

1 FEDERAL ENERGY REGULATORY COMMISSION

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4 FEDERAL ENERGY REGULATORY COMMISSION

5 TECHNICAL MEETING

6

7 May 21, 2009

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9 BE IT REMEMBERED THAT, pursuant to the Washington Rules of  
10 Civil Procedure, the Federal Energy Regulatory Commission  
11 Technical Meeting, was taken before Tia B. Reidt, #2798, a  
12 Certified Shorthand Reporter, and a Notary Public for the  
13 State of Washington, on May 21, 2009, commencing at the hour  
14 of 8:51 a.m., the proceedings being reported at Tacoma Public  
15 Utilities Building, 3628 South 35th Street, Tacoma,  
16 Washington.

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1 APPEARANCES  
2  
3 Pat McCarty  
4 Paul Hickey  
5 Debbie Young  
6 Matthew Love  
7 Michael Swiger  
8 Marc Wicke  
9 Bret Forrester  
10 Susan Graham  
11 Nick Jayjack  
12 Gina Krump  
13 Carolyn Templeton  
14 Allan Creamer  
15 Linda Gilbert  
16 Dave Herrera  
17 Thane Somerville  
18 Keith Kirkendall  
19 Jane Hannuksela  
20 Steve Fransen  
21 John Johnson  
22 Tim Romanski  
23 Joan Marchioro  
24 Ed Jouper  
25

1 APPEARANCES CONTINUED  
2  
3 Eric Schlorff  
4 Chris Maynard  
5 Alann Krivor  
6 Mali Krivor  
7 Eileen Fisher  
8 George Fisher  
9 Henry Hu  
10 Matt Bruer  
11 Joseph Pavel  
12 Mason Morrisset  
13 Jennifer Frozena  
14 Bob Dach  
15 Dennis Koehn  
16 Matt Wilson  
17 Jerry Ryan  
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3 Thursday, May 21, 2009

4 8:51 a.m.

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6 PAT MCCARTY: Now that Mason is here, we can get  
7 started, okay, now that that's on the record.

8 Welcome to all of you. It looks like most of  
9 you were with us on the tour yesterday, except Joan maybe.

10 JOAN MARCHIRO: Yeah. I was in Wenatchee.

11 PAT MCCARTY: So I'm Pat McCarty, again,  
12 generation manager with Tacoma Power. I'm glad you found it,  
13 and hopefully you were pointed out where the restroom was on  
14 the way down and you can find your way back there if you need  
15 to.

16 What we hope to do today is to have a  
17 technical conference where the Federal Energy Regulatory  
18 Commission staff can get any questions that they might have  
19 answered and we might be able to clarify things as we go  
20 along.

21 We're scheduled in here from now until about  
22 3:45. Hopefully we can break by then and head up to our  
23 auditorium, where we'll have the public hearing scheduled  
24 from four to six.

25 Oh, and Mike Swiger was also not on the tour

1 yesterday.

2 And you are?

3 MATT BRUER: I am an intern with Jeff Gillard.

4 PAT MCCARTY: Okay. Welcome.

5 Debbie, do you want to talk about the process  
6 and how we're going to go through this today?

7 DEBBIE YOUNG: Okay. Well, thank you for coming  
8 to the FERC staff. When we finished the settlement  
9 agreement, we asked for a technical conference primarily so  
10 we could have some face-to-face discussion in case there --  
11 that would benefit your understanding of what we agreed to  
12 after this last two years, long two years of meetings. So  
13 what we want to do today is do a fairly high-level step-  
14 through of the license articles.

15 And we're not going to go into all the  
16 details because you've got all of that information in the  
17 written documents, but we'll give an overview of the most  
18 important ones. We'd like it to be interactive. If you have  
19 questions as we go along, please feel free to just pipe up.  
20 We'll also have a period, probably right after lunch, where  
21 you can bring questions that you may have, and we may -- we  
22 don't have to take the whole day if we don't need it.

23 We've got a real bare bones PowerPoint to  
24 sort of help us organize the license articles. And what  
25 we're going to do is organize them in groups. We didn't want

1 to go through numerically because that doesn't always make  
2 sense and we might miss the more significant ones, so if we  
3 want to go to the next slide. So let's refresh our memories  
4 about everyone here, and we can start introductions.

5 PAT MCCARTY: I'm Pat McCarty with Tacoma Power.

6 PAUL HICKEY: Paul Hickey, Tacoma Power.

7 DEBBIE YOUNG: I'm Debbie Young, Tacoma Power.

8 MATTHEW LOVE: Matt Love, VanNess Feldman, outside  
9 counsel.

10 MICHAEL SWIGER: Mike Swiger with VanNess Feldman.

11 MARC WICKE: Marc Wicke, Tacoma Power.

12 BRET FORRESTER: Bret Forrester, Tacoma Power.

13 SUSAN GRAHAM: Susan Graham, U.S. Forest Service.

14 NICK JAYJACK: Nick Jayjack, FERC.

15 GINA KRUMP: Gina Krump, FERC.

16 CAROLYN TEMPLETON: Carolyn Templeton, FERC.

17 ALLAN CREAMER: Allan Creamer, FERC.

18 LINDA GILBERT: Linda Gilbert, office of general  
19 counsel, FERC.

20 DAVID HERRERA: Dave Herrera with the Skokomish  
21 Tribe.

22 THANE SOMERVILLE: Thane Somerville, attorney with  
23 the Skokomish Tribe.

24 KEITH KIRKENDALL: Keith Kirkendall, NOAA  
25 Fisheries.

1                   JANE HANNUKSELA: Jane Hannuksela, NOAA general  
2                   counsel's office.

3                   STEVE FRANSEN: Steve Fransen, NMFS.

4                   JOHN JOHNSON: John Johnson, U.S. Fish and  
5                   Wildlife Services.

6                   TIM ROMANSKI: Tim Romanski, U.S. Fish and  
7                   Wildlife Services.

8                   JOAN MARCHIRO: Joan Marchioro with the Attorney  
9                   General's Office representing the Department of Ecology.

10                  ED JOUPER: Ed Jouper with Washington Department  
11                  of Fish and Wildlife.

12                  HENRY HU: Henry Hu, West Consultants.

13                  GEORGE FISHER: George Fisher, Save the Lakes.

14                  EILEEN FISHER: Eileen Fisher, Save the Lakes.

15                  MALI KRIVOR: Mali Krivor, Skokomish Farms.

16                  ALANN KRIVOR: Alann Krivor, Skokomish Farms.

17                  CHRIS MAYNARD: Chris Maynard, Department of  
18                  Ecology.

19                  ERIC SCHLORFF: Eric Schlorff, Department of  
20                  Ecology.

21                  MATT BRUER: Matt Bruer, Charles Wright.

22                  JENNY ORMAN: Jenny Orman, Tacoma Power.

23                  JERRY RYAN: Jerry Ryan, Tacoma Power.

24                  MATTHEW WILSON: Matthew Wilson, Tacoma Power.

25                  DENNIS KOEHN: Dennis Koehn, Tacoma Power.

1 BOB DACH: Bob Dach, BIA.

2 JENNIFER FROZENA: Jennifer Frozena, Department of  
3 Interior.

4 MASON MORRISET: Mason Morriset, attorney for  
5 Skokomish and assistant to Thane.

6 PAT MCCARTY: And our scribe?

7 THE COURT REPORTER: Tia.

8 DEBBIE YOUNG: You've also got an agenda, and that  
9 gives you a rough outline. We're going to spend the morning  
10 reviewing license articles, and then we'll also get to the  
11 off-license agreements after we've gone through the license  
12 articles, and then we've got a segment for other regulatory  
13 issues if we want to talk about ESA consulting process and a  
14 few other things.

15 Anyone want to make any opening comments  
16 before I go any further?

17 (No response.)

18 DEBBIE YOUNG: Okay. Then if you want to go to  
19 the next slide?

20 We're going to start with the license  
21 articles this morning. And there are 23 license articles  
22 that were actually revised. There are 11 that were unchanged  
23 from the 1998 license, and there are ten that are proposed  
24 for deletion.

25 And of the revised license articles, we've

1 grouped them into topics, and we'll start with flows and  
2 elevations, so -- because flows was one of the more  
3 significant articles, we'll start with that article. And  
4 then we grouped a few others, even though they're out of  
5 order, with that topic. So we'll deal with ramping rates and  
6 a few other things, underflows and elevations.

7 And then we'll go to the next topic. And  
8 you've got an agenda. On the back page of your agenda,  
9 you've got a listing of the articles in the order that we're  
10 going to deal with them in, so that might help you keep on  
11 track. So we'll do flows and elevation, then fisheries, and  
12 then wildlife-related articles, then recreation and roads,  
13 and then we'll move into -- briefly we'll just list the  
14 unchanged articles, if you look on the back page of that  
15 second page, just list the articles proposed for deletion,  
16 and then we'll go on to the off-license agreements.

17 So Matt's going to walk us through real high  
18 level, the license articles. And again, we'll just -- if  
19 there are any questions as we go along. If there aren't,  
20 we'll move to the next.

21 MATTHEW LOVE: Great. Thank you, Debbie. Matt  
22 Love. Going to the -- starting in the flows and reservoir  
23 elevations. And in this segment, we're going to deal with  
24 Article 407, minimum flows; Article 403, channel conveyance;  
25 Article 405, impoundment elevations; 406, Operation and Flow

1 Monitoring Plan; and 411, the ramping rate conditions.

2 Moving to Article 407, the minimum flows, the  
3 flow releases from Dam 2 are to provide for protection  
4 enhancement of fish and wildlife resources, fish passage in  
5 the North Fork, channel formation in the lower North Fork,  
6 and sediment transport in the North Fork and Skokomish River.

7 To achieve these purposes, the article's  
8 divided up into three components, component one being the  
9 base flows. And with that, there's a water budget of 160,000  
10 acre feet that will be designed to mimic timing, duration and  
11 frequency of natural flow events. Of this, 115,835 acre feet  
12 are to establish and maintain habitat improvements in the  
13 river system.

14 The balance of 44,165 is designed to support  
15 upstream and downstream fish migration through the main stem  
16 and lower North Fork. And as clarification, that base flow  
17 is regardless of inflow. It's a constant flow. Unlike the  
18 existing 1998 license, which is 240 or inflow, this is a  
19 water budget that's regardless of what the inflow into the  
20 project is.

21 And Mark, did you want to talk about this  
22 slide?

23 MARC WICKE: So what this slide represents is an  
24 example of what might be done with an additional 44,000 acre  
25 feet. The dash line you see at the bottom represents the

1 115,000 flow as a base flow, and it kind of mimics the  
2 seasonal variations somewhat. But the yellow line and the  
3 blue -- and the solid blue line represent how the Flow  
4 Committee -- or the Fish and Habitat Committee can allocate  
5 the rest of that water budget throughout the course of the  
6 year.

7 The spikes you see to the left of the graph  
8 represent the flows that can be used to incur juvenile out-  
9 migration from the river system. And then the spikes on the  
10 other side represent flow that could be used to encourage  
11 adult migration upstream. So just an example.

12 DEBBIE YOUNG: So the 115,000 is basic. The other  
13 44 gets allocated by a committee, and they'll choose how it's  
14 going to be released. And these are some examples of how  
15 they might choose to release it, what it could look like.

16 MARK WICKE: Right.

17 PAT MCCARTY: The actual flows will likely differ  
18 from what you see in the picture.

19 MATTHEW LOVE: Yes. Thank you.

20 That was Marc Wicke from Tacoma Power.

21 Article 407, the Component 2, is channel  
22 formation flows. And here we have -- these flows are  
23 triggered by the flows at the USGS Staircase gage, which is  
24 the upper gage above Lake Cushman that we visited yesterday.  
25 And there, what we have is -- there's three different

1 triggers for when flows are at certain levels at that  
2 Staircase gage. And then Tacoma will be obligated to release  
3 additional flows from Cushman No. 2.

4 So in addition to the base flows, Tacoma will  
5 release 500 cfs from -- when the Staircase gage exceeds 3,000  
6 cfs. Tacoma will release 750,000 cfs when the Staircase --  
7 or excuse me, 750 cfs when it exceeds 4,000 cfs; and then  
8 1,000 cfs released when Staircase gage exceeds 5,000 cfs.

9 And then the third component of the flows for  
10 Article 407 are the North Fork -- oh, excuse me.

11 DEBBIE YOUNG: The next two slides are still about  
12 the channel formation flows, so...

13 MATTHEW LOVE: So the flows will release the same  
14 duration; flows can be delayed by up to seven days after the  
15 initial exceedance if necessary to avoid flood impacts or to  
16 allow time for notification.

17 And then the increase, every five years --  
18 excuse me, the flows released will be 500, 750 cfs and 1,000  
19 cfs are to be released by 5 percent beginning the sixth year  
20 of the license and every five years thereafter.

21 Moving on to the Component 3 flows. The  
22 Component 3 flows are mainstem sediment transport flows. And  
23 for these flows, Dam No. 2 to release up to 2,200 cfs for 48  
24 hours at slightly less than the mainstem bankfull capacity  
25 when the daily average flows at Potlatch gage exceed greater

1 of 9,800 cfs, or 15 percent above flood stage, between  
2 October 1 and February 1st.

3 There's an alternative for this Component 3  
4 flow. If the Fisheries and Habitat Committee determine the  
5 Component 3 flows do not improve sediment transport, then  
6 Tacoma will prepare a Flood Damage Reduction Plan and create  
7 a Flood Damage Reduction and Mitigation Fund.

8 For this fund, Tacoma will deposit 150,000  
9 into the fund in Year 1 of the license and then \$150,000  
10 every year thereafter.

11 Year 1 of the license or Year 1 of the -- of  
12 the plan. That's just the -- excuse me, that's -- unless it  
13 goes into effect, but that won't be Year 1 of the plan.

14 For the Component 3 flows there, in addition  
15 to base flows and North Fork channel formation flows, their  
16 purpose is to support mainstem river capacity, to move  
17 sediments downstream following a storm event. Flow releases  
18 to begin after the mainstem Skokomish drops below flood  
19 stage.

20 And Mark Wicke, can you give us -- or Pat, do  
21 you want to give us a summary of how this will work?

22 PAT MCCARTY: This is a graphic of how it works,  
23 so this is an actual flow that occurred on the mainstem. The  
24 dark red is the mainstem flow. And the red line represents  
25 approximately 9,800 -- or it's approximately bankfull. So

1 9,800 is above that line. It's 15 percent above that. And  
2 when the average daily flow exceeds that, then as that flow  
3 drops back down, it's augmented with the North Fork, which is  
4 depicted by the blue line down below for up to 2,200 cfs for  
5 48 hours. And the yellow bar on top of the maroon line is  
6 the augmented flow into the mainstem.

7 DEBBIE YOUNG: The idea was that we maintain the  
8 channel flushing of the mainstem that was happening by these  
9 high flows by adding some additional flow at the end and  
10 retaining that bankfull status for a longer period to enhance  
11 the sediment flushing.

12 PAT MCCARTY: To try and increase the velocity to  
13 move the gravel downstream.

14 MATTHEW LOVE: Great. Thank you.

15 Article -- moving to Article 403. But before  
16 we move to Article 403, I'd like to ask if there's any  
17 questions or comments on Article 407.

18 DAVID HERRERA: I'd like to make a few comments,  
19 Matt. This is Dave Herrera.

20 What I wanted to point out here is that this  
21 flow regime that we just walked through was -- we spent a lot  
22 of time in developing that. And the idea was to try to mimic  
23 the natural hydrograph of the North Fork of the Skokomish  
24 River.

25 In the 4(e) conditions that were developed in

1 '96, it was simply a flow, 240 cfs, and that's what it is.  
2 So in the license, there was 240 are inflow. And neither of  
3 those, in our view, looked at what the river would do if it  
4 could, so we did spend a lot of time in developing this flow  
5 regime, including the water budget. And the water budget  
6 isn't just to help with fish passage. It's, again, to mimic  
7 the natural hydrograph.

8 From year to year we'll look at what the  
9 previous water year was, and the Committee will develop --  
10 use that water budget to try to create that natural flow  
11 regime. So that was really a key component of this for us,  
12 is we want -- for the Tribe is -- I mean, there is -- there  
13 are two dams on the North Fork, and it will be what it was,  
14 but to the extent that we can make it function the way that  
15 it wants to, and that's what we were attempting to do here.

16 MATTHEW LOVE: Thank you. Is there any other  
17 questions on Article 407, or comments?

18 (No response.)

19 MATTHEW LOVE: Great. Moving to Article 403.

20 Article 403 requires -- addresses the  
21 Skokomish River mainstem capacity. Article 403 requires  
22 Tacoma to provide the Corps with 25 percent of the funds  
23 necessary to complete a general investigation that the Corps  
24 is currently conducting to address Skokomish River mainstem  
25 capacity issues. This requirement to contribute up to

1 25 percent of those funds, the Corps currently estimates that  
2 the general investigation will cost 4.4 million in total, so  
3 the licensee's share would be 400,000 per year, or  
4 1.2 million total. The license caps the share at 400,000 per  
5 year, or 1.2 million in total.

6 This funding obligation is intended to  
7 supplement the 50 percent funding that's currently  
8 contributed by the Corps and to offset existing cost-sharing  
9 obligations of the Tribe, potentially other regional cost-  
10 sharing partners.

11 In addition, if the general investigation  
12 recommendation is not implemented by Year 15 of -- after  
13 issuance of the amended project license, the licensee will  
14 have to develop a Mainstem Channel Restoration Plan. And  
15 this Mainstem Channel Restoration Plan will identify and  
16 prioritize measures proposed within the GI that can be  
17 implemented by the licensee to enhance mainstem channel  
18 capacity.

19 In addition, the licensee will have to  
20 establish a Mainstem Channel Restoration Account to help fund  
21 these projects. And the sum for that Mainstem Channel  
22 Restoration Account is...

23 PAT MCCARTY: \$600,000 initially for the first  
24 five years. And then every five years thereafter, another  
25 600,000. And if we end up with annual licenses later, then

1 it's \$120,000 a year.

2 MATTHEW LOVE: Okay. Are there any questions  
3 about Article 403, or comments about that article?

4 (No response.)

5 MICHAEL SWIGER: I would just add that, you know,  
6 when we wrote this and negotiated this article, we were  
7 mindful of the Commission's policy in the settlement policy  
8 about cost caps. There are cost caps in the license article.  
9 But the 1998 license itself had a cost cap in it which was a  
10 one-time contribution of \$1.5 million from Tacoma to  
11 contribute to a basin-wide restoration effort.

12 And so this really is the same concept, that  
13 Tacoma is contributing to a broader basin-wide restoration  
14 effort. And so the settlement parties agree that it was  
15 appropriate to limit Tacoma's contribution to some  
16 proportional share of the total, whatever that would be.

17 I think what the feature that is -- that is  
18 extra here is that in addition to helping fund the Corps  
19 study, which has taken the lead in this effort, there's a  
20 backstop that the licensee is providing that if the Corps  
21 study doesn't go anywhere and congress doesn't fund the money  
22 to enact whatever the Corps recommends, that Tacoma will step  
23 in and provide a substantial amount of funding to do  
24 projects.

25 MATTHEW LOVE: Dave?

1                   DAVID HERRERA: Matt, just to comment on that is  
2 the original license -- and this is not inconsistent with  
3 that except that the Corps of Engineers is doing the study  
4 now. The Tribe in Mason County, had -- with the Corps had  
5 developed this a couple years ago and got the effort going.  
6 So since they're doing it now in Tacoma, it doesn't make  
7 sense to have Tacoma do the same thing, so it's helping us to  
8 fund a study that makes more sense now.

9                   MATTHEW LOVE: Okay. Any other comments?

10                   (No response.)

11                   MATTHEW LOVE: Moving on to Article 405.

12                   Article 405 addresses impoundment elevations  
13 to the amended license. Tacoma would maintain lake  
14 elevations at Lake Cushman between 735 and 738 from Memorial  
15 Day through Labor Day weekend, and then at 690 feet minimum  
16 between November 1st and March 31st.

17                   For Lake Kokanee, elevations will be between  
18 474 feet and 480 feet except for intake and spillway  
19 maintenance requirements.

20                   Article 406, is there any questions on  
21 impoundment?

22                   (No response.)

23                   MATTHEW LOVE: Great. Moving on to Article 406.

24                   Under Article 406 requires an Operational  
25 Flow Monitoring Plan. The plan will be developed with the

1 involvement of representatives from the Save the Lakes  
2 Coalition, a philosophy developed in consultation with  
3 Fisheries and Habitat Committee. The plan will document how  
4 Tacoma will monitor lake levels, monitor stream flows, ensure  
5 compliance with flow requirements, improve mainstem flow and  
6 flood forecasting, address water use issues when refill,  
7 project operations, flow releases, and Lake Cushman  
8 elevations may conflict.

9 Questions?

10 ALLAN CREAMER: Allan Creamer with FERC.

11 One thing I noticed about this particular  
12 article. Our flow monitoring -- Operational Flow Monitoring  
13 Plans typically have a provision in it for filing incident  
14 reports in case something happens, and there's a -- that  
15 deviates from what the license requires. I didn't notice  
16 that in this particular report. It's an administrative type  
17 of thing. It's not substantial, but it's something that  
18 likely you would see added to this particular plan when we  
19 get around to the order.

20 MATTHEW LOVE: Thank you. And I suspect that the  
21 reason that this article doesn't include that type of  
22 incident report is because it was built upon the 1998  
23 license, and we tried to mimic it as much as possible to keep  
24 it as closely aligned as possible.

25 ALLAN CREAMER: Yeah. I certainly understand

1 that. And in 12 years or so, things have changed with some  
2 of the stuff that we do. And there are other articles that  
3 will probably comment on that -- you know, will bring it to  
4 your attention that there are certain administrative things  
5 and wording changes that you'll likely see in those articles.  
6 It doesn't substantially change what those articles say.

7 DEBBIE YOUNG: And this is Debbie. We're  
8 certainly used to dealing with that on our other projects, so  
9 that wouldn't be an issue to have an incident report  
10 addition.

11 I would only ask that you're mindful about  
12 how you word it. So the fact that the Flow Committee is  
13 maybe allocating this water budget differently each year,  
14 we're not in a situation where if they have a different  
15 allocation each year that that's an incident.

16 JANE HANNUKSELA: Jane Hannuksela. And I  
17 appreciate you bringing that up, Allan, and I presume that  
18 each time something like this comes up, as we go through the  
19 license articles you'll point that out now so we're aware?

20 ALLAN CREAMER: Yes.

21 JANE HANNUKSELA: Great. Thank you.

22 STEVE FRANSEN: Steve Fransen. Allan, I'm also  
23 glad you brought that up, because I have to deal with  
24 projects that have that very requirement in license articles.  
25 And I guess I'm really interested in how the Commission would

1 feel about building some kind of modest buffer around a  
2 compliance point, because I've got a couple of projects that  
3 keep triggering deviations.

4           And it's not like anything went wrong. It's  
5 just that because we put in a compliance point, and there can  
6 be circumstances beyond the operational control of the  
7 project that trigger these. The upshot is that I and you or  
8 your peers at the Commission are getting a lot of, I guess  
9 what we might call false reports, and you have to look at  
10 every one to see is this report meaningful or is this just  
11 one that triggered wherein nothing that would adversely  
12 affect resources occurred. And so we're dealing with a lot  
13 of incident reports that -- and only some of them are  
14 actually of interest.

15           PAT MCCARTY: And we did something like that in  
16 Article 407, under minimum flows. We put a 5 percent buffer  
17 in there, especially since it wasn't -- it was no longer a  
18 240 flat. It was going to be set by the committee. Since  
19 there is some variance in the gage, there are other  
20 influences that play into it, and we felt a 5 percent buffer  
21 was appropriate for that.

22           ALLAN CREAMER: We'll just have to take a look at  
23 it and see how we can potentially address that issue. I  
24 can't tell you now how we might do that, but I'm certain as  
25 we go through that we'll be mindful of that.

1                   MATTHEW LOVE: Great.

2                   Article 411. This pretty much speaks for  
3                   itself. These are ramping rate conditions for the operation  
4                   project. They're measured at the USGS gage below Cushman  
5                   No. 2. Different times of the year, there are different  
6                   ramping restrictions that apply for flows that are less than  
7                   critical flow. There's also restrictions on upramping rates  
8                   to no more than one foot per hour unless it's required by  
9                   operating for emergency.

10                  ALLAN CREAMER: Allan Creamer again. This is  
11                  another one that our operational articles typically have  
12                  provisions for temporary modifications, and this particular  
13                  article might have been because the 1998 article didn't have  
14                  it. But this is another one where we would probably add a  
15                  short paragraph that would allow for temporary modifications.

16                  MATTHEW LOVE: Thank you.

17                  Are there any comments on the ramping rate  
18                  conditions?

19                  (No response.)

20                  MATTHEW LOVE: Moving on, then, to the next group  
21                  for fisheries. The revised license articles include  
22                  Article 415 for upstream fish passage; Article 414 for  
23                  downstream fish passage; Article 416 for Fish Passage  
24                  Monitoring Plan; Article 417 for Fish Supplementation  
25                  Program; Article 418 for Tailrace Monitoring; Article 432 for

1 Fisheries and Habitat Committee; Article 412 for the Fish  
2 Habitat Enhancement and Restoration Plan; and Article 413 for  
3 the Fish Habitat and Monitoring Plan.

4 Moving to Article 415, that's the upstream  
5 fish passage. As we saw at the tour yesterday, the upstream  
6 fish passage facility is currently planned to be located at  
7 the base of Cushman Dam No. 2. It's going to be integrated  
8 into a new North Fork powerhouse. There's currently a  
9 license amendment to add to the North Fork powerhouse. And  
10 the idea is that, as you saw yesterday with all the water  
11 coming out, the 240 that's coming out at the base, we need  
12 some way to defuse that power, and so we're going to be using  
13 the North Fork powerhouse to defuse that power and run it in  
14 -- run the water into the upstream fish collector. There'll  
15 be -- adults will be lifted to the top of Cushman No. 2.  
16 There will be a sorting facility for adults and juveniles at  
17 Dam No. 2.

18 Are there any comments or questions about  
19 this license article?

20 ALLAN CREAMER: Allan Creamer with FERC.

21 A couple. Section 4 and Section 5. Section  
22 4 is the construction and Section 5 deals with fish passage  
23 at Little Falls.

24 As I read those two articles, they seem to  
25 contemplate that changes in budget facilities or other type

1 of things could occur without Commission approval. And I  
2 just wanted to -- these are a couple -- and there's other  
3 articles where I've read that. And if I'm wrong, please let  
4 me know. But they seem to contemplate the changes could  
5 occur to project operations or facilities without prior  
6 approval from the Commission. So that's something that we  
7 would be taking a look at with these articles, this  
8 particular article.

9 MATTHEW LOVE: And I think --

10 DEBBIE YOUNG: I think we would know if Little  
11 Falls is going to be an issue for the location of the  
12 collection facilities before we file our plan, so I don't  
13 think it would be a problem that we file the plan and then  
14 make some changes.

15 MATTHEW LOVE: That's exactly right. We were  
16 envisioning many of these things would be addressed through  
17 the plan, which would then be approved by the Commission and  
18 implemented after that, and so we were envisioning some type  
19 of Commission review approval process as part of this.

20 ALLAN CREAMER: The plans that we write today  
21 typically have a provision in it that basically is very  
22 explicit, saying that should changes occur, you know, those  
23 changes would need to be approved by the Committee. It's  
24 something that might go beyond what the plan itself might  
25 require. So again, it's a sentence -- it's an administrative

1 type of thing, so it doesn't change the article in any  
2 substantial way.

3 MATTHEW LOVE: Thank you.

4 Moving to Article 414. Article 414 involves  
5 downstream fish passage. The article requires development  
6 and implementation -- or development, construction and  
7 operation of a fish floating surface collector in Lake  
8 Cushman. This collector was designed to conform with the  
9 National Marine Fisheries Service 2008 Anadromous Salmonid  
10 Passage Facility Design Manual. The facility will be  
11 operated between March 15th and July 31st of every year.

12 Is there questions pertaining to this license  
13 article?

14 ALLAN CREAMER: Yeah. This is another one that --  
15 Section 5.8 again seems to imply that changes could be made  
16 without Commission approval. This article also mentions a  
17 Section 5.9, which pertains to operational periods and  
18 changes that the Fisheries and Habitat Committee could make  
19 to that period of operation. It would be -- and I think  
20 something that we might take a look at in terms of this  
21 article would be some type of reporting provision or a  
22 notification provision, if something like that were to happen  
23 that we would -- you know, not to say that we wouldn't allow  
24 it to happen, but just to notify the Commission that this  
25 change has occurred.

1                   MATTHEW LOVE: Right. And we understand that  
2                   it's -- the degree of change over what was put forth kind of  
3                   triggers the degree of notification or the degree of FERC  
4                   review and approval. If it's just a minor modification or  
5                   something along -- we're just trying to make sure that we're  
6                   streamlining and, you know, bringing the Commission in as  
7                   appropriate.

8                   JANE HANNUKSELA: Jane Hannuksela.

9                   Allan, I have a question about that. Is  
10                  there some way the Commission views when there's enough  
11                  change that they need approval again, or is any change, no  
12                  matter how small, requiring Commission approval? How does  
13                  the Commission view that?

14                 ALLAN CREAMER: Typically, at least in my  
15                 experience, if you write an article that says, you know, that  
16                 an applicant licensee can do certain things, you know, when  
17                 it comes to adaptive management, we try to put bounds on it.  
18                 And if some way -- if somebody on the outside were to come to  
19                 us and say, you know, the licensee isn't doing something that  
20                 they should be doing, then we need to be in a position to  
21                 know exactly what they're doing and when they're doing it so  
22                 we could respond to that inquiry and say, you know, they are  
23                 operating within bounds of their license, or if they're not,  
24                 then, you know, we can take appropriate action if they're  
25                 not.

1                   So I will venture to guess that, you know,  
2                   simply notifying the Commission that, you know, if you've  
3                   been doing, you know, a certain operational period for X  
4                   amount of time and we know that and that happens to change  
5                   for some reason, we need to know why that -- you know, that  
6                   it changed and why it changed so that we can respond to  
7                   somebody that might come in saying that the license is not  
8                   going the way it's supposed to.

9                   JANE HANNUKSELA: So I guess my question now goes  
10                  to is if we have the Committee that might be looking at past  
11                  history and say, well, this year we need to make this little  
12                  modification, is that the sort of thing, since we've built  
13                  adaptive management into the license articles, is that the  
14                  sort of thing that would require Commission approval again or  
15                  just notification or...

16                 ALLAN CREAMER: No. I mean, if you're within the  
17                 bounds of what the license originally required, no. That  
18                 would just simply be a notification that, you know, we're  
19                 making a certain change here, and this is what we're doing  
20                 this year.

21                 It's only when you might go beyond something  
22                 that the Commission might require that you'd need to come  
23                 back in, and we would need to take a look at it and approve  
24                 whatever change is being made.

25                 JANE HANNUKSELA: Okay.

1                   NICK JAYJACK: This is Nick Jayjack from FERC.

2                   If there's any gray areas or if you're  
3 looking at, say, making a change and you're not quite sure  
4 whether -- or the licensee isn't quite sure as to whether or  
5 not it would require an amendment, usually what we do is we  
6 tell them just to call the Portland or the regional office  
7 and just let them know what's going on and just get their  
8 opinions, and they're usually more than willing to render an  
9 opinion. If they think it's a problem, they'll let the  
10 licensee know, and then we'd go from there.

11                  JANE HANNUKSELA: Thank you.

12                  MATTHEW LOVE: I appreciate that.

13                  Moving to -- unless there's any other  
14 comments or questions, moving to Article 416, the fish  
15 passage monitoring plan. The purpose of this license article  
16 is to monitor or measure survival through Lake Cushman,  
17 assess the compliance with the survival and performance  
18 standards for effective passage to inform implementation of  
19 Article 414 and 415, the upstream passage.

20                  Like other plans, or like other licensed  
21 articles, it requires a development of a Fish Passage  
22 Monitoring Plan.

23                  Are there questions concerning this license  
24 article? Comments?

25                  (No response.)

1                   MATTHEW LOVE: Moving to Article 417. Article 417  
2 includes the fish -- oh, sorry.

3                   ALLAN CREAMER: Allan Creamer with FERC.

4                   I had a question. Section 2.2 mentions  
5 startup years. I was wondering if "startup years" was  
6 defined in terms of the length. You know, how is "startup"  
7 defined?

8                   MATTHEW LOVE: Let me just look at it for a  
9 moment.

10                  DEBBIE YOUNG: Do you remember, Steve?

11                  STEVE FRANSEN: Well, I think I remember it well  
12 enough to take a stab at it this morning.

13                  Startup years would be when the facility is  
14 in the water and ready to begin first-year operation. Spring  
15 would begin in the latter half of March. And the first year  
16 that the equipment is operated that way would be the first  
17 startup year. And we would certainly expect, unless  
18 something went catastrophically wrong, that the first three  
19 startup years would be consecutive years.

20                  MATTHEW LOVE: Let me just follow up. We would  
21 anticipate this monitoring requirement would be addressed by  
22 the plan, and defining the three times during the startup  
23 years and then two times every ten years thereafter.

24                  Some of it, isn't it dependent upon the  
25 species and things along those lines?

1                   STEVE FRANSEN: Yeah.

2                   MATTHEW LOVE: And the presence of different  
3 species and monitoring the survival of the different adult  
4 returning species?

5                   STEVE FRANSEN: Yeah. I'm sorry. I was just  
6 thinking to the downstream facility initially. But, right,  
7 it would apply to both.

8                   MATTHEW LOVE: So we'll have different species  
9 showing up at different times, and there will be a need to  
10 monitor the survival of the different species.

11                               So if it would be okay with the Commission,  
12 we would like to provide you some clarification on that  
13 because -- we'll confer and get back to you.

14                   ALLAN CREAMER: That's good.

15                   MATTHEW LOVE: Any other questions on this?

16                               (No response.)

17                   MATTHEW LOVE: Moving to Article 417, fish  
18 supplementation program, this includes a sockeye hatchery at  
19 Saltwater Park; produce up to 2 million fry; release the fry  
20 in Lake Cushman to rear. These fry would then be -- collect  
21 juveniles in the floating surface collector and transport to  
22 Dam No. 2 sorting facility and released into the lower North  
23 Fork to continue their out migrations.

24                               The next slide.

25                               In addition there will be a hatchery and net

1 pens at Lake Kokanee with production requirements for spring  
2 Chinook of 375,000 juveniles, 15,000 -- for winter steelhead.  
3 There will be 15,000 smolts and 225 adults. For coho, there  
4 will be between 10,000 and 35,000 smolts. For rainbow, there  
5 will be between 24,000 and 35,000 at three fish per pound.

6 Are there any questions about the  
7 supplementation program?

8 ALLAN CREAMER: Yeah. This is Allan Creamer with  
9 FERC.

10 Section 3.3 and Section 3.5. 3.3, and this  
11 is my reading of it, contemplates that the Fish and Habitat  
12 Committee can make changes to the program phase-in schedule  
13 without the Commission's knowledge. 3.5 seems to contemplate  
14 that Tacoma could make any necessary changes to hatchery  
15 operations based on monitoring results without the  
16 Commission's knowledge.

17 This would be an instance where you might see  
18 some language where it's -- again, it's a notification thing.  
19 And another note that I had to myself is that, you know,  
20 maybe that there, you know, is something that you could see  
21 as a reporting requirement, like an annual report where it  
22 would explain, you know, if any changes were made or  
23 whatever.

24 MATTHEW LOVE: We understand that. And again, I  
25 think what we had envisioned is that the plan would address

1 the continued -- the notification requirements and the  
2 approval requirement for changes, and so certainly we  
3 understand that obligation.

4 Any other comments or questions about this  
5 license article?

6 (No response.)

7 MATTHEW LOVE: Thank you. Moving on to  
8 Article 418. This is Tailrace Monitoring Plan. And --

9 NICK JAYJACK: This is Nick Jayjack.

10 Can we, real quick, go back to the last  
11 slide? The one question I have is are these numbers, are  
12 these hard and fast numbers, or is there some allowance for  
13 some deviation of a percentage? The reason I ask is that our  
14 compliance folks sometimes ask this very question because,  
15 you know, 365,000 juvenile spring Chinook, for example, in  
16 one particular incident, 375,000 juveniles, they might ask  
17 the licensing staff, do you consider that a deviation of some  
18 sort.

19 MATTHEW LOVE: And maybe I'll take a shot at  
20 responding to this.

21 NICK JAYJACK: To add real quick. So sometimes  
22 they might ask us to put a word inserts "about" 375,000  
23 juveniles. How would you all feel if we -- I'm not saying we  
24 would, but if the question comes up from them, that might be  
25 a fix we suggest to them.

1                   MATTHEW LOVE: Let me suggest that we've had these  
2 as targets in the license articles and that the primary  
3 reason for this is the facilities need to be designed to be  
4 able to meet these targets. And so it's not so much the  
5 production requirements that you get 375,000 fish. It's more  
6 that you have facilities that are designed to meet these  
7 targets, and then that's what the objective is. So that's  
8 the range.

9                   Steve, is that...

10                  STEVE FRANSEN: That's correct. They form an  
11 important design parameter. And I would say they form an  
12 important production parameter, I think from the licensee's  
13 perspective, you know, if it describes an upper limit to  
14 their exposure and liability.

15                  We don't want them necessarily to be  
16 producing any less than, but I agree that there has to be  
17 some recognition of sometimes you're limited by factors that  
18 are beyond the agency's or the licensee's control. The  
19 number of root stock that return in a particular year may  
20 well be the limiting factor. The number of eggs that are  
21 available limits the number of fish that can be reared.

22                  I'm not sure right off the top of my head how  
23 best to deal with that in a compliance document where  
24 somebody is expecting absolute precision, so we should  
25 probably have a little dialogue about that.

1                   NICK JAYJACK: The other way we've solved the  
2 problem is we might put in language, again, I don't know in  
3 this particular instance, but we might say something to the  
4 effect that in a certain -- if in any of the years of the  
5 license these targets were not met, provide notification, the  
6 reason why they weren't met, and a proposal to make any  
7 necessary changes in future years to ensure that targets are  
8 met. We've done that before.

9                   STEVE FRANSEN: Actually, I think that might solve  
10 the problem to everyone's satisfaction.

11                  DEBBIE YOUNG: As long as the target, again, isn't  
12 an exact number, because then we haven't solved the problem.  
13 If it's not exactly 225, then you have to send some report.  
14 So we need some kind of buffer because it may vary from year  
15 to year, so...

16                  MICHAEL SWIGER: It is an important distinction  
17 that we negotiated this license article wording this way.  
18 You know, we'll build the stadium for 70,000 people, but if  
19 70,000 people don't show up, we haven't violated the license.

20                                 And if you look at, for example, Section 222  
21 on Page 40, "The licensee shall construct, operate and  
22 maintain," blah, blah, blah, "facilities or" blah, blah,  
23 blah, "fish, which are capable" -- and that doesn't look good  
24 in the transcript, does it? Not at all. "Which are capable  
25 of producing plenty of healthy fish, shown in Tables 2, 3 and

1 4 respectively."

2 So we deliberately negotiated that language.

3 MATTHEW LOVE: Thank you. Just for the record,  
4 that was Steve Fransen who was talking first, and then Mike  
5 Swiger.

6 PAT MCCARTY: And Nick Jayjack in between.

7 JANE HANNUKSELA: And this is Jane Hannuksela.

8 Just to follow up on what you said, Mike,  
9 yes, you're right. 222 says to build the facility, but 3.4  
10 then says that Tacoma needs to include production to attempt  
11 to achieve those targets, so it's not just the facilities.  
12 They need to try to meet those targets, too.

13 PAT MCCARTY: And this is Pat McCarty. And that's  
14 part of the plan, is to work with the Fisheries and Habitat  
15 Committee in developing what those production targets would  
16 be initially and then in following years. And like Steve  
17 said, it would be dependent upon numerous factors, including  
18 egg availability.

19 MATTHEW LOVE: Great. Are there any other  
20 comments or questions?

21 BOB DACH: This is Bob Dach with BIA. Just  
22 regarding the language about 375,000 or whatever it may be,  
23 the only concern I have with that is if you were 370,000 year  
24 after year after year. We want to make sure that that didn't  
25 qualify as about 375. If it happens once or twice or now and

1       then, it's one thing, but if it's a continual perpetual thing  
2       that doesn't meet the target, that's another thing.

3                   MATTHEW LOVE: Thank you.

4                   Tailrace monitoring, 418. The 1990 license  
5       included a similar requirement. This requires that within 60  
6       months after issuance to the amended license the licensee  
7       will file a plan, monitor migration, delay injury and  
8       mortality tailrace during -- at the tailrace during the  
9       operation of Powerhouse No. 2.

10                   Are there any questions on this?

11                   (No response.)

12                   MATTHEW LOVE: Article 432, Fisheries and Habitat  
13       Committee.

14                   The purpose of this license article is to  
15       provide a committee for Tacoma to consult with on the  
16       implementation of specific license articles. Membership on  
17       this committee, on the Fisheries and Habitat Committee,  
18       include Tacoma Power, National Marine Fisheries Service, U.S.  
19       Fish and Wildlife Service, Bureau of Indian Affairs,  
20       Skokomish Tribe, U.S. Forest Service, Washington Department  
21       of Fish and Wildlife, Washington Department of Ecology.

22                   Are there any questions on the Committee?

23                   (No response.)

24                   MATTHEW LOVE: Article 412, Fish Habitat  
25       Enhancement and Restoration Plan. This license article

1 requires a Fish Habitat Enhancement and Restoration Plan to  
2 be developed for enhancement of fish habitat in the North  
3 Fork and Skokomish River basins.

4 The guide -- the purpose is to guide  
5 implementation of projects designed to enhance aquatic  
6 habitat in the North Fork. It requires that Tacoma develop a  
7 habitat restoration account and deposit 3.5 million into that  
8 account within 30 days of issuance of the amended license and  
9 then will deposit -- five years after the issuance of the  
10 license will deposit annually 300,000 into that account.

11 The license article also includes specific  
12 measures that have to be done that would be funded not by --  
13 would not be funded by the habitat restoration account.  
14 Those include the removal of McTaggart Creek conversion  
15 structure and the removal of certain culverts that are  
16 underlying U.S. Forest Service road crossings or an existing  
17 culvert under a Forest Service road crossing.

18 It also requires developing a threatened  
19 species -- threatened species, take minimization measures, a  
20 guide in waterwork during development of any physical  
21 structures. Things in which the habitat restoration account  
22 can be used for include but are not limited to instream  
23 structure enhancement, side channel habitat development,  
24 removal of existing upstream -- excuse me, removal of  
25 existing barriers to upstream migration in upper Big Creek

1 and down creek, gravel augmentation.

2 Are there any questions concerning this  
3 license article?

4 LINDA GILBERT: Linda Gilbert with FERC.

5 You said in your joint explanatory statement  
6 "if not already completed." We were just wondering what's  
7 the status of these issues of the removal for McTaggart Creek  
8 and the Forest Service culverts.

9 DEBBIE YOUNG: I can speak to that. These are  
10 items that we discussed in settlement negotiations as being  
11 early implementation items, so we're actually proceeding to  
12 try and complete the McTaggart diversion removal and the  
13 culvert replacements, hopefully at the end of this summer  
14 during the fish window, so it may actually be done before  
15 license is issued.

16 MATTHEW LOVE: And just as a follow-up to that,  
17 we're planning within the next few weeks, perhaps, notifying  
18 or requesting approval from the Commission to commence these  
19 activities, and so we're going to be requesting approval from  
20 Portland regional to implement these projects. We have a  
21 small work window in August, and so we're hopeful that we'll  
22 get that approval and be able to implement these projects  
23 this year.

24 LINDA GILBERT: Okay. So the license article,  
25 then, is designed to just go in, as you've given it to us,

1 and it sort of takes care of the possibility that it might  
2 have already been completed before license issuance?

3 MATTHEW LOVE: Exactly.

4 DEBBIE YOUNG: At the time we discussed this, we  
5 were -- because they're on other property, property owned by  
6 others, we weren't sure if we could get it done early or not,  
7 but it looks like we will be able to.

8 LINDA GILBERT: Right. And we actually had some  
9 discussions with compliance people about whether -- what we  
10 were supposed to do about actions like this before license  
11 issuance, so that's good to know.

12 DEBBIE YOUNG: So at this point, we plan to --  
13 because it's a project facility, we plan to just send the  
14 plan to Portland regional and then proceed with permits that  
15 might be required, but not as though it's a licensed article.

16 LINDA GILBERT: Right. Thank you.

17 MATTHEW LOVE: Any other questions on this?

18 MICHAEL SWIGER: This is Mike Swiger.

19 And this is another one where we were very  
20 mindful of the Commission's policies and wanting to approve  
21 specific projects in license articles where we tried to  
22 balance that policy with the flexibility that we would like  
23 to have to prioritize projects that need to be done in the  
24 project vicinity.

25 And so the way this is structured is we will

1 submit the plan, and the plan will include some things up  
2 front. But on an ongoing basis, the funds that we have will  
3 be used to implement other plans yet -- or other projects yet  
4 to be identified, but there is a reporting requirement, so  
5 the Commission will be aware of what was done at the end of  
6 the year and what we plan to do.

7 BOB DACH: This is Bob Dach from BIA.

8 Linda, I just want to make sure I was  
9 following you. So it's our understanding that you would  
10 treat, for example, McTaggart Creek, as though it weren't  
11 going happen and it would be a licensed article requirement  
12 the way it's laid out. And then if it hopefully does happen  
13 before then, then it's just had already been complied with?

14 LINDA GILBERT: Well, that's the way the article  
15 is structured right now.

16 BOB DACH: Yes. And are you guys okay with that?  
17 I couldn't tell if you thought, well, maybe we won't need to  
18 put this in because it will already be done, and that's what  
19 we're trying to guard against.

20 ALLAN CREAMER: I would think if it's already been  
21 done that there wouldn't be a need to include it in the  
22 article.

23 BOB DACH: Only --

24 LINDA GILBERT: I can't tell you for sure what --  
25 how the Commission will handle this. I can say that we're

1 mindful of all the effort that went into the settlement and  
2 trying to give effect to it as much as possible, so we'll  
3 certainly take that into account.

4 I understand the article is structured to  
5 have it be a requirement that may be completed before license  
6 issuance. But I can't tell you, yes, we're going to have it  
7 that way or, no, we're not.

8 BOB DACH: I might just add, the facility itself  
9 may actually be removed. I believe there was some  
10 restoration work that went along with site removal that even  
11 if it is completed by the time the license is in place, the  
12 restoration work, we want to make sure we monitored it and it  
13 continued to be a part of the license until it was completed.

14 So I mean, I'm just -- the only point is the  
15 point that we had included the way we did was just to make  
16 sure that it was in the license, a license requirement, and  
17 it was taken care of. And we are -- and I think they have  
18 every intent to do that, so it's just -- you know, the idea  
19 on our part was to make sure that it stayed a license  
20 requirement because we could have some sort of follow-on work  
21 to make sure it stays that way.

22 LINDA GILBERT: Okay. Well, I think that  
23 clarifies things.

24 MICHAEL SWIGER: And maybe to further clarify is  
25 that the current license requires the removal of McTaggart,

1 and so this is not like a situation where, under a previous  
2 license, it doesn't have that requirement and we're doing  
3 early implementation of a settlement. It's something that  
4 we're -- our current license says we need to do, and so  
5 it's -- the license amendment will just clarify that if it's  
6 not already done, we will do it, but if it's already done, it  
7 would have been under the current license, if that helps.

8 LINDA GILBERT: It does.

9 MATTHEW LOVE: Thank you.

10 So what we thought we would do is just finish  
11 up with Article 413, which is the next slide, and then we'll  
12 be shifting into wildlife plans. Because we're shifting  
13 topics, we thought we'd take a ten-minute break and then come  
14 back.

15 So moving to the Fish Habitat and Monitoring  
16 Plan, it requires the licensee to monitor channel morphology  
17 and substrate composition in the lower North Fork and  
18 mainstem; monitor fish and fish habitat in the North Fork and  
19 mainstem; monitor Lake Cushman productivity; monitor water  
20 temperature in the North Fork, Lake Cushman and Lake Kokanee.

21 Are there questions about this license  
22 article?

23 ALLAN CREAMER: Allan Creamer with FERC.

24 This is another one that seems to contemplate  
25 that Fish and Habitat Committee would have authority to

1 modify monitoring program methods and frequency, data  
2 collection and reporting requirements without Commission  
3 knowledge. It mentions an annual report.

4 I simply wanted to clarify that that annual  
5 report probably should include if changes are made, what  
6 those changes were, and why.

7 MATTHEW LOVE: Certainly. And that's what we had  
8 envisioned, is that those types of changes would be included  
9 within that annual report.

10 Are there any other comments or questions  
11 pertaining to the monitoring plan?

12 (No response.)

13 MATTHEW LOVE: If not, perhaps we can come back at  
14 10:20. Does that sound about right? Or how about 10:15 and  
15 then we'll go from there?

16 (Pause in the proceedings.)

17 MATTHEW LOVE: Well, maybe I'll just go back on  
18 the record for just some housekeeping issues. We're about  
19 halfway through the summary of the licensed articles right  
20 now. So we have until four o'clock scheduled, I think, or  
21 4:30. Is it four o'clock?

22 PAT MCCARTY: 3:45. The public hearing starts at  
23 four over in the auditorium. So anybody going to the public  
24 hearing will need to move from here and go over to the  
25 auditorium.

1                   MATTHEW LOVE: What we were thinking is that if we  
2                   end early, we recognize that some people are here for the  
3                   public meeting, that maybe we could provide for those who are  
4                   present an opportunity to provide public comment so they  
5                   wouldn't have to stay here until four o'clock and come back,  
6                   if that's -- if that works for folks, just to kind of  
7                   accommodate people's schedules, because we are ahead of  
8                   schedule, and if we can avoid, just for people's convenience,  
9                   so they wouldn't have to stay through the later public  
10                  comment period, they could provide testimony now, if that  
11                  works for you guys. Is that...

12                  LINDA GILBERT: Our main concern about the public  
13                  meeting was that we didn't want people who were planning to  
14                  show up at four to be disappointed, so obviously people here  
15                  now would have notice if we allow them to speak early, but  
16                  people planning to show up later might miss hearing what  
17                  others had to say. That's the only disadvantage.

18                  MATTHEW LOVE: We would resume at four to allow  
19                  those people who came at that time to participate in the  
20                  public hearing at that point. So we wouldn't preclude those  
21                  people who are scheduled at that time to participate at that  
22                  time. It's just more...

23                  LINDA GILBERT: They would just miss the benefit  
24                  of what happens earlier.

25                  MATTHEW LOVE: Right.

1                   LINDA GILBERT: And so perhaps we would summarize  
2 that for them at the open. As long as we do that, I think  
3 we're fine.

4                   MATTHEW LOVE: Okay. All right.

5                                 Any other housekeeping issues?

6   (No response.)

7                   MATTHEW LOVE: Okay. Moving to wildlife. And  
8 these wildlife articles include Article 421, Article 424,  
9 Article 420, and Article 423.

10   Under Article 421, the Wildlife Habitat  
11 Enhancement Plan, that article has really two components to  
12 it, the first component being a land acquisition component.  
13 And there the article identifies the 320-acre Homan Flats and  
14 the 330-acre Lake May lands to be included as wildlife -- to  
15 be acquired by the licensee and be included within the  
16 Wildlife Management Plan.

17   The second component includes the enhancement  
18 of habitat and wildlife populations. It includes the  
19 reservoir and includes over 2,000 acres of project lands. As  
20 part of this plan, there's specific measures, enhancement  
21 measures that will be implemented, including construction of  
22 osprey nesting structures, protecting and preserving suitable  
23 bald eagle and osprey perching, roosting, and nesting trees;  
24 establishing high density snag areas; constructing and  
25 maintaining and monitoring up to 200 acres of elk forage

1 fields.

2 Are there any questions about the wildlife --  
3 Article 421?

4 CAROLYN TEMPLETON: Carolyn Templeton from FERC.

5 I just want to, for my own benefit, make sure  
6 that I'm reading this correctly. And it appears to me that  
7 the amount of land proposed to be included in the plan under  
8 your new license article are actually about a little under  
9 200 acres more than what the original -- or the subsequent  
10 license had required. Is that what I'm reading, the  
11 2,746 acres versus the 2,586 from the subsequent license?

12 MATTHEW LOVE: Bret, do you want to respond?

13 BRET FORRESTER: Bret Forrester.

14 That's correct. The hard thing to compare,  
15 though, is in the '98 license, the transmission line was  
16 included from the project out to the Vaughn Tap, and that is  
17 no longer the case. It's a much shorter section of  
18 transmission line. And because of the varying ownership and  
19 the easements and there's a road, a county road that falls  
20 along within the transmission line right-of-way that was in  
21 the license, it's very difficult to calculate the actual area  
22 of land that would have been included.

23 So that's probably a couple hundred acres  
24 maybe, so it's pretty comparable now, the actual land that we  
25 were proposing, to the other. But in our negotiation, it was

1       because it was so difficult to calculate the transmission  
2       line, we just basically were looking at the other more  
3       comparable lands.

4               LINDA GILBERT:  Linda Gilbert, FERC.

5                       I can't remember where I saw this, but at one  
6       point when I was reading through this, it seemed to me that  
7       the primary transmission line was to the Vaughn Tap.  Is that  
8       correct or is that not?  Because we need to get the --  
9       where's the primary line?

10               DEBBIE YOUNG:  The primary line, the first tap at  
11       this point still is at the Vaughn Tap.  So as far as project  
12       boundary issues go, that's still correct.  It's just that we  
13       didn't include that land as wildlife land.

14               LINDA GILBERT:  But it's still in the project  
15       boundary, and it's still the primary line?

16               DEBBIE YOUNG:  Correct.

17               LINDA GILBERT:  Okay.  Thank you.

18               UNIDENTIFIED SPEAKER:  Because of the marginal  
19       benefit to wildlife and the conflicting uses associated with  
20       that.

21               LINDA GILBERT:  Yeah.  I mean, the statement is  
22       "Eliminates the transmission lines."

23               DEBBIE YOUNG:  That does not mean as far as  
24       project boundaries.

25               LINDA GILBERT:  Good.  Thank you.

1                   PAT MCCARTY: Or the physical transmission lines.  
2 They're still necessary, yeah.

3                   MATTHEW LOVE: Other questions?

4                                 (No response.)

5                   MATTHEW LOVE: Other comments?

6                                 (No response.)

7                   MATTHEW LOVE: Thank you.

8                                 Moving to Article 424, Shoreline Management  
9 Plan.

10                   DEBBIE YOUNG: I think we changed reviewing  
11 parties.

12                   MATTHEW LOVE: Yeah. This is, for the most part,  
13 consistent with the 1998 license. There isn't really --  
14 there may have been some changes in the parties who  
15 participate in the management of it. But for the most part,  
16 this is unchanged.

17                                 Are there questions about this?

18                   CAROLYN TEMPLETON: Carolyn Templeton from FERC  
19 again.

20                                 The subsequent license from 1998 had said  
21 within one year, and your proposed article says within two  
22 years, so I was just wondering if you could clarify why  
23 you're requesting or proposing two years for this plan. We  
24 typically ask for within one year when we do SMPs.

25                   DEBBIE YOUNG: I think we just, because of the

1 complexity of the things being proposed and the number of  
2 residences and their interest in reservoir elevations and the  
3 complexity of getting them involved in a stakeholder process,  
4 we just thought that two years might be a more reasonable  
5 time frame for us to complete it.

6 CAROLYN TEMPLETON: So up until this point, there  
7 hasn't been any discussion with possible shoreline  
8 stakeholders in terms of preparing a plan? This is -- would  
9 be starting fresh?

10 DEBBIE YOUNG: This is brand-new.

11 CAROLYN TEMPLETON: Okay.

12 DEBBIE YOUNG: That's correct.

13 CAROLYN TEMPLETON: Okay.

14 DEBBIE YOUNG: We also have the additional  
15 complexity of having a lease over most of those lands, so it  
16 adds another layer of complication for developing the plan.

17 CAROLYN TEMPLETON: Thank you.

18 MATTHEW LOVE: Other questions?

19 (No response.)

20 MATTHEW LOVE: Moving to Article 420, the  
21 Terrestrial Resource Protection Plan.

22 This plan includes the same requirements as  
23 the existing license Article 420, although the plan will now  
24 be developed in consultation with WDFW, U.S. Fish and  
25 Wildlife Service, U.S. Forest Service, BIA, and the Tribe.

1                   Are there questions pertaining to this  
2 article?

3                   (No response.)

4                   MATTHEW LOVE: Okay. Moving on to Article 423.

5                   Again, this license -- proposed license  
6 article is consistent with the objectives and requirement of  
7 the existing Article 423. It requires the development of a  
8 plan within one year of the issuance of the amended project  
9 license, and it will be developed in consultation with the  
10 Fisheries and Habitat Committee for approval by NMFS and U.S.  
11 Fish and Wildlife Services.

12                   Any questions on this one?

13                   (No response.)

14                   MATTHEW LOVE: Great. Moving on to Article -- to  
15 the recreation and roads. Recreation and roads include  
16 Article 425, the Recreation Plan; Article 428, the  
17 Recreational Use Monitoring Plan; Article 427, the Road  
18 Management Plan; and Article 410, the Water Quality  
19 Enhancement Plan.

20                   Moving to Article 425, the Recreational  
21 Resource Plan -- Resources Plan. This requires to improve  
22 five shoreline access sites in the Staircase Road  
23 recreational area; improving the Lake Cushman viewpoint;  
24 relocate the Dry Creek Trail; to improve Lake Kokanee boat  
25 ramp facilities; improve Big Creek campground; and to improve

1 the Bear Gulch access.

2 Are there questions pertaining to this  
3 license article?

4 ALLAN CREAMER: Allan Creamer with FERC.

5 I seem to recall reading Item 10 of the plan  
6 relates to schedules. And it seems to contemplate that  
7 changes can be made in the schedule without Commission  
8 knowledge. This is another one where it's a Commission  
9 notification thing.

10 MATTHEW LOVE: Sure. We appreciate that, and we'd  
11 be receptive to that modification.

12 LINDA GILBERT: My name is Linda Gilbert, FERC.

13 This is a really minor question, but you  
14 referred to HCRP, and I somehow couldn't find what that  
15 refers to, the HCRP property.

16 MATTHEW LOVE: Oh, the Hood Canal recreational  
17 property, which is the Saltwater Park.

18 LINDA GILBERT: Oh, okay. Thank you.

19 NICK JAYJACK: Nick Jayjack from FERC.

20 I just have a -- I'm just looking for a  
21 little background information. There's a statement in the  
22 explanatory statement with regard to Article 425 that makes  
23 mention of what I'm assuming are nonproject improvements to  
24 the Big Creek campground. And then it says "and other  
25 National Forest Service facilities within the project area."

1                   That's not at all related to the project.  
2           I'm just wondering, can somebody give me a little background  
3           on what those improvements are or were? And I'm assuming the  
4           reference point here is since the '98 license.

5                   The statement is: "Given the substantial  
6           improvements to the Big Creek Campground and other National  
7           Forest Service facilities," et cetera, et cetera.

8                   What is that referring to? Which  
9           improvements?

10                   DEBBIE YOUNG: I think those are the additional,  
11           the 60 additional campsites at Big Creek.

12                   NICK JAYJACK: I think that's generally the  
13           context.

14                   DEBBIE YOUNG: And we discussed on site yesterday  
15           the cook shelters.

16                   MICHAEL SWIGER: These are things that we would be  
17           doing under the amended license, not things that have already  
18           been done. Is that your question?

19                   PAT MCCARTY: Right.

20                   DEBBIE YOUNG: Right.

21                   NICK JAYJACK: That was my question. Okay. I was  
22           looking for clarification on that statement.

23                   So just for further clarification, the Forest  
24           Service really hasn't done anything to Big Creek campground  
25           since 1998, any major changes like adding campgrounds or...

1 SUSAN GRAHAM: No.

2 NICK JAYJACK: Okay.

3 MATTHEW LOVE: Good. Any other questions? Any  
4 other comments?

5 (No response.)

6 MATTHEW LOVE: Moving on, then, to Article 428,  
7 the Recreational Use Monitoring Plan.

8 This requires the licensee to conduct studies  
9 to determine whether existing recreational facilities meet  
10 project-related recreational demands after the new  
11 improvements are completed.

12 And are there questions pertaining to this?

13 GINA KRUMP: How will you -- I guess, how will you  
14 be measuring the annual reviews? What -- like are you going  
15 to do it on certain weekends out of the year?

16 DEBBIE YOUNG: I think we'll be developing that in  
17 the plan.

18 GINA KRUMP: Okay.

19 DEBBIE YOUNG: We will probably use it as a guide  
20 for some of the things we've done before where we spread it  
21 over weekdays and weekends so that we get a good cross-  
22 section.

23 GINA KRUMP: Okay.

24 NICK JAYJACK: This is Nick Jayjack from FERC.

25 So the areas that will be monitored will

1 include the nonproject recreational areas as well; for  
2 instance, Big Creek campground?

3 MATTHEW LOVE: Correct.

4 DEBBIE YOUNG: Yes.

5 MATTHEW LOVE: Any other comments? questions?

6 (No response.)

7 MATTHEW LOVE: Moving on to Article 428, or excuse  
8 me, Article 427, the road management.

9 And really, this one should probably be read  
10 in conjunction with the Article 410. But Article 427  
11 requires Tacoma to assume a portion of responsibility for  
12 operation and maintenance of Road No. 24, U.S. Forest Service  
13 Road No. 24, from Mile 10.1 to Mile 14.08, which I believe is  
14 the turnoff to the causeway; is that right?

15 DEBBIE YOUNG: (Nods head affirmatively.)

16 MATTHEW LOVE: And then U.S. Forest Service Road  
17 2451, which is the causeway road you saw yesterday, and  
18 that's from Mile 0 through Mile 1. And the level of  
19 responsibility for the O and M is going to be commensurate  
20 with project-related use.

21 Are there questions related to Article 427?

22 GINA KRUMP: Are these roads within the project  
23 boundary?

24 PAT MCCARTY: I believe they are.

25 DEBBIE YOUNG: Yes, they are.

1 PAT MCCARTY: Yeah. There may be portions of it.

2 GINA KRUMP: But the majority are? All right.

3 MATTHEW LOVE: Moving to Article 410, the only  
4 change in Article 410 relates to the -- to the second bullet,  
5 and this addresses the improvements to Staircase Road,  
6 consistent with US Forest Service water quality protection  
7 measures.

8 The approach that this license requires, that  
9 the licensee contribute up to 750,000 towards improving the  
10 road, the idea there is that this will be used to -- by U.S.  
11 Forest Service in seeking matching dollars or federal or  
12 other grants if it determines that it will facilitate  
13 jurisdiction of Staircase Road be assumed by a public road  
14 management agency.

15 If this doesn't occur within three years,  
16 then the licensee will be obligated to apply a double  
17 thickness asphalt emulsion chipped rock application on the  
18 road, which is basically in the form of chip seal.

19 Are there questions?

20 ALLAN CREAMER: Allan Creamer.

21 Just a point of clarification. In  
22 Article 410, you talk about Staircase Road, 750,000. That is  
23 the obligation -- if you go back to Article 427, the Road  
24 Management Plan, you talk about Tacoma's responsibilities to  
25 maintain the road.

1                   Am I to assume that Article 410 lays out  
2 those obligations, or are there other obligations that are  
3 not identified in 410, Article 410?

4                   MATTHEW LOVE: I think -- just give us a moment to  
5 confer on that.

6                   Article 427 is very specific as to what the  
7 licensee's obligations are. There's a list of things that --  
8 the types of things that the licensee will have to do until  
9 the road jurisdiction is transferred to others or until  
10 agreed to by U.S. Forest Service. So the idea is there's  
11 going to be this contribution of 750,000 that the Forest  
12 Service would then use to try to get the road transferred to  
13 a public road agency. If that doesn't occur, then we do the  
14 chip seal.

15                   But until that happens, then the operation  
16 and maintenance of the Staircase Road would be governed by  
17 Article 427, which includes things like cleaning, removal,  
18 reconditioning, installing and replacing of the drainage  
19 structures and all those type of things. And that's going to  
20 be a shared responsibility that comes with it that recognizes  
21 that the licensee's obligation is commensurate with its  
22 project impacts.

23                   ALLAN CREAMER: I guess that's my question, is how  
24 do you define "commensurate with project impacts"? In other  
25 words -- I mean, it identifies the type of things that, you

1 know, from an ongoing maintenance standpoint, it qualifies as  
2 ongoing, you know, maintenance to the road, but it doesn't --  
3 the way Item 7 in Article 427 is laid out, it doesn't define  
4 "responsibility" and what is "commensurate with project  
5 impacts." I guess that's what my confusion, and it needs  
6 clarification, is.

7 MATTHEW LOVE: Right. And I think that in part,  
8 that is going to be developed through the Road Management  
9 Plan, because the Road Management Plan will include a  
10 description with the project-induced impacts relevant to the  
11 history of the roads development and use. So through that  
12 plan process, we're envisioning that the licensee will be  
13 able to better define what its overall responsibility is in  
14 conjunction with other entities.

15 ALLAN CREAMER: So in Article 427, if we were to  
16 put a cost on this article, how do we put a cost on this  
17 article? In other words, when we go back and do our  
18 economics on this new proposal, how do we put a cost on this  
19 particular article?

20 PAT MCCARTY: This is Pat McCarty.

21 It would be a range. Because if the road is  
22 transferred, then there would be very little or no cost. If  
23 it is not, if it is not transferred and it is kept as a  
24 forest service road, then it would be dependent upon further  
25 study, which would be laid out in the plan how that study

1 would be performed as to how that cost-share responsibility  
2 would lay out.

3 MATTHEW LOVE: So what you could do is you could  
4 take a hundred percent responsibility down to zero. And, you  
5 know, that would be your range, obviously. And we're not  
6 anticipating that the -- I don't know what the cost is  
7 associated with it, but it's going to be -- it's going to be  
8 somewhere in that range.

9 ALLAN CREAMER: I guess that still doesn't -- it's  
10 still not answering me. My question is when we go back and  
11 redo the economics for this, we need to know how much this  
12 article is going to cost so that we can factor that into the  
13 economics. And even if it's going to be a range, we need to  
14 know that up front as opposed to, you know, post order type  
15 of thing where you develop a plan and then the costs are put  
16 in there. I mean, we somehow need to know to do our  
17 economics now.

18 DEBBIE YOUNG: So you want to understand what the  
19 maintenance costs might be? It seems contrary to putting a  
20 cost cap in an article.

21 ALLAN CREAMER: Somebody is going to ask us, so,  
22 you know, when we go through these articles, how much is this  
23 article going to cost Tacoma? You know, a lot of these  
24 other -- a lot of the other articles have -- you know, you've  
25 got your costs in there saying you're putting X amount

1       towards these measures. This particular one doesn't. It  
2       simply talks about responsibilities in a very vague fashion  
3       commensurate with project impacts.

4                       Well, what does that mean, and how do we use  
5       that information to do our economics on this proposal, I  
6       guess is my question.

7                       MICHAEL SWIGER: Yeah. I mean, I think it's a  
8       good question. I think that this is again one where we  
9       modeled it as closely as we could to the '98 license. I  
10      think the '98 license also had Tacoma doing the study of what  
11      the project-induced effects were. And I don't know offhand  
12      what the FEIS assumed as far as the cost of this article, but  
13      we can go back and look and see what numbers the FEIS assumed  
14      and see if those are still within the range of what we think  
15      is possible.

16                      MATTHEW LOVE: And even if you assume total  
17      responsibility, we're talking in the range of 20- to 30,000  
18      for total operation maintenance responsibilities, roughly.

19                      DEBBIE YOUNG: Annually.

20                      MATTHEW LOVE: Annually. And so we're talking  
21      about a portion of that responsibility. If that helps as far  
22      as for the type of the economic analysis.

23                      ALLAN CREAMER: That could be the worst-case  
24      scenario. We could use that as the worst-case scenario, I  
25      suppose.

1 MATTHEW LOVE: Yes.

2 SUSAN GRAHAM: I'm really not involved that much  
3 in roads, and that would be something that Louise could  
4 answer, and maybe a ten-year average of costs. I know this  
5 last couple of years have been higher because of the flooding  
6 and because of the Bear Gulch two fires. So we've had a real  
7 spike in road maintenance for two years there.

8 MATTHEW LOVE: We can provide you with additional  
9 information, if that would be helpful.

10 ALLAN CREAMER: That would be helpful.

11 MATTHEW LOVE: Okay. Any other questions about  
12 Staircase Road?

13 (No response.)

14 MATTHEW LOVE: Thank you.

15 Moving on to the license articles that are  
16 unchanged from the 1998 license. It's pretty self-  
17 explanatory, unless there's questions.

18 CAROLYN TEMPLETON: Is there more than that list?

19 MATTHEW LOVE: Do you have the previous slide?

20 PAUL HICKEY: I have the previous slide and  
21 switched it so she should see the next one.

22 CAROLYN TEMPLETON: Carolyn Templeton with FERC.

23 I have a question regarding Article 429,  
24 regarding the CRMP. It indicates that it's unchanged.

25 In the subsequent license, I don't know if



1 proposed for deletion.

2 Construction Plan for Nalley Ranch. Article  
3 404, effectiveness of maintaining channel conveyance  
4 capacity. Article 408, Minimum Flow Plan. 409 has already  
5 been deleted. 422, Estuarine Enhancement Plan. And 426, the  
6 longhouse/day use facility.

7 Are there any questions on this?

8 (No response.)

9 MATTHEW LOVE: Any comments?

10 (No response.)

11 MATTHEW LOVE: Continuing on articles proposed for  
12 deletion.

13 Again, as we just mentioned, the penstock  
14 article painting requirement. Then there's certain items  
15 from the '98 license that have been superceded by other  
16 license articles.

17 MICHAEL SWIGER: I believe those were from the  
18 original Forest Service for each condition that has been  
19 superceded.

20 MATTHEW LOVE: All right?

21 (No response.)

22 MATTHEW LOVE: Moving to the off-license  
23 agreements, unless there's questions?

24 (No response.)

25 MATTHEW LOVE: We have four -- or three off-

1 license agreements and MOU. These documents were filed with  
2 the Commission for information purposes only. They help --  
3 they give us some context as to other commitments that the  
4 licensees make in relationship to the settlement agreement,  
5 which we hope the Commission takes into consideration.

6 We have the settlement agreement between  
7 Skokomish Tribe, Tacoma; we have an MOU between the Skokomish  
8 Tribe, Tacoma, and WDFW; we have an off-license agreement  
9 with WDFW; we have an off-license agreement with U.S. Forest  
10 Service.

11 On the settlement agreement, this historic  
12 settlement agreement begins a new relationship between the  
13 Tribe and Tacoma. It settles all of the tribal damages  
14 claims pertaining to construction and operation of the  
15 project and establishes a strong foundation for future  
16 cooperation and improved communication between the Tribe and  
17 Tacoma.

18 The settlement agreement includes a lump sum  
19 payment and annual payments based upon percentage of the net  
20 value of electric production from Cushman No. 2 powerhouse.  
21 It includes conveyance of land of cultural and historic  
22 importance to the Tribe, including Nalley Ranch, Saltwater  
23 Park, Camp Cushman, and two transmission line parcels.

24 Are there questions about the damage  
25 settlement?

1                   MICHAEL SWIGER: Just to clarify, we're not  
2 conveying transmission line parcels. I think they were  
3 parcels that we had thought were in the transmission line  
4 corridor and were not, so... Is that right, Thane?

5                   THANE SOMERVILLE: Yeah. I think that's right. I  
6 think it's more accurate to state that there's title issues  
7 that were addressed in previous lawsuits involving those  
8 parcels, and this purpose is to clarify that title, but  
9 there's going to be no change at all in the actual legal  
10 title of those parcels. It's to really clarify the record.

11                  MICHAEL SWIGER: You look puzzled, Linda. I can't  
12 understand why.

13                  LINDA GILBERT: Yeah. I was puzzled at the change  
14 in the legal title. This must relate to the condemnation  
15 issue?

16                  THANE SOMERVILLE: And there is no change -- there  
17 will be no change in the legal title. It's just right now  
18 there's a -- there is -- I mean, literally the records at  
19 Mason County are in error. And what we're trying to do is  
20 clarify those records and make sure that the title is  
21 captioned correctly, but there is going to be no change in  
22 the actual legal title as it stands today.

23                  LINDA GILBERT: Okay. Two questions. Who has  
24 title and are these the primary line parcels?

25                  THANE SOMERVILLE: The answer to the question is

1 that currently I believe the United States holds the title to  
2 these parcels in trust for the Tribe. These are some of the  
3 specific parcels that have been addressed in previous license  
4 orders where the dispute arose about Tacoma's right-of-way  
5 over these parcels.

6 LINDA GILBERT: Okay. And these are primary  
7 transmission line parcels and they will remain in the project  
8 boundary?

9 THANE SOMERVILLE: That's correct.

10 MATTHEW LOVE: Yes.

11 UNIDENTIFIED SPEAKER: Anything else you want to  
12 take back, Mike?

13 MATTHEW LOVE: So anything else on this issue?

14 (No response.)

15 MATTHEW LOVE: Moving on to the MOU.

16 Tacoma will construct a third boat ramp lane  
17 at Saltwater Park on Hood Canal prior to transferring that  
18 land to the Tribe.

19 Tacoma will also maintain and remove debris  
20 from Saltwater Park boat launch year round. Tacoma will  
21 maintain and service the restroom facility at the park;  
22 maintain the boat -- Tacoma will also maintain the boat ramp  
23 at Camp Cushman and remove debris from the ramp prior to  
24 Memorial Day weekend through Labor Day weekend. Tacoma will  
25 also maintain a trailer dump station at Camp Cushman.

1                   The Tribe will allow year round public access  
2                   to those boat ramps and associated parking areas and  
3                   restrooms at Saltwater Park subject to reasonable conditions.  
4                   The Tribe will also allow public access at existing boat  
5                   ramps and associated parking lanes, trailer dump station at  
6                   Camp Cushman from Memorial Day through Labor Day weekend  
7                   subject to reasonable conditions and regulations determined  
8                   by the Tribe.

9                   And then WDFW has agreed that the recreation-  
10                  related obligations in the settlement license article in  
11                  conjunction with the MOU are in the public interest.

12                  Moving on to the off-license agreement with  
13                  WDFW.

14                  GINA KRUMP: I actually have a question about the  
15                  previous one. Can you go to the pervious slide before that?

16                  The recreation site at -- the U.S. Forest site,  
17                  the Big Creek Campground, that's open year round?

18                  SUSAN GRAHAM: No.

19                  GINA KRUMP: No? It's open Labor Day -- Memorial  
20                  Day through Labor Day?

21                  SUSAN GRAHAM: This is Susan Graham.

22                  It's open from mid May, May 15th, through the  
23                  end of September.

24                  GINA KRUMP: Okay. So what happens in the interim  
25                  in -- the Camp Cushman trailer dump station, is that open --

1 is that available for use for the times that the campground  
2 needs it, is what I'm asking?

3 MATTHEW LOVE: Yes.

4 GINA KRUMP: Not just through Memorial Day and  
5 Labor Day weekend? I guess that's what I'm confused about.

6 PAT MCCARTY: Oh. The boat launch at Camp Cushman  
7 is open just from Memorial Day weekend to Labor Day weekend.  
8 But my understanding is that the trailer dump station would  
9 be open for --

10 MATTHEW LOVE: Maybe if we can get back to you on  
11 that. I don't want to mis- -- I don't want to -- I'm not  
12 sure if we have an answer to that, and I want to confer with  
13 the Tribe before.

14 GINA KRUMP: Okay. Because otherwise, you know,  
15 that won't make up for -- I mean, otherwise  
16 [indecipherable]...

17 MATTHEW LOVE: Sure. So it's a difference between  
18 May 15th, roughly.

19 SUSAN GRAHAM: Through the end of September,  
20 September 30th.

21 MATTHEW LOVE: All right. Okay. So that's an  
22 issue we'll clarify.

23 Okay. Moving on to the off-license agreement  
24 with WDFW. Tacoma will continue to fund George Adams  
25 Hatchery for the duration of the license. Tacoma will

1 release three fish per pound into Lake Kokanee, 24,000 to  
2 35,000 fish. This is included as a license obligation. But  
3 then there will be, additionally, to lakes designated by WDFW  
4 and Mason, Kitsap, Thurston, Pierce and Jefferson counties,  
5 between 65,000 and 76,000 fish.

6 Off-license agreement for U.S. Forest  
7 Service.

8 ALLAN CREAMER: Allan Creamer with FERC. Just for  
9 a point of clarification, I didn't ask this yesterday because  
10 we went by it several times quickly.

11 The George Adams hatchery, is that part of  
12 the existing license? Or is it -- it's not in the existing  
13 license?

14 MATTHEW LOVE: No, it's not in this existing  
15 license, although there is a contractual commitment  
16 currently between WDFW and Tacoma pertaining to the funding  
17 of this hatchery, so we're continuing that contractual  
18 obligation, and that stems from a settlement of a previous  
19 lawsuit.

20 Okay. Any other questions?

21 (No response.)

22 MATTHEW LOVE: Moving to the off-license agreement  
23 with U.S. Forest Service.

24 As part of this off-license agreement, Tacoma  
25 has agreed to fund U.S. Forest Service for the operation,

1 maintenance, and administration of recreational facilities  
2 owned or operated by U.S. Forest Service on Tacoma lands;  
3 fund law enforcement from Memorial Day to Labor Day on U.S.  
4 Forest Service Road 24, causeway bridge, and Big Creek  
5 campground.

6 Is there any questions about this off-  
7 license agreement?

8 (No response.)

9 MATTHEW LOVE: Okay. Moving to other regulatory  
10 settlement issues, concerns.

11 We understand you've identified a few issues  
12 that you wanted to ask a few questions about, and these  
13 relate to the ESA consultation, license amendment, and North  
14 Fork powerhouse.

15 On the ESA consultation, as the slide says,  
16 "The Natural Marine Fishery Service currently plans on  
17 revising its existing biological opinion."

18 We're in the process of conferring with U.S.  
19 Forest Service on this issue. We have a meeting scheduled  
20 between the licensee, the Tribe, U.S. Forest Service, and  
21 National Marine Fishery Service scheduled for September...

22 DEBBIE YOUNG: You mean U.S. Fish and Wildlife  
23 Service.

24 MATTHEW LOVE: What did I say?

25 DEBBIE YOUNG: Forest Service.

1                   MATTHEW LOVE: Oh, sorry.

2                   U.S. Fish and Wildlife Service scheduled for  
3                   September -- for May 27th. And after that meeting, we would  
4                   envision notifying the Commission as to the schedule for  
5                   completing the consultation of National Marine Fisheries  
6                   Service and, to the extent necessary, to schedule for  
7                   completing consultation with U.S. Fish and Wildlife Service.

8                   Jane, do you have anything you want to add to  
9                   that?

10                  JANE HANNUKSELA: This is Jane Hannuksela.

11                  Just that, as Matt said, we need to issue the  
12                  revised biological opinion. We have new species to list  
13                  since the last biological opinion, which requires us do that.  
14                  We're going to be working with Tacoma on whatever kind of  
15                  update is necessary for their biological evaluation for their  
16                  BA. We hope to do this absolutely as expeditiously as  
17                  possible.

18                  LINDA GILBERT: That actually raises a question  
19                  for us. The relationship between the settlement and the  
20                  amendment for the powerhouse, do you all anticipate that the  
21                  revised biological opinion would cover the amendment for the  
22                  new powerhouse, or is that a separate consultation, and can  
23                  it be completed on the same time frame or not?

24                  JANE HANNUKSELA: That's a good question. And it  
25                  seems to me that we, as always, evaluate the proposed action

1 that's given to us, so we include the application for the  
2 amendment to the powerhouse as a part of the proposed action,  
3 then we will evaluate that in our biological opinion.

4 That gets to another point with settlement  
5 agreements. Remember always -- we will be assuming that as  
6 the proposed action, which we assume it will be. That's what  
7 we'll be evaluating. So if there's significant changes to  
8 the actual license amendment that FERC issues, you know, that  
9 would require reinitiation again. From everything we've  
10 heard today, I don't think there's going to be any  
11 significant changes. But again, you know, we can never  
12 predict what the Commission does. But that's just something  
13 to keep in mind, too.

14 MATTHEW LOVE: And just as a follow-up, the  
15 powerhouse is related -- or it's going to be used to defuse  
16 some of the power coming out of Dam No. 2 for the minimum  
17 instream flow, and it's going to be kind of integrated into  
18 the upstream fish passage collection facility even though  
19 we've kept them separate, so that if the powerhouse amendment  
20 isn't granted, there'll still be the upstream fish passage  
21 collection obligation within that license article.

22 But as we're currently envisioning the  
23 development on the upstream fish passage going forward, the  
24 powerhouse is a component of that facility, so it just makes  
25 sense to consider them together as part of this one

1       consultation. That's how we're approaching it, because it  
2       would be developed in conjunction.

3               LINDA GILBERT: Well, we've read the settlement  
4       to -- it seems to contemplate that you are considering these  
5       two actions together, that you would like us to consider them  
6       together. But at the same time, you state that the agencies  
7       reserve their right to comment on the amendment. And we  
8       weren't really sure if -- there was also this provision that  
9       you didn't want the amendment to delay the amended license  
10      under the settlement. And in fact, the settlement is defined  
11      as not including the amendment. So we were kind of not sure  
12      whether they could be considered together or in the same time  
13      frame or whether there really is a threat of delay.

14             I think our interest would be in considering  
15      them together as long as we're not going to run into delay as  
16      a result. And you're probably better in a position to inform  
17      us about that than anyone.

18             MATTHEW LOVE: Part of the reason you have that  
19      designation, I think, is because there was some uncertainty  
20      as to powerhouse design and its -- and concern by the  
21      resource agencies that they didn't want to waive their  
22      ability to assess the environmental impacts. And so we're  
23      collaborating with the resource agencies in development of  
24      the upstream fish passage facility, and it's still moving  
25      forward as we had envisioned, with the North Fork powerhouse

1 being a component of that. And so ideally for the package to  
2 move together, so long as we continue to move forward and the  
3 agencies don't have a concern about the powerhouse being a  
4 component of it, then we would want them to be considered  
5 together. They just needed to reserve the ability as we're  
6 going through this planning process to express concerns, I  
7 think. Is that...

8 JANE HANNUKSELA: This is Jane Hannuksela, and  
9 Steve can chime in, too.

10 I think I look at it not just as expressing  
11 concern, is that we want to work on the engineering design as  
12 it goes through its phases and be involved in the development  
13 and commenting on it and being sure we're comfortable with it  
14 too. So that's really what we were looking at.

15 The other thing, back to the ESA consultation  
16 for a minute, we can consult on two actions. Even if we look  
17 at them separately, we can combine them. They're  
18 intertwined, and I think that that's acceptable under the ESA  
19 to do that. So we can speed things along by doing the  
20 consultations together.

21 LINDA GILBERT: Okay. So then do you anticipate  
22 that the proposed action for consultation will be both the  
23 amended license and the powerhouse amendment?

24 MATTHEW LOVE: Yes.

25 LINDA GILBERT: At this point, you're planning

1 to --

2 MATTHEW LOVE: Yes.

3 LINDA GILBERT: -- consult on both proposed actions  
4 at one time?

5 MATTHEW LOVE: Yes.

6 LINDA GILBERT: Okay. That's good.

7 JANE HANNUKSELA: Yes, for the record.

8 LINDA GILBERT: We like that answer. We just  
9 didn't want to go down a different path if you all didn't  
10 want that.

11 MATTHEW LOVE: No. Our preference is to keep them  
12 together because we think it's going to expedite the  
13 implementation of the license articles.

14 ALLAN CREAMER: And you said that you would be  
15 notifying the Commission after the May 27th meeting about  
16 what your plans are?

17 MATTHEW LOVE: That's correct.

18 Would it be helpful to take a five-minute  
19 break and come back?

20 LINDA GILBERT: Yes.

21 MATTHEW LOVE: Okay.

22 (Pause in the proceedings.)

23 MATTHEW LOVE: Okay. We wanted to just come back  
24 real quick to a question.

25 LINDA GILBERT: Yes. Linda Gilbert with FERC. We

1 have -- I think we have just two questions, but I have a  
2 request from the Washington Ecology -- I have a request from  
3 the Washington Ecology folks to address this issue first.

4 In the amendment application, you listed a  
5 number of statutory and regulatory requirements that may  
6 affect the amendment, and one of them that you list is  
7 Section 401 of the Clean Water Act. And then you go on to  
8 say, "The above-referenced laws have been complied with  
9 during the course of obtaining a new license for continued  
10 operation of the project."

11 So our question is: Do you intend your  
12 letter saying that you intend to take no further action with  
13 regard to the 401 certification to apply to the powerhouse  
14 amendment?

15 JOAN MARCHIORO: This is Joan Marchioro for  
16 Ecology on that question.

17 No. The no further action would only relate  
18 to the settlement and the revamping in the court, and then we  
19 reserved our right to issue a 401 certification for the new  
20 powerhouse and any additional project changes that may come  
21 down the road requiring, say, a 404 permit or any further  
22 amendment to the license.

23 LINDA GILBERT: Okay. That's very important for  
24 us to know. And what are your plans for obtaining -- plans  
25 and schedule for obtaining a 401 for the powerhouse

1 amendment?

2 MATTHEW LOVE: Yes. And we've had discussions  
3 with Ecology on this issue, and we're planning while we're  
4 doing the Section 7 consultation to seek the 401 for the  
5 powerhouse so that we can have it done. I mean, it's our  
6 hope that we can complete the 401 concurrently with  
7 completion of the Section 7.

8 And so -- and what I would suggest is that if  
9 we're going to have a meeting with Ecology, we haven't  
10 scheduled that at this point, and after we have that  
11 discussion, we'll file something with the Commission that  
12 outlines our schedule for completing that.

13 LINDA GILBERT: Wonderful. Okay. Thank you very  
14 much.

15 And then the other question is -- it's  
16 similar. In your settlement, you say, "each party intends  
17 that the settlement agreement" and the -- let's see, "is  
18 consistent with and satisfies the currently applicable  
19 statutory regulatory responsibilities under 4E, 10A, 10J, and  
20 Section 18."

21 And so our question is obviously it seems to  
22 us if parties had wanted to provide new Section 18 or 4Es,  
23 they would have done so already, but what about Section 10J  
24 would specifically regard to the powerhouse amendment?

25 MATTHEW LOVE: I think it's -- and I'm sure I'll

1 be corrected, but we're developing that in collaboration with  
2 the settlement parties, and it's our hope that it would not  
3 result in any additional 10Js or recommendations. I think  
4 we're planning on it being kind of a stand-alone package  
5 that's going to be just developed concurrently in  
6 relicensing.

7 LINDA GILBERT: From our standpoint, we issued  
8 notice of the application, and we didn't get any 10A  
9 recommendations or 10J recommendations. We didn't call for  
10 them, but we didn't get them, so we were trying to ascertain  
11 what the party's intent is with regard to that.

12 MATTHEW LOVE: Yeah, Bob?

13 BOB DACH: This is Bob Dach with BIA.

14 I guess we're looking at the powerhouse as an  
15 integral part of the fish passage, not as you would  
16 customarily look at an expansion of the project with a new  
17 powerhouse and that all of the associated specs that go with  
18 that.

19 This is specifically, and I think a benefit,  
20 to the control and operation of a fishway. So I guess the  
21 way we're looking at it is that it is a component of the  
22 fishway itself.

23 Now, we want to make sure that it is designed  
24 and developed sufficient to work in unison with how that  
25 fishway needs to operate, which is why we want to stay

1 engaged in how the whole thing works. But the way that we're  
2 looking at is that we need this for the fishway to work  
3 right, I guess is how I would then put it.

4 So it's not an independent, new separate  
5 powerhouse for the sake of solely producing power. We're  
6 looking at it as necessary for the fishway and incidentally  
7 producing power, I guess is the way I would say it.

8 LINDA GILBERT: Well, I guess in light of that, to  
9 follow up, we were thinking in terms of not needing to call  
10 for further recommendations, but we wanted to get a sense  
11 from you all if you were comfortable with that. So I'm  
12 getting the sense that nobody sees at this point a need for  
13 further recommendations?

14 STEVE FRANSEN: Steve Fransen, NMFS.

15 I think things are progressing well in that  
16 regard right now. We're working collaboratively with  
17 Tacoma's engineer, and the design is still at the conceptual  
18 stage, and it's one of those things where -- our engineering  
19 concepts are often pretty simple, but as soon as we get into  
20 engineering details and one of our staff engineers is also  
21 involved, it starts getting not so simple anymore.

22 But this powerhouse amendment can serve the  
23 purpose of providing energy dissipation that can then be  
24 employed in the adult fishway. I mean, the engineer,  
25 Tacoma's engineer, is also -- I mean, he can build a small

1 addition on the side of the bow for a gatehouse existing it  
2 and to -- and add an energy dissipation structure. In fact,  
3 that would be one of the things he includes in there. But as  
4 long as he's at it, he can also have another energy  
5 dissipation device, and it's turbine. Actually so far, it's  
6 two small turbines, and both work.

7 And so I think that in terms of our -- what  
8 we want to do is reserve the right to be involved or make  
9 comments in the event that we were not -- didn't have the  
10 design moving in a collaborative fashion with our engineer  
11 and their engineers working together. If it were an  
12 engineering concept or a design developed and then presented  
13 to us to react to, then, yeah, the likelihood that we would  
14 have comments and recommendations for modifications of that  
15 design would probably be a lot greater.

16 We're hoping that this way the development  
17 moves faster and serves the dual purpose of -- and will  
18 produce a small amount of energy and provide the water supply  
19 to the adult fishway all in one very small compact  
20 development.

21 JANE HANNUKSELA: This is Jane Hannuksela.

22 And to look at it from a different aspect,  
23 I'm glad to hear you're thinking about normally for a  
24 powerhouse amendment you would ask for 10Js or anything else.  
25 In this case, I think, you know, we all agree we can skip the

1       preconsultations or, you know, the consultation steps. We  
2       can skip all that. This was developed sort of at the same  
3       time as the settlement agreement where we're thinking about  
4       everything as a package, even though we have been very clear  
5       that this is not exactly part of the settlement agreement.  
6       So I think in this case we wouldn't have additional 10Js or  
7       10As, so it would be okay. But this is really an exception.

8               ALLAN CREAMER: Allan Creamer with FERC.

9                       Is Fish and Wildlife --

10               TIM ROMANSKI: Yes. This is Tim Romanski, Fish  
11       and Wildlife Service.

12                       I concur with those assessments. I think  
13       it's critical that we develop them together; otherwise you're  
14       either having to shut down fish passage sometime in the  
15       future to install this second device or you're going to have  
16       to delay the initial implementation of fish passage, which,  
17       you know...

18               LINDA GILBERT: So it sounds like we'll be hearing  
19       from you about schedules?

20               MATTHEW LOVE: Yes.

21               LINDA GILBERT: In not too long.

22               MATTHEW LOVE: Yes. Both the Section 7  
23       consultation and the 401 certification for the third  
24       powerhouse.

25                       We wanted to come back to a question that was

1 raised pertaining to the dump station. We've had an  
2 opportunity to discuss this issue with the Tribe. Thane, do  
3 you want to...

4 THANE SOMERVILLE: I think the question was the  
5 current MOU between the State and the Tribe and Tacoma. The  
6 dump station was scheduled to be open from Memorial Day  
7 weekend through Labor Day weekend, and we understand that Big  
8 Creek is open a little bit broader time period than that,  
9 May 15th through September 30th.

10 And I think both the Tribe and Tacoma think  
11 it makes sense to have the dump station remain open during  
12 the May 15th through September 30th time period so that the  
13 users of Big Creek can have access to that during that  
14 slightly expanded time frame.

15 GINA KRUMP: So would that be indicated in the  
16 off-site agreement, then, or is it just an informal? I'm  
17 just wondering.

18 MATTHEW LOVE: We could file something with the  
19 Commission that --

20 GINA KRUMP: I don't think the Commission would  
21 need it. I'm just wondering if it's an informal agreement or  
22 if it will be in the off-license agreement. That's all I'm  
23 wondering.

24 MATTHEW LOVE: It would be our preference to keep  
25 it informal, just because it's such a de minimus change,

1       rather than reopening these agreements.

2                   PAT MCCARTY:  It has been stated on the record  
3       here.

4                   GINA KRUMP:  Right.

5                   LINDA GILBERT:  And it is off-license.

6                   MATTHEW LOVE:  Right.

7                                Are there any other questions?

8                                (No response.)

9                   MATTHEW LOVE:  No?

10                  LINDA GILBERT:  I don't think so.

11                  MATTHEW LOVE:  Great.  Well, I guess in  
12       conclusion, Tacoma wants to express its gratitude to the  
13       federal and state agencies and the tribes for participating  
14       in this settlement process.  We could not have done it  
15       without their participation, their expertise, and we're very  
16       appreciative of their continued involvement, and we're  
17       appreciative of the Commission coming out from Washington,  
18       DC, taking the time to consider this historic settlement, and  
19       we look forward to continued working towards issuance of the  
20       amended license.

21                  MICHAEL SWIGER:  Just to make sure that we don't  
22       miss anything, we have said we will follow up with some cost  
23       information or cost ranges on the Road Management Plan.

24                                Is there anything else in terms of additional  
25       information?

1 DEBBIE YOUNG: Schedules.

2 MICHAEL SWIGER: Schedules for ESA and Clean Water  
3 Act. Anything else?

4 ALLAN CREAMER: Allan Creamer, FERC.

5 One of the things that I've kind of been  
6 mulling over in my mind is whether or not we have enough  
7 information -- current information on the project boundary as  
8 it is, the existing boundary, and what the proposed project  
9 boundary is going to be, with all the lands coming in and out  
10 and, you know, the other facilities.

11 So I guess probably one of the things that,  
12 from an information standpoint, if we could either get, you  
13 know, a project boundary map filed or some other explanation  
14 as to the project boundary as it currently is and what the  
15 new project boundary will be. So we'll need to describe that  
16 in the order.

17 DEBBIE YOUNG: So you want that prior to license  
18 issuance?

19 ALLAN CREAMER: Mm-hm.

20 PAT MCCARTY: Would you like it formally  
21 transmitted or just an informal...

22 ALLAN CREAMER: It should be formally submitted.

23 MICHAEL SWIGER: So, Allen, I think this is  
24 something that we were certainly expecting to do as a true up  
25 following the commission's orders, because normally that's

1       what the Commission asks you to do, is to file the revised  
2       Exhibit G to conform with the new requirements. And what I  
3       gather is what you're saying is you want us to do that two  
4       times, once before the order and once probably after the  
5       order if there are any changes; but if not, we won't do it  
6       again?

7                   CAROLYN TEMPLETON: This is Carolyn Templeton from  
8       FERC.

9                   I mean, Allan can speak to this, but I don't  
10       think he was asking for exhibit -- revised Exhibit G maps,  
11       but even just like an explanatory statement or, you know,  
12       GIS -- like a GIS map or something that just sort of depicts  
13       the existing. I don't think he's going as far as new Exhibit  
14       G right now.

15                  ALLAN CREAMER: Yeah. There's a couple of  
16       different ways that, you know, we would look at. One is  
17       leave the exhibits alone and we could deal with revised  
18       exhibits as a post-license thing. Or you could file a  
19       revised Exhibit G now that has all the information on it.  
20       Something that -- the way we look at these things now is we  
21       try to approve the exhibits as part of a license.

22                  We don't -- back in '98, a lot of these  
23       things happened post licensing. Now we're trying to improve  
24       these things up front. And if it can be done that way,  
25       that's great, but it's not necessarily what I'm asking for.

1                   I'm just -- I want to try to make sure we  
2                   have as good an understanding as we can have without the  
3                   project boundary, you know, as it currently exists, and how  
4                   it would be, you know, proposed project boundary so that we  
5                   can adequately describe that in the order.

6                   We get questions all the time for our folks  
7                   at GC about project boundaries and, you know, what's in,  
8                   what's out, what's the relationship of facilities to the  
9                   project boundary. That's the type of information that I'm  
10                  looking for.

11                  MICHAEL SWIGER: And I think we have looked at  
12                  this internally and figured out that the Exhibit G maps that  
13                  were submitted in connection with the application were  
14                  probably outdated and not very helpful, so we can provide  
15                  something more current.

16                  LINDA GILBERT: Yeah. Ordinarily when we're  
17                  looking at issuing a license, we do have -- nowadays we have  
18                  proposed project boundaries that we can look at that are very  
19                  clear, hopefully. And here we have descriptions of things  
20                  coming in or going out, but we don't have maps that show  
21                  those proposals.

22                  MICHAEL SWIGER: Sure.

23                  PAT MCCARTY: This is Pat McCarty.

24                  Depending on the time frame, it might be  
25                  easier to give you something like Carolyn suggested, which

1 would be, you know, a Google Earth type map. I'm just  
2 concerned that it might take several months anyway to put  
3 together true Exhibit Gs with all the current requirements  
4 that are in Exhibit G.

5 LINDA GILBERT: Well, we don't want to delay  
6 things. We just want to understand what we're doing. I  
7 mean, we do want to kind of facilitate things if possible.

8 PAT MCCARTY: Well, we'll check with the surveyor  
9 and see what the time constraints might be and how much  
10 additional work would be necessary.

11 We know we have to put them together at some  
12 point, but we'll see what works and float a few things by you  
13 to see if it meets your needs.

14 ALLAN CREAMER: Fair enough.

15 MATTHEW LOVE: Thank you.

16 So -- oh, Mason?

17 MASON MORRISET: Mason Morriset.

18 I know that Chairman Joseph Pavel, and I know  
19 Dave would agree, would like to have the Tribe also join in  
20 thanks to FERC and all of the parties for all of the time  
21 they've spent, and say we probably never thought we'd see the  
22 day when we would like to see Tacoma's application approved.

23 PAT MCCARTY: Thank you, Mason.

24 MATTHEW LOVE: Okay. Shall we shift over to  
25 public comment for a few minutes to allow the folks that are

1 here today to -- so they can leave? Great.

2 PAT MCCARTY: Do you want to have them take the  
3 chair in the middle?

4 GEORGE FISHER: My name is George Fisher. I'm  
5 with Save the Lakes Coalition. It's a community action group  
6 at Lake Cushman representing the residents and homeowners  
7 there.

8 The first thing, I want to thank you all for  
9 coming, and I want to thank you for the detour we took  
10 yesterday into Division 2. Our boundaries are very easy to  
11 describe. It's the wet stuff in the big dip out there called  
12 the lake. So it's from shoreline to shoreline.

13 And our concern was we'd like water in there  
14 three months a year. And we have worked with Tacoma, and  
15 they've done a nice job in helping us get back to 735 feet  
16 elevation, with a hope of getting up to 738 feet. It makes a  
17 big difference. If you're there, you know that five feet,  
18 six feet of water represents a big big difference.

19 So all we're saying is the timeframes that we  
20 saw on the board where we talked about keeping the lake level  
21 down and then refilling, look at those and take  
22 consideration, big consideration, of how long does it take  
23 the lake to refill. It only has rain or snowpack melt off.  
24 So what we're looking for is three months of 735 to -38 feet.  
25 And we appreciate your time.

1                   And I have some other representatives that  
2                   are just dying to get up here and talk. Do you have any  
3                   questions about that? You saw the water, you saw the lake,  
4                   and you saw the docks that were out of the water. So that's  
5                   what we're working with. And we're just saying three months.  
6                   That's all we want.

7                   Do I get a sandwich or anything?

8                   PAT MCCARTY: There's a doughnut, George.

9                   GEORGE FISHER: Oh. I'd like to introduce my  
10                  wife, who has better details than I did. This is Eileen.  
11                  She's also a member of the coalition.

12                 EILEEN FISHER: I'm going to be repeating part of  
13                  what George said and just -- not only as a secretary for Save  
14                  the Lakes, but we've been residents at Lake Cushman on the  
15                  water for 18 years, and we have had an intervenor status in  
16                  the process for the last 16 years.

17                 And our goal, again, is to protect a full  
18                  lake level of 738 feet from Memorial Day to Labor Day.

19                 And on the tour yesterday, you saw that Lake  
20                  Cushman is one of the jewels of the Northwest, if you haven't  
21                  been up there before. And so for the people that use it  
22                  during the summer months and for the people that live up  
23                  there, we want to have the 738-foot level because, as you saw  
24                  it, 732 feet, which was the lake level yesterday, it's going  
25                  to take about six feet for the lake to rise to the 738 level

1 and make those docks and -- floating docks and the ramps  
2 accessible to us.

3 So our concern, of course, is that yesterday  
4 was May 20th, we have less than a week to Memorial Day, so  
5 we're just kind of wondering how this is going to happen.  
6 And that's why we're very concerned about keeping active in  
7 Article 406, which allows us to come in and be part of the  
8 process of the -- maintaining the operation of what we hope  
9 will be an accurate workable operational and flow monitoring  
10 plan with the aid of an expert hydrologist, Dr. Hu, who will  
11 speak next. Thank you.

12 HENRY HU: My name is Henry Hu of West  
13 Consultants. We are representing Save the Lakes, and I'm a  
14 hydraulic engineer.

15 Thanks for the [indecipherable] and Save the  
16 Lakes, you know, for the opportunity to participate in the  
17 tour and the discussion we have today. I think it's  
18 excellent.

19 This is a really comprehensive plan, but the  
20 way I really focus on one issue is the lake level because,  
21 you know, how soon and how often -- or how soon and how fast  
22 you fill the lake depends on many things, many factors: the  
23 precipitation, snow melt, and then also you have a downstream  
24 components, the minimum flow in all of these obligations  
25 [indecipherable] of the project.

1                   So our concern is that how is the plan of --  
2 will address, you know, the lake level. For example, if the  
3 forecast saying that this year precipitation or snow melt is  
4 about average or normal or below the average, then the plan  
5 will specify when we'll start to fill the lake. For example,  
6 if this year it's above average precipitation, will it be  
7 possible that by Monday, next -- you know, next Monday,  
8 Memorial Day weekend, will fill to 738 and keep at 738? Or  
9 if it's below the average level, then we'll fill to 735, or  
10 on the normal average, you know, fill to 736 or 738, in a  
11 range. It really depends on the precipitation and the  
12 watershed. So that's the number one concern.

13                   The second concern we have is that, for  
14 example, by next Monday, it's already filled to 735.  
15 However, if it's still possible that we have not much inflow  
16 coming from up the stream, and the same time, downstream you  
17 have the minimum flow requirement, so there may be some  
18 conflict between maintaining the lake level and also  
19 maintaining the downstream minimum flow requirement.

20                   And under these conditions, how the plan will  
21 address, you know, which ones take the high priority or --  
22 because you have, you know, the power generation, minimum  
23 flow requirements, and the lake level maintenance. All of  
24 these things have to be considered, you know, in the  
25 operation. So we hope, you know, that the operation can

1 address these two major concerns that we have.

2 Thank you.

3 ALANN KRIVOR: I'm Alann Krivor, and Mali Krivor.  
4 We're the new owners of the Richard properties, encompassing  
5 some 870 acres on both sides of the North Fork where it comes  
6 down, the South Fork, and where it meets here and becomes the  
7 mainstem of the Skokomish River.

8 In 1998 is that FERC ordered the City of  
9 Tacoma to build a bridge across the river. In fact, in this  
10 case they said bridges, two, across the river so that the  
11 family, the corporation, could access the west fields. This  
12 river divides the property almost in two. Actually, the  
13 better fields for livestock are on the west side, okay, which  
14 unfortunately you didn't see yesterday because of the wild  
15 turkeys.

16 In FERC's order, it said -- and I'm on  
17 Page 30 of the Joint Explanatory Statement. It says,  
18 "Funding" -- this is FERC's order: "Funding the design,  
19 construction and maintenance of two bridges at River Fjord on  
20 Richard Ranch," which was the name of the property under the  
21 corporation, "to protect water quality and aquatic  
22 resources." Okay?

23 "Providing access to spawning habitat" -- oh,  
24 sorry. I went a little too far.

25 And then in the amended agreement, which was

1 completely left out, on page, I believe it's 33, it says:  
2 "The settlement does not include a requirement to fund the  
3 construction and maintenance of two bridges at River Fjords  
4 on Richard Ranch. In the March 31, 1999 rehearing order, the  
5 Commission stated 'the bridges are to be constructed as  
6 Article 412 states to protect water quality and aquatic  
7 resources, not for the sole benefit of the landowners.'  
8 Furthermore, the article does not specify the quality of  
9 bridges to be constructed but leaves it to Tacoma to propose  
10 a design in consultation with the fish and wildlife agencies  
11 and the owners. Tacoma may propose any design of water  
12 crossing that adequately protects water quality and aquatic  
13 resources. If the agencies conclude that the bridges are not  
14 necessary for such purposes, they may join Tacoma in a  
15 request that Tacoma's license be amended to delete this  
16 requirement."

17 And this is the stand, I believe, that Tacoma  
18 took in this explanatory statement.

19 And then I go on. "And that installing these  
20 bridges does not appear to serve the public interest. First,  
21 an alternate road provides access to western portions of the  
22 Richard Ranch."

23 That's not true. Those are private roads.  
24 They're owned by Green Diamond. There's no access. Nor do  
25 they have easements through our property to get to theirs.

1                   "Second, it's the licensees' and the Tribe's  
2 understanding that Mr. Richard's corporation is in the  
3 process of selling Richard Ranch to a real estate developer."

4                   That's us. We're actually rural agricultural  
5 developers.

6                   "To the extent Article 412 was intended to  
7 provide Mr. Richard with access to agriculture lands, the  
8 purpose appears to no longer apply."

9                   And that's not true, as you'll hear in a  
10 moment.

11                   "The settlement parties have concluded that a  
12 bridge is not necessary to protect water quality and aquatic  
13 resources, based on the proposed flow regime and anticipated  
14 lack of use of the existing water crossing. Therefore the  
15 settlement has not included this action within the proposed  
16 license article."

17                   Well, I'll leave that out. Okay. So in this  
18 letter, which I also have (indicating)...

19                   MICHAEL SWIGER: Sorry. Do you have a copy for  
20 us?

21                   ALANN KRIVOR: We will, and plus it will be in the  
22 record.

23                   The issues are, from our side, is that the  
24 North Fork of the Skokomish River divides the Skokomish Farms  
25 into nearly two equal parts. In July 1998, FERC ordered the

1 City of Tacoma to build two bridges across the North Fork of  
2 the Skokomish River.

3 In November 2008, Land Northwest, LLC, solely  
4 owned by Mali Krivor, purchased the issued and outstanding  
5 shares of the Skokomish Farms, Inc. She became the sole  
6 shareholder of the corporation. Legal ownership of the land  
7 has not changed. It's still Skokomish Farms, Inc.

8 The farm use is being modified from a hay  
9 operation to a large cross-pastured, grass-fed livestock  
10 operation on the west side of the North Fork.

11 This modification will create one of the ten  
12 largest organic farms in western Washington, making abundant  
13 healthy organic food available to residents of the Puget  
14 Sound region.

15 Our concern is the construction of the north  
16 bridge intended to provide Skokomish Farms access to the west  
17 side of the property since flows on the North Fork have been  
18 increased from 60 to more than 240 cubic feet per second as  
19 ordered by FERC.

20 The flows were increased starting in March of  
21 2008, but the bridge has not been constructed. The increased  
22 flows now endanger anyone attempting to cross the North Fork.  
23 It's not a question of if endangered, it's a question of  
24 when.

25 Construction of the bridge eliminates any

1 question of endangerment and the use of machinery using the  
2 river as a crossing. This will enhance the quality of the  
3 river by preventing degradation of the river and protection  
4 of the endangered salmon species using the North Fork for  
5 spawning.

6 We must have a safe daily access to the west  
7 side year round under all flow conditions. This can only be  
8 ensured by a bridge.

9 Because of FERC's order to increase the flows  
10 on the North Fork. And without the bridge, it is no longer  
11 feasible to farm the land on the west side, causing the loss  
12 of prime productive farmland and a substantial financial loss  
13 to Skokomish Farms, Inc., and Mali J. Krivor.

14 If the bridge is not constructed, there  
15 remains the question of a regulatory taking by FERC. And  
16 that is contained in Presidential Executive Order 12630, and  
17 it's governmental actions and interference with civil  
18 constitutionally protected property rights.

19 And Section 1 states that "The fifth  
20 amendment of the United States Constitution provides that  
21 private property shall not be taken for public use without  
22 just compensation."

23 And I'm skipping a little bit. And then it  
24 says: "And it reaffirmed the fundamental protection of  
25 private property as provided by the Fifth Amendment in



1 ALANN KRIVOR: Okay. Thank you.

2 LINDA GILBERT: This is Linda Gilbert, FERC.

3 I'd like to just assure you that the  
4 Commission has all of your comments and filings and will  
5 consider them in reaching its decision in this matter. And I  
6 thank you very much for your presentation today.

7 MATTHEW LOVE: I think with that, we are adjourned  
8 until four o'clock. And we will be reconvening in the  
9 auditorium upstairs for public comment.

10 DEBBIE YOUNG: It's on the same level.

11 MATTHEW LOVE: Although, before we adjourn,  
12 Joseph, do you want to just introduce yourself for the  
13 record?

14 JOSEPH PAVEL: Yeah. Joseph Pavel, Skokomish  
15 Tribe. I have a few comments.

16 You know, we've all worked long and hard on  
17 this project, and I think we've really reached a milestone as  
18 far as finding some resolution to the issues. We're  
19 committed to that arrangement. We're anxious to begin the  
20 work that those conditions lay out for the parties. You  
21 know, we've had a long and combative relationship with  
22 Tacoma, and we look forward to turning that around and to  
23 truly working with the City of Tacoma as partners in a  
24 watershed.

25 As I said, we're anxious to get going on

1       that, the sooner the better, and we'll observe your processes  
2       [indecipherable]. And we're respectful of that and would  
3       like to make sure everything gets done properly, and so I'm  
4       here to encourage that and -- that process. And once again,  
5       this -- a lot of people think, wow, it's over. It's done.  
6       Let me tell you, we're looking at this -- this is a huge  
7       assignment for the parties. We have laid out a very  
8       ambitious program, easily four years' worth of work, assuming  
9       we can get started on that, the greater the progress we can  
10      make. Thank you.

11                   MATTHEW LOVE: That was Joseph Pavel, chair of the  
12      Skokomish Tribe.

13                   With that, unless there's anything else,  
14      we're adjourned.

15                   PAT MCCARTY: Thank you all for coming.

16                   (Whereupon, the meeting was concluded at  
17      12:05 p.m.)

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I, Tia B. Reidt, do hereby certify that pursuant to the Rules of Civil Procedure, the witness named herein appeared before me at the time and place set forth in the caption herein; that at the said time and place, I reported in stenotype all testimony adduced and other oral proceedings had in the foregoing matter; and that the foregoing transcript pages constitute a full, true and correct record of such testimony adduced and oral proceeding had and of the whole thereof.

IN WITNESS HEREOF, I have hereunto set my hand this 28th day of May, 2009.

/Signed

Tia B. Reidt

June 3, 2010

Expiration Date