UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

In the Matter of:	)
	) Project No.
MERCED IRRIGATION DISTRICT	) 2179-042
_____	)

INTENT TO FILE LICENSE APPLICATION,
FILING OF PRE-APPLICATION DOCUMENT,
COMMENCEMENT OF LICENSING PROCEEDING,
AND SCOPING;
REQUEST FOR COMMENTS ON THE PAD AND
SCOPING DOCUMENT, IDENTIFICATION OF
ISSUES AND ASSOCIATED STUDY REQUESTS

MERCED COUNTY FARM BUREAU
646 S. HIGHWAY 59
MERCED, CALIFORNIA

WEDNESDAY, JANUARY 28, 2009

The above-entitled matter came on for public scoping meeting, pursuant to notice, at 6:40 p.m.

APPEARANCES

Matt Buhyoff, Hearing Officer
Federal Energy Regulatory Commission

Frank Winchell
Federal Energy Regulatory Commission
Emily Carter
Federal Energy Regulatory Commission

Dan Pope
Merced Irrigation District
Kenneth M. Robbins, Attorney
Mason, Robbins, Browning and Godwin
on behalf of Merced Irrigation District
Diana Westmoreland Pedrozo
Merced County Farm Bureau

Robert Silveira
Merced County
Anthony Roggero
Jeff Gabe
Merced River Conservation Committee

APPEARANCES

Michael Martin

Merced River Conservation Committee

Chris Shutes

California Sportfishing Protection Alliance

Stan Morimoto

Ronald Stork

Friends of the River

Rick Benson

Mariposa County

I N D E X

P R O C E E D I N G S

6:40 p.m.

HEARING OFFICER BUHYOFF: I'd like to welcome everyone to the NEPA scoping meeting for the Merced River hydroelectric project. My name is Matt Buhyoff. I'm the Project Coordinator for this project. I also am a fisheries biologist by trade, so I'll be looking at a lot of the analysis for any of the aquatic species.

I have a short presentation to kind of give everyone a basic idea of who FERC is, what we do, and what we're all here for. The catch is it's on the PowerPoint slides, and it's hard to see unless the room is dark. So, if everyone's all right we're going to turn the lights off. I know it's late, so I hope everyone had some coffee.

All right. Again, we're here with the Federal Energy Regulatory Commission. We're an independent regulatory agency. Our headquarters are located in Washington, D.C. It's a five-member commission appointed by the President. And, in fact, with the new Administration the man in the center there, the Chairman, is no longer our chairman.

We do regulate all aspects or many aspects of power, including electric power rates, natural gas, oil pipelines, and obviously hydroelectric projects.

Our hydropower program consists of licensing, dam safety and also folks that insure compliance with our licenses. We're here at the licensing. We're going to be anticipating conducting a relicensing proceeding.

And obviously we take input from the licensee, resource agencies, tribes, NGOs and local stakeholders. And all of them are extremely important because, you know, you guys are the local experts and that's why we need you.

We'll be using something called the integrated licensing process. This was created in 2003 and it's now the default process for any groups that want to come in and either get licensed or relicensed.

The point of the ILP was to insure early issue identification and coincides more precisely with the NEPA process. Something to beware of is there are very established timeframes. That insures that the process keeps moving.

So why are we here today? Well, today

we want to try to get a handle on any of the potential environmental effects, issues, concerns and opportunities associated with the relicensing of the project, and to identify any alternatives.

We also want to identify any information that might be needed and study needs that will hopefully be used to develop these operational and departmental recommendations.

Typically we'll talk about existing conditions at the project, their resource agency, their management objectives. Talk about information that already exists, what we already know. What we don't know, study needs. And we're also going to talk about the process plan.

This is the integrated licensing process in a nutshell. We're right here at the second box. MID has already submitted their notice of intent and preapplication document. And the point of the preapplication document is to bring together all the information that we currently know, and also provides a basis for identifying this issue data gap study needs.

It's in the form of a NEPA document and that helps to provide a foundation for the NEPA document.

And I'm sorry, I'm using the acronym NEPA a lot. For anyone that doesn't know, that refers to the National Environmental Policy Act.

So why are we here? We're doing a scoping. And typically the scoping meetings are held early. And, again, the point is to identify issues right upfront.

So, what we plan to do is to prepare a draft and final environmental assessment. That is the NEPA document. And eventually we'll make a licensing recommendation to the Commission. Then comes the licensing decision. The Commissioners review the project record and then make a licensing decision on whether or not to relicense the project. Licenses typically last 30 to 50 years.

Here's our initial schedule, and just some of the important dates that are upcoming. On March 3rd we can expect comments, filed comments if you choose to do so, on both the PAD, the scoping document, and also any study reports.

Now, I know MID has been working pretty closely with folks to try to get a jump on the study plans. But it's also your prerogative, if you choose to do so, to file any study reports.

And we can talk about the form of those study requests in a bit.

Some participation tips for ILP. It's a pretty new process to us, but we've done a few already. Some of the points that we've really learned help are especially for public involvement is to get involved early. So it's good that you guys are here. Stay involved and be prepared. And especially with the timelines. The timelines are pretty strict, and the point is to make sure that we keep moving along.

Also, we highly encourage the use of our efiling, esubscription services. I have some pamphlets on the table there. If you're not esubscribed, or use your efiling, it's pretty nice. Basically it'll send you an email update any time anything regarding the project is filed, whether it be from FERC or a stakeholder or anything like that. So it's a good way to keep up to date with all the documents.

The other thing is it's all these, you know, a lot of complex issues involved in relicenses. And we just ask that everyone be patient and really keep the lines of communication open. And that's why I have a dove and an olive

branch there.

Something else we've been focusing on is to try to include detailed plans, something that are -- plans that are implementable when it comes to the application time.

So the agenda for this meeting. I'll be giving the introduction to the FERC Staff that are present. MID's going to give a short description of the project. We're going to have agency and public comments and discussion of other issues.

What we'll be doing is we're going through the resource issue categories in our scoping document, just saying what we've found. And these are the resource issue categories.

There are documents at the front table here, including our scoping document. I'm going to go ahead and turn the lights on real quick.

All right. Again, I mentioned the sign-in sheets. If you do plan to speak, please sign in.

And finally, our court reporter. If you intend to say something on the record we'll have you come up to this table. And you're going to have to speak into the microphone.

So, if there are any comments or

questions that you don't intend to be on the record, we'll have a period after the meeting that we can be around to answer any of those questions for you guys.

So without further ado I'll go ahead and turn it over to MID. And let them give a basic synopsis of the project.

(Pause.)

MR. POPE: I'm Dan Pope; I'm the General Manager for the Merced Irrigation District.

Since it's late this evening we'll try and keep this fairly brief. Merced Irrigation District is the owner and operator of the Merced River hydroelectric project.

As we go through this you'll see that the project really is very simple in concept. As we go through it, we have two dams, two powerhouses. The upper dam, the Lake McClure impound by new Exchequer Dam is the larger reservoir; it's a storage reservoir. There's a powerhouse with it.

The lower reservoir, McSwain, is a re-regulating reservoir for the river. There's a 9 megawatt powerhouse with it.

We also do have recreation areas within

the boundaries of the project. I guess the other thing to note what makes it so simple is we don't have any other water bypasses, river bypasses, canals, conduits, or any transmission lines related to the project.

This is on our website. One thing for everyone, if you haven't seen it already, we do have a public website. It is www.merced-relicensing.com. This is a map, an overall map of the project. Just a reminder there that the boundaries of the map, there's nothing significant about it. We just had to choose somewhere in the geography how to depict the project boundaries and its relationship geographically in the region.

The scenario of Lake McClure. This is Lake McClure on a better day when we have a bit more water than we have right now. You can see it's a very large reservoir, a million acrefeet of maximum storage, over 7000 acrefeet of surface area. Quite a bit of shoreline, and a drainage area of over 1000 square miles, which includes Yosemite National Park.

Again, just another shot shows that from the air, looking from the north, you see the large dam, new Exchequer Dam, on the upper left, if I'm

not blocking your view. Saddleback Dam and then our emergency spillways to the middle lower right there. And we do permit 241 houseboats on the reservoir.

Again, this is what we would consider on the project. This is the controlled spillway section of our emergency spillway at new Exchequer Dam.

Another view. You can see downstream of the dam, below you see the operations village and the river, which is really the upper part of Lake McSwain. So they are next to each other, they're adjacent to each other.

It is still new Exchequer Dam. Old Exchequer was commissioned in 1926 by the District. It impounded about 280,000 acrefeet of water back then. There was a small powerhouse there of about 34 megawatts. This dam is still in existence. It is really integrated into the new dam. It is the upstream tow of the new dam.

Again, just a view from the downstream. That's the downstream slope of the reservoir, full reservoir behind it. The power house in the middle lower part of the photograph there, and just kind of a geographic location of how it's

situated.

This is McSwain Dam and Reservoir. Again, it's a smaller dam. It's a re-regulating reservoir, controls the flows in the river moment-by-moment basis. A 9 megawatt powerplant just the downstream face of that dam and reservoir. You can see tomorrow if you're on the site visit, we're going to assemble as the entry into the park, to our recreation area. And that is the McSwain recreation site right there in the center of the photo.

A different aerial view showing the crest of the dam in the middle. In the upper left you see the passive spillway from McSwain, and if it's utilized it actually spills into Merced Falls Reservoir which is just adjacent and downstream of McSwain. Merced Falls is owned and operated by Pacific Gas and Electric Company.

Again, McSwain powerhouse on the downstream face of McSwain Dam. Nine megawatts and pretty much what they consider a run-of-the-river powerhouse operation.

As stated here our operations primarily, the project operates using available water consistent with meeting safety considerations

first; all FERC license conditions; flood control requirements; and permits, contracts and agreements.

Lake McClure is primarily the storage reservoir for the project. And also has the largest hydroelectric generation facility in our project.

McSwain is, as I stated earlier, this is a re-regulating reservoir, and how we control and provide water releases into the Merced River farther downstream.

And I think that's it. That's pretty brief.

HEARING OFFICER BUHYOFF: Great. Sounded good, thank you very much. It's not just -- brace everyone for the lights.

All right, well, next what I'd like to do is just go over our scoping document. What we're going to do is just give a rundown of what we've identified so far. And then what we'll have is we have, so far, a list of speakers. We'll invite them up. And if anyone feels compelled to speak after the folks that want to speak, we'll definitely entertain them as well.

So, again, we're looking at our scoping

document, which is just a way for us to try to get a handle of what issues might exist with this relicensing.

If you have the scoping document I'm starting on page 8. First I'd like to note that as of right now we haven't defined a geographic or temporal scope for the project. So, we'd certainly appreciate if anyone has any ideas, to file those with us or let us know. Again, we rely a lot on you local experts.

So start with geology and soil resources. Again, we're just going to read the bullets that we've listed so far. For geology and soil resources we have effects of potential project construction on erosion of soils. This afternoon we also identified sediment storage and transport, as well.

For water resources the effects of project construction, operation and maintenance on water quality, including temperature, in Lake McClure, McSwain Reservoir and the Merced River. The effects of construction, operation and maintenance upon instream flow and water quantity in the Merced River.

Contamination of water resources via the

release of petroleum products or other volatile organic chemicals as a result of construction, operation and maintenance.

For aquatic resources, entrainment of fish into the project's intake structures. The effects of the proposed construction and operation, environmental and project-related human disturbance on available aquatic habitat, including spawning habitat. The effects of project operations and maintenance upon habitat fragmentation.

And for terrestrial resources -- excuse me, let me back up real quick. I forgot to introduce the FERC Staff. Sitting here to my left is Emily Carter; she's terrestrial and land use resource specialist. This is Frank Winchell; he's our cultural resource specialist.

Now with us today, our engineer's Jim Fargo; and Shana Murray is our recreation specialist. She'll be on the site visit tomorrow. She's attending another project actually today in Salt Lake City. So she's been doing quite a bit of traveling.

So I'll let Emily continue with her bullet points.

MS. CARTER: Okay. So on this project -- I'm an environmental biologist at FERC, and on this project I'm looking at the terrestrial resources, threatened and endangered species and aesthetics and land use.

So the issues that we identified for terrestrial resources include the effects of project operations and facilities on botanical species and wildlife species and habitat.

Effects of project operations and maintenance on the presence, establishment and spread of noxious weeds and invasive plants.

Effects of the project on the extent and quality of riparian habitat and upland wetlands from and including Lake McClure to Crocker-Huffman diversion Dam.

The effects of project operations and facilities on raptors and the effects of project operations on wetland, riparian and littoral vegetation community types around project facilities and reservoirs.

For threatened and endangered species we identified the effects of project operations on wildlife and botanical species listed as rare, threatened, endangered or a special status species

on federal or state lists.

And then the effects of project operations on aquatic and amphibious species listed as rare, threatened, endangered or special status on federal or state lists.

For recreation resources we've identified the adequacy of existing public recreation access facilities and effects of project operations on recreational opportunities within the project boundary. The ability of the existing recreational facilities to meet current and future recreation demand. And then the effects of project operations on the quality and availability of water-based recreational opportunities, including boating, angling and swimming.

DR. WINCHELL: I'm Frank Winchell. Again, I'm an archeologist and I'm going to be doing the cultural resource aspects of this relicensing.

Essentially this is a very general approach as far as we'd be looking at the effects of project operations or change in project operation or facilities on historic or archeological resources that are eligible for

listing in National Register of Historic Places.

Essentially that just means we're going to look to see if there's any significant historic or archeological resources in addition to significant sites that Indian tribes might find significant within the project boundary.

MS. CARTER: And then for aesthetic and land use resources we identified the effects of project operations including maintenance activities, construction debris and garbage and invasive species on aesthetic resources within the project area.

The effects of project facilities, transmission lines, maintenance and reservoir operations on the aesthetic quality of the reservoir.

Effectiveness of existing land use plans to establish or maintain compatibility between and among various land and water uses at the project. And the effects of project activities on the Merced Wild and Scenic River.

HEARING OFFICER BUHYOFF: And finally for developmental resources, any effects of project mitigation, protection -- excuse me, enhancement measures on project economics.

So at this point what we'll do is we'll go ahead and go through the list of speakers. Again, this is on the record. I'd like to remind the folks that do speak, when you come up to just remind us of your name. And feel free to tell us whatever you like. We also appreciate comments on the scoping bullets if you think there's something that needs to be changed, or if there's something we missed, that's why we're here. You know, we're here to get some help.

MS. CARTER: Or if we've listed something that doesn't seem to be that much of an issue, that's also helpful information that if there's something that we've listed that isn't an issue with this particular project. We've included a broad list; we've tried to be very broad in the bullets.

So, if we've identified something on this particular project that isn't as important, then we'd like to know that as well.

HEARING OFFICER BUHYOFF: All right. And finally, if you don't feel comfortable speaking or if you speak and you feel like you missed something, there's an opportunity to file your comments in writing with us.

So, I'm going to go ahead and get the list and we can run down in order of folks who signed up.

Okay, Bob.

MR. SILVEIRA: Bob Silveira?

HEARING OFFICER BUHYOFF: Yes. I'm sorry.

MR. SILVEIRA: So I have to speak into this microphone, huh?

HEARING OFFICER BUHYOFF: Yes.

MR. SILVEIRA: Bob Silveira, and I just had a few general comments. I am a farmer in Livingston, California. And I guess a customer or a member of the Merced Irrigation District, I guess you call it.

I'm an olive farmer. And I just wanted to make some general comments about the importance of this process. As we look at all the different regulations and things to do with the river and all that, that we never lose sight of the fact that Merced County doesn't exist without this dam and without the water resources that come out of the Merced River.

And, you know, this county in California we call -- we just talk about pumping water. And

really we mine water. The way that the water is removed from the ground in the San Joaquin Valley, it will run out. Certainly it's being over-drafted and we all know that.

The Merced River, the Exchequer Dam and that is a renewable resource, and it's a tremendous support to us, and so oftentimes in looking at the specifics of details of doing something like this we lose sight of what's really important, at least in my humble opinion. And that is the water resources that come behind that dam. And really the people of this county and this entire state is an extremely important project to us.

And so I just wanted to, I guess, focus a little bit on the big picture and that we don't lose sight of it.

That's really the comments that I have.

HEARING OFFICER BUHYOFF: Okay, thank you very much, Mr. Silveira.

Okay, Anthony, please.

MR. ROGGERO: Thank you for the opportunity of speaking. Actually it was the MID Board meeting it was mentioned that or determined that I should make some comments.

HEARING OFFICER BUHYOFF: Okay.

MR. ROGGERO: Amazingly the gentleman before me did (inaudible). One of my issues, and my understanding, I don't know if it's the proper time at this point, be noted that when a license takes place there's going to be issues with water and those.

I farm in El Nido, I have 200 acres. The last years have been dry. So I guess my concern is for the years I've had to lay out land and lay down half of my land last year, and even bought outside water. Stephenson and Mariposa water came in.

But my concern is on the wet years we have adequate, are we going to have, depending on the -- maybe I'm looking too far forward -- are we going to have an ample supply? Are we going to be limited? Or, issue is we want to look at years where we have a lot of water; in wet years we want to have a general reserve. Yes, we are mining our underground.

In fact, I'm putting a well in this year with a (inaudible) that's 800 feet, and I haven't used for 15 years because of the conditions that I'm going to need to use efficient going ahead

because I'm anticipating a cutback.

On the wet years is my point. We want to know that we have plenty of water that we can shut our wells and build up our underground. I guess that's one of the issues that we want -- we put out right now.

HEARING OFFICER BUHYOFF: Good.

MR. ROGGERO: Thank you.

HEARING OFFICER BUHYOFF: Thank you so much.

Okay, Mr. Jeff Gabe.

MR. GABE: I'm going to sit down. Jeff Gabe, and I'm representing the Merced River Conservation Committee.

I have a statement to read from Ralph Mendershausen, who is on the committee, and interested primarily in cultural and archeological resources. I've got some comments to make for myself, and then Michael Martin, Dr. Michael Martin is also here representing the committee.

So I'll start with Dr. Mendershausen's comments. He's on his way to a rafting trip in the Colorado River and is unable to join us here tonight. So, his comments are fairly brief. He states:

The area of concern here is Bagby/Benton Mills and is entirely within the project boundary. Most of it is on MID land, but some may be on BLM land, as well.

The site of Bagby/Benton Mills is now largely underwater due to the project. Since the impact of the project has been to flood and largely bury the site, and since the site is entirely within the project boundaries, it's logical to assume that this site will get careful comprehensive attention in the study phase.

Indeed, the guidelines for the cultural historical study that FERC employees mandate that such a study must consider potential of cultural resources for placement on the National Register of Historic Places.

Benton Mills is mentioned in their laconic historic remarks, but is not given much significance in the section on cultural resources, 7.12.2-1. Benton Mills is an extremely significant site for the region, state and nation.

The Las Mariposas Estate, or Fremont Grant, is a much studied entity with a very long bibliography. Benton Mills was the heart of the early operation of the grant which was managed

from nearby Bear Valley. That's where Fremont lived, and that is where his successors, Trenor Park, and Frederick Law Olmsted lived.

The grant, its creator, his successors and their lawsuit, their political aspirations and their finances were clearly of national significance. The ore processing for two of the most productive mines of the grant was done at Benton Mills, a mill created by J.C. Fremont.

The same site saw the beginning of electrification in the region in 1902. And it has been associated with power production ever since.

It was also at the heart of an audacious, but eventually futile, plan to drain several mines on the grant. This site is also one of many significant native American sites in the Merced River Canyon.

I wish to be on record with FERC that this site needs to be evaluated for the Register of National Historic Places because it is currently noted as unevaluated in table 7.12.2-1.

The expectation is that this site and all other unevaluated sites will be separately and collectively evaluated in this forthcoming study.

At the present time Bagby is a large

parking lot and a boat ramp with only a little Clampers' sign to attest to its past.

Possible mitigation measures for the flooding of the site to produce electricity should begin with its nomination and placement in the National Register of Historic Places, and also include recognition of its significance with a permanent historic display or visitors center; and interpretation of the site with public educational presentations at appropriate times. Ralph Mendershausen."

I've got a couple of comments on the scoping document, as it exists now. And just some questions. I noticed that there's some different language that applies to the different resources that are listed in the scoping document. And I don't know if there's any significant intent with differences in that, and the different approach to be taken to evaluating the resources.

But the sort of most expansive verbiage I saw was associated with the cultural resources section, where it says effects of project operations or changes in project operation or facilities on historic and archeological resources.

And I guess I don't understand why that same scope of evaluation shouldn't be applied consistently to all of the resources. Or that some consistent statement and scope should be used, so they all receive their due attention.

I think one of the effects of operation that need to be taken a look at on this is changes in reservoir level. And that can go all the way back to what was the reservoir level before the existence of the current dams. And how has placement of those dams changed the habitat in and around what was at one time the Merced River, and is now McSwain and McClure Reservoirs.

HEARING OFFICER BUHYOFF: Are you referring to the changes in reservoir with reference specifically to aquatic species habitat?

MR. GABE: Aquatic habitat, habitat adjacent to the reservoir. There's been fragmentation of habitat due to the loss of what was a river. Many tens of miles of former riparian habitat no longer exist. What has been flooded out in that change from what was once a river to what is now a reservoir.

I think it's appropriate for the environmental assessment to take a look at those

changes back to historic levels of the river. Certainly to the point where new Exchequer and McSwain Dams were built.

I don't know if there is the opportunity to take a look back prior to the construction of new Exchequer, and look at, you know, the effect of old Exchequer.

Really what's happened, and I don't know if this is considered a cumulative effect or not, but the dams at McSwain and McClure have basically continued what historically has been disruption of that river environment. And they have added to it cumulatively, what with their addition.

So, the temporal scope, I'd like to go back certainly to the construction of the existing dams. But, if possible, go back further and evaluate what's been lost with the construction of those dams and the creation of those reservoirs.

And within that, within the existing situation, depending upon the level of the reservoirs and where their operations are maintained, you may either inundate or expose various resources. It could be that of limestone salamander habitat. I don't know what has been drowned out.

Certainly if you go to the Bagby area now and look off of the bridge, you see some of the ruins of Benton Mills which, under higher levels of water, are obscured from view.

So that can be, I would think, with all of the resources, the effects of changing water levels and operational levels within the reservoir, could find some level of the reservoir where it would be important to not go above that. To try and maintain an important environmental feature that will, under current operation procedures, be occasionally inundated.

I'm particularly interested, myself, in terrestrial recreation. I like to walk. There used to be -- the river used to be a corridor for transportation as well as fish. And people could move along the river.

There was the Yosemite Valley Railway, and that old railroad bed which ran along the river, which now is largely, most times of the year, under water.

There are plenty of opportunities or examples in other parts of the country where railbeds have been turned into terrestrial recreational trails. And I think one of the

aspects of the reservoirs that currently exist now is terrestrial recreation. And I think there really needs to be a substantial effort put in to see what type of terrestrial recreation could be developed, given the current reservoir situation in consideration for what's been lost in the past.

I moved to Mariposa almost three years ago now from the Bay Area. And I love Mariposa. It's a great place to live. I miss a few things about the Bay Area. Oddly enough, one of the things about the Bay Area is public access to open space.

There's a lot of open space in Mariposa County, much of it is private land. A lot of it is public land, but at higher elevation. There really is a need within the county and in the state, in general, for recreational opportunities within oak woodland habitat. And the region at the reservoir is, in large part, oak woodland habitat.

And it would be wonderful to have more terrestrial access to that type of habitat within Mariposa County. Not only for Mariposa County residents, but for residents of nearby counties, as well as people traveling from the Bay Area and

out of state, internationally, as well.

I think it's important to look at recreation, as well, in terms of the scope, the geographic scope, in areas upstream and downstream of the reservoir, as well as areas adjacent to it. And try to integrate the reservoir within that entire geographic context. It's important from a terrestrial recreational aspect. And I think, as you'll hear from Dr. Martin, looking at things in a larger geographic extent is important from the perspective of fisheries, biology, recreation, management.

And one other comment I'd like to make is on aesthetics. I watched the helicopter video that's in the PAD. And it's an interesting video. But the thing that I found most moving about it was as the helicopter is flying up towards the headwaters of McClure Reservoir, it gets up there and it gets to the point where the reservoir now becomes a river.

And I don't remember the words of the passenger or the pilot or whoever it was exactly, but it was, oh, my gosh, look at that, isn't that beautiful. You didn't hear him say that during the entire ride up over the reservoir.

And I fully understand the importance of the reservoir in terms of power generation. It's an integrated part of the irrigation system that MID runs. And I think it's important to think of the reservoir in the context of that irrigation system because the two of them work hand-in-hand.

But at the same time, what was lost to create that was a river. And I don't know about anybody else, but for me, if I'm walking along -- next to a river is an inherently more aesthetic, more enjoyable, more interesting experience than walking along next to a reservoir.

And I didn't hear them say what a beautiful reservoir, and if I did I would have suggested that perhaps it's an oxymoron. It certainly is from my own perspective.

I guess with that I'll conclude my comments. I will reserve the right to submit comments in writing at a later date, as well.

HEARING OFFICER BUHYOFF: Absolutely.

MR. GABE: And if there's time and it's appropriate now, Michael Martin could talk.

HEARING OFFICER BUHYOFF: Sure.

(Pause.)

(Parties speaking simultaneously.)

DR. MARTIN: So you can leave?

MS. WESTMORELAND-PEDROZO: Yes.

DR. MARTIN: Sure, okay, yes. Please do.

MS. WESTMORELAND-PEDROZO: Can I indulge? Read a letter while they're getting all their stuff together?

HEARING OFFICER BUHYOFF: Actually, would you just read your name for the court reporter's sake?

MS. WESTMORELAND-PEDROZO: My name is Diana Westmoreland-Pedrozo, Merced County Farm Bureau. And I'm reading a letter into the record on behalf of the board of supervisors that was dropped off because they thought the meeting would last a little longer earlier this morning.

"I am writing on behalf of the Merced County Board of Supervisors to support the Merced Irrigation District's efforts associated with the Federal Energy Regulatory Commission relicensing of their Merced River hydroelectric project number 2179.

MID has been an outstanding partner in our community for many years and has been providing reliable, cost-effective power to

thousands of customers residing and conducting business in Merced County.

We are proud of the investments that Merced Irrigation District has made in our community over the years, bringing new infrastructure, equipment and personnel to the area.

Considering the challenges post the energy crisis of 2001, Merced Irrigation District has undertaken a number of aggressive steps encouraging its customers to conserve energy while protecting the environment.

As the board of supervisors understands, MID intends to apply for a new license for the aforementioned project no later than February 28, 2012. This approval is important to our county and many of our residents, as they provide us with an essential and viable commodity that we depend upon daily.

We stand with MID and their objective of obtaining a new license of a maximum term, while fostering its relationship with the community, governmental agencies, and other important stakeholders.

On behalf of the board of supervisors

and the residents of Merced County I am asking for your favorable consideration of MID as they proceed with the steps necessary to secure relicensing.

Thank you in advance for your consideration of our request. Sincerely, Deidre Kelsey, Chairman, Merced County Board of Supervisors."

HEARING OFFICER BUHYOFF: Thank you.

MS. WESTMORELAND-PEDROZO: Thank you for the indulgence.

DR. MARTIN: Mr. Hearing Officer, FERC Staff, ladies and gentlemen, my name is Michael Martin. I am representing the Merced River Conservation Committee. I'm a certified fisheries biologist from the American Fishery Society. I'm an Adjunct Professor in the Department of Biology and Chemistry at the City University of Hong Kong, China. And I'm a long-time and extremely avid fly fisherman. I also serve, but I'm not representing tonight, as the Conservation Chairman of the Merced Flyfishing Club of Merced.

My comments tonight are addressing the scoping document. The Merced River Conservation Committee is an ad hoc coalition of local citizens

who are dedicated to the protection and restoration of the Merced River.

You invited our participation to identify significant issues and blah, blah, blah, blah, and we appreciate allowing us to participate in the process. And we will be in the process until February 2014.

You identified a list of preliminary issues. The PAD identifies -- in the PAD MID identified the process of consultation on fish and wildlife affected by project operations.

It's my professional opinion that anadromous fish, in particular steelhead and two populations of salmon, have been cumulatively affected by project operations.

Federal- or state-recognized resources either occurred or historically occurred in the Merced River. And my recommendation is that the EA evaluate the project's direct and indirect cumulative effects on anadromous fish resources.

You requested input on geographic scope. Anadromous fish occurred in the Merced River historically from the Bay Delta to the upper reaches of the Merced River, including Yosemite Park and within about four miles of Wawona on the

South Fork of the Merced River.

That all this information is included in two reports that I've done the research and prepared for the project, and will submit that as part of the record.

They are now restricted, because of the project and the project operations, to below Crocker-Huffman Dam, and below the hydro project dam. I recommend that the EA address project effects from Bay Delta to headwaters.

With respect to the individual resource issues I believe the construction and project operations will affect instream sediments. Matt, you mentioned that you were going to include that, and we appreciate that and we can move on.

Agencies, certainly Fish and Wildlife Service and the anadromous fish restoration project have identified the need to replenish gravel. And I might add that the Merced Flyfishing Club and the California Department of Fish and Game have a project, that we anticipate funding in this year's cycle, to do some gravel restoration below the Crocker-Huffman Dam. That project is scheduled to go off this next fall, either before or subsequent to the hopefully fall

run of Chinook salmon run. So you've included that, thank you.

Under water resources there were three significant issues identified in the draft report. I think there are more specific issues that should be addressed with respect to water resources and considered in the EA.

Number one is a water balance operations model that's linked to water production in the basin. We're all aware that there's some significant changes in the climatological patterns of California and elsewhere. And it's highly likely that rainfall patterns and snow patterns are going to change dramatically. And the federal fisheries agencies and state fisheries agencies are aware of and investigating that. And I think that should be part of the EA.

A temperature model for providing adequate conditions for anadromous fish in river reaches below Crocker-Huffman Dam, including egg fry survival, rearing habitat preference, growth rates and summer rearing is necessary -- is needed.

With respect to water quality your recommendation was for a group of semi-volatile

organics. Mercury and pesticides should be included as constituents of concern. And when the study plans for those develop we'll provide technical input to that.

Also there are a number of downstream water agreements that are going to be expiring or changing during the renewal process of the FERC license. And those are going to have importance to how water is distributed. And those should be evaluated. And, again, I recommend that that happen.

With respect to section 4.2.3, aquatic resources, I believe the effects and alternatives to anadromous fish passage for steelhead, spring run and fall run, late fall run of Chinook salmon should be a part of the assessment process. And specifically analyze bypass prescriptions and the reintroduction of anadromous salmonids with appropriate genetic backgrounds in conservation hatchery supplements.

The California Legislature now has legislation that they're considering that is going to direct the Department of Fish and Game to start considering genetic issues with respect to their entire hatchery program. And they're also being

in a lawsuit, in a settlement, with respect to that issue. So it's an important issue on the Merced River, as well.

A fisheries management plan, i.e., an adapted fisheries plan for the entire Merced River within and beyond FERC boundaries should be developed. And an analysis of future and recreational fisheries with those same boundaries, including an economic evaluation, should be included in the assessment process.

Current and future effects of DFG and private hatchery operations on non-target species, steelhead and spring run salmon. The Fish and Game hatchery was built as a part of the project for project impacts mitigation on fall and late fall run Chinook salmon. And built with public funds. And I believe and I recommend that those effects have not been evaluated fully and need to be evaluated in the EA process.

The PAD eliminated all species that do not occur within the, quote, "project vicinity." And they had a definition that maybe FERC mantra. But central valley spring run Chinooks, winter run Chinooks and California Central Valley DPS steelhead all occur or occurred in the Merced

River.

And the presence or absence of a historic occurring species is not -- this is my opinion -- is not the only factor to be considered in providing protection or enhancement from project impacts.

For example, designated critical habitat or ongoing and planned restoration might be significant actions allowing the enhancement and/or re-establishment of an extirpated and currently severely depleted populations. And those should be, the project operations and their effects upon those depleted populations should be a part of the environmental analysis.

There's a benefit of T&E, threatened and endangered, restoration including bypass, et cetera. There's a need to increase cold water winter habitat. I fully believe that the federal and state agencies, in the next few years, are going to start saying that there is need for more habitat. That certainly was an issue in the licensing of the Oroville Dam.

Conservation of stream-type life habitat is needed. That's one of the limiting factors on the current populations. It's now restricted

below Crocker-Huffman Dam. And that's less than probably 5 or 7 percent of their original refugia. And that has an effect.

There's a need to return culturally important species to their native rivers. The upper river and the Indians had anadromous fish. They should have them again.

It increases forage for terrestrial species including eagles. And providing fish passage might allow an opportunity to use water more efficiently, i.e., don't try to flush a lot of water to create habitat for a long time if you bypass the dam and you don't have to release the water.

And current anadromous salmonid populations are in critical decline. This fall there was a return of, I believe it was 271 returning adults. And that's one of the lowest return rates since they've been taking -- surveying salmonids in the lower river.

And, of course, reintroduction and enhancements in the stability of the Merced River populations are important to the commercial and recreational fisheries of the Bay Delta system and the Pacific Ocean. Those should be included in

the EA.

Recreational resources. And Jeff touched on the hiking; I'm interested in fishing. The project may provide enhanced river-based recreational opportunities over current conditions. And project maintenance and operations can affect those enhanced opportunities.

For example, if a fishery were developed in the river above McClure, and the operations of lake levels and/or stream blockage allowed significant access upstream, that might, in turn, create a more robust recreational fishery in the upper river.

Currently the stream surveys are pretty rudimentary, and those probably should be part of the recreational resource evaluation, which I will talk in the study plan development.

I think there should be an adaptive fisheries management plan.

You asked for any important environmental documents or studies. At least two, I think, are critical and need to be integrated into the operation of the Merced River project: the San Joaquin River restoration program, which

is going to be an attempt to reestablish the spring run in the main fork of the San Joaquin. And as salmonid movers and shakers know, fish go where they go. And there's little doubt in my mind that they will, if they do get a population going in the San Joaquin below Friant, that some of those fish will start swimming up some of these other drainages.

And then the second document of importance that has relevance to the operation and maintenance of the project is the Bay Delta. And the Bay Delta Vision Task Force was mentioned in the PAD, but it said it had not been produced and so they weren't discussing it. And it was actually published at the end of December 2008, and is available and should be included.

Other information are my two reports, and I will provide the staff with copies of those for the record. And there are three arguably steelhead trout from the lower river in the last two years.

Thank you.

HEARING OFFICER BUHYOFF: Thank you very much, Dr. Martin.

I think we have one more speaker on the

list. Mr. Chris Shutes.

MR. SHUTES: I'm going to sit -- I'm going to face the folks in the audience.

HEARING OFFICER BUHYOFF: Absolutely.

MR. SHUTES: My name's Chris Shutes. I'm the FERC Projects Director with the California Sportfishing Protection Alliance. And of behalf of CSPA I'd like to thank the folks from FERC for hearing our comments about scoping for the Merced hydroelectric project.

CSPA has long been extremely concerned and active in seeking improved management of the San Joaquin River and its major tributaries. CSPA is one of the organizations that successfully sued to have flow in the San Joaquin downstream of Friant Dam restored.

We expect that restoration to begin imminently and ultimately to see spring run Chinook restored in the San Joaquin.

This, just as an aside, is an extremely good example of why you can't simply analyze what's there now. It is not only realistic, it is feasible and likely that we're going to see a push to have increased passage past rim dams in California in the next five to ten years.

On the not-so-good side, recent numbers of returning fall run Chinook in the Merced, the Tuolumne and the Stanislaus have been precariously low. Numbers of steelhead returning to these rivers also appear to be low.

Management of the Merced River from its headwaters downstream to the Golden Gate is entwined in a number of overlapping and possibly conflicting jurisdictions. The Park Service manages the river in the park. Downstream of the park the Merced is subject to regulation under the Federal Wild and Scenic Rivers Act.

The Merced project boundary begins at Lake McClure. More or less immediately downstream of the Merced project is the Merced Falls project. Downstream of Merced Falls MID's consumptive rights are exercised at Crocker-Huffman. Downstream of Crocker-Huffman water is withdrawn from the river by riparian and other water rights holders on the lower Merced.

Still further downstream future requirements are to be determined in the next few years for flows for the lower San Joaquin River to replace the Vernalis Adaptive Management project flows now that VAM has officially expired. A

timeline for that at the state board is approximately 2011 or '12.

We note that jurisdictional responsibility for flows to meet standards are Vernalis and more broadly, delta flow requirements, has not been recently tested. But it's more likely to be disputed as flow requirements grow in magnitude.

Overlaid onto these differing jurisdictions, which could largely be conceptualized geographically, are three biological opinions. Two for the Central Valley Project and the State Water Project's operations and criteria plan, or OCAP. One for listed pelagic species, especially delta smelt. And the other for listed salmon, steelhead and green sturgeon. The third would be the one that we presume will be coming for listed central valley steelhead in the Merced River, itself.

This multitude of jurisdictions presents significant difficulties for both FERC and for relicensing stakeholders, as well as for jurisdictional agencies and parties concerned with aspects of management outside the Merced project's geographical footprint.

The Federal Power Act, section 10(a) says that the project adopted, including the maps, plans and specifications shall be such as -- difficult language -- in the judgment of the Commission will be best adapted to a comprehensive plan for improving or developing the waterway.

If the term comprehensive cited above is to have any meaning, then a comprehensive plan for the Merced River and waters upstream and downstream of the Merced project cannot be decided piecemeal, divided up solely according to FERC project boundaries as appears to be proposed in section 3 of the preapplication document for the Merced project relicensing.

At minimum the following study needs inevitably overlap and cannot be practically approached under a narrow limitation on a geographic scope for the relicensing.

One, the hydrology of the Merced River. Two, hydrologic modeling of the movement of water from say, El Portal, through Lake McClure and down to the lower Merced River.

Three, water temperature modeling. This will need to begin with water temperature in the Merced River downstream of El Portal down to the

project. The hydrodynamics of Lake McClure will need to be modeled, stratification evaluated. And possible temperature variability and releases out of this reservoir evaluated.

Thermal loading in McSwain Reservoir, Merced Falls Reservoir and the Merced upstream of the Crocker-Huffman diversion pool must be evaluated under different historic and potential operations and operating scenarios. And finally account for thermal loading in the Merced River downstream of Crocker-Huffman Dam.

Evaluation of fish passage past the Crocker-Huffman, McSwain Dam and new Exchequer Dam, and out of Lake McClure equally cannot be conceived under a narrow limitation on a geographic scope.

All of these studies, at a minimum, require an examination and analysis that goes beyond present FERC boundaries.

Such analysis is needed to understand project effects on central valley steelhead listed under the Federal Endangered Species Act. Such an analysis is also needed under NEPA.

Section 3 of the PAD, which describes direct and indirect effects of the project as

being limited to the immediate project area presents, as a conclusion, that which the NEPA process is supposed to determine.

Stating that other effects are cumulative does not make it so. Nor is an effect necessarily cumulative under NEPA if it acts in concert with other effects. The geographic scope of what it's studying and relicensing must be sufficiently broad to quantify and evaluate that which licensee's consultants have stated upfront as a foregone conclusion.

If a relicensing study is nothing outside of the immediately project area it goes without saying that it will find no project effects outside of that area.

Wherever FERC decides to draw lines on scope, they should clearly delineate where it believes it has jurisdiction, over what, to what extent. And in the cases of the Merced River project and the Merced Falls project, in what venue.

The various aspects of water movement and management on the Merced River must be coordinated to optimize management benefits for anadromous salmonids as well as for resident

trout.

FERC must consider and set forth how it plans to address the soon-to-be-set new flow standards to replace the VAM flows at Vernalis under a reopening of 1641 or whatever succeeds it. The VAM flows have been shown to be grossly deficient and to directly affect Merced River steelhead and fall run Chinook. Water to meet the standards must come from somewhere.

Until the San Joaquin, above the Merced confluence, once again flows on a regular basis, there are only three feasible sources of water to meet the new standards, the Stanislaus, the Tuolumne and the Merced.

The Merced and the Tuolumne both contain FERC jurisdictional rim dams. New Don Pedro is on a relicensing timeline, two years behind the Merced River project. FERC's EA or EIS for the Merced and Tuolumne relicensing, and that should be EAs or EISs, must consider the effect of each proposed action on the other. And how the combined actions can just address flow requirements in the lower San Joaquin River.

Finally, the FERC EA or EIS for the Merced project and the biological assessment for

the accompanying section 7 consultation must intercept with the OCAP biological opinions to protect fisheries resources without jurisdictional gaps or loopholes based on overlapping or ambiguous jurisdictions.

I will submit a expanded version of these statements in writing through efile. I would also point out that the OCAP biological opinion for salmon and steelhead is due out in early March. And that is a critical document that FERC should consider when evaluating environmental effects for this project.

Thank you very much.

HEARING OFFICER BUHYOFF: Okay, thank you very much, Mr. Shutes.

Is there anyone else that we haven't gotten to that would like to speak? Okay. Would you like to come up and speak into the microphone.

MR. MORIMOTO: I didn't sign up because my intention was just to come and listen. And I've learned a lot by listening. My name is Stan Morimoto; I'm a farmer over in the -- Cressy area.

I listened with interest to the growers that spoke about the needs of our waters here and the role it plays in the production of our food

and our economy locally. And I listened with interest to the people that are concerned about the critters out there that need the good water to survive.

I grew up fishing on that Merced River. I lived right there. The river's changed a lot over the years. But, you know, this whole world has changed. I just can't imagine if all of us had to go out and find our lunch for tomorrow out hunting or fishing or something. I think a lot of our fish would be extinct by now.

We, as a country, I think, are very -- we came here because we were looking for something better. We probably got kicked out of some of our countries, and we came here as a last result. But, we did a pretty good job of learning how to allow us to grow.

Each of us has an impact. It's partly my fault for being born. It's partly my fault for having grandchildren. If we didn't do this we wouldn't have the population that we have out there right now that we're trying to feed.

We didn't have to try and do that as much ten years ago, 20 years ago, or especially maybe 40 years ago. A lot of things have changed.

I know if we don't try to cling to a perfect world we would probably give up and things would get a lot worse. So I appreciate where you're coming from.

But keep in mind also that San Francisco wasn't as big as it was, and we didn't have an L.A. the size that we look at currently. And we have to find a way to feed them. We've been doing a pretty good job.

We talk about mitigation for the fish, and I'm all for that. You know, there's a lot of little critters out there that I used to enjoy looking at when I was growing up that I just hardly see any of anymore. And my kids won't see them and my grandchildren absolutely won't.

But if we try and help every critter out there survive, then we have to look at ourselves and say, maybe there's just too many of us, I'll take the pill or something and start shrinking it down. But that may not go well with some religions. It may not go well with a lot of other people.

But the fact is we've got to feed the people. I read an article the other day where right now average American, I think was in the

Merced Sun -- works six weeks to pay for his food bill. That's pretty good.

Otherwise, if it wasn't for the cows out there, the beef animals out there there probably wouldn't be any deer left. Wouldn't be -- we almost did away with the buffalo, maybe for other reasons than eating.

You know, one of the things when we talk about mitigation, on that river there didn't used to be a lot of striped bass out there when I was growing up. Fish and Game started planting them. They had people right here in Snelling planting them.

And I'll tell you what, striped bass like to eat baby salmon. They love it. You probably catch them on your flyrod sometimes. They're a heck of a fighter, aren't they? Yeah. I used to flyfish for striped bass over on the forebay with a number 12 line. A lot of fun. That and what do you call those fish that you smoke a lot? Chad.

But, you know, why does the striped bass have diplomatic immunity? It's over there doing as much damage as any of us are doing by diverting water to feed all these people in San Francisco

and L.A. and everywhere else. And this is probably one of the most productive areas in the United States, right here. And it used to be a desert. I don't think we want to let it go back to a desert again. We can't afford it.

There is a little striped bass that got into the river, and I hear it's on the San Joaquin. It used to be in one lake down south. And one person from Fish and Game, with approval or without, moved it into a river. It's very similar to a small mouth bass, but more aggressive.

Sits right in the fast water like a trout does, very aggressive. More aggressive than the large mouth bass which kind of sits to the side in the slow water. Even more aggressive than the small mouth. My neighbor knows the name of it; he lives on the river and he catches them all the time. He says, boy, they're fighters. But he catches them and they have a lot of small little critters that we worry about in them.

If we're going to mitigate let's not just mitigate one area, let's do the whole thing right. You know, it's just like fixing one leg on a table. It just doesn't sit right. Let's fix

the whole thing.

I have a friend that goes out and fishes and he says it's starting to get amazing how even on a four-day-out trip how much garbage you find caught up in some of these big fishes you catch. What he was told is there's a big circle of plastic trash just circling out there that gets dropped off in the ocean that's having an impact on our migrating fish and the fish that live out there their whole life.

We need to fix the whole thing. If we try and say, give these fish more water and it'll fix it, I think -- I don't blame you for asking, but there's a reason why in China they don't let them have too many children, because they can't feed them all.

We can over here. We have one of the most effective, efficient farm operations in the world. And we are getting better and better and we're showing the rest of the world how to do it.

You know, it's the technology of farming which has gotten it so that you don't have to go out there and shoot a deer for lunch tomorrow, or a squirrel, or whatever. We can produce it right here in the valley and all the other good farm

areas in California and the rest of the United States. But the one thing we need is water. We need it.

Let's fix it, but if we take the water and the fish don't come back because of this striped bass over there, or this small bass that's eating them on the Merced River, it's not going to do any good. It's a waste of time and it's going to have a big impact on the economy of Merced County, because depends very heavily on agriculture.

And it's going to affect the price of food to everybody. It's not going to just take six weeks if we dry up all these farms to buy your food. It's going to take 12 weeks, maybe more than that. We're very fortunate to have a country where food is not an issue. We've always been able to provide, and we need to continue doing this.

I have a tendency to babble and I'm sorry. But I wasn't going to say anything, but you know, you were talking about we're mining the water. Yeah, we're mining it, but, you know, one of the unique things that we have right here in the valley is we have a reservoir and a

rechargeable groundwater resource.

And the district has done a very good job. You know, at one time they were talking about lining all these canals, but they found that by not lining them these leaky canals were all contributing to the recharge of this basin.

And the fact that the district is here, less people were actually pumping from it. And actually with some monies that the district had, they created a situation of where they encouraged this recharging by creating basins out there. Actually recharging these aquifers for drier years. It's a good banking system.

You know, one of the things that you have to cherish, in my mind, is a unique agricultural situation like this where you have the climate, the water and the soil to produce the kind of food that we need.

You know, if the people down south lose that land, they don't have groundwater. That's why a lot of ranches are going to be fallowed.

But through good management here, in combination with the resource that we have, with the reservoir and a rechargeable groundwater this is a sustainable area for long-term farming. And

it's got to be protected.

And I don't want to challenge your concern about the environment and all the fish and animals out there. I think it's a good indicator of the health of our environment, but also remember this, is that too many people have become a part of this environment. And somehow we have to balance this so that we can continue to feed them at a reasonable price.

Thank you.

HEARING OFFICER BUHYOFF: Thank you very much, Mr. Morimoto.

Okay. Yes?

MR. ROBBINS: Ken Robbins; I represent Merced Irrigation District. Just a comment obviously you'll take into account, jurisdictional limitations that FERC has relative to the project, as you deal with that.

But one thing that's clearly in your jurisdiction are the potential impacts of shifting the timing of power generation. Many of the requests that you're going to get require a shifting of electric generation out of the summer. California's extremely energy short in the summertime. This plant contributes to summer

peaking power. Loss of that is significant, economic as well as resource impact. And I'd ask you to take that into consideration in your scoping process.

HEARING OFFICER BUHYOFF: Thank you. Is there anyone else that would like to speak? Great. Mr. Stork, you can go ahead and speak right now, actually. That's good timing. And would you just state your name for the record.

MR. STORK: My name is Ronald Stork. I'm with Friends of the River. My apologies for being late, but I showed up at the Merced County Board of Supervisors place, which is where the announcement was for this meeting, and there was no little thing on the door or anything. So it took me awhile to try and eventually figure out where you were.

HEARING OFFICER BUHYOFF: Our apologies.

MR. STORK: We'll be filing scoping comments, but just a quick review. Clearly the tailwater fishery issues are going to be a significant issue in this relicensing, as are opportunities for reintroduction of some of the problem fisheries upstream of Exchequer and McSwain.

And I'm sure that you and the agencies will be working on grappling through those -- or working through those issues. And that will probably take the majority of your time.

But I was also looking at the licensee's preferred alternatives. And I noted a number of interesting, and perhaps laudable, thing that the agency is looking at.

And one was to try and find a way to improve perhaps the water conservation storage within the reservoir. And it seems to me that there's two ways in which you do that. One is you invade the Corps of Engineers' flood control diagram. And the other is you raise the reservoir.

And I'm sure that the Commission is already quite aware that doing that, raising the latter, raising the reservoir, would be illegal and beyond the Commission's authority.

And I'm curious to know -- we'll get a memo out to you, but I'm just curious to understand if the Commission has done that in the past, has looked at an alternative that encroaches into a Wild and Scenic River or a national park, as part of its range of alternatives.

The other issue which the district is interested in exploring is, I could assume, would be to see if they can utilize part of the Corps' flood control reservation as part of the water conservation storage at the dam.

And I served on the Department of Water Resources independent review panel for central valley flood control, and on various subcommittees, and of the Corps of Engineers on their recent look at improving the flood control systems in the central valley.

And the obvious way in which you would do that -- or sorry -- I highly doubt if the Corps will let you invade the flood control reservation that currently exists at Exchequer. Unless there's some change in the, presumably an expansion in the flood control channel downstream so that the district has the opportunity to manage its flood control reservation. Not just by storage, but by, when necessary, making larger releases than they currently can.

The reason why I go into that trouble is you are looking at trying to figure out what the scope of the project is. And if you're going to expand the downstream floodway that is a -- you

chase that down quite a ways, down the Merced and down the San Joaquin. So it becomes quite a significant challenge for, I think, FERC and the district and the Corps to sort out how you're going to deal with that.

But I'll speak to your authorities. You do have flood control as part of your authorities when you're doing licensing, so you'll have to grapple with the licensee's views on that and the public's views on that, as well.

And I came prepared, or I was hoping to arrive on time so I would be a bit more prepared. But since I've been in downtown Merced instead of down here and closer to God's country, I'm just not as prepared as I should be, so.

I'll be on that trip tomorrow, though.

HEARING OFFICER BUHYOFF: Okay. Thank you very much.

Anyone else? Okay. None.

I'll be brief, the last part here. Just to remind everyone, the next stage is study plan development. I know MID's trying to get a head start to put together some studies. I encourage you to check their website to see what their study schedule is like.

That being said, it's more than your prerogative to give us any study requests you may have. I have some documentation on the best way to do that, and what kind of criteria we look for in studies.

Again, a reminder on March 3rd we welcome any written comments on the preapplication document, our scoping document, and the study requests are also due.

Let's see, is there anything I'm missing? Oh, yeah, tomorrow, again, we're going to be having a site visit so we can see the site. The public is more than welcome to come. We'll start at 10:00 a.m. You can talk to Mr. Andy -- Anthony, excuse me, about any details after the meeting if you feel like that's something you'd like to go see.

Like I said, we're going to hang around a little after the meeting, if there are any other questions you'd like to ask us.

I want to thank everyone for your comments. Again, very helpful, we really appreciate the public participation. As Mr. Morimoto said, you know, I mean there's -- everyone has, you know, a lot of different views

on how best to proceed. And, you know, the more participation we get I think the better decision we can all reach.

DR. MARTIN: Michael Martin. Do you want the study requests efiled or sent directly to you?

HEARING OFFICER BUHYOFF: You should file them. So if you've been using efiling that would just continue. But, yeah, they should be filed on the record.

Okay, so unless anyone has any objection I'm going to adjourn the meeting so we can stop using the microphones.

(Whereupon, at 8:20 p.m., the meeting was adjourned.)

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CERTIFICATE OF REPORTER

I, DEBORAH L. BAKER, 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 1st day of February, 2009.