, you know.

6 And there's one of the new gals, I
7 actually was on the phone with her this morning.
8 She's the new one on Pyramid. And I think she
9 said she's doing all the Santa Claras. So she may
10 be the person assigned here, so. She's great and
11 reasonable and --

12 MR. DICKENSON: We've appreciated their
13 help all along, yeah.

14 MR. SWEIGER: If you run into any
15 difficulties on that, I mean I don't know that I
16 still have the confidentiality agreement, but most
17 of those agreements have a provision that if the
18 information otherwise becomes public it's no
19 longer protected. Or if it's required to be
20 disclosed.

21 If FERC would submit an additional
22 information request, for example, that would be
23 the requirement --

24 MR. WELCH: I already disclosed the
25 information.

Santa Felicia Hydroelectric Project
March 4, 2008

1 (Laughter.)

2 MR. WELCH: Yeah, I don't know.

3 Whatever you guys are comfortable with. It does
4 seem to be, you know, with us in the room -- I
5 don't want to inhibit --

6 MR. DICKENSON: Right, it's not -- I
7 don't think.

8 MR. WELCH: If there is something that
9 is really burning right now, I would be happy to
10 step out in the hallway.

11 MR. DICKENSON: I don't know of
12 anything. We were just thinking that we were
13 talking in tongues and we don't need to be, you
14 know.

15 MR. WELCH: Yeah, I know.

16 MS. LARSEN: I think my general counsel
17 would prefer that we go by the book. And she will
18 submit a letter stating that we have no issues
19 with confidentiality. Our department was actually
20 very concerned that information from those
21 sessions was released without any contact with us
22 asking whether we were okay and comfortable with
23 that.

24 So, we will go ahead and issue a letter;
25 Tina will send a letter to FERC.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. DICKENSON: What release was that?

2 MS. LARSEN: We'll just state that we
3 are okay with any information that was developed
4 in --

5 MR. DICKENSON: Oh, I thought you --

6 MS. LARSEN: -- any of our sessions
7 being --

8 MR. DICKENSON: -- say you had some
9 problem with something that happened.

10 MS. LARSEN: Well, we were concerned
11 about how the information that was confidential
12 got released.

13 MR. WELCH: Sometimes in those
14 confidential, there's some set clauses that say,
15 you know, if nothing ever happens then it's
16 automatically lifted.

17 MS. LARSEN: But I don't know.

18 MR. WELCH: I don't know if that's in
19 there or not.

20 MS. LARSEN: If we have it, and Tina
21 brought it up as an issue and we had a discussion
22 on -- when the department had a discussion about
23 this issue last Friday.

24 MR. WELCH: Oh, okay.

25 MS. LARSEN: So we'll just go ahead and

Santa Felicia Hydroelectric Project
March 4, 2008

1 we'll submit something to FERC.

2 MR. DICKENSON: I'll talk to you after
3 the meeting.

4 MR. WELCH: Okay. Is there any -- so is
5 there anything we want to discuss in relation to
6 the exhibit A and how it relates to RPA number
7 what, 3 -- RPA number 3?

8 Oh, I remember. The big concern here
9 was the time, the ten-year thing.

10 MR. DICKENSON: Yeah.

11 MR. WELCH: I still don't -- can you
12 show me where that -- where is that?

13 MR. DICKENSON: Okay, let me go to start
14 of a.

15 MR. WELCH: Oh, only the first sentence.

16 MR. DICKENSON: Yeah.

17 (Laughter.)

18 MR. WELCH: Oh, okay.

19 MR. SPINA: I don't know if I'm speaking
20 out of turn right now, but was having a little
21 sidebar here with Penny, and now I'm afraid to ask
22 a question to John, if I may.

23 MR. WELCH: Go.

24 MR. SPINA: John, do these flows agree
25 with previous discussions?

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. DICKENSON: I believe so.

2 MR. SPINA: Exactly?

3 MR. DICKENSON: I believe so.

4 MR. SPINA: Okay.

5 MR. DICKENSON: But, of course, I had
6 trouble finding the final of the previous
7 discussion in my computer. And this is what
8 Murray and I thought was the final. If there's
9 something little adjustment -- check yours.

10 MS. LARSEN: Talk to -- Bob about how we
11 came --

12 MR. SPINA: That goes for the
13 migration--

14 MR. DICKENSON: That was for another
15 document that's not filed yet.

16 MR. WELCH: Oh, okay. You're right, you
17 did talk about the flows.

18 MR. DICKENSON: Right.

19 MR. WELCH: Okay.

20 MR. DICKENSON: But we should check
21 that. Everybody check it. And that's what we
22 intended it to be, so.

23 MR. SPINA: Well, the two concerns I
24 have at this point, and I should qualify that by
25 saying I haven't read this in any detail. It's

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 based on a quick scan.

2 Is, one, the conditioning of the
3 releases to 10 years, when, in fact, the permit
4 goes much longer than that. That's quite
5 problematic for us.

6 Second, --

7 MR. DICKENSON: Can we talk about that?

8 MS. WISEHART: But you do understand why
9 we want that?

10 MR. WELCH: Actually, I don't.

11 MR. DICKENSON: Okay, --

12 MR. SPINA: Yeah, I wasn't exactly clear
13 again why you --

14 MR. DICKENSON: Okay, there's --

15 MS. WISEHART: Yeah, because the flows
16 affect our yield, which affects what the project
17 is there for. And if the studies are showing that
18 they're not effective, you know, we just hate to
19 keep losing --

20 MR. WELCH: That the flows are not
21 effective?

22 MS. WISEHART: Yeah.

23 MR. DICKENSON: Or that the study
24 concludes that passage is infeasible and there's
25 no reason to continue these.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. MITCHNICK: Would you have problems
2 not time it to ten years, but include in the
3 option to re-evaluate it after ten years?

4 MR. DICKENSON: Yes, that was what was
5 intended.

6 MR. WELCH: Okay, so it would be in
7 place for the life of the license, but just
8 revisited after ten years?

9 MR. DICKENSON: Yes, yes, that's fine.

10 MR. WELCH: Did you guys -- I'm sorry,
11 did you guys pick up on what we were just --

12 MR. SPINA: Yeah, you talked about --

13 MR. WELCH: It's not a test or anything.

14 MR. SPINA: -- revising the ten-year
15 commitment to basically a revisiting after ten
16 years rather than just saying we're done
17 releasing --

18 MR. WELCH: Is that something that --

19 MR. SPINA: Well, that's what I was
20 trying to get from Penny, how does that work from
21 the ESA perspective in trying to demonstrate that
22 the proposed action, or RPA, with exhibit A now,
23 would, in fact, insure --

24 MS. RUVELAS: Right. And so the
25 question then becomes is we can put in this

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 checkpoint, if you will, at ten years --

2 MR. WELCH: Um-hum.

3 MS. RUVELAS: -- and say are they
4 working or not. Then it then raises the question
5 of what does are they working mean, you know. And
6 I was trying to figure out if these were like --
7 because someone, I forget who, I'm sorry --
8 mentioned, you know, -- it was you, that, you
9 know, after ten years we might say, well, fish
10 passage is infeasible, then, you know, we don't
11 need to keep doing the flows.

12 And I was just trying to figure out,
13 well, sometimes you still need to keep doing the
14 flows because the fish are below the dam and they
15 need the flows below the dam, it's not just --

16 MS. WISEHART: And if we determine that,
17 that 's acceptable. But I think it needs to be
18 determined whether the fish are going to be there.

19 MS. RUVELAS: Right. And so that's then
20 that question of how do we know if these flows are
21 working or not.

22 MR. WELCH: Well, I think clearly with
23 what we just went through, -- well, there's enough
24 monitoring in here to answer that -- should be
25 enough monitoring in here to answer that question.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. SPINA: In theory there is. The
2 challenge, of course, is are there things
3 happening in the watershed that are precluding a
4 biological response.

5 For example, the county road crossing.
6 Is that doing something to preclude adults in the
7 stream. So if that crossing, for example, remains
8 unmitigated, we're conducting these studies and
9 we're not seeing a biological response, well, in
10 our view that's really an unreasonable test of the
11 hypothesis.

12 MR. DICKENSON: Sure, agree.

13 MR. SPINA: So, when we do proceed with
14 the monitoring, we need to have a reasonable feel
15 from which to collect those data. We don't want
16 it influenced by, okay, they can't get past this
17 one structure, or someone's taking all the water
18 that United's releasing out of the stream, and so
19 it's a dry stream two miles down. You know, those
20 kinds of things.

21 MR. WELCH: Well, let's just play this
22 out. So, we come to this, you know, this recheck
23 after ten years. United would, you know, based on
24 the monitoring, come up with some sort of
25 recommendation. You know, the recommendation

Santa Felicia Hydroelectric Project
March 4, 2008

1 could be, you know, continue it for another, you
2 know, we'll recheck again in another ten and
3 continue with what we've been doing.

4 Or, based on some biological criteria,
5 they would alter it. Now, if they had to alter
6 it, they would have to come in with an amendment
7 from FERC for our approval. And that would
8 trigger section 7 consultation. And then we'd go
9 to you. So, --

10 MS. RUVELAS: But our analysis is still
11 going to be for your full license. You know,
12 we're not going to say we're just doing a ten-year
13 analysis or whatever.

14 MR. WELCH: That's right, that's right.
15 These flows, essentially they would be in place
16 for the entire thing, with a possibility that they
17 would be revisited. And if the license have an
18 amendment, then we would have to go back to the
19 section 7 process again.

20 MR. DICKENSON: And we understand that
21 they wouldn't be rev'd back unless there was no
22 biological effect to revving them back.

23 MS. RUVELAS: Right, --

24 MR. DICKENSON: Yeah, sorry.

25 (Laughter.)

Santa Felicia Hydroelectric Project
March 4, 2008

1 MS. KNITE: Here's another, just to make
2 it more complicated. The ten years is starting at
3 license issuance, so how is that affected by the
4 four years and two months, or whatever. You're
5 already going to be halfway through your ten years
6 by the time your ten-year --

7 MS. WISEHART: Well, I think the flows
8 are going to be --

9 MR. WELCH: Yeah, the flows will be
10 right away.

11 MS. KNITE: The flows will be right
12 away, but what I'm saying is is that then an
13 appropriate checkpoint, because you really won't
14 have implemented the full complement potentially,
15 the full complement of what is going to, you know,
16 become this comprehensive package of solution.

17 MR. SPINA: What she's saying is the
18 flows are going to start right away. But the
19 studies, if you will, they might be --

20 MR. DICKENSON: The studies are going to
21 somehow --

22 MS. KNITE: No. You're going to do
23 studies and then implement some stuff. And let's
24 just, for round numbers, say that that will all be
25 done at the five-year mark.

Santa Felicia Hydroelectric Project
March 4, 2008

1 So instead of assessing based on ten
2 years of flow, you're really only going to be
3 assessing based on five years of flow, which
4 doesn't --

5 MR. WELCH: Five years of flow and other
6 things.

7 MS. KNITE: -- which doesn't necessarily
8 give you -- right -- which doesn't necessarily
9 give you a full complement of hydrologic behavior.

10 MR. DICKENSON: Okay. The
11 implementation we're presuming is only going to
12 occur if there are -- if the animal comes to exist
13 in this watershed. And if that's the case I don't
14 think there's going to be -- I don't think they're
15 going to let them let us change those flows. I
16 don't think --

17 MS. KNITE: I understand, --

18 MR. DICKENSON: -- if implementation
19 happens, I don't think --

20 MS. KNITE: -- I'm just saying, look
21 at --

22 MR. DICKENSON: -- there's going to be a
23 change. It's just --

24 MR. WELCH: I think what you're saying
25 maybe 15 would be more of a better number --

Santa Felicia Hydroelectric Project
March 4, 2008

1 MS. KNITE: If you want your ten
2 years --

3 MR. WELCH: -- a better number --

4 MS. KNITE: -- or that the ten-year
5 trigger point starts from whatever changes are
6 going to create the comprehensive package of how
7 things are going to be operated, that you get a
8 full ten years --

9 MR. DICKENSON: Okay, that's fine.

10 MR. WELCH: Was it --

11 MS. KNITE: -- or that --

12 MR. WELCH: So there wasn't anything
13 other than ten, other than it was ten?

14 MR. DICKENSON: Right.

15 MR. WELCH: Okay.

16 MR. SPINA: I have a question for Penny.
17 So how are we going to reconcile this in the
18 opinion if they're only going to provide flows for
19 ten years, and then revisit --

20 MR. WELCH: No, that's not -- not,
21 that's --

22 (Parties speaking simultaneously.)

23 MR. WELCH: Their proposing to do it for
24 the entire licensing. It's just going --

25 MR. SPINA: Oh, okay. Oh, okay.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: -- to be revisited in ten
2 years.

3 MR. DICKENSON: We can ask --

4 MR. WELCH: But if nothing ever happens,
5 the flows are implemented for the whole time.

6 MR. HOWARD: And that's going to be in
7 your license, right?

8 MR. WELCH: Exactly.

9 MR. HOWARD: These are for the life of
10 the license.

11 MR. WELCH: Oh, yeah. Yeah.

12 MR. DICKENSON: Which takes me to, then
13 the reason ten years was here is that prior, and
14 this is what I had concern about, I think, that we
15 didn't talk about.

16 Our prior conversations, that study plan
17 suite was going to be over 12 years, I believe.
18 And now in here it's going to be compressed into
19 three years, or two and a half years. And that's
20 okay. I just think you don't get the whole suite
21 of information that you wanted.

22 MR. SPINA: I'm not following, why it
23 would be compressed into two years?

24 MR. DICKENSON: Okay. That's what
25 your -- you have us doing a final report on the

Santa Felicia Hydroelectric Project
March 4, 2008

1 feasibility in two and a half years.

2 MS. LARSEN: The feasibility, it's just
3 the feasibility of fish passage.

4 MR. SPINA: Well, the feasibility; yeah,
5 thank you, Mary. There's the feasibility study
6 and then there's these studies --

7 MR. DICKENSON: Where are those
8 described? In here. I thought those were passage
9 feasibility studies from earlier conversations.
10 That 12-year thing.

11 MR. SPINA: In the sub-element that
12 deals with the water release schedules; that's
13 sub-element 3. So it's 3B.

14 MR. DICKENSON: 3B.

15 MR. SPINA: Talk about the effectiveness
16 monitoring.

17 MR. DICKENSON: Oh, okay.

18 MR. SPINA: Yeah. And, again, what
19 we're thinking of here is fairly similar to the
20 types of things we were discussing in the past.
21 You know, those past discussions.

22 MR. DICKENSON: I need to look at this
23 more closely. I'm sorry, I haven't.

24 MR. SPINA: So the studies begin on
25 small F. F, G, H, I, J, K, L, M, N, O, P.

Santa Felicia Hydroelectric Project
March 4, 2008

1 (Pause.)

2 MR. WINGERT: Could I just interject
3 real quick a question. This implementation
4 effective -- was that something you guys discussed
5 in your prior discussions?

6 MR. DICKENSON: Not under that name, no.

7 MR. SPINA: Not under that name.

8 MR. WINGERT: Does the language that's
9 in here meant to kind of fuzzy up some of the
10 things that you guys discussed and potentially
11 agreed to before?

12 MR. DICKENSON: It doesn't look like
13 what --

14 MR. SPINA: The language that's here is
15 different, I think, than the language we used, but
16 the scope is intended to be somewhat, you know, --
17 recalling back, I think the scope is intended to
18 be fairly similar to the kinds of things we
19 discussed.

20 I'm trying to remember, I know we had
21 the discussions with Fish and Game. I'm trying to
22 recollect the extent that those discussions
23 included United. And I can't recall specifically.
24 We worked together on hammering out a scope of
25 work. And kind of a watered down version of that

Santa Felicia Hydroelectric Project
March 4, 2008

1 was --

2 MS. LARSEN: But Steve and I looked at -
3 - we did some work together on some of the
4 components.

5 MR. DICKENSON: That was -- I understood
6 that to have all been the passage feasibility
7 studies.

8 MS. LARSEN: No. There was downstream
9 stuff, and --

10 MR. SPINA: I remember downstream
11 studies --

12 MS. LARSEN: -- and there was some
13 upstream stuff.

14 MR. SPINA: Yeah, I remember one of the
15 discussions --

16 MR. DICKENSON: I thought we broke them
17 up, downstream and upstream.

18 MR. SPINA: I'm sorry?

19 MR. DICKENSON: We broke them into
20 specifically downstream and upstream passage
21 studies.

22 MR. SPINA: Yeah. I --

23 MS. LARSEN: Well, they were related to
24 passage, but they're not exactly passage, per se.

25 MR. SPINA: Once, I seem to recall one

Santa Felicia Hydroelectric Project
March 4, 2008

1 specifically intended to look at abundance,
2 distribution of fish in lower creek.

3 MR. DICKENSON: Sure.

4 MR. SPINA: Juveniles.

5 MR. DICKENSON: That's -- okay, let me
6 back up a little more then. FERC's passage in
7 their existing EA, their passage is all passage up
8 to the base of the dam. That's part of the
9 passage suite, is to get Lower Piru Creek fixed
10 up. You mentioned the county bridge and there's
11 other issues.

12 And so there were items to deal with
13 that. And then there were items to deal with --
14 then there was a feasibility assessment, which is
15 here. And then there was stuff upstream, habitat
16 considerations and so forth.

17 MR. SPINA: Yeah, I recall that.

18 MR. DICKENSON: I mean I've got all
19 those. I've got that still saved.

20 MR. SPINA: Again, I recall past
21 discussions focusing on doing studies downstream
22 for the purposes of assessing whether or not those
23 flows were doing what they should be doing, using
24 various fish population metrics as response
25 variables.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. DICKENSON: Good. Yeah, and I
2 think --

3 MR. SPINA: That's all I'm talking about
4 here really.

5 MR. DICKENSON: Yeah. Those are going
6 to be the basis of your criteria probably, or to
7 some degree.

8 MR. SPINA: Which criteria?

9 MR. DICKENSON: The trigger criteria.

10 MS. RUVELAS: For passage --

11 MR. DICKENSON: Yeah.

12 MS. RUVELAS: -- to the dam or for
13 whether or not the flows are working?

14 MS. WISEHART: Well, both.

15 MR. DICKENSON: When we count the fish,
16 the number of fish -- you know, I don't know what
17 you want to use it for, but --

18 MR. SPINA: I suppose I've been speaking
19 all along about that the biological ecological
20 information that will be collected to help us
21 determine whether the flows are doing what they
22 should be doing, I suppose in that context some
23 additional work can be done to trap fish, you
24 know, count fish, how many adults are we getting,
25 did we meet our criteria. There could be some

Santa Felicia Hydroelectric Project
March 4, 2008

1 overlap, but --

2 MR. DICKENSON: Okay.

3 MR. SPINA: -- I just wanted to make it
4 clear that when I wrote this specific element of
5 this sub-element I was thinking specifically about
6 the studies needed to help us insure that the
7 flows are doing what they're supposed to do.

8 And the types of studies are very
9 similar. Immediately I can't recollect them all,
10 the discussions we had in long-ago past.

11 MR. DICKENSON: Okay.

12 MR. WELCH: I'm sorry, I just want to
13 get back to the ten -- I want to clarify on the
14 ten years. So, what I'm hearing is that United
15 could edit their exhibit A to just to say, you
16 know, just to say the licensee shall operate the
17 Santa Felicia project in accordance with the
18 following criteria, period.

19 And then add a paragraph or something
20 after that that would talk about after a period of
21 10 to 15 years, this flow regime would be reviewed
22 based on yada, yada, yada, yada, yada.

23 MR. DICKENSON: Yeah.

24 MR. WELCH: Does that sound okay?

25 MS. WISEHART: Is yada yada in there?

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. DICKENSON: Yada yada --

2 MR. WELCH: Four yadas.

3 (Laughter.)

4 MR. DICKENSON: With an h at the end or
5 not?

6 (Laughter.)

7 MR. HYTREK: This is Dan. I just wanted
8 to clarify one thing to make sure that we're not
9 talking past each other.

10 I think, if you take a look at the third
11 sub-element of the RPA, which talks about getting
12 the water release schedule, it's got three factors
13 right up front in the first paragraph that I think
14 are informative about what NMFS is looking for in
15 its water release schedule.

16 They're small 1, two 1 and three 1.

17 MR. DICKENSON: In where? I'm sorry.
18 What page?

19 MR. HYTREK: Page 76, number 3.

20 MR. DICKENSON: I've got a C on 76.

21 MR. HYTREK: Right here at the top.

22 MS. RUVELAS: Well, just look in the
23 first paragraph, 3, --

24 MR. SPINA: On page 74.

25 MR. WELCH: -- licensee shall implement

Santa Felicia Hydroelectric Project
March 4, 2008

1 a plan and proceeding, written NMFS' agreement on
2 the plan?

3 MS. RUVELAS: You see that little i, ii,
4 iii, the Roman numerals i, ii, iii?

5 MR. WELCH: Unimpeded migration of adult
6 and juvenile steelhead, formation and preservation
7 of freshwater rearing sites. Is that what you're
8 talking about?

9 MS. RUVELAS: Yes.

10 MR. HYTREK: So those are the kinds of
11 things I think NMFS is looking for that this water
12 schedule will meet. So it's not just passage of
13 fish. It's these three things here.

14 MS. RUVELAS: And then the studies are
15 designed to determine if it's meeting --

16 MR. HYTREK: Right.

17 MR. DICKENSON: Okay. Well, this is
18 something that deserves some discussion then a
19 little bit. That's all well and good, and I'll
20 look closely at that.

21 But part of the prior discussions, you
22 know, in FERC and in their development of their
23 EA, and some of those parties that aren't here,
24 one of the things that this flow regime does is it
25 doesn't dry the streambed. Which in this reach

Santa Felicia Hydroelectric Project
March 4, 2008

1 would be a natural condition. But we've offered
2 this stored water to wet this reach because in
3 mitigation of our blockage in part.

4 So, given that, you know, it's an
5 unnatural thing we're going to be doing here.
6 There were parties to this proceeding that didn't
7 want to see that, that wanted it to periodically
8 dry.

9 And so we're agreeing to do this until
10 at some point people decide that it -- if people
11 decide that it's not worth doing, you know. Then
12 at that point, however we put that in, that's what
13 the ten years was about, whatever period it is.
14 At some point, if it's not worth doing and there
15 are people that have resources that they would
16 prefer to see the thing in a more natural
17 condition, then shouldn't we have a mechanism in
18 place for doing that?

19 Which would not be following these.
20 Then you would not be accomplishing these things.
21 But you would consciously be saying, we're not
22 going to accomplish these.

23 Do you follow? Is that --

24 MR. SPINA: Well, I'm trying to
25 understand --

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. HOWARD: You're just saying there's
2 maybe another situation that might come up why we
3 need to revisit this in 10 to 15 years. Is that
4 what you're saying?

5 MR. DICKENSON: No. I'm saying that
6 this flow regime is costing the over-drafted
7 Oxnard aquifers about 1000 to 1500 acrefeet a
8 year. And that's okay, you know, we do understand
9 the need to balance resources.

10 There were others, Betty and some
11 others, that thought that Piru Creek ought to dry
12 up periodically. But biologists that thought that
13 it's unnatural to take this ephemeral wash and
14 leave 7 cfs in it, you know, year after year.

15 And they wanted us to follow nature.
16 And when things go low we go really low, and when
17 things go high, we put higher flushing flows.
18 Because they were seeing a -- they're not talking
19 about a single resource, about steel head and
20 O. Mykiss. They're talking about the --

21 MS. LARSEN: But that has now -- that is
22 no longer our focus, John. The Department of Fish
23 and Game is fine with the -- and we developed,
24 helped develop the flow releases. And we now
25 agree with the flow releases.

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 MR. DICKENSON: Appreciate that.

2 MS. LARSEN: And so while that might
3 have been an initial idea of what we wanted, that
4 has since changed.

5 MR. DICKENSON: I understand and
6 appreciate that. But I'm saying that there might
7 be future people that look at it and want to go
8 back to do it the other way. Might be NMFS wants
9 to go back and do it the other way in the future.

10 So, you know, I guess it doesn't need to
11 be written in here. Just saying if these are the
12 goals that are, you know, we can do this. We're
13 offering this flow up. But, you need to
14 understand that this is artificial in this stretch
15 of creek, and there might be future people that
16 want it to go back to a more natural condition.

17 And we would like that because it would
18 then yield water for our constituents that are in
19 a state of over-draft.

20 MS. RUVELAS: We have similar situations
21 in the Central Valley that because the fish are
22 blocked from being able to get to areas where
23 previously they had spawning and rearing, et
24 cetera, habitat, we now have essentially to create
25 an artificial situation well --

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. DICKENSON: Right.

2 MS. RUVELAS: -- below those dams
3 because that's the only place the fish can get to.
4 So we need to --

5 MR. DICKENSON: And that's what this
6 flow was designed to be. And Anthony has the
7 backup for it.

8 MS. RUVELAS: So I guess until the fish
9 are able to get to areas where they would have
10 sort of the refugio from a drying situation, I
11 don't see that we would change our mind about
12 that --

13 MR. DICKENSON: Oh, no, I'm --

14 MS. RUVELAS: -- going dry.

15 MR. DICKENSON: -- suggesting that --
16 I'm skeptical that we will get fish here. And how
17 long do we do this release and cost of this water,
18 and affect this --

19 MS. RUVELAS: Right, but that's why we
20 have the ten-year checkpoint.

21 MR. DICKENSON: -- thing without any
22 benefit.

23 MR. WELCH: I think he's just trying to
24 explain the reason for the check. I --

25 MR. DICKENSON: Yeah.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: -- think it's a
2 reasonable --

3 MR. DICKENSON: I mean we want to get
4 fish here, and we want to do this. If we don't,
5 do we just keep doing this kind of silly thing in
6 perpetuity?

7 MS. RUVELAS: it's not silly to them.

8 MR. DICKENSON: Okay.

9 (Laughter.)

10 MR. WELCH: Okay. doing a time check
11 here, it's a quarter of three. We have one more
12 agenda item to get to, and that's NMFS' schedule
13 for issuing the final biological opinion.

14 One thing, I was going to say this in
15 the beginning, and it sort of escaped me, but I
16 did really want to thank NMFS for being so timely
17 with their biological opinions and adhering to the
18 schedules. And that's not always been our
19 experience at FERC --

20 MR. SPINA: Craig, are you listening?

21 MR. WELCH: -- with other NMFS. And
22 thank you for -- I'd like to thank your staff,
23 Craig, they did a great job, you know, with the
24 schedule and everything. So, much appreciated by
25 FERC.

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 MR. SPEAKER: We think you did a good
2 job, too.

3 MR. SPINA: Thank you.

4 MR. WELCH: So, March 21st, right, is
5 our current deadline --

6 MR. SPINA: Yeah.

7 MR. WELCH: -- for the biological
8 opinion. So I guess the first question I would
9 need to ask is does there need to be any more
10 discussions of this nature prior to writing the
11 biological opinion?

12 Now, we've got some concepts up there
13 that we're going to turn over to Anthony. I don't
14 know. What do you think? Do we need to have some
15 more meetings? Does there need to be more
16 conversation?

17 MS. WISEHART: You know, I think we will
18 have to have more conversation, just when we're
19 finalizing the language. And I'd appreciate being
20 able to discuss it when, you know, when you're
21 developing the language.

22 MR. SPINA: Yeah, well, I think that's
23 reasonable. I am concerned about the schedule.
24 We are required to --

25 MS. WISEHART: I'm not sure that it

Santa Felicia Hydroelectric Project
March 4, 2008

1 would change the schedule.

2 MR. WELCH: We're talking three weeks
3 essentially, right?

4 MR. SPINA: Yeah, yeah, we are talking
5 three weeks. Yeah, there's a possibility it won't
6 affect the schedule. It just depends on the
7 extent of those discussions.

8 And frankly, I'm hoping that if we can
9 just take the discussions that occurred here and
10 roll that into the opinion, we could move swiftly
11 through the remaining days that are left to
12 finalize the opinion. And then finalize the
13 opinion.

14 But, I believe NMFS is open to having
15 these discussions with United and FERC.

16 MS. WISEHART: It could just be over the
17 phone.

18 MR. SPINA: Yeah, yeah.

19 MS. WISEHART: I mean it doesn't --

20 MR. DICKENSON: Or emailing of drafts
21 back and forth.

22 MS. WISEHART: Yeah.

23 MR. WELCH: Well, --

24 MR. DICKENSON: And that's, I guess, our
25 question is how much do you need to be involved in

Santa Felicia Hydroelectric Project
March 4, 2008

1 that, or can we talk outside your more formal
2 process.

3 MR. WELCH: Phil and Linda, are you
4 still on?

5 MS. GILBERT: Yeah, I'm still here.

6 MR. WELCH: Okay.

7 MR. PETERS: I'm still here.

8 MR. WELCH: Would they be able to, if
9 they wanted to work out some more language, and
10 not do it in our presence, would that be
11 acceptable to do by email?

12 MS. GILBERT: Well, I guess the question
13 is who wants to talk with whom. Of course, if the
14 Commission is not involved in a discussion anybody
15 can talk to anybody else.

16 MR. WELCH: Right.

17 MS. GILBERT: It's when we get involved
18 that we have to worry about notice to all the
19 parties. And I think, I'd have to check with
20 general law to be sure, but I think we've used
21 email in the past.

22 But what we have to do is be sure that
23 we have all the parties on the email. So we can't
24 have just the select group exchanging emails about
25 the substance.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: So we could do it by email
2 as long as FERC Staff -- I mean if you wanted to
3 include FERC Staff, as long as all the other
4 parties were on the email.

5 MS. GILBERT: Right, or at least all the
6 other parties have been given an opportunity to
7 say yes, we want to be involved in this exchange,
8 or no, we don't care. I mean they can opt out.
9 But they have to all be given a chance to join the
10 email group.

11 MR. WELCH: Okay.

12 MS. GILBERT: FERC has to be off the
13 group.

14 MR. WELCH: Well, let me just -- you
15 know, I thought about this a little bit, and I
16 would -- I'm not trying to impede things in here,
17 but we're so close to the end here, I would want
18 to be involved in seeing any kind of language that
19 would go back and forth.

20 So I think that I wouldn't be
21 comfortable not participating in that.

22 MR. DICKENSON: If you think that is
23 going to be a drag, a time drag on getting the
24 final out, do we want to investigate an extension
25 at this point?

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WELCH: Well, that's kind of where I
2 was going a little bit.

3 MR. DICKENSON: Okay.

4 MR. WELCH: Don't really want to, but,
5 you know, if just a few more days would help, you
6 know, make sure we get this done and get this done
7 right, we could do that.

8 MR. SPINA: Yeah, if --

9 MR. WELCH: See how I choked on that
10 one.

11 (Laughter.)

12 MR. SPINA: -- it seems to me that one
13 of the key action items is for NMFS to revise the
14 RPA per the discussion today and get that out.
15 That seems to be the critical action item.

16 I believe we can do that relatively
17 quickly. What's today, Tuesday.

18 MS. KNITE: Tuesday, the 4th.

19 MR. SPINA: So, -- I'm sorry?

20 MS. KNITE: Tuesday, the 4th.

21 MR. SPINA: Thank you. So I think we
22 can do that relatively quickly. Don't ask me to
23 define what I mean by that.

24 But get that out quickly. Get hopefully
25 a verbal or written agreement that that seems, the

Santa Felicia Hydroelectric Project
March 4, 2008

1 group concurs that that reflects the discussion.

2 We can move forward.

3 So, overall I'm hopeful that we could
4 make this happen quickly. So at this time I don't
5 know that there is a need to extend --

6 MR. WINGERT: Just a sec. The 21st
7 would be the deadline for a final opinion,
8 correct?

9 MR. SPINA: Yeah.

10 MR. WELCH: Right, correct.

11 MR. WINGERT: So, Penny, I'd go to you
12 for a second here. Internally we have our
13 procedures to go through. This is --

14 MR. WELCH: Right.

15 MR. WINGERT: So, you know, I don't know
16 if we can nail that down. But if you start taking
17 from the 21st, backing up and start talking about
18 how much, you know, looking at the amount of time
19 it might take to nail down the language, you know,
20 it might be too tight of a squeeze.

21 So, I think it's worth talking about
22 some additional time. But, to inform that I guess
23 I wanted to hear from Penny about clearance, as
24 she views it, given her workload and everything
25 else that's going on.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. DICKENSON: Thirty more days, 30
2 more days.

3 MS. RUVELAS: He's trying to load the
4 deck here. Yeah, because there's several other
5 very significant consultations all coming in at
6 the same time.

7 MR. WELCH: But FERC's is the most
8 important.

9 MS. RUVELAS: Well, I think the people
10 in the Klamath Basin might differ.

11 (Laughter.)

12 MR. WELCH: We got that BO. Thank you,
13 Steve.

14 MS. RUVELAS: I think the thing is that
15 in general it sounded like, from what Anthony was
16 saying this morning, that the most of the main
17 body of the biological opinion has been dealt
18 with. You're not totally done with the comments
19 it sounded like. But you've really taken a pretty
20 good chunk out of it.

21 MR. SPINA: A good chunk out of it, yes.

22 MS. RUVELAS: So, it's very possible
23 that I and Dan would be able to start looking at
24 the main body of the opinion while Anthony is
25 still working with FERC --

Santa Felicia Hydroelectric Project
March 4, 2008

1 MR. WINGERT: And Russ, too.

2 MS. RUVELAS: Well, yes, Russ would need
3 to be in that, as well. But anyway, what I'm
4 saying is sort of from an efficiency perspective
5 we can start looking at the main body while the
6 RPA section, itself, is still being drafted. And
7 then that, you know, would just be the only thing
8 left to analyze -- excuse me, to review at the
9 end.

10 But, you know, we will need to probably
11 very soon start that loop so that he and I can get
12 any comments back to Anthony if we have any. And
13 then be able to brief Russ, our Assistant Regional
14 Administrator. To brief him and give him a
15 chance, too.

16 So I don't know if we'd be able to
17 pretty soon deliver a draft opinion.

18 MR. WELCH: Well, I was wondering if
19 Anthony could get together what we've done here
20 today with the RPAs in say a week. And did the
21 email thing, including Commission Staff and all
22 the intervenors.

23 And we looked at it, and all of a
24 sudden, you know, you started getting, well,
25 Anthony, could you do this, do this, do this,

Santa Felicia Hydroelectric Project
March 4, 2008

1 could you do this. I mean clearly we would
2 probably need more time.

3 But if it came back and everyone's
4 going, looks good to me, looks good to me, looks
5 good to me, just put and/of there. And, you know,
6 bam, then we would probably make it.

7 So, you know, I --

8 MR. SPINA: I'm really hoping that we
9 don't start getting nit-picky and --

10 MR. WELCH: Well, I -- I realize that,
11 I --

12 MR. SPINA: -- you know, just --

13 MR. WELCH: -- realize that. Yeah,
14 yeah.

15 MR. SPINA: Yeah, so.

16 MR. WELCH: So I don't know. I mean I
17 guess it's whatever you're comfortable with.

18 MS. RUVELAS: I think the wisest course
19 would be putting in for an extension basically.
20 To do that just because there is a lot still
21 involved --

22 MR. SPINA: Yeah.

23 MS. RUVELAS: -- in our overall process.

24 We have a fair amount of scrutiny on our
25 procedures here to make sure we're dotting all

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 those i ' s and t ' s. So I think i t ' s safest to ask
2 for more.

3 There ' s ways we can make the review and
4 clearance process go more efficiently, but I think
5 given that, plus allowing you guys ample time to
6 really talk, you know, about the --

7 MR. DICKENSON: Right, and I think --

8 MR. WINGERT: That ' s my gut feeling,
9 that maybe i t ' s 30 days or something. But, part
10 of that I think also should be sort of a drop-dead
11 date for when we try to resolve everything, you
12 know. Goes back and forth, maybe that ' s two weeks
13 from now or something. And then we ' ve got the
14 additional time to get it through our clearance
15 process, you know, i t i s big consultation, you
16 know, got i t s measure of controversy. So we need
17 that --

18 MS. RUVELAS: And then I think, i f I
19 could just add, I think i n the RPA I really
20 appreciate what Uni ted has offered here, and I
21 think we ' ve got a really great concept. There ' s
22 going to be a fair amount of, you know, devil ' s i n
23 the details.

24 And so Dan and I would need to be
25 working wi th Anthony because we have a lot of sort

Santa Felicia Hydroelectric Project
March 4, 2008

1 of issues and guidance from both case law as well
2 as the regulations, as to what that RPA needs to
3 do, what it needs to say.

4 So I wouldn't want us to wait until you
5 guys have talked for awhile, and then Dan and I
6 show up on the scene and go, whoa.

7 MR. DICKENSON: Right. We can all --

8 MS. WISEHART: Mostly we just wanted to
9 make sure that the essence of what we are talking
10 about is clear in the RPA, and it is what we think
11 we're agreeing to.

12 MS. RUVELAS: Okay.

13 MR. SPINA: Maybe we can use the 21st
14 date as the drop-dead date to conclude the
15 discussions. And then extend 45 days thereafter
16 to complete the opinion, final. Do you want to
17 think about it?

18 MR. WELCH: Yeah, so would that have to
19 come from us, or could you ask for an extension?

20 MR. SPINA: I'd prefer --

21 MS. RUVELAS: We could go --

22 MR. WELCH: It was our turn last time.

23 (Laughter.)

24 MS. RUVELAS: It's more paper if we have
25 to write something to you.

Santa Fel i c i a Hydroel ectric Project
March 4, 2008

1 MR. SPINA: Yeah. It's so much easier
2 for us --

3 MR. WELCH: All right, all right. I
4 will take that back and talk about it -- I don't
5 think it will be a problem.

6 MR. HOWARD: So we're talking 45 days at
7 this point?

8 MR. SPINA: From the 21st.

9 MR. WELCH: Yeah. All right.

10 MR. DICKENSON: Good.

11 MR. WELCH: Okay.

12 MR. DICKENSON: Should be able to figure
13 it out.

14 MR. WELCH: Thank you very much,
15 everyone.

16 MR. DICKENSON: And, Anthony, you made
17 it. It's not 3:00; you've got five minutes to get
18 to your --

19 MR. WELCH: I know.

20 MR. SPINA: Well, I'd just like to
21 extend a thank you to the FERC Staff for flying
22 out here. And really grateful to have you out
23 here and finally put a face with a name. And
24 appreciate Uni ted for driving down from Ventura
25 and spending time with us.

Santa Felicia Hydroelectric Project
March 4, 2008

1 MS. WISEHART: I'd rather fly from D.C.

2 (Laughter.)

3 MR. SPINA: Yeah, it is a drag.

4 Nevertheless, we appreciate you coming here.

5 (Parties speaking simultaneously.)

6 MR. WELCH: Well, thanks, everybody.

7 Good job. Excellent, excellent work. And thank

8 you, everyone on the phone, for indulging us.

9 Meeting concluded. We are now off the
10 record.

11 (Whereupon, at 2:55 p.m., the meeting
12 was adjourned.)

13 --oOo--

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Santa Felicia Hydroelectric Project
March 4, 2008

CERTIFICATE OF REPORTER

I, TROY RAY, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing Federal Energy Regulatory Commission Meeting; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said meeting, nor in any way interested in outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of March, 2008.