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VERBATIM TRANSCRIPT OF:  
FEDERAL ENERGY REGULATORY COMMISSION (FERC)  
PUBLIC SCOPING MEETING  
FOR THE MATTER OF:  
PEABODY'S PROPOSED TROUT CREEK RESERVOIR  
HYDROELECTRIC PROJECT P-14446  
Held Thursday, October 25, 2012, 10:10 A.M.  
at the Steamboat Springs Community Center  
1605 Lincoln Avenue, Steamboat Springs, Colorado

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S P E A K E R S

Staff:

Shana Murray, FERC  
Joe Hassell, FERC  
Brian Yansen, Peabody  
Sandi Snodgrass, Esq., Peabody  
William Caile, Esq., Peabody  
Dave Merritt, URS/Peabody

Audience Members:

Matt Rice, American Rivers  
Brian Hodge, Trout Unlimited  
Kevin McBride, Upper Yampa Water Conservancy District  
Barbara Walz, Community Member  
Laurie Jazwick, Natural Resources Conservation Services  
Jackie Brown, Routt County Conservation District

1                                   OCTOBER 25, 2012; 10:10 A.M.

2                                   P R O C E E D I N G

3                                   MS. MURRAY: We're going to go ahead and get  
4 started.

5                                   I would like to go ahead and welcome  
6 everyone to the Federal Energy Regulatory scoping  
7 meeting. That's a mouthful. You can just call us FERC.  
8 It's much easier.

9                                   This is a scoping meeting for the proposed  
10 Trout Creek Reservoir project. The purpose of this  
11 meeting today is to allow Peabody to give an overview or  
12 explain what exactly they are proposing. It also allows  
13 FERC to kind of explain the licensing process for these  
14 hydro projects such as Trout Creek, what the next steps  
15 are, and how to get involved and stay involved with the  
16 process. Because it's a lengthy process, or it can be,  
17 and there are a lot of steps. And there are times for  
18 public and stakeholder comments throughout the process  
19 at each step. And we want you to be aware of those so  
20 that if you would like to participate or make comments  
21 and be involved we want to give you all the tools and  
22 resources to do that.

23                                   My name is Shana Murray. I should have  
24 started with that. I am the project coordinator on the  
25 FERC side of things. This is my colleague, Joseph  
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1 Hassell. He is a -- let me see if I get this right -- a  
2 water resources engineer/hydrologist/everything under  
3 the sun. Joe is a smart guy, on the FERC team. We also  
4 have additional team members, a terrestrial specialist,  
5 Carolyn Templeton. An engineer, Jim Fargo. An  
6 archeologist, Frank Winchell. And a fish biologist,  
7 Matt Buhyoff. Unfortunately, really sad for them, they  
8 couldn't come to Steamboat with us. They are a little  
9 jealous of us. But we do have a full team at FERC, so  
10 they will also be available throughout the process.

11 I want to note before we get started, this  
12 lovely lady is the court reporter. This meeting is  
13 being recorded. There will be a transcript at the end  
14 of this meeting. It will be available on the FERC  
15 website in two weeks. So she's basically taking the  
16 minutes of the meeting, which means when we talk and we  
17 open this up for discussion, one thing that is really  
18 helpful is to talk one at a time, just because that's  
19 hard to type two people talking at once, and to state  
20 your name and affiliation just to help her for her  
21 record.

22 So with that I'm going to turn it over to  
23 Brian Yansen with Peabody, and he will introduce his  
24 team and tell you a bit about what we are talking about  
25 today.

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1                   MR. YANSEN: Well, I'm glad everybody could  
2 come today on a snowy morning, but I am Brian Yansen  
3 with Peabody Energy. I'm the project manager on the  
4 Trout Creek Project. There are a few new faces, so I  
5 will keep this short. Everybody else has heard this at  
6 least twice maybe. So I'm going to kind of go through  
7 my team here.

8                   A couple of people were here last night that  
9 aren't here today. Obviously, talked about project  
10 manager. Jerry Nettleton works at Twentymile Mine.  
11 Some of you might know him. He's kind of our local guy  
12 here. He's the manager of environmental affairs at  
13 Twentymile that also will be working on this project, as  
14 well as we have a PR, community relations person, Beth  
15 Sutton. She's not here. She was here last night.

16                  I want to introduce a couple of our project  
17 attorneys out of Denver. Bill Caile and Sandi Snodgrass  
18 are over there, as well as David Merritt is with URS.  
19 He's our lead consultant on the project, as well as his  
20 team is Jody, right there, and David Jones, right there.  
21 So that's kind of our team. There are many other people  
22 working on stuff, but this is kind of the core team.

23                  To kind of give everybody an idea, you know,  
24 we went through a little bit of this last night, but I  
25 will catch everybody up. Peabody Energy, if you don't  
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1 know who we are, obviously, we're a very large coal  
2 company. You know, our Peabody name and the record of  
3 safe, sustainable mining for a half a century in  
4 Colorado. We have been here a long time. We own  
5 Twentymile Reservoir -- or Twentymile Mine, the new Sage  
6 Creek Twentymile expansion, as well as the Senca  
7 operations back in the day that are now shut down and  
8 being reclaimed. That was all ours, as well as the old  
9 Empire Mine, the old William's Fork Mine down in Craig,  
10 also. So that kind of gives you an idea of our  
11 footprint out here in Colorado. We are the number one  
12 coal producer out here in Colorado, the State, the  
13 county and the region. We create about 350 jobs and  
14 about \$790 million of economic benefit to the region.  
15 So we got a big footprint here, and we like being here.

16 Trout Creek is just another investment, you  
17 can see up here. \$16 million is kind of the budgeted  
18 amount for the project itself. This continues our  
19 long-term investment in the State and in the region as  
20 well as the County. You know, this will be an enhanced  
21 wildlife habitat, as well as our long-term water supply  
22 for our mining operations.

23 Kind of Peabody in general, we're the  
24 world's largest private sector coal company. We're the  
25 US leader. The box down in the corner here talks about  
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1 a couple of areas we are the number one position in.  
2 Everywhere that we are out in the United States, we hold  
3 the number one position as far as coal safety. Our  
4 records speak for themselves. Like I said, number one  
5 in several areas we're in. We have about 30 operations,  
6 30 mines, throughout the US and Australia as well.

7 Safety record: We always talk about our  
8 safety record. We are a very safe company. 2011 was  
9 our safest year to date. We're a 120-year-old company,  
10 so it kind of speaks for itself. Every year we get  
11 better. We have a good reputation for having  
12 environmental excellence in everything we do. The Trout  
13 Creek Project, as well, should follow that path. We  
14 have been honored for sustainable mining, as well as our  
15 corporate responsibilities.

16 Safety: You know, we always talk about our  
17 safety. Every year we get better in safety. We try to  
18 strive to be better and better. You know, you can kind  
19 of see we got better by 30 percent last year, so we just  
20 kind of like to show everybody that.

21 A good idea on Twentymile itself, the mine  
22 out here, 7.5 million tons in 2011 were shipped out of  
23 there. So we mine a lot of coal out of that mine, as  
24 well as ship it all over the globe. Safety rating, as  
25 well as anything we touch, our Senca operations that we  
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1 shut down, to stuff that we are working on currently,  
2 every piece of ground we touch will be restored, and  
3 that land was about four times more productive than the  
4 original land before we came there.

5 Twentymile, Sage Creek, if you guys have  
6 been driving around at all on 27 out near the airport  
7 there at about the Hayden station, they are building a  
8 rather large roundabout. You can see it from the plane.  
9 You can probably see it from the moon. It's a large  
10 roundabout.

11 But, basically, that represents a \$200  
12 million investment down that road is our new Sage Creek  
13 portal location. Twentymile eventually will wind down  
14 the longwall. We'll go put it underground over there  
15 and start mining back towards Twentymile. That  
16 represents another 105 million tons of coal that we're  
17 accessing. So that \$200 million investment is being  
18 secured by a 16-year contract with Hayden Station, as  
19 well as other export contracts throughout the world.

20 We have already had the permits in place  
21 from the longwall, and we started construction on that  
22 operation already.

23 Kind of what I just talked about before, the  
24 economic benefit. The indirect/direct cost that we  
25 spend out here with the multiplier equals close to \$800

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1 million, as well as the 350 jobs that are created off of  
2 the operations.

3           The planned Trout Creek Reservoir Project,  
4 you can kind of see it where it's located right there.  
5 It's a red dot. Many of the maps really zoom in on it.  
6 I'll kind of just show you a little bit. That's the  
7 location there, up Trout Creek, Trout Creek's tributary  
8 of the Yampa. So water from this facility can be used  
9 down the Yampa to hit our other operations in the  
10 future. That's -- the geographic location of this  
11 project is key for our future mining.

12           The Reservoir itself, the footprint over  
13 there, the blue one on the map over there on the easel,  
14 represents about 385 acres. You know, this is basically  
15 the footprint today. It's probably going to change a  
16 little bit, tweaked a little bit, but all in all it's  
17 about a 385 acre lake, enhanced wildlife, long-term  
18 water supply for our operations. As well as why FERC is  
19 here today, and why this meeting is being held, we have  
20 decided to add the hydroelectric plant to the back end  
21 of this project. With that we also looked at the  
22 possibility of lakeside development, boating, fishing,  
23 creating wildlife habits, trying to basically tie the  
24 project together as a whole. What else can we do with  
25 water?

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1                   The reason for Peabody taking this unique  
2 position and going down the path of getting a license  
3 from FERC is basically to -- it compliments the Colorado  
4 Renewable Energy Initiative. The state is really  
5 pushing for small hydro. We decided we have been  
6 looking at this project for awhile, and said, you know  
7 what, we're going to go ahead and add a small hydro  
8 plant to the facility.

9                   It's not large. You can see on here. It's  
10 about 100 -- you know, I would say, put it how many  
11 houses can this supply. Let's keep it simple. It's  
12 about 125 average homes, about 125 homes a year. That's  
13 how much electricity. If you look down at Stagecoach,  
14 just to give everybody an idea of size, if you are  
15 familiar with that, we're about a third of the footprint  
16 of Stagecoach. We're about a third of the water supply  
17 of the volume of water, and we're less than a third on  
18 the power side as well. So we're a lot smaller than  
19 Stagecoach, just to give everybody kind of a scale.

20                   But this project itself will offer all kinds  
21 of avenues for both developing the land as well as the  
22 water and really try to get a community benefit out of  
23 it.

24                   The maps in the back of the room is this one  
25 if you can't see it. It's the same one back there. It  
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1 kind of shows that we're looking at developing about an  
2 80 foot high, 78, 80 foot high, earthen dam. It will  
3 have an emergency chute off to the one side, an overland  
4 emergency spillway. It will have a hydro plant, which  
5 is basically it's designed about the size of a two-car  
6 garage below the dam. The pipes will go through there  
7 and crank electricity, and then basically that earthen  
8 dam will back up and create the almost 400-acre lake  
9 behind it.

10 The one thing on this map, if you are  
11 looking at it, the blue line in there basically is the  
12 high-water mark. The red line is what we call the  
13 project boundary. That is what FERC's license will  
14 govern. Basically everything inside that red box or  
15 that red bubble is what their license will make us  
16 perform to basically. So they will have every  
17 stipulation of everything that happened inside of that  
18 red bubble, and that's what the license will govern.

19 Kind of a couple shots of it, this is the  
20 valley where we took a tour yesterday. Most of you --  
21 some of you were there, some of you weren't. It's a big  
22 hay meadow with a lot of irrigated fields in there,  
23 irrigated hay fields over the years and years. The  
24 creeks themselves -- this is a shot of Middle Creek --  
25 that was actually completely dry this last year in the  
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1 drought. But entrance streams, heavily grazed, heavily  
2 hayed. So, I mean, not great habitat out there right  
3 now. This is a shot of actually Trout Creek from the  
4 crossing that goes over the road, the road crossing  
5 looking back at the Trout Creek itself.

6           You know, kind of the next steps Shana will  
7 get into a lot more detail on this. I just want to kind  
8 of tell you where we are today. Last year and starting  
9 in 2010 we really started studying the project to see  
10 what we could be doing out here. We did a lot of  
11 baseline analysis. We have done the prelim drawings  
12 that you see over there to kind of give us an idea of  
13 what we're looking at, did the surveys, fluid, had  
14 people on the ground out there doing measurements,  
15 testing the water, fish studies on habitat for species,  
16 as well as we have three power lines that criss-cross  
17 the top of the lake. We're working with those electric  
18 pole owners to find out where those power lines actually  
19 come down. They span the lake completely. We just got  
20 to know the elevation of those lines and if there is  
21 something that has to be tweaked. And then 90 days ago  
22 from give or take this week we submitted the FERC  
23 preapplication document to FERC that started this  
24 process. So we're at the very beginning stages of the  
25 process.

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1                   Why is Peabody doing this, and why is FERC  
2                   involved? And it's for anytime that you put a hydro  
3                   plant, small, medium or large, they are involved. So we  
4                   looked at it like it was a good thing, worked with the  
5                   State of Colorado, their initiative of small hydro. We  
6                   liked the process, the ILP process that FERC offers. So  
7                   that's the desired approach that we decided to go with.  
8                   And they really look at this project as a whole from  
9                   what's happening on the shoreline, where is the water  
10                  being used, what kind of fish, when you release it, what  
11                  kind of, you know, safety as far as the dam. They are  
12                  probably the bees knees when it comes to safety on dam  
13                  safety. They do big ones all over the world. So,  
14                  basically, the one here should be as safe as any of  
15                  them.

16                  The other thing that is kind of where we're  
17                  at is obviously we have had three days -- or two days of  
18                  these hearings. We had tour yesterday, had the big  
19                  meeting last night, big public meeting, and then this  
20                  one today.

21                  So we're trying to engage all the  
22                  stakeholders as much as possible. We have lots of  
23                  information out here. Nobody has to write down anything  
24                  today. All of this information is posted out to our  
25                  website that we have. It is

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1 peabodytroutcreekreservoir.com. All the maps that are  
2 on the easels back here you are able to download out  
3 there. And as well as Shana is going to talk about how  
4 to access the FERC website. That will be for the  
5 official record. We're going to try to match both  
6 websites, all the information, wherever it's easier to  
7 find.

8 That's kind of Peabody's what, when, why and  
9 how. I'm going to turn it back over to her, and she's  
10 going to really handle the scoping meeting and kind of  
11 talk about the project in more detail.

12 MS. MURRAY: Thanks, Brian.

13 So like I said, we're FERC. I won't point  
14 out who, but someone said, "I don't even know what FERC  
15 is," when they walked in today, so that tells me maybe I  
16 need to tell you a little more about us. I'm going to  
17 skip the meeting agenda. That was yesterday's meeting,  
18 and, of course, since we're a smaller group I think we  
19 can go through some of this in a little quicker fashion  
20 so I don't bore all of you.

21 Basically of what FERC is is the Federal  
22 Energy Regulatory Commission. We are an independent  
23 agency. We regulate electric transmission lines,  
24 hydropower, natural gas and oil and pipe lines. But  
25 what we're here to talk about today is hydropower.

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1           FERC's jurisdiction over hydropower, it's  
2 those projects that are located on navigable waterways.  
3 They may be on public lands. When I say public lands, I  
4 mean BLM or Forest Service lands. There could be use of  
5 surplus water from a federal dam or those projects that  
6 fall under Commerce Clause jurisdiction, in which case  
7 FERC has jurisdiction on this proposed project.

8           So the hydropower program at FERC is  
9 comprised of three main offices. We have the hydropower  
10 licensing office, which myself and Joe are a part of.  
11 That's if you are trying to propose a hydro project, you  
12 come to us. Once a license is issued, if a license is  
13 issued, our licensing and administration and compliance,  
14 they make sure that all the license articles, the  
15 requirements in that license, are being complied with by  
16 the licensee. It's not like we give the license and,  
17 you know, you're free to do whatever you want. There  
18 are certain requirements within that license that the  
19 licensees have to comply with.

20           And then, of course, as Brian mentioned, we  
21 have our dam safety. Sometimes we have existing dams,  
22 or in this case a whole new dam is being built. So  
23 obviously there are safety concerns there as far as the  
24 public dam safety, so that group really takes care of  
25 that part of the process.

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1                   We're talking about a project license here.  
2           Basically we have three different processes you can go  
3           through to acquire a project license. Our default is an  
4           integrated licensing process, the ILP, which is mainly  
5           what we're going to talk about today. But we also have  
6           two others, the traditional and the alternative  
7           licensing processes. They all have the same prefiling  
8           and post filing steps. They may be in a little bit  
9           different order or different timelines, but basically  
10          prefiling, anything before a final license application  
11          is filed. We want to consult with all interested  
12          stakeholders, gather information. Studies may be  
13          conducted if there needs to be additional information,  
14          and then, of course, this all informs the licensee -- or  
15          excuse me, the Applicant to prepare final license  
16          application.

17                   Post filing, once an application is filed  
18          FERC will seek comments again from those stakeholders,  
19          and based on what we hear from the agencies and the  
20          public, we may get conditions for the license from  
21          agencies. That all goes into an Environmental  
22          Assessment or an Environmental Impact Statement.

23                   Basically, our analysis of all the  
24          information that's been gathered, all the comments and  
25          our recommendations to either go ahead and construct and  
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1 operate the project, to not have a project at all or to  
2 construct and operate with staff-recommended conditions  
3 or recommendations.

4 We usually issue a draft Environmental  
5 Assessment. We ask for more comments, possibly  
6 modifying conditions, and then all of that goes into a  
7 final document which will inform a Commission decision  
8 whether a license is issued or not.

9 So, like I said, Peabody has decided to go  
10 with the integrated licensing process. We have a  
11 schematic, a handout on the table. This is all the  
12 boxes. The blue are prefiling before the license  
13 application, the green and pink are after. It's kind of  
14 a lot to look at. So to break it down in four simple  
15 steps for each side of the process, prefiling and post  
16 filing, again we have this initial proposal in front of  
17 us. It's the preapplication document which Peabody  
18 filed in August. This is their, hey, this is what we're  
19 thinking about.

20 Right now we're in the scoping meeting step  
21 of this where we're trying to identify all the potential  
22 effects and issues that might come with constructing and  
23 operating this project. Then, of course, we also want  
24 to identify, okay, here is what we know, what don't we  
25 know? What still needs to be studied? Is there more  
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1 information we need to gather? That will all go into  
2 the study plan development, eventually leading to a  
3 study plan where the Applicant will have to conduct  
4 studies. All of that then forms a license application.

5 Once all of that is done, a license  
6 application is filed. FERC will do our NEPA documents  
7 and again go out for comments. And then there will  
8 either be a license or not a license. I keep saying  
9 that because I guess nothing is ever automatic. It's up  
10 to the Commission to decide, you know, if this project  
11 is in the best interest or if this project, with certain  
12 conditions, is in the best interest. So it goes either  
13 way.

14 So I'm going to zip through these. Because  
15 I kind of just already talked about all of them. But  
16 the purpose of the PAD, like I said, is to gather all  
17 the existing information right now and identify where  
18 there are information gaps. Which, like I said, Peabody  
19 had filed that in August. And I believe -- do you have  
20 the CDs with you or not?

21 MR. MERRITT: Yes, we do. They are over  
22 there, if anybody needs one they can get a copy of it.

23 MS. MURRAY: Yes, if you don't have a copy  
24 of the PAD, Peabody and URS have been gracious enough to  
25 bring copies of the PAD on CD, and it is also on

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1 eLibrary, which I will get into later on the FERC  
2 system.

3 MR. MERRITT: It hasn't gone to DVD yet.

4 MS. MURRAY: Of course, as I said, we're in  
5 the scoping meeting right now, and the next step will be  
6 getting ready for the study plan development, which I  
7 will talk about a little later, and then, of course,  
8 following that there will be studies conducted by the  
9 Applicant.

10 Now, studies usually are one to two years  
11 typically. With new projects, because a license isn't  
12 expiring, sometimes it can extend past two years, but  
13 generally they are one to two. At the year mark we do  
14 an initial study report which is filed by the Applicant.  
15 It's a checks and balances. Okay. You've gone this far  
16 with studies. What information have you gathered? Did  
17 we find out something new? Do we need to change  
18 something? Is there something we found out, a different  
19 species out there that we didn't know when we started  
20 this that may need to be studied. It's checking to see  
21 that everything is going okay.

22 And then, of course, once the studies are  
23 completed, whether it's at the end of the first year or  
24 the second year, there will be a final study report with  
25 all the information gathered. All of this leads to a  
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1 preliminary licensing proposal. This is a draft license  
2 application. This is a chance for the Applicant to file  
3 a draft and get comments, like, to make sure, okay, did  
4 we address all of your comments and concerns.

5 Hey, FERC, do you need any more information  
6 or did we include everything in our draft application.  
7 It's kind of like a -- what do I want to say -- a dress  
8 rehearsal for the final license application. It's the  
9 last chance to make sure they have covered everything.  
10 There still could be disagreement, but hopefully it's  
11 addressed in the license application.

12 And then, of course, once the license  
13 application is filed, again, we go into our NEPA. I'm  
14 just going to skip these because I kind of already  
15 talked about this.

16 Like I said, we have a draft Environmental  
17 Assessment or an Environmental Impact Statement. Once  
18 that's issued we will get more comments and issue a  
19 final Environmental Assessment. So and that could lead  
20 to a licensing decision. If there is a license issued,  
21 it will contain licensing requirements that the  
22 Applicant will have to comply with. And these are  
23 environmental recommendations. These could be  
24 recommendations on how to operate. Also, once a license  
25 order is issued, we will ask for final design drawings.

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1 The reason we don't ask for final drawings beforehand --  
2 I mean, we still have to see drawings but they are in  
3 draft form. Based on what the Commission decides on our  
4 analysis and our decision, the design could change. So  
5 we don't want to make the Applicant file final design  
6 drawings when there is a possibility they could change  
7 based on our recommendations in the NEPA document and  
8 license.

9 There is always another chance, if someone  
10 disagrees with what we have put in our license order,  
11 there is a chance for rehearing. This means 30 days  
12 from the issuance of a license, an intervenor -- and I  
13 will explain what an intervenor is a little later here  
14 -- can file a rehearing and say, hey, I don't like that  
15 you didn't include, you know, measures X, Y and Z. I  
16 think that still needs to be in the license. FERC will  
17 analyze the rehearing and then issue an order either  
18 agreeing with it or standing by their decision. So it's  
19 another -- it's yet another chance for stakeholder  
20 involvement to say, wait, wait, wait, FERC, you know,  
21 let's get this right. And sometimes we agree, looking  
22 at Matt, sometimes we don't. But, you know, it is  
23 another chance to state your case. There are a lot of  
24 chances in this process to state your case.

25 So to get back to the box we're in right  
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1       now, we are at scoping. The purpose of this meeting is  
2       to identify potential effects of the proposed project,  
3       potential issues that might come up. That's the whole  
4       purpose of being here today. FERC, when we look at  
5       potential issues, we're looking at water quality,  
6       fisheries, soils and geology, wildlife, cultural  
7       resources, recreation land use, aesthetics and  
8       socioeconomics.

9               Now, FERC has identified several under each  
10       of those categories. There is a handout outside. It's  
11       our scoping document, and we go into detail under each  
12       of these resources. So I don't expect you to be able to  
13       read all of these as I go through them. We're not going  
14       to go through them individually today, because we want  
15       to hear from you. Or if you have a question about what  
16       we have put on there, we're certainly here to talk about  
17       it. But I'm skipping forwards and noting in the middle  
18       of this, this presentation will be available on  
19       Peabody's site, so you can come back and look at the  
20       specifics.

21               But we have a small group here today so I  
22       really want to get to the point where we have a  
23       discussion, which is the point of this literal round  
24       table sort of, this oddly-shaped round table.

25               Again, we have a court reporter, so I would  
26

1 love an open discussion. I just want to make sure that  
2 you state your name and affiliation each time you talk,  
3 even if you talk a lot. And just try and speak one at a  
4 time so she can catch all of what you are saying.

5 But this is the point where I stop talking  
6 and we all talk. So with that I'm going to open it up  
7 and see if anyone has a comment about the proposed  
8 project.

9 MR. RICE: Matt Rice, American Rivers.

10 Shana, I was wondering if you could talk a  
11 little bit about the coordination with the Army Corps of  
12 Engineers, because they are going to need a permit from  
13 the Corps as well, as if you could kind of explain the  
14 determination why FERC may be in the lead.

15 MS. MURRAY: Right. So --

16 MR. RICE: Regarding NEPA.

17 MS. MURRAY: Yeah. When hydropower is  
18 involved, FERC is the lead agency. We -- this  
19 integrated process somewhat folds other agencies, like  
20 Army Corps of Engineers, Fish and Wildlife Service, the  
21 Tribes, you know, I'm only listing a few, into our  
22 process.

23 So in this case, FERC has our specific hydro  
24 licensing process. But Matt is exactly right, for this  
25 project, because it's a brand new unconstructed project,  
26

1 if there is a license issued, Peabody will also have to  
2 get a 404 permit, correct, from the Army Corps of  
3 Engineers.

4 Now, in the past this has worked where an  
5 applicant will come through the FERC process and go  
6 through a long integrated licensing process, and come  
7 out at the end with a NEPA document and possibly a  
8 license. Then they go to the Corps, and the Corps will  
9 go through a similar process, not exactly the same, but  
10 similar, come out with a NEPA document, and hopefully a  
11 404. So wouldn't it make sense for these to be  
12 together?

13 On these projects, FERC has an MOU, a  
14 Memorandum of Understanding, with the Corps. The  
15 purpose of that is to work with the other federal  
16 agency, because they are another federal entity, which  
17 means we don't have any authority over them. The whole  
18 purpose is to work together and cooperate so we have one  
19 NEPA document. So at the end of it we can use the NEPA  
20 document to make a decision on the license, and the  
21 Corps can use the NEPA document to make a decision on  
22 the 404.

23 I will say FERC is looking forward to  
24 talking to the Corps about cooperating. We would love  
25 to cooperate. Unfortunately, the Corps is not here, and  
26

1 I will say the Corps is not required to cooperate with  
2 us. However, with the MOU signed in place, there is a  
3 heavy amount of encouragement on both sides to cooperate  
4 and make it work. So we're hoping it works out.

5 Does that sort of explain it?

6 MR. RICE: Yeah, yeah, no, it does, and I  
7 think what else I was getting to, Matt Rice, is not --

8 MS. MURRAY: Yeah, if I am leaving something  
9 out, fill in, please.

10 MR. RICE: Yeah, because hydropower appears  
11 in the PAD to be a fairly small component of this  
12 project, and just to clarify why, you know, for example,  
13 I mean, is it -- I'm assuming it's because there is a  
14 very small portion of the project footprint is on Bureau  
15 of Land Management land?

16 MS. MURRAY: Yes.

17 MR. RICE: So rather than going through the  
18 Corps to -- you know, to build a water supply project  
19 and then kind of incrementally putting hydropower on  
20 afterwards, they are not going to be -- because it's  
21 federal land, they can't get an exemption for that kind  
22 of hydropower.

23 MS. MURRAY: Correct. And when Matt talks  
24 about an exemption, an exemption exempts a licensee from  
25 certain parts of the Federal Power Act. A difference  
26

1       between an exemption and a license -- and maybe this is  
2       a good point to point out -- a license is anywhere from  
3       30 to 50 years, as far as term. Which means every 30 to  
4       50 years if Peabody gets a license, they will have to go  
5       through this again. An exemption is in perpetuity. You  
6       go through a process once and you have it forever. That  
7       doesn't mean there is not requirements within that  
8       exemption, it's sort of another type of license. But  
9       it's different.

10                     In this case, Matt, you're exactly right.  
11       There is federal land, BLM land, so this project would  
12       not be exempt. They would have to go for a license.  
13       You bring up a good point, as far as who the lead is.  
14       Typically FERC has taken the lead. That's not to say it  
15       has to be that way. Right now we are the lead. We  
16       haven't spoken with the Corps. It doesn't mean the  
17       Corps couldn't take the lead.

18                     MR. RICE: Yeah.

19                     MS. MURRAY: Not always, but usually they do  
20       defer to FERC to take the lead.

21                     MS. SNODGRASS: Shana, Sandi Snodgrass,  
22       Holland & Hart. I am asking this because I am not  
23       certain, but I know that FERC is mandated to be the lead  
24       under the Natural Gas Act, under EPAct '05, they made  
25       that -- the Congressmen made -- is that not the case for  
26

1       hydropower?

2                   MS. MURRAY: Well, I don't think so. And I  
3       wish I had my lawyer here. I mean, I don't know. Yeah,  
4       I don't think so. I'm going to be very honest because  
5       before we came out here we did talk about it. The Corps  
6       is heavily involved in this. Why could the Corps not be  
7       a lead in this?

8                   So that tells me, based on the talk  
9       internally in our office, that it could be a  
10      possibility. It usually doesn't happen that way. But I  
11      don't necessarily think there is a mandate that FERC is  
12      always the lead. Usually we are when the hydropower is  
13      involved. And I don't want to speak for the Corps  
14      because I haven't talked to them yet. But so far we're  
15      the lead, we're in the integrated licensing process, and  
16      we're going to talk to the Corps about cooperating and  
17      where our roles -- defining our roles in this.

18                  Do we have more comments? I know we have  
19      more comments. I was going to say -- I keep looking at  
20      Matt, because are you just kind of giving them  
21      incrementally? Not to put you on the spot.

22                  MR. RICE: Yeah, well, I was kind of in the  
23      spirit of discussion. It thought it was a round table  
24      that we have here.

25                  MS. MURRAY: Yes.

26

1                   MR. RICE:  Yeah.  Matt Rice, American  
2 Rivers.

3                   First of all I want to say that we certainly  
4 appreciate the outreach that Peabody has done leading up  
5 to this, reaching out to us and other NGOs that would be  
6 interested, other interested stakeholders.  And  
7 certainly it's been -- at least my understanding, it's  
8 been tough -- it's been tough to get applicants to use  
9 an ILP in the licensing process in this state.  You  
10 know, we believe that it's a much better process to  
11 involve the public, and it has -- it provides mechanisms  
12 that really encourages public participation.  And we  
13 certainly look forward to participating and engaging and  
14 helping in the study plan development process.  I could  
15 go into some of those now.

16                  MS. MURRAY:  Yeah, that's fine.  That's why  
17 we're here.

18                  MR. RICE:  Great.  Well, first off, I'll  
19 start with one kind of broad comment about the scoping  
20 document.  My reading of it, it strongly suggests that  
21 the environmental document for this project is going to  
22 be an Environmental Assessment.  I would, from my  
23 perspective, from our perspective, you have the  
24 construction of the new dam, almost 2000 feet long,  
25 80 feet high, certainly from our perspective it

26

1 represents a significant action. And, therefore, we are  
2 going to be encouraging the development of an  
3 Environmental Impact Statement.

4 MS. MURRAY: Which I'm going to interrupt.  
5 I just want to note, for those of you who are not really  
6 aware of the difference, an Environmental Assessment is  
7 usually -- it's on a -- I don't want to say a smaller --  
8 but a project with less issues. A significant impact  
9 such as a new project, not always, but sometimes, or  
10 usually, we do an Environmental Impact Statement,  
11 because there is more impacts. It's, as Matt said, a  
12 significant issue. Those are kind of the differences.

13 FERC put in our scoping document which we  
14 usually do with the first one, that we're going to do an  
15 Environmental Assessment. But, of course, we always  
16 want to hear people's opinions on that, which sometimes  
17 they agree and sometimes they don't. So we're trying to  
18 feel out how everyone else feels and what the right type  
19 of document would be for this project.

20 MR. RICE: Yeah, okay. She's just looking  
21 at me.

22 MS. MURRAY: I know you have more.

23 MR. RICE: Matt Rice, American Rivers.

24 A review of the study proposals, I think --  
25 we think it's a very good start. Obviously, these study

26

1 proposals we believe need to be kind of further  
2 developed and clarified, and I look forward to reviewing  
3 them and offering our recommendations. You know, I  
4 think that there are a few important things that I think  
5 may or may not be captured in kind of the brief synopsis  
6 of the Applicant's study plans. But you know, what this  
7 project -- how this project will impact peak flows is  
8 important, seasonal peak flows, on Trout Creek and  
9 further downstream on the Yampa.

10 My understanding of the operations are that  
11 it's going to capture water and creates high flow,  
12 released later on. That water obviously needs to --  
13 that water is probably likely going to come during high  
14 flow periods. That water is also critically important  
15 for the ecosystem health, both on Trout Creek and  
16 potentially downstream on the Yampa, the longest --  
17 essentially unaltered hydrograph river in the Colorado  
18 River Basin. That's one I look forward to seeing  
19 further development of.

20 MR. HASSELL: Can I interrupt?

21 MR. RICE: Sure.

22 MR. HASSELL: Joe Hassell with FERC.  
23 Because I wanted to talk a little bit about hydrology as  
24 well as -- since you introduced the subject.

25 MR. RICE: Great.

26

1                   MR. HASSELL: You know, it's a system. It's  
2 a 12,000-acre-foot reservoir. It's a snow melt AND  
3 runoff system, okay, where you get most of the runoff in  
4 May and June. And so there is some shoulders there too  
5 where the flow is high. Just to give people an idea  
6 that average runoff of May and June combined is  
7 12,000 acre feet. So basically you replace that volume  
8 of water, if it was full, you replace it during that two  
9 months of runoff. And we need to understand how the  
10 project is going to work.

11                   Right now in the PAD they have modelled it  
12 with a 500 acre foot constant draw, and they have done  
13 some analysis downstream of what the flow would be like.  
14 But it's done on a monthly time. Okay. So that doesn't  
15 get to your peak flow information.

16                   Now, if the reservoir was full at the time  
17 we had these big runoff events, then it probably  
18 wouldn't change it that much. But if they are using it  
19 as a water supply reservoir for their coal operation,  
20 which is probably a more constant draw, then we would  
21 expect the reservoir to draw down, starting after June  
22 and then create a -- you know, as the low flows come in  
23 the summer and the fall and going into the winter, and  
24 they are taking 500 acre feet per month, if that's  
25 greater than what's coming in, the reservoir would draw  
26

1 down.

2 So what you brought up is an important thing  
3 that we need to understand, not only in terms of the  
4 peak flows, but in terms of what's the outflow going to  
5 be in Trout Creek, and what is the habitat going to be  
6 in Trout Creek, based on the project operations.

7 The way it is now, they plan on releasing  
8 water from the reservoir of Trout Creek and picking it  
9 up at the Sage Creek -- at the Yampa River at the Sage  
10 Creek project. I don't know exactly how many miles  
11 downstream that is, but it's the entire length of Trout  
12 Creek, and then a couple of miles down the Yampa. So it  
13 will -- it could increase the low flows --

14 MR. RICE: On Trout Creek.

15 MR. HASSELL: -- on Trout Creek. But it  
16 could also take away these peak flows.

17 MR. RICE: Yeah, and that's the -- Matt  
18 Rice, American Rivers.

19 That's the important point that I was trying  
20 to get at that certainly flow augmentation late in the  
21 summer is good, especially for anglers. But, you know,  
22 what really drives, as you know, these ecosystems in the  
23 Rocky Mountain snow melt rivers are these peak flows.  
24 We have seen many examples of that around the state.  
25 When you take those peak flows away you have sediment  
26

1 problems, you have kind of a net loss of habitat, so it  
2 creates a lot of problems. So that's obviously  
3 something that can be discussed as far as operations go,  
4 how they fill, how they release. I'm certainly not  
5 suggesting that it can't be addressed, it's just  
6 something I think needs to be critically studied.

7 MR. HASSELL: Joe Hassell. But it's  
8 probably something that needs to be studied and analyzed  
9 a little bit more further than what's in the PAD.

10 MR. RICE: Certainly, certainly. Great.

11 Matt Rice, American Rivers. I think the  
12 same question applies to the Yampa as well. My  
13 understanding of the project proposal is that there is  
14 going to be a net loss of water in the Yampa. It's a  
15 much bigger system, obviously, but it's an important  
16 river in the Colorado River Basin, and I think that  
17 needs to be looked at, downstream impacts on the Yampa.

18 Anybody else have anything?

19 MS. WALZ: Barbara Walz, W-a-l-z. I'm just  
20 a community residence. I'm just curious, given the year  
21 we have just had, is there a point where the water can  
22 drop so low that the operations would have to shut down  
23 as far as the hydro and Peabody using it?

24 MR. YANSEN: I can answer that. Brian  
25 Yansen, Peabody.

26

1                   You know, part of the reason for this  
2 project is to make sure that operations will continue  
3 even in a drought situation, that that water is there  
4 when we need it, that there is enough water in the basin  
5 or in the lake itself to handle a low flow that we have  
6 enough to continue operations even in a drought  
7 situation. So the answer is, yes, there is water going  
8 to be available in that system for our operations so we  
9 do not have to shut down. That is the reason for this  
10 project. That we want to make sure we have enough water  
11 secured, very similar to what you saw this year out of  
12 Stagecoach. They released for the Craig power plant.  
13 We're in the same situation. We don't want to be in  
14 that position where we have a \$200 million investment  
15 sitting around, and we got to send everybody home  
16 because we ran out of water.

17                   MS. WALZ: Well, yeah, that's what I was  
18 wondering.

19                   MR. YANSEN: So that's exactly what this  
20 project is for, so that we have enough water in the  
21 system to secure and set aside that we can use on a  
22 daily basis, and that in a drought situation we have  
23 enough water in senior priority position that we are  
24 able to use that water for operations and rely on that  
25 water for long term. Basically, that water in that

26

1 system can be used. We have more reserves downstream.  
2 When I pointed at the chart earlier that talked about  
3 down at the Yampa, we have, not only the Sage Creek that  
4 has 105 million tons, we have two other properties out  
5 there that we have future mining, that's going to happen  
6 someday in the future.

7 As Sage Creek winds down, exactly what  
8 Twentymile and Sage Creek operations are going to do,  
9 someday in the future there will be two or three other  
10 mines involved, and this water will support them as well  
11 going on in the future. We know that water is becoming  
12 very scarce, and we want to make sure we have ours  
13 secured for that operation so that we can continue out  
14 there.

15 So, again, we have been here for about half  
16 a century. We're going to be here for another half a  
17 century, so with a project like this, the location is  
18 perfect for that use going forward.

19 Does that answer your question?

20 MS. WALZ: Yes.

21 MR. HASSELL: Joe Hassell. I have a  
22 question for you, Ms. Walz.

23 Was your concern about just the reliability  
24 of the water supply, or was your concern about the lake  
25 level elevation or having a dry lake or both?

26

1 MS. WALZ: Kind of all of the above. I'm  
2 just trying to understand how it all works and then  
3 thinking about that everybody else is trying to call on  
4 water rights and how it impacts down the line.

5 MR. HASSELL: I see. Well, thank you for  
6 bringing up that subject.

7 MR. MERRITT: Yes, and this is David  
8 Merritt, URS.

9 I think what they want to make sure of is  
10 that Peabody's use does not impact other water rights,  
11 so they do not get into a situation where they would be  
12 impacting other water rights because they have that  
13 water available for the critical mining uses. So they  
14 don't have to worry about that issue.

15 MR. HASSELL: Joe Hassell.

16 Peabody has a right to store 15,000 acre  
17 feet?

18 MR. CAILE: Yes. My name is Bill Caile,  
19 C-a-i-l-e, Holland & Hart.

20 MR. HASSELL: And, Bill, can you explain to  
21 us the conditions under which Peabody is allowed to  
22 store water?

23 MR. CAILE: Sure.

24 Peabody currently has a 15,000 acre foot  
25 conditional water right for this reservoir, with a right

26

1 to a single refill, so a total of 30,000 acre feet in  
2 any one year period, with a 1977 priority. So this is  
3 an old water right. It's been on the books for awhile,  
4 and it's decreed for a variety of uses, which include  
5 irrigation, industrial power generation. So it's  
6 legally available for the uses that Peabody is proposing  
7 for the reservoir.

8 In terms of how it will work and how it will  
9 affect downstream uses, obviously, well first of all I  
10 should say as you noted in the PAD Peabody has retained  
11 a water engineer who performed a preliminary water  
12 availability study. And that was looking at  
13 historically the flows in Trout Creek and the priority  
14 date of this water right. And, what we believed, was a  
15 fairly generous 500-acre-foot-a-month release. And  
16 that's not any reflection of Peabody's anticipated  
17 demand, that was just a number that we felt was large  
18 enough to give a hypothetical number, in other words,  
19 that was large enough to give a realistic picture of  
20 whether this 1977 water right would be reliable and be  
21 able to store under most conditions.

22 And what that study showed was that the  
23 reservoir -- there was water legally and physically  
24 available to the storage right under most conditions  
25 most times of the year. The reservoir fills relatively  
26

1 quickly and remains full even as quite a bit of water is  
2 released from the reservoir. So that shows that there  
3 is water legally available to this water right on Trout  
4 Creek.

5           Then in terms of what happens if there is a  
6 downstream senior call for water that is senior to the  
7 Reservoir, at that point the Reservoir needs to release  
8 water up to the amount of inflows sufficient to satisfy  
9 the downstream senior call. So really what it comes  
10 down to to simplify it, if there is a downstream senior  
11 call that commands the flow of Trout Creek, then Peabody  
12 just needs to make sure that the reservoir is passing  
13 inflows. So whatever is coming into the reservoir is  
14 going out.

15           And, as an aside, I would note that the  
16 hydropower plant can still be operating during that time  
17 because you can pass those inflows through the power  
18 station. It's a nonconsumptive use, and so it can  
19 continue to generate power. So there needs to be an  
20 accounting to make sure that, at times when the  
21 reservoir is not legally entitled to store, that it's  
22 passing all inflows, and that way it is not injuring  
23 downstream senior water rights.

24           But, again, based on the preliminary  
25 evaluations that we have done, there is ample water  
26

1           legally and physically available on Trout Creek to keep  
2           the reservoir full under most conditions, most of the  
3           time.

4                       MR. HASSELL:   Joe Hassell.

5                       What if there were an environmental flow-by  
6           requirement?

7                       MR. CAILE:   And I'm not sure what you mean  
8           by that, but I'm gathering you mean some sort of -- to  
9           maintain a natural hydrograph to a certain extent?

10                      MR. HASSELL:   Uh-huh.

11                      MR. CAILE:   It would be a question of  
12           operations.  I mean, we would have to look at how that  
13           fits operationally, and, obviously, if that was a  
14           requirement that was imposed, we would have to live with  
15           it.  But in terms of whether we could agree to it, we  
16           would have to look at how it affected Peabody's  
17           operations in terms of when they are able to store and  
18           what their demand is during that period that they are  
19           storing.

20                      MR. HASSELL:   Okay.

21                      MR. CAILE:   And I can't speculate on how  
22           that's actually going to work.

23                      MR. YANSEN:   Brian Yansen with Peabody.

24                      As far as going back to what Bill is talking  
25           about a little bit, obviously there has to be some

26

1 flexibility. We're starting in mine operations in 2015,  
2 2016, depending on what, when and where and how coal  
3 markets are, predict when we start up over there. And  
4 then demand, obviously. It is seasonally, so it's not a  
5 set or hypothetical 500 acres. It was just to give an  
6 idea of a picture.

7           When we started looking at this project,  
8 obviously, there is issues with when we talk about  
9 development, recreation, fishing, boating, blah, blah,  
10 blah, we can't have the lake draw a -- completely dry  
11 out.

12           So we're looking at enough water in the  
13 bucket itself that supports operations, that it can  
14 handle the hydropower as well as the other uses that  
15 we're talking about. And when we are talking about the  
16 whole project here is is there a residential development  
17 that's going to enjoy the lake as well as having our  
18 water supply secure. You know, that there is a fishery,  
19 is there recreation on the lake, is there something  
20 downstream? We're trying to make it as redundant use of  
21 the water as possible, but having that water set aside  
22 for operations. And going back to as the draws come  
23 down, we have preliminarily already analyzed it a little  
24 bit, that that lake, we're trying not to get to the  
25 point where it fluctuates a lot and creates erosion

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1 problems on the shoreline, something we talked about  
2 yesterday. But, you know, basically keeping a nice pool  
3 of water there that is able to be used, and basically  
4 serve as the water supply for the mine.

5 So we're trying to fit everything into one  
6 basket here and make sure that it works for all the  
7 different -- the different aspects of the water  
8 operation. But, again, like Bill talked about, as the  
9 flow is going threw naturally it would just be there, so  
10 that's why we have really looked at this as a unique  
11 opportunity go ahead and put the hydro plant on there  
12 and capture that electricity and load it up to the grid.

13 MR. HASSELL: Joe Hassell.

14 Does Peabody have a working model of the  
15 proposed Peabody Trout Creek Reservoir, which would  
16 allow them to simulate different operations?

17 MR. YANSEN: Brian Yansen, Peabody.

18 Not yet. This is probably something that  
19 we'll analyze this coming year in a different number of  
20 studies.

21 MR. CAILE: The water availability study  
22 that's in the PAD is really -- was just a first look at  
23 is there going to be water available under most  
24 conditions to satisfy this water right. Again, I'll  
25 reiterate, the 500 acre foot monthly release was just

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1       ballpark.  If we're releasing a substantial amount of  
2       water out the reservoir, are we going to draw it down?  
3       And what the water availability study shows is that, no,  
4       under current conditions, even releasing that amount of  
5       water, it's going to remain full most of the time.

6                   MR. RICE:  Question about hydropower.  Matt  
7       Rice, American Rivers.

8                   I'm curious to know if what kind of analysis  
9       went into that sized project.  It seems that fairly  
10      large reservoir.  I'm not -- you know, I don't know the  
11      engineering but it seems like there might be opportunity  
12      to install a bigger hydro there for more power.

13                   MR. YANSEN:  Brian Yansen with Peabody.

14                   We did look at it, and the engineers had  
15      actually studied that for us, came out with this is --  
16      and, David, you might weigh in a little bit more.  I'm  
17      not an engineer.

18                   But, basically, we're looking at where can  
19      we get the maximum without capturing the low and the  
20      then the high and really regulating it and trying to get  
21      an average amount of power throughout the year.

22                   So not necessarily loading up in peak season  
23      or runoff season and then shutting stuff down and just  
24      let it, you know, basically be nothing.  We're trying to  
25      figure out what the average is across the board every  
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1 month or whatever, and I'll let David talk with you.

2 MR. MERRITT: Yeah. When you're sizing  
3 equipment and everything else, you are looking to  
4 operate in a range of about a four to five multiplier,  
5 say, from 10 to 50 CFS. You can capture that. That's  
6 sort of a range of high to low efficiently. When you  
7 start to operate outside of that range you start to look  
8 efficiencies.

9 And so you are looking at the size of  
10 equipment that will operate in some sort of a range  
11 which you can expect most of the time. It's very  
12 expensive to try to capture the very upward end of the  
13 range, because you are only going to have that maybe 10  
14 or 15 days out of the year at the most or sometimes  
15 maybe 10 or 15 days out of every four or five years.  
16 You just can't afford to put that in. So you are  
17 looking at sizing something that is in a range that you  
18 can capture as much of the time as possible efficiently.  
19 So that was the sizing.

20 MR. HASSELL: Joe Hassell.

21 To give you an idea of the average inflow  
22 and sort of this peak springtime is 27 CFS in April, 107  
23 CFS in May, and 112 CFS in June. Now, you know, May and  
24 June, they could have done something bigger, but after  
25 that --

26

1                   MR. RICE:  What about July?  How fast does  
2   it drop off?

3                   MR. MERRITT:  Yeah, it drops off.

4                   MR. HASSELL:  We know that it probably drops  
5   off.  It's back where it was, you know.  And they will  
6   be able to run that July flow through there probably,  
7   and they probably won't lose any electricity.

8                   MR. RICE:  Yeah.  So the 125 kilowatt plan.

9                   MR. MERRITT:  Yeah.

10                  MR. RICE:  That's --

11                  MR. MERRITT:  And, you know, as we go  
12   through the process we'll probably be looking at, you  
13   know, reassessing that.

14                  MR. RICE:  Have you decided on the turbine  
15   yet?

16                  MR. MERRITT:  No, no.  This is so early in  
17   the process.

18                  MR. RICE:  Good.

19                  MR. MERRITT:  We're just looking at the  
20   basic ranges.  That would be further along in the  
21   process.

22                  MS. MURRAY:  Go ahead.

23                  MS. JAZWICK:  Laurie Jazwick.  I'm with the  
24   Natural Resources Conservation Service.

25                  My question is what is the proposal to get  
26

1 the water out of the Yampa at Sage Creek, and is that  
2 considered part of this proposal, or is that a different  
3 part?

4 MR. YANSEN: Brian Yansen with Peabody.

5 That is a separate permit side of the mine.  
6 That proposal is basically a pump, and a pump and a  
7 pipeline system, that will come back up to a mine that  
8 will be a million-gallon holding tank, and it will go  
9 underground to serve the longwall system as well as the  
10 facilities that are to be built onsite, showers and  
11 domestic use, water, you know, commercial use.  
12 Basically showers, you know, spray-down, wash-down  
13 units, everything, as well as the longwall system down  
14 below the ground, a thousand feet in the ground.

15 So it will come back out. We're looking at  
16 working with the landowner that is down close to the  
17 mine, trying to get a permit path through there, done  
18 some surveying to date, but basically that will be the  
19 way that the water gets released from here, down to the  
20 Yampa, and then pulled back up to the mine operations.

21 So as I was talking about before, the rest  
22 of the reserves further down are close proximity to the  
23 Yampa as well, so that same model will be used at other  
24 locations.

25 MS. MURRAY: Do we have more questions?

26

1 More comments?

2 Matt.

3 MR. RICE: Matt Rice, American Rivers.

4 I guess a couple of things. One, I don't  
5 remember seeing it in the PAD or in the scoping  
6 document, but construction of the reservoir, if this is  
7 more of a terrestrial question, if that is going to  
8 impact any kind of wildlife corridors. I understand  
9 that that is a very productive range area for wildlife.  
10 That's one potential study.

11 Another, kind of related to that, my  
12 understanding is kind of Upper Trout Creek supports a  
13 very good population of native cutthroat trout. And,  
14 you know, what project construction, this could maybe  
15 fall into something later as far as PM&E measures, but  
16 ensuring that the project does not harm that population,  
17 even there likely will even be an opportunity on the  
18 part of the Applicant to protect that population. So  
19 that's another thing.

20 MR. YANSEN: Brian with Peabody.

21 We have done several studies, if you can  
22 take a look at the PAD already, and see what they have  
23 in there for the wildlife and the corridors. Right off  
24 the top of my head, I don't know --

25 (Interruption by the court reporter.)

26

1                   MR. YANSEN: Off the top of my head in the  
2 PAD itself we had wildlife studies, but I don't know  
3 about the specific corridors. We have done the  
4 endangered fish and endangered species and all of those  
5 reports, but if that's something that's not in there  
6 adequately, then we will take a look at that as well.  
7 We have done a visual assessment as well in there as  
8 well, so I think they have handled the wildlife --

9                   MR. RICE: But -- and I'm not -- and like I  
10 said, I'll be talking with folks that are more  
11 concerned -- I'm a river guy, you know -- that are more  
12 concerned about this and help them put something  
13 together if they see some opportunity for more in-depth  
14 studies.

15                   Yeah, I think we talked a little bit about  
16 this before, but sediment transport, you know, is  
17 vitally important. We have seen what happens when  
18 projects disrupt natural sediment transports in the  
19 upper Colorado River. Siltation problems impacts fish,  
20 bugs, everything else. I think it needs to be -- needs  
21 to be a priority.

22                   And, secondly, water quality. I know that  
23 there are certainly -- that's in the proposal I saw  
24 that, both temperature, but certainly dissolved oxygen  
25 as well. And, like I said, we would be happy to help  
26

1       you flesh that one out.

2                   MR. HASSELL:  Joe Hassell.

3                   I would like to make a few comments about  
4       water quality.  When you build a reservoir like this,  
5       it's going to stratify, and basically you will have a  
6       thermocline there with the cold water underneath and the  
7       deoxygenated water underneath and warmer oxygenated  
8       water above the thermocline.

9                   And the first intake down from the full pond  
10       is set at 19 feet below the full pond.  We need to know  
11       -- we need a water quality model, a reservoir model, not  
12       just, you know, some water quality stream monitoring  
13       data, we need a reservoir model that will predict where  
14       that thermocline is going to be under the proposed  
15       operations.

16                   MR. RICE:  Exactly.

17                   Yep, and having worked on several hydropower  
18       projects, dissolved oxygen is obviously a big issue, and  
19       it's a very, very real impact of this project.

20                   MR. HASSELL:  Joe Hassell again.

21                   If you understand, you know, that  
22       temperature and dissolved oxygen system there, then you  
23       would know how to design your intake.

24                   MR. RICE:  Yes.

25                   MR. HASSELL:  And we don't know at the  
26

1 moment whether this is perfect or could be better or  
2 whatever. So that's why you need this reservoir model  
3 to be done. And I think they proposed doing a model,  
4 but I just wanted to make the comment that this is very  
5 important.

6 MR. RICE: Sure.

7 MR. MERRITT: David Merritt, URS.

8 The location of those right now is just  
9 purely to show that there are proposed to be three.  
10 There is -- right now there is no information and no  
11 implication that those are where they should be and what  
12 they should be. The early part of my career, actually,  
13 I was with the Corps of Engineers in modeling selective  
14 withdrawal from reservoirs and how to do that -- you  
15 know, and having reservoir stratification for DO and  
16 temperature in research. And I consider that to be  
17 extremely important is locating those things at the  
18 proper elevation and those current locations. They are  
19 saying, yes, will be three, that's for this size  
20 reservoir, and that is a good functional number. But  
21 the location of those will be, you know, really accessed  
22 by when does thermostratification develop up here, and  
23 that, you know, can be done.

24 MR. HASSELL: Joe Hassell.

25 You need to do it in conjunction with

26

1 operations. You need to know what you are --

2 MR. MERRITT: Yeah, where you will be and  
3 those things, yeah.

4 MR. HASSELL: And for that you need this  
5 water resources model and water quantity model.

6 MR. MERRITT: Yeah, yeah.

7 MS. MURRAY: Do we have more comments?

8 MR. RICE: Sure. I'm almost done. And I  
9 definitely appreciate this. This is I think the most  
10 fun scoping meeting I've been involved in. It's not 300  
11 people.

12 MR. MERRITT: Did you have cookies yet?

13 MR. RICE: I did.

14 I saw in Peabody's proposal for -- they are  
15 proposing PHABSIM modeling. Certainly that's good. I  
16 would certainly would like to see what this project  
17 does, kind of, how it impacts, not just species, but  
18 life stages as well. So that would be also like a --  
19 that's a suggestion.

20 MR. HASSELL: This is Joe Hassell.

21 When it comes to your PHABSIM proposal, and  
22 forgive me for not being able to give instant recall to  
23 what's in the PAD, have you put proposed transects or --  
24 on Trout Creek yet, or is this all preliminary?

25 MR. MERRITT: It's preliminary at the  
26

1 current time.

2 MR. HASSELL: Well, you don't have fish  
3 species or anything like that yet?

4 MR. MERRITT: Well, essentially there is  
5 very little -- I think -- there is species that -- they  
6 are assessed by the GEI. Conklin did this year.

7 (Reporter Interruption.)

8 MR. MERRITT: We do not have any PHABSIM  
9 sites located currently. That will be part of the  
10 process.

11 In terms of fish species that are -- we  
12 don't have those proposed. That would be developed in  
13 the fishery management plan. The species that are out  
14 there, they found just a couple of fish on their visit  
15 this year when GEI and the fisheries biologists were  
16 there. There is very little there currently.

17 MR. HASSELL: Joe Hassell again.

18 Brian has talked about -- and this may  
19 change the subject here -- recreation and public access.

20 MR. MERRITT: Yes.

21 MR. HASSELL: And has talked about  
22 establishing public access for a trout fishery --

23 MR. MERRITT: Yes.

24 MR. HASSELL: -- to be created below the  
25 dam.

26

1 MR. MERRITT: Below the dam.

2 MR. HASSELL: So perhaps that might be a  
3 species that you would want to look at and the transect  
4 that you would want to look at.

5 MR. MERRITT: Yes, we will be looking at it.  
6 Currently there is nothing there right now, and it has  
7 great potential for being there. We have seen that in  
8 other dams or reservoirs within Western Colorado. As  
9 Matt knows, once you have put a reservoir there, you  
10 need to work with the Division of Parks and Wildlife in  
11 identifying what sort of species they would like to see  
12 established there.

13 MR. HODGE: Brian Hodge, Trout Unlimited.

14 To touch on what you guys were just talking  
15 about as far as fish, I would, I guess, point out that  
16 fish do move and sometimes use habitats seasonally.

17 MR. MERRITT: Yes.

18 MR. HODGE: So we have to make sure that  
19 we're not looking at one snapshot in time in one place  
20 in Trout Creek and assuming that that captures the  
21 breadth of what is going on. We may have fish, for  
22 example, young suckers will move into small tributaries  
23 from, for example, the stem Yampa or White Rivers. So  
24 just kind of a general thought or suggestion as far as  
25 you looking at fishery impacts to look maybe over a

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1 broader spatial and temporal scale in considering those  
2 impacts.

3 MR. RICE: Yes. Matt Rice, and that brings  
4 me back to what I was saying, too, a more in-depth look  
5 at this, not just looking at the species, but also  
6 looking at life stage.

7 MR. MERRITT: Life stages, yes.

8 MR. RICE: And I would also suggest to  
9 modeling for, not just trout, but also some of the other  
10 nongame species as well that are important for a healthy  
11 ecosystem.

12 MR. YANSEN: You know, part of the GEI's,  
13 when they were looking at the fish studies, they  
14 indicated there was no seasonal fish that were moving up  
15 and down the section out there. So that was something  
16 that will come back out in the PAD. The PAD stopped  
17 last year when they were done sampling in September or  
18 October. They have been continuing on, so we'll have a  
19 revised report of a full year of water quality,  
20 temperature and fish habitat throughout the year. So  
21 that will be coming out, and you'll see that.

22 MS. BROWN: Jackie Brown, Routt County  
23 Conservation District.

24 But they just looked at that one section,  
25 correct?

26

1                   MR. YANSEN: No, they actually went  
2                   downstream further from the dam -- Brian with Peabody --  
3                   further from the dam as well, and they had temperature,  
4                   water sampling and fish habitat a mile plus, maybe two  
5                   miles, downstream.

6                   MS. BROWN: Did they look at any section  
7                   that was a restored riparian section that actually had  
8                   vegetation around it that would be natural if this land  
9                   hadn't been irrigated and grazed?

10                  MR. YANSEN: I do not think so.

11                  MS. BROWN: Okay. Just curious.

12                  MR. RICE: Matt Rice, American Rivers.

13                  As far as the flooded section of river, I  
14                  can't remember from reading the PAD how many miles or  
15                  how --

16                  MR. MERRITT: About two miles.

17                  MR. RICE: About two miles. Was that also  
18                  included in the analysis?

19                  MR. YANSEN: Yes.

20                  MR. MERRITT: Yes.

21                  MR. RICE: It was. And the analysis only  
22                  extended to a mile or two below the proposed dam site?

23                  MR. YANSEN: Yes.

24                  MR. RICE: Not to the confluence of the  
25                  Yampa?

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1 MR. YANSEN: Brian from Peabody.

2 They had water quality and temperature  
3 sampling, three on trout within the basin itself, and  
4 one on Middle Creek that falls within the basin. As  
5 well as they went down -- I forget the landowner  
6 downstream -- and they were doing sampling down there as  
7 well. So that was giving them a broad idea, but they  
8 did not go upstream.

9 (Interruption by the court reporter.)

10 MR. RICE: I don't remember what I said.

11 They sampled the downstream location on a  
12 couple of the landowners downstream, but they did not go  
13 upstream and do any sampling upstream.

14 MR. MERRITT: And I might note that they  
15 observed temperatures as high as 30 degrees this year on  
16 Trout Creek, centigrade, not Fahrenheit.

17 MR. HASSELL: Do you know what the water  
18 quality standard is? 17 or 18?

19 MR. MERRITT: No, it would be 20.

20 MR. HASSELL: 20?

21 MR. MERRITT: 20 would be the upper. And  
22 that's kind of pushing it, yeah.

23 MR. RICE: Once again, I don't remember from  
24 reading the PAD, existing -- existing diversions on  
25 Trout Creek?

26

1                   MR. MERRITT: Yes, there are existing  
2 diversions down below the reservoir that would be  
3 senior. That would be -- that's part of the reservoir  
4 operations is ensuring that those senior diversions, if  
5 the water, you know, is in Trout Creek, that those  
6 diversions are met. As you know the Yampa has had very  
7 little history of administration.

8                   MR. RICE: Yep.

9                   MS. MURRAY: Do we have more comments?

10                   I was trying to figure out, Matt, if you are  
11 just taking pauses. I'm just giving you a bad time.

12                   MR. RICE: I think that might be it.

13                   MR. HASSELL: I have some more comments  
14 about the scope.

15                   Issues that I would like to bring up, one,  
16 is access, public access to the lake. We at FERC, I  
17 don't know, a lot of our projects have public access.  
18 And we were talking about it earlier, and Shana and I  
19 are both confused whether it's mandatory or not. We  
20 think it's not, but we know that we can require it.  
21 Would that be safe to say?

22                   MS. MURRAY: Well, yeah. It's a gray area.  
23 The Federal Power Act says when you have a hydropower  
24 project you need to provide public access to those lands  
25 and waters. However, again, an example, in the case of  
26

1 exemptions if there is private land completely around  
2 the reservoir, there is no recreation going on anyway,  
3 in those cases we haven't required it. Or, in this case  
4 there is a proposed reservoir, so it's a gray area of,  
5 okay, provide public access. Is it to the reservoir?  
6 Are people interested in that? Is it downstream because  
7 people are interested in fishing? It's not an automatic  
8 you have to make this reservoir public, it's -- but,  
9 yes, it's a gray area which obviously we need to get  
10 more information in order to give you more information.  
11 But it is typical of hydropower projects that public  
12 access, we require it, to the reservoir in the land  
13 surrounding the project.

14 MR. HASSELL: It's an area that we will  
15 analyze, and it's an area where we need help from NGOs  
16 and state agencies that unfortunately may not be  
17 represented right now. But since we do have the  
18 Applicant here, what are your ideas?

19 MR. YANSEN: Brian with Peabody.

20 You know, we have been talking with the  
21 agencies. Peabody has an idea of what we would like to  
22 do, but, obviously, if there is a community benefit or a  
23 need in the area. You know, part of what ultimately I  
24 think our plan is, obviously, it's private lands except  
25 for a nine-acre piece of BLM land that is inundated by  
26

1 the project itself.

2 You know, I think for the community as a  
3 whole, you know, what is their need to the project, if  
4 any, that they would see a benefit out of it.

5 Obviously, we like to cooperate with all the agencies to  
6 help out with what is in the interest of the community  
7 itself. You know, our track record speaks for that. We  
8 try to cooperate with everybody, or we try, you know.

9 But at the same time with this particular  
10 project being positioned on private land, it's not  
11 gigantic at 385 acres, or whatever, you know, so the  
12 boating aspect of it. I think the agencies that we have  
13 talked to so far, meaning the Colorado Parks and  
14 Wildlife, you know, they are very worried about stocking  
15 issues, midnight stocking and people introducing  
16 invasive species to the lake itself. They are having a  
17 lot of trouble with that at other facilities around  
18 here.

19 So, I mean, we would like to cooperate in  
20 the best interest of the ecosystem and having those  
21 fish, but also to cooperate with people that want to go  
22 fishing. So I think there is probably a tradeoff. I  
23 mean, obviously we have some mitigation that is going to  
24 have to happen depending on where we can do that and  
25 incorporate that into something that could be turned

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1 around as maybe a fishery or a public use. That's where  
2 we're going.

3 Now that -- none of that has been detailed  
4 out. We have been thinking out loud about that, but  
5 over the next year that's going to have to be flushed  
6 out further.

7 MR. RICE: Downstream of the post reservoir  
8 site, that's my understanding that that's private. Is  
9 that owned by Peabody?

10 MR. YANSEN: It's private up to the point  
11 where the dam -- and there is a family-owned working  
12 ranch there on 155 acres that we have been talking to  
13 the landowners about acquisition of that property. So  
14 there will be some property just below the dam, just  
15 basically south of 179 that we'll own, and there could  
16 be possibly more acquisitions out there.

17 MR. RICE: So still kind of recreational  
18 access is a possibility?

19 MR. YANSEN: Possibly.

20 MR. RICE: All right.

21 MR. YANSEN: Right now, obviously, we own a  
22 lot of the lakeside property now, about 2000 acres  
23 around there. But we're looking at developing part of  
24 that, and the best part to develop would be next to the  
25 lake. So it's kind of what's in the community benefit,  
26

1       what will help us obviously, with the land we own, and  
2       then how to serve everybody and really get a great  
3       project out here is what we're looking at.

4               MR. HASSELL:  Brian, can I ask you a  
5       question about that orphan piece of BLM property?  It's  
6       a simple question.  I mean, it's a rectangular nine-acre  
7       plot, and about half of it it's in the pool and half of  
8       it is shoreline.  The half that is above the pool that  
9       is shoreline, does that connect to a road?  No --

10              MR. YANSEN:  It's surrounded by private  
11       property.

12              MR. RICE:  Is that Peabody property again?

13              MR. YANSEN:  No, other owners, three or four  
14       other owners are around that.

15              MR. HASSELL:  So there is no way for the  
16       public to use that as access to the reservoir.

17              MR. YANSEN:  They can't get to it now.

18              MR. McBRIDE:  Kevin McBride, Upper Yampa  
19       Water Conservancy District.  And you mentioned  
20       exemption, so is the process -- is there exemption in  
21       this process that's going on?

22              MS. MURRAY:  No, I mentioned exemption when  
23       talking about other recreation at projects and where  
24       sometimes we don't require public access.  Because there  
25       is BLM land on this project, they are -- they do not

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1       qualify for an exemption. This is not an exemption  
2       project. Yeah. There is no exemption.

3               MR. McBRIDE: So somebody adding hydropower  
4       to a project, the Lake Catamount project --

5               MS. MURRAY: They qualified -- yes, they  
6       qualified for an exemption and applied for an exemption.

7               MR. McBRIDE: So no need for public access  
8       in an exemption?

9               MS. MURRAY: That's not always the case.  
10       It's not always the case with exemptions. Sometimes  
11       there is a need or is a want. But the reason I bring up  
12       exemptions, I'm thinking about conduit or 5 megawatt  
13       exemptions, they're usually projects, water treatment  
14       plants, that already exist. They are upgrading their  
15       system. They are surrounded by private land. They are  
16       not -- there is no recreation in the first place. They  
17       are not changing anything. It's not a recreation area.  
18       So typically exceptions, there is not a lot of  
19       recreations and there is not a want for it, so we don't  
20       require it.

21               MR. RICE: And exemptions as well, for,  
22       like, a 5 megawatt exemption, for example, they will --  
23       one of the requirements -- my understanding on of the  
24       requirements of the Applicant is that they have to abide  
25       by all agency recommendations. So if that's a priority  
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1 of a state agency, then it would have to happen if they  
2 wanted to get an exception.

3 MS. MURRAY: Right. Yeah, because there are  
4 some exemptions that do have recreation, and we require  
5 access. But in other cases there is no recreation,  
6 nobody is even asking for it, so it doesn't get required  
7 as part of the license.

8 MR. McBRIDE: Okay. I guess my only comment  
9 would be is that, you know, through a FERC process,  
10 forcing any kind of public access would be a  
11 disincentive for small -- for people to add small micro  
12 hydro to existing reservoirs in the State of Colorado.

13 MS. MURRAY: This is Shana. See, I'm not  
14 even following my own rules. Shana Murray, FERC.  
15 Sorry.

16 You're exactly right, which is why typically  
17 on exemptions those small projects, when it's a conduit,  
18 or it's already existing and they are just adding a  
19 powerhouse, there is usually not a rec requirement.  
20 It's rare.

21 MR. RICE: Yeah, almost never.

22 MS. MURRAY: Yeah, especially with the  
23 conduits.

24 MR. RICE: Yeah. That would be never, I  
25 would say.

26

1 MS. MURRAY: Yeah, but this is not an  
2 exemption. It's a brand new reservoir. So, you know,  
3 we had said last night or maybe yesterday during the  
4 site visit, we have to evaluate what's being proposed,  
5 needs from stakeholders and agencies, what's available  
6 in the surrounding area.

7 You know, is this the only reservoir to go  
8 to to fish, which right now there is no reservoir and I  
9 don't know about fish, or are there other ones close by?  
10 You know, we have to look at all of those things and  
11 take them under consideration when we do our analysis in  
12 the NEPA and make our recommendations for a licensing  
13 decision.

14 MR. MERRITT: One of the additional  
15 complexities that has come up in the past couple of  
16 years on open public access is the Zebra mussels'  
17 introduction. And most of the reservoirs now within  
18 Colorado, in particular, Western Colorado, require  
19 inspection, staff inspection stations, or have the boat  
20 ramp closed when you are not -- when you don't have the  
21 inspection station staffed. And you have to have a  
22 Hotsey there that is able to essentially flush out all  
23 of the boat itself and get rid of any potential Zebra  
24 mussel villagers. That really becomes a protection of  
25 the works, because those tend toglom into the

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1       hydropower facilities.

2                   MS. MURRAY:   And this is Shana Murray from  
3       FERC.

4                   I have a question about that.  You may not  
5       know the answer.  If the reservoir is public and  
6       stocked, so Colorado has this law that you have to have  
7       all your boats inspected for zebra mussels, but if the  
8       reservoir is private, wouldn't you still have to have  
9       that in place even if the landowners are using it?  I  
10      guess I don't know how that works.  Do you have the  
11      State come out to the reservoir and do boat inspections,  
12      do you hire someone?

13                  MR. MERRITT:  This becomes an issue if you  
14      are moving a boat from one body to another.  If your  
15      hull and your bilge is drained and dry and has been  
16      inspected, it does not become a problem.  However, if  
17      you are moving a boat from one to the other and you've  
18      got residual water in the bilge, and this is -- what  
19      happens -- what a lot of reservoirs do then is if  
20      somebody is going to be keeping a boat there, it has,  
21      essentially, when they take it out they put a tag on it  
22      which seals it.  You know it's one of these zip-tie-type  
23      tags that's tagged to that reservoir.

24                  So if they bring that boat home, they bring  
25      it back to that reservoir with that, say, it's a

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1       Stagecoach zip tie, that's keyed to Stagecoach, they can  
2       put that boat back in Stagecoach because it has not been  
3       in any other water body between when it left Stagecoach  
4       and when it came back. So if you have a reservoir that  
5       you want to protect that, then, you know, if there are  
6       some boats out there, those would be inspected before  
7       they went in. And, as long as they stayed in there,  
8       then it's not an issue.

9                   MS. MURRAY: Okay.

10                  MR. MERRITT: It's the transport that  
11       becomes an issue.

12                  MR. YANSEN: Brian with Peabody.

13                  Obviously, we would want to control that  
14       from our side if it became private, because we would  
15       have a homeowners' association to implement anything on  
16       the shoreline plan, but, again, also just who is on the  
17       water and who is not on the water and who is coming in  
18       and out, obviously. That would be easier to control  
19       than having the public and maintaining the public in and  
20       the out.

21                  Again, you know, I'm worried about a 400  
22       acre lake as a recreational piece. You could have a lot  
23       of boats out there, and it could really damage what the  
24       overall picture could be. But, obviously, if that was a  
25       need, that would be different. So I think there is ways  
26

1 to do this project that makes everybody happy.

2 MR. MERRITT: Dave Merritt again.

3 The other issue is once you get these zebra  
4 mussels villagers in the reservoir, the Hotsey, this  
5 trailer with pumps and everything else, all that is good  
6 for is as a car wash at that point. Because you've got  
7 the zebra mussel spores in the reservoir, and that's it.  
8 There is no way that you are going to be getting rid of  
9 them at that point.

10 MR. HASSELL: Joe Hassell. Speaking about  
11 invasive species or non-native species, I want to bring  
12 up an issue that is in some of the lakes here with the  
13 northern pike. The Fish and Wildlife Service has a  
14 programmatic biological opinion to protect four native  
15 species in the Yampa River. AND one of the threats to  
16 the species are predation by northern pike and channel  
17 catfish. And northern pike is an apex predator. It's  
18 also a desirable sport fish, and people with maybe good  
19 intentions, or maybe bad intentions, will introduce them  
20 to reservoirs in hopes of establishing a northern pike  
21 fishery in a reservoir. This reservoir will be cold,  
22 having sufficient shallow water habitat. If somebody  
23 did that, you could get northern pike in there.

24 The ways to combat this problem, and in some  
25 of the other reservoirs, I mean there is all kinds of  
26

1       ways, many of them are very expensive, but if you design  
2       your project at the beginning, maybe you can minimize  
3       this threat. And the ways that you can -- I'm going to  
4       mention two or three ways that you can anticipate this  
5       project. I don't think -- I don't think it would be  
6       safe to say that this is not going to happen. I think  
7       that you should design in anticipation that if it does  
8       we can mitigate cheaply by, you know, thinking it  
9       through at the beginning. And the way -- you can  
10      screen, you can control the lake level, and that's  
11      generally done by having the lake level -- having not an  
12      uncontrolled spillway. You know, all the water goes  
13      through the turbine, okay. So basically you have got to  
14      pull it down a little bit at certain times of the year.  
15      Or keep it just a little bit below that to try to  
16      maintain it so that everything is going through your  
17      screened intake. And if the problem gets way out of  
18      hand, you may want to treat, chemically treat, poison --

19                   MR. MERRITT: Kill the whole lake, yeah.

20                   MR. HASSELL: And to do that you need to be  
21      able to drain the lake down. I mean, you don't want to  
22      kill everything in Trout Creek. You want to kill what's  
23      in Trout Creek Reservoir. So design your intakes to be  
24      able to bring that reservoir down to a low level so that  
25      the inflow will not -- you'll apply a dose of Rotenone,

26

1 and you can kill what's in there without poisoning the  
2 rest of the creek.

3 MR. MERRITT: Uh-huh, yeah.

4 And the screening actually is being used at  
5 Elkhead Reservoir -- this is Dave Merritt.

6 It's is being used at Elkhead Reservoir.  
7 It's proven to be a fair bit of problem screening those  
8 intakes. And in spite of the fact that there was  
9 significant federal funding on that for the screens  
10 where there is essentially a backfill of federal funding  
11 if there are problems there. Even this first couple of  
12 years we are seeing problems with those.

13 MR. HASSELL: What kind of openings do they  
14 have; do you know?

15 MR. MERRITT: That I don't know. But, I  
16 mean, these are screened to keep out pretty small  
17 materials, though.

18 MR. HASSELL: I think you need to strike a  
19 balance.

20 MR. MERRITT: Yeah. And this is what is  
21 spec'd by the Fish and Wildlife Service, because of the  
22 involvement of Fish and Wildlife Service, with Elkhead  
23 Reservoir, with recovery programs, along with everything  
24 else.

25 And the lake-level issue, that becomes  
26

1       essentially a trade off with flushing flows in that if  
2       you control that -- if you reduce that so that you don't  
3       use the spillway at all, then you don't get a lot of  
4       those higher flushing flows that aren't good for the  
5       stream downstream.

6                   And in terms of the last one. I mean, it's  
7       just, you now, desired practice anyway nowadays to have  
8       that reservoir, the bottom outlet, deep enough that you  
9       can draw the reservoir all the way down. And that's  
10      just the way things are built now, at least out here  
11      nowadays. So that's not even an issue as far as I am  
12      concerned with that one. I mean, that will be done.

13                   MR. HASSELL: Okay.

14                   I want to go back to the water quantity  
15      modeling. I heard Brian say yesterday that -- it is GS  
16      has established the stream gauge on Trout Creek?

17                   MR. YANSEN: There is a stream gauge on a  
18      property owner's property on Trout Creek, yes. It is  
19      not operable, but we're trying to get it operable.

20                   MR. HASSELL: Trout -- I mean, I saw the  
21      reference to the TWZ (sic) report. I haven't read the  
22      report, I have just seen it. So I'm not exactly sure  
23      how you all developed the simulated flows. I saw the  
24      reference in the PAD to the TWZ (sic) --

25                   MR. MERRITT: TZA, yes.

26

1                   MR. HASSELL: TZA. But I have not seen the  
2 report itself, so I'm not exactly sure how you correlate  
3 it or simulate it to Trout Creek. And I was -- when I  
4 saw the PAD originally I was a little concerned that  
5 there weren't any actual measurements on Trout Creek.

6                   MR. MERRITT: Uh-huh, yeah.

7                   MR. HASSELL: And I think you need to get  
8 the gauge in it and do some correlations so that you can  
9 confirm that your estimates of inflow, or simulated  
10 inflow, are reasonable. And one of the things that  
11 bothered me is it appeared from the description of the  
12 report that the simulated flows were correlated with a  
13 gauge on Elkhead Creek.

14                  MR. MERRITT: No, on Elk Creek.

15                  MR. HASSELL: On Elk Creek that's no longer  
16 operating, right? I mean, they have moved it. It  
17 stopped in 2007.

18                  MR. MERRITT: Boy, that -- that I don't  
19 know. And I would be disappointed because, it's a  
20 personal injection here, but having been with the  
21 Colorado River District and involved with funding that  
22 for a long time, I would be disappointed if we hadn't  
23 ceased funding that.

24                  MR. HASSELL: I'm saying if you --

25                  MR. MERRITT: And it may have been

26

1 relocated. There were two gauges up there, and they did  
2 a cross-correlation on Elk Creek, and the GS had decided  
3 to move one that they did not like at that location.  
4 And they kept it going for a few years while they put a  
5 new gauge in at a better location. But they -- the Elk  
6 Creek near Milner has been a very important gauging  
7 site, and it is --

8 MR. McBRIDE: Are you talking about the Elk  
9 River?

10 MR. MERRITT: Elk River.

11 MR. McBRIDE: The Elk River site is still  
12 going.

13 MR. MERRITT: The Elk River site is still  
14 going.

15 MR. HASSELL: Is this the site that was used  
16 to develop the formula?

17 MR. MERRITT: They used some correlation  
18 there and used correlation with other creeks also. They  
19 are on different sides of the stream. They are at  
20 different aspects, but the Elk River was used as one of  
21 the sites to correlate, yes. But, Elk River, you are  
22 right. Yeah. Okay.

23 MR. HASSELL: I'm just saying I think this  
24 information needs to be verified.

25 MR. MERRITT: Yeah. I'll take a look at  
26

1 that, but, yeah, there was cross-correlation done  
2 with -- because the Elk River near Milner has been  
3 around for the longest time and a very long period of  
4 record on that. There was a move of that gauge because  
5 of concerns that USGS had with the location of that  
6 historic point, so they moved it. They carried the  
7 record for a few years while they did a correlation  
8 against the new site and then discontinued the whole  
9 site.

10 MR. HASSELL: Coming up is -- December 4th  
11 is the comment period for comments on the PAD and  
12 requests for studies. We comment as well, and one of  
13 the -- I think one of the comments that we will make is  
14 we will ask you to file those existing reports that you  
15 have.

16 MR. MERRITT: Okay.

17 MR. HASSELL: You can do that now as a  
18 matter of fact.

19 The other -- you probably need to file the  
20 wetland delineation, Preliminary Wetland Delineation  
21 Report as well.

22 MR. MERRITT: Okay.

23 MR. HASSELL: Did I forget anything?

24 MS. MURRAY: If you did I don't know what it  
25 is. Did we have more comments?

26

1                   MR. MERRITT: One thing, going back to the  
2                   pike issue, yeah, there are complexities in dealing with  
3                   it, but I wanted to reiterate that, you know, I  
4                   personally, and as a board member of the Colorado Water  
5                   Conservation District Board, consider the pike issue to  
6                   be extremely important to, you know, the Yampa River  
7                   system and all rivers. Those issues are important and  
8                   trying to deal with those are important as the project,  
9                   you know, proponent. That's, you know, one of the  
10                  concerns everybody has once you build a reservoir,  
11                  especially when you get -- you know, public fishing is  
12                  the -- the midnight stocking or the bait bucket  
13                  stocking. And other than a watchtower, I'm not sure  
14                  that there are ways to --

15                 MR. YANSEN: I don't want to be out there  
16                 that much.

17                 MS. MURRAY: That would be a first. I'm not  
18                 sure FERC has ever required a watchtower.

19                 All right. I think this is a good segue.  
20                 I'm not cutting anyone off.

21                 MR. McBRIDE: I was just going to make one  
22                 comment about the pike, and that, you know, it certainly  
23                 is a complicated issue, as Dave said. But the need for  
24                 storage in the Yampa basin, you know, and the potential  
25                 for augmentation of late-season flows through storage  
26

1       certainly has a potential to have as much positive  
2       environmental impact as pike in a reservoir might.  And  
3       that there are many other sources, oxbows and other pike  
4       areas, that have the potential.  So to think that  
5       excessive measures on pike control on any other  
6       particular reservoir that an owner can't control should  
7       not be the controlling factor on a decision where you  
8       would be able to build a reservoir or not.

9               MR. HASSELL:  Kevin, you make a good point.

10              The low flows are a problem, too, and you  
11      see that in the PAD biological opinion.  But there is  
12      also they talk about the high flows that spread the  
13      water out into, I guess, the nursery areas.  You  
14      can't -- you know, you can't -- you really can't have  
15      both, can you?  I mean with -- if we put the storage in  
16      and if we operate the way they have hypothesized, then  
17      we are going to be cutting off some of the high flows,  
18      aren't we?

19              MR. McBRIDE:  Well, there are studies going  
20      on that show that the Yampa is at greater risk from lack  
21      of low flows than impacts on the high flows from  
22      appropriately-sized storage projects.  And that's simply  
23      because there are diversions on the basin and there is  
24      water use.  So the low flows, certainly on a percentage  
25      basis, are creating more impact than some reduction of  
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1 the peak flows. And the variability of that is so  
2 great, as evidenced by the last two years, that the  
3 natural flow of the Yampa is much more impacted at low  
4 areas than at high -- at high flows, even though  
5 recognizing the ecological work that's being done by  
6 high flows.

7 MR. HASSELL: Okay.

8 MR. MERRITT: I believe the Yampa has, what,  
9 less than 100,000 acre feet of total storage?

10 MR. McBRIDE: About 100,000, and the average  
11 output in the basin is over a million -- is about 1.4,  
12 1.5 million acre feet.

13 MR. HASSELL: So we shouldn't be that  
14 concerned about --

15 MR. McBRIDE: So in balance it's really the  
16 low-flow situation that is more critical, evidenced by  
17 the endangered fish program and purchasing storage in  
18 Elkhead Reservoir.

19 MS. MURRAY: All right. I'm doing one last  
20 check.

21 Okay. So somewhat of a segue, and I will go  
22 through this.

23 The next point we're at is the study plan  
24 development I want to quickly go over. We have specific  
25 criteria for study requests. These are seven main

26

1 criteria. If you are going to make a study request we  
2 ask that you include the goals and objectives. You  
3 explain relevant public interest. You describe the  
4 methodology. How this is going to inform licensing  
5 requirements in the future, and, of course, the level of  
6 effort and cost.

7 As I was saying last night, you know, you  
8 could ask Peabody to do a \$5 million study. Okay. Is  
9 that reasonable? It just depends.

10 So when we weigh -- FERC make these  
11 decisions on what's going to be required as part of the  
12 study plan, we're weighing all of these objectives,  
13 including the level of effort and cost and what's  
14 reasonable for the project.

15 Like I said before, these are on our  
16 website. They will be on Peabody's website. They are  
17 posting this presentation on their website, so you don't  
18 have to memorize these. They will be available in  
19 several spots, or you can just give me a call and I can  
20 walk you through.

21 But, basically, the importance of these  
22 criterion are to get a better understanding of what  
23 stakeholder needs for information. It focuses the  
24 studies more rather than let's have a fish study, okay,  
25 what kind of fish study. What's the goal of the fish  
26

1 study? What are we going to do? How are we going to  
2 look at the fish? Which means it's a more efficient use  
3 of time when we get to the table and start talking about  
4 what should go in the study plan and what should not.

5 So study requests will be made by FERC,  
6 stakeholders, agencies. This will all be filed, and the  
7 Applicant will have 45 days to take all of those into  
8 consideration and file a proposed study plan. Once they  
9 file a proposed study plan, we call this the study  
10 development period. It's meetings on all the studies  
11 that have been proposed by the Applicant, they accepted  
12 them into their proposed study plan. Or if, for some  
13 reason, you ask or request for a study and it didn't get  
14 included but you still think it should be included.  
15 90 days to talk about this, including FERC. We are a  
16 participant in this process as well.

17 There will be one final comment period to  
18 say your last piece about what's being proposed as far  
19 as the study plan. Again, the Applicant will take this  
20 all into consideration and file a revised study plan.  
21 Then FERC takes that revised study plan, we look at all  
22 the agency, stakeholder -- agency and stakeholder  
23 comments and we make a final determination on what will  
24 be required as the study plan.

25 Of course, there is always -- there is  
26

1 always a, well, wait, FERC -- I feel like there are  
2 several spots in the process where people can say, "but  
3 wait, FERC." If there is still a dispute on what FERC  
4 determines should be in the study plan, possibly someone  
5 requested a study, FERC didn't think it was necessary.  
6 If you are a mandatory commissioning agency, which in  
7 this case it's BLM, you can come back to FERC and say,  
8 hey, I disagree with what you have determined. We think  
9 our study should still be included. We'll put together  
10 a panel. It includes FERC and two representatives from  
11 separate agencies. It will go into this dispute  
12 resolution process where everyone gets to kind of try  
13 their side to the panel. The panel will make a decision  
14 and give that to you our office director. And once  
15 again, our office director will make a decision based on  
16 what he's heard from the panel.

17 So, big picture. How to stay involved.  
18 Where do you get involved? At what point? Basically,  
19 as I've been saying probably over and over the last  
20 couple of days, at each point there is stakeholder  
21 involvement, and we really want to keep people involved  
22 if they want to be involved, or at least provide the  
23 knowledge that at this spot, at this spot, you know, we  
24 are taking your comments, we are taking your concerns,  
25 just so people are aware of where they can jump into the  
26

1 process.

2 So the first thing you can do if you want to  
3 be involved, if you want hard copies of everything  
4 that's filed under this project number, you can get on  
5 our mailing list. You can either e-mail,  
6 eFiling@ferc.gov, or you can mail a request to our  
7 secretary.

8 You have to be specific and say I want to  
9 get on the mailing list for the Peabody Trout Creek  
10 Reservoir project and include the project number, which  
11 is a little hard to see, but, again, this will be  
12 available online. That's one way to do it.

13 There is no mailing list right now because  
14 this is a brand new project. So if you got a scoping  
15 document, that's all you are getting unless you put  
16 yourself on the mailing list. You won't get anything  
17 more from us. So you have to actively do this. We used  
18 to put people on the mailing list and they said I never  
19 asked you to do that, why are you putting my name on it,  
20 so we don't do that anymore. I'm just telling you FYI.

21 The other way to get involved is to be an  
22 intervenor. The difference between just being a  
23 stakeholder and an intervenor, you have special rights.  
24 You participate in hearings. You are able to file  
25 briefs. You are eligible to file a rehearing if the

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1 Commission decides to issue a license. If you are a  
2 stakeholder without intervenor status you don't have the  
3 option of filing rehearing. If you are a cooperating  
4 agency, you cannot be an intervenor, which in this case,  
5 I don't think anyone would be a cooperating agency or  
6 have that status.

7 Again, you have to file a motion with FERC  
8 to ask for intervenor status. So how do you do this?

9 Well, you can do this by paper. Again, you  
10 can e-mail our secretary. And I want to note at the  
11 bottom of this, the next thing that's due are comments  
12 on the PAD. So what we have seen already as far as the  
13 initial proposal and existing information, scoping  
14 document comments. So if you have identified issues  
15 that FERC hasn't that you want to include in the scoping  
16 document, comments on that, and then, of course, the  
17 study requests. All of these are due by December 4th.  
18 It's a really important date to remember.

19 This is what I think probably is the most  
20 important slide out of this whole thing, how to stay  
21 involved. We have web resources off of Ferc.gov that  
22 allow you to be involved in the project, know when  
23 things are filed, each step of the way.

24 The first thing is our licensing web page.  
25 It explains more about our process, more about some of

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1 the federal statutes that are not ours but there are  
2 other agencies involved in the process. Just everything  
3 we kind of have gone over today but in more detail.

4 Then we have the eLibrary. This is our  
5 system where we keep a record of everything that happens  
6 under the proceeding, of each proceeding at FERC. So  
7 for this project, when you go into eLibrary and type in  
8 the project number for this project, you are going to  
9 see everything that's been filed by FERC, by the  
10 Applicant, by agencies, by your neighbor Betty Smith,  
11 all of it is going to be under that project number, and  
12 you can look it up in eLibrary.

13 If you are like me, I'm a little lazy, I  
14 don't like going to eLibrary each week and checking,  
15 okay, what's new, I just -- I want a notice. So you can  
16 sign up for eSubscription. What this says is you  
17 basically sign up to get an e-mail. Each time something  
18 is filed under this project number, you will get an  
19 e-mail that says, okay, American Rivers has made a  
20 comment. FERC has filed a study request. Peabody has  
21 filed their proposed study plan. It's just a way for  
22 you to stay involved without having to visit our website  
23 every day.

24 The other part is the eFiling. I know I  
25 talked about sending your comments to the secretary by

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1 mail, which you are completely able to do. But if you  
2 would rather submit them electronically, you can go into  
3 our eFiling system and just attach either I think it's  
4 either a Word document or PDF if you have it. If you  
5 are typing your comments in Word, it's just quick, it's  
6 easy.

7 When you do mail, sometimes we don't see  
8 those for three or four days, because it takes awhile to  
9 get to DC and then into our filing system. Where if you  
10 do it electronically through eFiling, you can file it in  
11 the morning and see it under the record by that  
12 afternoon. So I really highly encourage eFiling.

13 Do you have a question?

14 MR. McBRIDE: Question.

15 On intervenor status, is there a deadline  
16 for filing for intervenor status?

17 MS. MURRAY: Gosh, you know, I would have to  
18 look. I don't think so. I don't think there is a  
19 deadline for it. I want to say it usually happens once  
20 a final license application is filed. It's not during  
21 prefiling.

22 MR. RICE: Yeah, I mean, I don't think there  
23 is anything that prohibits you from doing it, but, yeah  
24 typically you will file to intervene, file a motion to  
25 intervene, after the final license application has been  
26

1 filed.

2 MS. MURRAY: Yep, and I'm going to take back  
3 what I said. There is a deadline once the final  
4 application is filed.

5 MR. RICE: 60 days FERC will notice it.

6 MS. MURRAY: Yes, we'll notice it and say  
7 okay, we're calling for motions to intervene, comments  
8 on the license application, conditions from the  
9 agencies. We'll put out a notice and say, okay, now is  
10 your chance to do it, and you have to file by this --

11 MR. RICE: If Peabody had filed a  
12 preliminary permit -- there are, like, two intervention  
13 stages -- if Peabody filed for a preliminary permit  
14 rather than just straight to their notice and their  
15 preliminary application document, then it would have  
16 been a good opportunity to file to intervene in the  
17 preliminary permit phase of the project. Which, if they  
18 had done that and then filed their notice of intent and  
19 then a final license application, you would have had to  
20 file another intervention, so you would have had to  
21 intervene twice.

22 MS. MURRAY: Right, because a preliminary  
23 permit and the integrated licensing process, although  
24 we're talking about the same project, they are two  
25 separate processes. A preliminary permit, just to be

26

1 clear, it's to hold a spot. It doesn't allow  
2 construction. It doesn't allow groundbreaking  
3 activities. It's basically saying we are -- we're kind  
4 of putting dibs on this spot. It's for three years, and  
5 it's to make sure no one comes in and swipes the spot  
6 from them, because they are going for a license.

7 MR. McBRIDE: The spot. They own the spot  
8 anyway, right?

9 MS. MURRAY: They do, but --

10 MR. RICE: But somebody could file --

11 MS. MURRAY: Someone else can file even  
12 though -- yes.

13 MR. McBRIDE: My understanding is that even  
14 though we own Stagecoach, if we decided to shut down the  
15 power plant and walk away that somebody could file to  
16 actually take over our plant.

17 MS. MURRAY: Absolutely, you're correct.

18 So, yeah, we usually encourage preliminary  
19 permits, because even though it might not be likely that  
20 someone will file a permit on land that you already  
21 owned in an area, it could happen, and we have seen  
22 crazier things. It does happen.

23 So, with that, I just want to check if there  
24 is any last-minute questions on the process, all this  
25 information I threw out at you? I'll remind you with  
26

1 getting involved that blue booklet out there everything  
2 I just went over very quickly, it's all contained in  
3 that booklet. And I find it -- I guess I'm biased -- I  
4 find it really helpful, because it lays everything out  
5 for you, gives the links, tells you how to e-file, how  
6 to e-subscribe. But I also have my card out there as  
7 well. That's what I am here for, so if you want to call  
8 and I can walk you through it, if you are unsure. Or  
9 you get going and find it too confusing, which I have  
10 had those moments, that's what I am here for.

11 So do we have any questions?

12 All right. I am officially concluding this  
13 meeting. Remember December 4th, very important date.  
14 Thank you all for coming today. We really appreciate  
15 your participation.

16 (The hearing was concluded at 12:05 p.m.)

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