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PROCEEDINGS

(10:02 a.m.)

MS. NGUYEN: Can we go ahead and get started please? Welcome to the second meeting to discuss the Draft Environmental Impact Statement or draft EIS for the Wells Hydro Electric Project. My name is Kim Nguyen. I'm a civil engineer and project coordinator for the Federal Energy Regulatory Commission or FERC.

I'd like my colleagues on the panel to introduce themselves.

MR. CUTLIP: I'm Matt Cutlip. I'm a fisheries biologist with FERC.

MR. PALOS: I'm Nicholas Palso. I'm a recreation planner, cultural resources, esthetics and land use person with FERC.

MR. WINCHELL: I'm Fred Winchell. I'm with Louis Berger Group. I'm a contractor to FERC. I'm a fisheries biologist, and I also am the project manager for the contract team that worked on preparing the EIS.

MR. EDIGER: Good morning, I'm Scott Ediger. I'm an attorney in FERC's Office of General Counsel.

1 MS. NGUYEN: First some housekeeping
2 matters. Please sign the sign-in sheet in the back
3 of the room, even if you do not intend to speak.
4 This will help us have a complete record of
5 attendance. There are some hard copies of the draft
6 EIS as well as CDs on the back table. The licensee
7 has also made available a complete set of the
8 license application for us to reference if we need
9 it.

10 Since this meeting is being recorded, a
11 transcript will be made part of the record for the
12 project. Please use the mic in the center of the
13 room there. Before you speak, please state your
14 name with the spelling and your affiliation.

15 The current licensee, the Public Utility
16 District Number One of Douglas County or Douglas
17 PUD, filed a relicense application for the project
18 on May the 27th of last year. On April the 6th of
19 this year, we issued the draft EIS for the project.
20 And we are here today to provide the public and
21 stakeholders with an opportunity to comment on this
22 draft EIS.

23 The public and stakeholders also have an
24 opportunity to provide written comments, which are
25 due on Tuesday, before Tuesday, May the 31st.

1 Please see the following instructions on our notice
2 for the draft, issued on April the 6th.

3 And since you do have this opportunity to file
4 written comments, I ask that you limit your comment
5 at this meeting to substantive and major issues,
6 such as characterization of measures and our
7 analysis of such measures. Comments having to do
8 with clarifications on dates, dimensions or
9 descriptions for example, or are grammatical in
10 nature are best filed electronically, using our
11 e-filing link on our webpage, ferc.gov.

12 Following the comment period, we intend to
13 issue a final EIS, incorporating all comments, in
14 November of 2011.

15 Douglas PUD will now give us a brief summary of
16 their relicensing proposal. I will then follow up
17 with FERC staff's alternative and highlight how it
18 differs from the PUD's proposal. Then we'll open it
19 up for comments per resource area, in the order
20 listed in the table of contents for the draft.

21 Does anyone have any questions before we start?
22 Okay, with that, Shane Bickford.

23 MR. BICKFORD: Thanks Kim. Hopefully,
24 this is still on here. It is. Let's see if I can
25 do this without a mic. So, my name is Shane

1 Bickford. I work for Douglas PUD, and I'm here to
2 present the applicant's proposal as documented in
3 the final license application filed with FERC on May
4 27th, 2010.

5 Just a brief summary of the location of the
6 Wells Project. It's in North Central Washington.
7 It's located . . . the Wells Project is the blue
8 dot. It's the ninth hydro electric-

9 MS. NGUYEN: Green dot.

10 MR. BICKFORD: Green dot, sorry. On the
11 Main Stem Columbia River. It is the last project
12 that . . . it's located upstream of Rocky Reach Dam,
13 which has fish passage. It's located downstream
14 from Chief Joseph Dam, which does not have fish
15 passage. It's located at river mile 515 on the
16 Columbia.

17 What the applicant's proposal, the two source
18 documents that I'm going to be referring to for the
19 applicant's proposal is primarily the final license
20 application as filed with FERC on May 27th, 2010,
21 and also the Joint Offer of Settlement for the
22 Aquatic Settlement Agreement filed the same day, May
23 27th, 2010. And in that aquatic settlement there's
24 six additional aquatic resource management plans.

25 In general, the Douglas PUD is not proposing to

1 change project operations or materially change
2 project generating features or to materially modify
3 the project boundary under the proposal. But
4 Douglas PUD is proposing to substantially enhance,
5 protect and mitigate the environmental resources
6 found within the project boundary.

7 The primary components of the proposal include
8 the Wells HCP, the Aquatic Settlement Agreement, the
9 Wildlife and Botanical Management Plan, the Avian
10 Management Protection Plan, Historic Properties
11 Management Plan, the Recreation Management Plan,
12 three recreation settlement agreements of the cities
13 of Pateros, Brewster and Bridgeport for on-project
14 measures and an off-license settlement agreement for
15 wildlife and resident fish.

16 So to recoup the substantial investment that
17 Douglas PUD is planning to make in those
18 environmental measures, Douglas PUD is seeking a 50
19 year license, and the applicants proposal, as
20 documented in the final license application, is
21 expected to cost about 64.3 million per year.

22 So the first one of that large list of
23 proposals, the HCP, which is an anadromous fish
24 agreement and habitat conservation plan. The term
25 of that agreement is from 2004 - the effective date

1 is the FERC order date - through 2054. It's a 50
2 year agreement. It covers five species of
3 anadromous salmonids. It's sockeye, coho, summer
4 fall Chinook, spring Chinook and steelhead. The HCP
5 includes extensive adult and juvenile passage and
6 survival studies. It includes an Adult Fish Passage
7 Plan, which is focused at the fish ladders. It also
8 includes a Juvenile Fish Bypass Operating Plan for
9 downstream migrants. Hatchery Compensation Plan,
10 which is 7/9ths of the mitigation, and I'll get into
11 how the mitigation is packaged in the next slide.
12 But that Hatchery Compensation Plan is focused on
13 making up for juvenile losses at the project,
14 unavoidable losses.

15 There is also an Inundation Compensation Plan
16 for original habitat impacts associated with the
17 construction of the project. There is also a
18 Tributary Conservation Plan, which mitigates for up
19 to two percent of the adult losses associated with
20 the project. And then there's also some new
21 measures that have been added since FERC approval in
22 2004, and several of those measures are still being
23 considered currently, as they go through ESA
24 consultation and are being finalized by the Hatchery
25 Committee. And those include, and all of them are

1 kind of related to this hatchery modernization, but
2 there is the Spring Chinook Hatchery Genetic
3 Management Plan that was recently developed and is
4 going through consultation. There is also a
5 Steelhead Hatchery Genetic Management Plan. It's
6 kind of on the same track, expected to be issued in
7 time for the expiration of those ITPs in 2013.

8 There's also been the addition of a new
9 hatchery program, what the Colville's are building
10 up at Chief Joe. That's the new Chief Joseph
11 Hatchery. It's supposed to come on line in 2013.
12 They've actually broken ground on that. Once they
13 actually have fish in the program, the HCP requires
14 us to provide mitigation for those fish as well. So
15 that's going to include new mitigation for Okanogan
16 River spring Chinook, as well as Okanogan and
17 Columbia River summer fall Chinook.

18 What's the purpose of the HCP? The purpose of
19 the HCP is to satisfy ESA for Section 10. It's also
20 a recovery plan, and it's a take compliance plan.
21 The HCP also satisfies the HCP parties, and I'll
22 have a slide on the signatory parties in a minute.
23 It satisfies the parties relicensing requirements
24 for all five stocks of anadromous salmon and
25 steelhead, including Section 18 fish rate

1 prescriptions and 10(j) protection, mitigation and
2 enhancement recommendations. That also is intended
3 to address ESA Section 7 and Section 10, and also
4 ESA critical habitat. It also addresses the
5 essential fish habitat provisions under the
6 Magnuson-Stevens Conservation Act, as well as the
7 Fish and Wildlife Conservation Act of the Northwest
8 Power and Conservation Council. It also covers for
9 Washington State, Title 77, the Revised Code of
10 Washington.

11 The other intent of the HCP is also to be a
12 safe harbor. So if there are additional ESA
13 listings, the project will be allowed to continue to
14 operate because all five plan species are treated as
15 if they are listed currently. And it was also one
16 other note on the HCP, it was approved as a
17 comprehensive plan under the Federal Power Act
18 Section 10(a)2(a), I think back in 2007.

19 So how does the HCP work, in terms of the
20 mitigation component? The idea under the incidental
21 take permit for hydro operations is to have at least
22 91 percent adult and juvenile survival. That is
23 split up into two components. There is a 93 percent
24 juvenile and a 98 percent adult, so there is a nine
25 percent allowed take.

1 We make up for that nine percent allowed take
2 through two measures; 7/9ths of that is hatchery
3 compensation, and 2/9ths of that is tributary
4 compensation. Currently, as measured through
5 survival studies, the take at Wells for juveniles is
6 3.7 percent, so almost half of the allowed level of
7 take.

8 Parties to the HCP: National Fisheries Service
9 is the sponsoring entity and the party that issued
10 the four incidental take permits, three for hatchery
11 and one for the hydro operations. The U.S. Fish and
12 Wildlife Service, Washington State Department of
13 Wildlife, the Confederated tribes of the Colville
14 Reservation, the Yakama Nation, Douglas PUD and also
15 the power purchasers for the Wells Project also
16 signed the Wells HCP.

17 So the applicant's proposed measures here,
18 getting down to kind of what the costs are, bottom
19 line. Starting in 2003, after we received the
20 incidental take permit for hydro operations, we
21 started implementing the HCP. And that continues up
22 through to today. We have cost estimates from 2003
23 through 2007 for implementation of the HCP that was
24 included in the final license application. And the
25 five year average for that was 9.6 million per year

1 in measures. That does not include spills or the
2 bypass system, or any of the foregone energy. It's
3 all focused on actual measures. But we've also
4 identified early on that there are several other new
5 HCP costs that are going to likely start in 2013 in
6 the first year of the license. And those include
7 the implementation of the Spring Chinook Hatchery
8 Genetic Management Plan, the Summer Steelhead
9 Hatchery Genetic Management Plan, as required by
10 NOAA, additional mitigation of the Chief Joseph
11 Hatchery facility that's going to be phased into
12 implementation in 2012 and '13 and also hatchery
13 modernization at Wells and Methow to comply with ESA
14 requirements, specific recommendations by the
15 Hatchery Scientific Review Group, as well as
16 recommendations that are in the Interior Columbia
17 Basin Recovery Plan, and also to adhere to the
18 Hatchery Genetic Management Plans as approved by
19 NOAA. So, it's pending to see what NOAA is going to
20 recommend for that.

21 If we pool these two together, so for all the
22 hatchery modernization and modifications and
23 additional mitigation, plus our historic costs,
24 comes up to 11.1 million per year of future
25 anticipated HCP expenditures during the license. So

1 that's the Aquatic Settlement. That's the first of
2 the applicant's proposals.

3 The second proposal is an Aquatic Settlement
4 Agreement, which has six aquatic resource management
5 plans that support it. The first of which and
6 probably the largest, is the White Sturgeon
7 Management Plan. The White Sturgeon Management Plan
8 has quite a few facets to it, including an adult
9 broodstock collection and spawning program and plan.
10 There's juvenile rearing and hatchery facilities and
11 stocking in the reservoir. There are behavior and
12 reproductive studies on the fish that are stocked,
13 as well as natural fish in the reservoir, trying to
14 identify what habitat is being utilized. There is
15 also a habitat evaluation and utilization study.
16 There is index monitoring, which is intended to
17 track how well the hatchery program fish are
18 naturalizing to the reservoir. There is adult
19 passage evaluation, should downstream projects
20 identify the need to provide provisions for sturgeon
21 to pass upstream. Wells would also in kind be
22 looking at adult passage. And there is also
23 education and outreach to make sure that our
24 programs are consistent with adjacent utilities and
25 consistent with state and regional white sturgeon

1 recovery efforts.

2 The Bull Trout Management Plan is intended to
3 also cover Section 7, because bull trout are an
4 endangered species. So, it's also a very robust
5 plan. It includes extensive adult and subadult
6 passage studies at the dam as well as at hatchery
7 broodstock collection sites. There is enumeration
8 at the count stations, specifically at Wells Dam,
9 but also at the Twisp Weir, which is one of the
10 brood collection sites.

11 There's bypass operations for both adults and
12 subadults that is tied to HCP bypass operations for
13 plan species that will also benefit bull trout.
14 Considerations are in there for bull trout as well.
15 There's incidental take monitoring, which is a
16 requirement of Section 7.

17 There is genetic sampling to identify what
18 population is actually interacting with the project,
19 both in the tributaries as well as at the dam and at
20 Twisp. There are stranding surveys that take place
21 on the reservoir to identify locations where bull
22 trout, both subadults and adults, could be stranded
23 when the reservoir operates through its full range,
24 from 781 down to 771. And then, there's a specific
25 study requirement to monitor bull trout passage at

1 Twisp Weir and any other future hatchery trout sites
2 that are developed. And then, there is again
3 regional information exchange, which you'll see kind
4 of common to almost all six of these plans, where we
5 want to make sure that we're doing things at Wells
6 that are consistent with downstream projects and
7 with other recovery efforts that are going on in the
8 region.

9 So the third plan is the Pacific Lamprey
10 Management Plan. It's also a fairly robust plan.
11 It includes a literature review prior to
12 implementation of any of the passage measures.
13 There is a lot of lamprey research going on at Lower
14 Columbia River and Snake River projects, as well as
15 at Chelan and Grant PUDs' projects. We want to take
16 the benefit of that information and use that at
17 Wells to help guide passage improvement. And so
18 periodically through the implementation of the
19 aquatic settlement, there will be updates through
20 these literature reviews to make sure that we're
21 using the most current information.

22 There is also fish passage improvements to help
23 adult lamprey move upstream through the project,
24 adult passage studies to evaluate the performance of
25 those improvements, to ensure that they are actually

1 beneficial and are not negative. There is adult
2 ladder dewatering and salvage criteria, and we take
3 the ladders down to do maintenance work. We'll go
4 in, and we'll make sure that any lamprey that are
5 still over wintering in the ladders are moved safely
6 and put back in the river.

7 There's enumeration counting at the adult count
8 stations at the dam, which can be kind of tricky
9 because the lamprey go around the count stations in
10 a lot of cases, and so they are a little different
11 than salmon. There's juvenile passage and survival
12 studies. And again, the regional information and
13 exchange, to make sure that we're communicating with
14 others and that they are communicating with us, in
15 terms of measures to enhance the populations of
16 lamprey.

17 The fourth one is a Resident Fish Management
18 Plan. It's a little bit smaller in comparison to
19 the first three big ones. It includes predator
20 control measures for pike minnow, but also, should
21 there be measures over the next 50 years that would
22 include walleye, smallmouth bass or other predators,
23 that would be integrated in the Resident Fish
24 Management Plans as well. There's also a tie in the
25 Resident Fish Management Plan to the Land Use

1 Policy, as it relates to shoreline habitat
2 protection because that has been deemed to be
3 beneficial to resident fish. There is also periodic
4 index monitoring of the resident fish assemblage to
5 detect changes in the population that could be
6 attributed to project operational changes and then,
7 native resident fish monitoring. That's really what
8 the focus of what that program is on, as opposed to
9 just predator control.

10 The other aspects of the aquatic settlement,
11 the last two of those management plans. The Aquatic
12 Nuisance Species Management Plan. The first part of
13 that is to ensure that whenever we go out and we do
14 a ground disturbing or aquatic disturbing
15 enhancement, like a recreation site, that we would
16 use best management practices. It also relates to
17 really anything that we do in the reservoir. We use
18 best management practices to prevent the spread of
19 ANS and if ANS are detected, to not contribute to
20 enhancing those populations. There's also ANS
21 monitoring to detect the presence, hopefully, early
22 presence of aquatic nuisance species and hopefully,
23 contribute to eradication or control measures.
24 There is bypass monitoring so that when we are
25 implementing all these other management plans if ANS

1 are detected, it feeds back into kind of the
2 reservoir monitoring and reporting aspect.

3 There's education outreach. That's to educate
4 boaters and recreators on the reservoir that they
5 could be introducing ANS into the project and what
6 they need to be looking for.

7 And then again, regional information exchange.
8 If there are ANS upstream or downstream of us, we
9 want to know that. And hopefully, we can help in
10 the prevention measures.

11 Another one of the really large management
12 plans is the Water Quality Management Plan. It's a
13 really important one. It includes monitoring for
14 total dissolved gas at the project. We use the
15 acronym TDG for that. It includes a Spill
16 Operations Plan. We call it our spill playbook.
17 That's how we're going to configure our spillways at
18 the dam to best reduce total dissolved gas.

19 There is also an annual plan that we submit to
20 Ecology for approval called the GAP. That's the Gas
21 Abatement Plan. That's the Total Dissolved Gas
22 Abatement Plan, GAP for short, and the TDG
23 exemptions that go along with that. There's
24 temperature monitoring throughout the reservoir
25 every 10 years, contributing to a model to identify

1 whether we are exceeding the delta temperature
2 requirements of the state water quality standards.
3 And then also, that temperature monitoring data
4 would likely ultimately feed into Environmental
5 Protection Agency's TMDL, once they initiate that
6 process. There was a TMDL on the Mid Columbia, I
7 think six or seven years ago, and we know that EPA
8 is going to pick that back up again. So once they
9 do, there is a measure in here that we'll
10 participate in that effort and use the temperature
11 data that we've collected to assist in that
12 modeling.

13 There's also a couple of measures that are
14 related not to water spill but to oil spill. There
15 is the spill prevention and control requirements in
16 the management plan. There is also counter measures
17 that are implemented at the dam associated with that
18 measure. There is also participation in the
19 Columbia River Spill Response Initiative for oil
20 spills. There's annual inspections that Ecology
21 does, related to oil spill prevention measures and
22 making sure that the project is up on the latest
23 technology for preventing oil spills.

24 There's also a submission of quality assurance
25 plans to ensure to make sure that we're collecting

1 the data for temperature, for TDG and any of the
2 other parameters for water quality, that we are
3 collecting it in a way that is scientifically
4 rigorous, robust and can be compared to projects
5 upstream and downstream of us.

6 And there is also native resident fish
7 monitoring that's tied back to water quality effects
8 as designated uses.

9 And then again, regional information exchange
10 coordination to make sure that we're talking to
11 hydro operators around us as well as regulators. So
12 that's kind of it for the measures.

13 How much do all those measures cost when you
14 package them together? You will see that the
15 sturgeon and bull trout are very large. Water
16 quality is very large. There is also just
17 implementing and coordinating within the aquatic
18 settlement parties, the annual report, the meeting
19 coordination effort. And all that comes for 1.15
20 million per year on average.

21 So the third and fourth proposals in the
22 applicant's proposed measures. The third one is the
23 Wildlife Botanical Management Plan. It includes
24 some enhancement of the dikes and Cassimer Bar.
25 That's really an enhancement of wetlands on Cassimer

1 Bar. It's pretty extensive wetlands out there, and
2 making sure that they have good connectivity with
3 the reservoir.

4 There's White Pelican Education and Avoidance
5 Plan. The idea there is we have a pretty good
6 colony of white pelicans on the reservoir. Over the
7 years, there has been increasing levels of
8 harassment related to fishing and watching and
9 stuff. We're hoping to try and minimize and educate
10 people on where to not go, so they don't harass
11 pelicans. There is also a Riparian Vegetation
12 Management Plan, this will be targeted for project
13 lands. There is RT&E; Rare, Threatened and
14 Endangered Plant Management and Protection Plan,
15 which includes periodic monitoring for the
16 protection of rare plants, but then also a feedback
17 if they are detected. Protection through buffer
18 zones around those plants.

19 There's a lot of measures in there about bald
20 eagles and raptors related to perch management and
21 preparing restoration so that those birds continue
22 to have places to roost and nest. The beaver
23 management component is specifically tied back to
24 protection of vegetation, but also to ensure that
25 the bald eagles have a place to nest, because the

1 beavers do like to take down their preferred trees.

2 There is also extensive waterfowl enhancement
3 measures on the wildlife area as well as bimonthly
4 reservoir inspections, to ensure that people don't
5 trespass into project areas and particularly damage
6 naturalized areas. And if there is damage that
7 takes place, there is a whole set of triggered
8 events that takes place as described in both the
9 Wildlife and Botanical Management Plans and the land
10 use policy.

11 There is also kind of a beef up of the
12 management of the Cassimer Bar Wildlife Area, which
13 is the one wildlife area in the Wells project that's
14 not managed by Washington Park Fish and Wildlife,
15 and an extensive noxious weed control program.

16 The fourth is an Avian Protection Plan. It's
17 very standard. I'm not going to go into all the
18 details of it, but it's consistent with the Avian
19 Protection Plans that the U.S. Fish and Wildlife
20 Service has approved for most utilities. It's
21 primarily focused on the transmission lines and on
22 the switch yard above.

23 The fifth of the applicant's proposals is the
24 Historic Properties Management Plan. It includes
25 employee and public education, so that people know

1 what cultural resources are, what historic
2 properties are, and what they should do if they are
3 identified through going about their daily duties.
4 There is also reservoir inspections that take place,
5 so that we get qualified staff and consultants out
6 there to identify sites as they avail themselves.
7 And also determination of eligibility for the known
8 sites. These are quite extensive, a list of sites
9 on the Wells Project and specifically, in the EPE.
10 And so of those known sites over the license term,
11 we'll determine eligibility on those, particularly,
12 the high priority sites.

13 Data index monitoring and archiving of the
14 information that's already available and also annual
15 archeological monitoring at all 44 of the priority
16 sites.

17 There is erosion monitoring, a pretty extensive
18 Erosion Monitoring Plan, and the Cultural Research
19 Work Group is working right now. There is also site
20 monitoring for both terrestrial and inundated sites.
21 It's tough to survey the inundated sites, so what we
22 try to do is when the reservoir is down for some
23 maintenance activities or construction activities,
24 use those opportunities to get out and checkup on
25 those inundated sites.

1 There's also a ten year archaeological
2 monitoring component to this, as well as periodic
3 testing and site protection of known eligible sites,
4 and then curation of the materials that have been
5 recovered. It's pretty extensive.

6 The sixth proposal is a Recreation Management
7 Plan. It includes enhancements to the Wells
8 Overlook Park that already exists. The idea is we
9 used to have a visitors center that was down in
10 Wells Dam. After 9/11, the idea is to move public
11 interaction with the project out towards Highway 97.
12 It's a little bit more available to the public. It
13 also gets them out of that critical infrastructure
14 and allows them to get a feel for what the project
15 is about. So, there is an interpretive display
16 that's going to be constructed at that overlook.

17 And there's also an expansion of the RV
18 facility at the marina park in Bridgeport to address
19 capacity issues there. That park's been full.
20 According to documents in the licensing studies,
21 there is an effort to make that park bigger and to
22 capture that demand. And there's a proposal to
23 develop a formal boat-in tent camping site. The
24 site is yet to be identified, but it's largely going
25 to be in that Okanogan/Columbia River confluence

1 area.

2 There's also a proposal to develop a rustic
3 boat-in tent camping site, as requested by some of
4 the paddling groups. And there is also a proposal
5 to expand the Chicken Creek Boat Launch, so that
6 water body . . . there is a lot of interest in
7 fishing there. That would actually get utilized at
8 all reservoir operating levels.

9 There is also a provision to provide reservoir
10 navigation maps so the shallow water areas can be
11 identified. And recreation facility O&M funding
12 that's tied to those parks in the three cities that
13 are within the project boundary so that the cities
14 can maintain and operate those parks with our
15 project features.

16 There's also a feasibility study to look at
17 opportunities to construct wildlife viewing trails
18 around the reservoir that are consistent with
19 wildlife, so it's going to be a balancing act, with
20 the public out in the wildlife areas. We want to
21 make sure that, that's located in an area that's not
22 going to actually disturb wildlife and isn't going
23 to cause a problem for wildlife, but still get at
24 that pent-up demand for bird watching in particular,
25 but also just wildlife trails.

1 There is also recreational promotional maps
2 that we're going to be providing to try and enhance
3 recreation. We've also proposed to adhere to the
4 FERC form media updates periodically, as well as
5 license at Wells to conduct recreational use and
6 need studies.

7 So the costs associated with those three
8 proposals. The annual costs for implementation of
9 wildlife, botanical and avian is expected to be
10 about 140,000 a year, disturbed properties, 178,000.
11 The Recreation Management Plan is fairly robust;
12 it's almost a half a million a year for a total of
13 the four terrestrial orient and management plans,
14 about 800,000 dollars a year. A lot of those costs
15 are capital costs. They're front loaded however, so
16 they take place in the first five years of the
17 license.

18 I'm going to mention a couple of other things
19 that are not in the comprehensive process analysis
20 but are related. There was actually a question
21 about that yesterday. There is the Pateras
22 Recreation Agreement, Brewster Recreation Agreement,
23 Bridgeport Recreation Agreement, and there aren't
24 individual identified costs associated with these in
25 the final license application. The reason we did

1 that is because these are the three mechanisms we
2 are going to use to actually implement the O&M
3 funding for the on-project costs. So we're not
4 looking for FERC approval for these three recreation
5 agreements, but they are related to project
6 activities, and all the costs are actually expended
7 within the project boundary, both O & M and capital.
8 And we also didn't include costs for land use policy
9 because those costs were already captured in our
10 baseline costs. Because we are already implementing
11 the land use policy, it just folded into our
12 historic operating costs associated with the
13 project.

14 So there's also an 11th measure, which is the
15 Off-license Wildlife Resident Fish Agreement.
16 Again, not seeking FERC approval for that, but it is
17 providing enhancements to the project. So we
18 provided that information in the FLA, just for
19 consideration.

20 Included in that, there's 20,000 pounds of
21 resident trout annually to be stocked in Okanogan
22 and Douglas County for recreational fish
23 enhancement. Most of that is outside the project
24 stocking. There is some in project stocking.

25 There's wildlife area funding that covers all

1 six of the wildlife areas operated jointly with
2 Washington Department of Fish and Wildlife. There's
3 habitat restoration for some of those. Three of
4 those wildlife areas are inside the project
5 boundary. Three of them are outside the project
6 boundary, and they are up-on-sites.

7 There is a habitat restoration fund should
8 there be a catastrophic fire on those wildlife
9 areas. There is a fund, kind of a one time
10 stimulus, to rehabilitate those sites. There is
11 also capital equipment funding to provide the
12 infrastructure needed to actually take care of those
13 wildlife areas because they're fairly extensive and
14 a little over 10,000 acres.

15 So again, we did not include any of the
16 off-license costs in the applicant's proposals as it
17 relates to comprehensive development.

18 So, kind of bottom line summary. The projected
19 operating costs as proposed by Douglas PUD in the
20 FLA is developed in two ways.

21 One, we took the historic five-year average
22 cost of operating the project, and we took out the
23 HCP. And that comes up with 30.4 million dollars.
24 The HCP historic as mentioned in some of the earlier
25 slides as 9.6 million, and that adds on top of the

1 30.4.

2 Over the term of the new license, we are going
3 to have to implement extensive repair and
4 rehabilitation to the project, as infrastructure
5 just ages, and it needs to be cared for. We call
6 those capital infrastructure costs. We also call
7 them R & R costs, repair and replacement costs.
8 That's for turbine's, transformers, generators,
9 large capital infrastructure that's going to need to
10 be attended to in the future. And we projected that
11 at almost 21 million dollars on average per year
12 over the license term.

13 Folded in with that are just the purely
14 environmental proposed protection, mitigation and
15 enhancement measures. That's the HCP, all the
16 management plans and then the jointly filed Aquatic
17 Settlement Agreement. That totals 13.1. So that's
18 where we get to the 64.3, which is basically the sum
19 of those three values from the previous page. So,
20 that's what the Douglas PUD's anticipated cost are
21 for implementation in the new license.

22 That comes up with what you call a
23 comprehensive developmental cost over a 30 year term
24 of 1.9 billion dollars. And I might just point out
25 that the difference between the applicants proposal

1 and our current operating costs. This would be the
2 delta between what our operating costs are now and
3 what they would be under the new license. They are
4 about almost 34 million dollars.

5 So a little bit about another component of the
6 license application or proposal. We did develop a
7 draft biological assessment in really close
8 coordination with NIMFS and the U.S. Fish and
9 Wildlife Service.

10 That biological assessment addressed all of the
11 listed species within the counties associated with
12 the project. But only three of those species were
13 actually found within the project boundary, and
14 that's spring Chinook, summer steelhead and bull
15 trout. So we developed this biological assessment
16 and worked with Fish and Wildlife Service and NIMFS
17 to comment on that, to refine it and then actually
18 submit it into the draft license application.

19 FERC also had an opportunity to review it and
20 provided comments on both the draft EA as well as
21 the draft license application.

22 At the time that we filed the application in
23 May of 2010, the agreed-upon effects determination
24 was, "May affect, not likely to adversely affect,"
25 for all three of those fish species. And then, "Not

1 likely to adversely modify or destroy designated
2 critical habitat," for the critical habitats that
3 had been identified at that point. I believe it was
4 only for spring Chinook and summer steelhead.

5 Bull trout critical habitat is being identified
6 right now. It will likely be done before the end of
7 the year.

8 Just a little bit about the ESA consultation
9 construct as it relates to the applicant's proposal.
10 Just a little bit of historical, then talk about
11 what's kind of going on now. This might help Steve
12 out a little bit.

13 In 2000, NIMFS issued Douglas PUD an ESA
14 Section 7 incidental take statement for hydro
15 operations only. And that was really, the basis of
16 that was the 1990 Long-term Anadromous Fish
17 Settlement Agreement. The determination in that
18 document was, "Not likely to jeopardize the
19 continued existence of the listed Chinook and
20 steelhead."

21 We were negotiating the HCP from that point
22 forward, and in 2003, NIMFS issued Douglas PUD an
23 ESA Section 10 permit for Wells project operations.
24 And that was a 50 year incidental take permit, and
25 that's for all five plan species not just for the

1 listed species, for all five.

2 And then subsequent to that in 2003, as part of
3 the HCP, NIMFS also issued Douglas PUD three other
4 separate Section 10 incidental take permits for the
5 operation of the listed species hatcheries programs:
6 Methow for spring Chinook; Wells, for steelhead.
7 And then also a permit for nonlisted species
8 operation, which included Eastband Hatchery
9 operations for summer Chinook, Chief Joe, Scott Cove
10 provisions, sockeye provisions, as well as summer
11 fall Chinook and Wells. So all those were tied up.
12 So we have four ESA permits currently, for the
13 project.

14 And then in 2004, as part of the FERC approval
15 of Wells HCP, under the existing license, the
16 original license, NIMFS also did conduct a
17 subsequent Section 7 consultation on the HCP as it
18 related to that license amendment. Specifically,
19 that license amendment required reauthorization of
20 the HCP as part of the re-licensing contract. And
21 specifically that 2004, when FERC did approve the
22 HCP that did trigger the effective dates of the HCP,
23 so the Wells HCP effective dates are a little bit
24 different than Rocky Reach and Rock Island. It's
25 2004 to 2054. That's the 50 year term.

1 Talking about currently, water, what's going on
2 with ESA consultation. There are three ESA
3 consultations that are in the works right now with
4 NOAA.

5 The first one is consultation on the hatchery
6 genetic management plan for spring Chinook. The
7 other one is for summer steelhead, and those are
8 expected to be issues sometime later this year,
9 early 2012.

10 There is also the consultation that FERC has
11 initiated, which is the relicensing of the Wells
12 project and reauthorization of the HCP. So we're
13 expecting that to be in consultation for the license
14 term of 30 to 50 year range.

15 The other consultation that's going on is for
16 bull trout. A little bit of historical on bull
17 trout because it does relate to what's going on
18 currently. In 2004, the U.S. Fish and Wildlife
19 Service issued Douglas PUD an ITP for bull trout,
20 and it was specifically bull trout protection
21 measures related to implementation of HCP. But it
22 also covered hydro operations.

23 In 2005, FERC approved the jointly developed
24 Bull Trout Monitoring and Management Plan that was
25 developed jointly with the HCP coordinating

1 committee. It specifically was Douglas and the U.S.
2 Fish and Wildlife Service. That triggered the
3 incidental take monitoring program that we are
4 currently under.

5 In 2005, FERC designated Douglas PUD as a
6 nonfederal rep, pre ESA consultation. That allowed
7 us to start talking about sort of preconsultation or
8 consultation with a small c, as it related to bull
9 trout and related to the relicensing package. And
10 that culminated in 2008 with the U.S. Fish and
11 Wildlife Service signing the Wells Aquatic
12 Settlement Agreement, which was jointly submitted in
13 2010. And in that settlement agreement include the
14 Bull Trout Management Plan, which is intended to be
15 the terms and conditions under Section 7 for that
16 consultation.

17 So currently, the U.S. Fish and Wildlife
18 Service is working on one Wells ESA consultation
19 action, and that is the relicensing of the Wells
20 Project per the letter that was filed on May 5th.
21 And we're expecting that the Aquatic Settlement
22 Agreement's bull trout management plan will really
23 form the basis and the construct for that, for the
24 terms and conditions of that construct. So, that's
25 all I have on the applicant's proposal.

1 MS. NGUYEN: Thank you, Shane. Now for
2 the staff's proposal. The staff's proposal includes
3 most of Douglas PUD's proposal, including to
4 continue implementation of the Wells HCP as well as
5 implementation of some of the measures in the six
6 aquatic resource management plans that Shane alluded
7 to.

8 Staff did not however recommend implementation
9 of as yet unspecified measures or studies included
10 in some of those plans. We also did not recommend
11 that Douglas PUD be required to participate in
12 forums that address regional water quality issues,
13 regional bull trout conservation efforts, regional
14 Pacific lamprey conservation efforts, and regional
15 monitoring for aquatic nuisance species.

16 We do not recommend that the annual bypass
17 spill operations plan be subject to approval by the
18 aquatic settlement group.

19 For bull trout, we do not recommend monitoring
20 or studying bull trout passage performance at
21 off-project hatchery and broodstock collection
22 facilities, and collecting and funding the genetic
23 analysis of bull trout tissue samples.

24 For Pacific lamprey, staff did not recommend
25 conducting studies of Pacific lamprey habitat and

1 relative abundance in project area, and conducting
2 literature review of potential upstream and
3 downstream passage measure for Pacific lamprey.

4 For white sturgeon, we did not recommend
5 developing a Mid Columbia hatchery facility to
6 accommodate various phases of white sturgeon
7 supplementation for the project.

8 Staff also did not recommend the implementation
9 of the resident fish management plan, except for the
10 continued implementation of the Wells HCP predator
11 control program and the Douglas PUD Land Use Policy.

12 Our justification for not recommending these
13 measures are in the comprehensive development,
14 Section 5 of the draft EIS.

15 Now, I would like to open the floor for your
16 comments. Please remember to state your name with
17 spelling before you speak. And if you are more
18 comfortable, I can have Scott send you the
19 microphone at your chair.

20 MR. PATTERSON: My name is Bo Patterson,
21 and I'm a natural resources scientist with Douglas
22 PUD, and I expect to be tasked with numerous
23 implementation responsibilities when the new license
24 is issued.

25 One of my concerns is the requirement applied

1 to numerous measures analyzed in the draft EIS that
2 almost by default plan to be submitted to FERC for
3 approval, prior to implementation. And for a lot of
4 those measures that's entirely understandable, but
5 in some cases, it sets up a real potential for
6 conflicting regulatory jurisdictions and an
7 untenable position as an entity charged with
8 implementation where we are likely to have to decide
9 which law or rule to break.

10 And the example that I want to use for that is
11 the requirement that we file a gas abatement plan
12 for approval prior to implementation. And just to
13 address that issue, I've got to give a little bit of
14 background.

15 Spill at the hydro project causes total
16 dissolved gas to increase, which can be harmful to
17 aquatic life. In 2000, the National Marine
18 Fisheries Service determined that exposure to total
19 dissolved gas was less harmful for out migrating
20 anadromous salmonids in the Columbia and Snake River
21 systems. And in response to their jeopardy,
22 determination that exposure to elevated TDG was the
23 less harmful to smolts than passage through
24 turbines. The State Department of Ecology used
25 their delegated Clean Water Act authority to allow

1 an exception for elevated TDG in the Columbia River
2 during the smolt out migration period. And my
3 concern is that I, currently, am the technical lead
4 for Douglas PUD with the Gas Abatement Plan, and
5 that's an annual plan that is modified and approved
6 by the Department of Ecology annually. And just by
7 the nature of the timeline, we are going to probably
8 run into a conflict either with FERC approval, prior
9 to implementation, or run afoul of our ESA
10 requirements under the HCP or Clean Water Act
11 requirements under the Gas Abatement Plan.

12 And the way that works is fish spill season
13 runs from April through August essentially, and
14 we're doing in-season modeling while that's going
15 on. Tweaking spill configurations, minor fixes that
16 don't affect either the project generation or the
17 infrastructure at the dam. They are changing the
18 patterns of spill in spill bays.

19 We can handle unusual and unforeseen events,
20 like a unit outage or unusual operations upstream at
21 the federal storage project, to which we have to
22 respond as a . . . run a river downstream by phone
23 calls to the various agencies, and memorializing
24 those at the end of the season in our gas abatement
25 report.

1 So, spill season ends in August. We're doing
2 in-season ends post hoc analysis of the conditions
3 and events and that is to inform the draft gas
4 abatement report that we send to the Department of
5 Ecology by the end of October. Ecology gives their
6 feedback on that plan, and we file a final report
7 end of December.

8 The information in that report we experienced
9 from the previous spill season then informs our
10 draft Gas Abatement Plan for the coming year, which
11 is due to Ecology, end of February.

12 At the same time, a parallel process going on
13 in the HCP for Endangered Species Act compliance is
14 the Juvenile Bypass Operations Plan. And it takes a
15 lot of close coordination to make sure that the
16 Juvenile Bypass Operations Plan and the Gas
17 Abatement Plan for the upcoming year don't have any
18 conflicts in them. And then, end of February that
19 draft Gas Abatement Plan will go to the Department
20 of Ecology. They'll review, provide response, and
21 by the first of April, we'll file our final Gas
22 Abatement Plan with Ecology. And with all of that
23 preparation, hopefully, they approve our TDG
24 exception for the fish spill season, which starts in
25 April and runs through the end of August.

1 And if we throw the additional requirement in
2 there, that we receive FERC approval of the Gas
3 Abatement Plan prior to implementation,
4 realistically, I don't think that we can meet that
5 timeline in order to be able to meet the TDG
6 exemption for fish spill, in order to meet our ESA
7 requirements under the HCP. So, I just offer that
8 up as an example.

9 In a lot of cases in the EIS, it's a really
10 good idea to require FERC's approval prior to
11 implementation. But on some of these actions that
12 are ongoing and renewed annually, the regulatory
13 process is a little bit onerous and potentially puts
14 us in a no win situation with competing regulatory
15 jurisdictions.

16 There are several of those that caught my eye.
17 I just wanted to point one out. We'll respond in
18 detail where we see those potential conflicts in our
19 written comments. But I just wanted to bring to
20 your attention that it would be great to take a
21 really critical look at what is required for each
22 measure for implementation. And does it really meet
23 the public interest standard to require FERC
24 approval or to require FERC approval prior to
25 implementation or if just the filing of plans and

1 reports where there are other regulatory agencies
2 with local experience and expertise that are kind of
3 watchdogging that public interest already? So thank
4 you.

5 MS. NGUYEN: Thank you Bo. Let me touch
6 on that a little bit. Approving of plans, it's our
7 norm. We're going to do it. But we can always work
8 with you on that implementation and approval time
9 frame. And that, obviously, will not come into the
10 orders as being written an issue. But before
11 implementation, it's the way we do our business;
12 it's going to happen. But like I said, we can
13 always work with you on those time lines and time
14 frame.

15 If you need approval, our norm has been 90
16 days. It's been anywhere from 30 to 90 days. But
17 if you need something less than that, and if you
18 bring that to our attention, we can work with you.
19 Our Division of Hydro Compliance will work with you.

20 MR. CUTLIP: I guess to add to what Kim is
21 saying, we appreciate any specific comments you
22 have. For example, how quickly it takes Ecology to
23 turn that approval around. And while you may think
24 that it's a bit onerous to have the Commission
25 approve all your plans, it's pretty clearly defined

1 in the Settlement Policy Statement that Commission
2 approval is required for all plans. And that's
3 pretty much been in place since September of 2006
4 when the policy statement was issued. So that's
5 pretty standard practice at the Commission, and I
6 think it's pretty consistent with recent precedent
7 in all of our other orders.

8 MR. PATTERSON: Yeah, I'm not going to
9 dispute that. I'm just kind of looking at it
10 concerned with implementation and not seeing how we
11 could maintain compliance with the multiple
12 jurisdictions, with really an iterative annual plan.
13 And in particular, with the type of reactive
14 in-season modifications that may be required during
15 peak out migration of juvenile spring Chinook and
16 some guidance on how to not get in jeopardy. I
17 guess we'll work with you down the road.

18 MS. NGUYEN: We try to move things along,
19 really.

20 (Laughter.)

21 MR. BICKFORD: Just one fact check. The
22 2009 Rocky Reach order did not require approval of
23 the Gas Abatement Plan by FERC, and did not require
24 approval of the Sturgeon Broodstock Collection
25 Management Plan.

1 MS. NGUYEN: But I'm sure we had a good
2 reason for that.

3 MR. CUTLIP: We look forward to your
4 comments.

5 MR. LEWIS: Well, we don't have a fancy
6 presentation-

7 COURT REPORTER: I'm sorry, I don't
8 remember your name from last night.

9 MR. LEWIS: I'll get to that. But we
10 don't have a fancy presentation for our comments,
11 but we do have concerns related to the EIS.

12 First of all, again, I'd like to thank the
13 Commission for coming here for these conventions,
14 for these hearings related to the project. My name
15 is Steve Lewis, spelled, S-T-E-V-E L-E-W-I-S, and I
16 coordinate the relicensing activities in the Big
17 Columbia River for the service.

18 First of all, we have numerous general comments
19 as well as specific comments related to your
20 document. I simply would like to touch base on the
21 more general concerns, as I'll be filing specific
22 comments by the Commission's May 31st deadline for
23 this document.

24 We have worked with PUD for numerous years in
25 the negotiation of this new license for the project.

1 As you are aware, these efforts have culminated in
2 the Aquatic Settlement Agreement, which provided
3 assurances related to bull trout and Pacific lamprey
4 resource issues. We support the agreement, as we
5 are a signatory to it.

6 We have also filed numerous 10(j)
7 recommendations, Section 18 fish rate prescriptions
8 for this proceeding, which are consistent with this
9 agreement and approved by Douglas PUD.

10 I guess our main concern is we are unclear as
11 to why the document did not support numerous
12 measures associated with the PUD's actual proposal
13 for the relicensing of the project, specifically,
14 the measures inherent to the various measures
15 inherent to the Bull Trout Management Plan, Pacific
16 Lamprey Management Plan, as well as the service's
17 10(j) recommendations and fish rate prescriptions.

18 Just to highlight and to refresh, bull trout is
19 a listed species under the ESA, and the Pacific
20 lamprey is experiencing a precipitous decline. All
21 the measures contained in the agreement will ensure
22 that associated project effects to these species are
23 minimized for the next 30 to 50 years. I'd like to
24 also emphasize that Section 18, fish rate
25 prescriptions, are mandatory for FERC regulated

1 projects. And we strongly recommend that the
2 Commission's preferred alternative includes these
3 prescriptions.

4 I just want to briefly discuss some of the
5 reasons as to why our fish rate prescriptions and
6 10(j) recommendations should be supported in their
7 entirety for the new license, realizing that these
8 examples are not all-inclusive.

9 For example, the project in relationship to
10 Pacific lamprey currently does not meet the upstream
11 safe, effective and volitional passage standard for
12 adult Pacific lamprey. The Commission's record is
13 replete with information regarding this issue, and
14 yet the document's analysis for picking and choosing
15 certain measure related to our fish rate
16 prescriptions regarding this issue is misleading.

17 The document also cites a lack of evidence or
18 lack of sufficient detail regarding the execution of
19 measures that you cited, related to bull trout and
20 Pacific lamprey. But I would just like to emphasize
21 that many of the tools, measures and methodologies
22 inherent to the applicant's HCP also lack sufficient
23 detail or methodologies in some cases, related to
24 some of the tributary projects or methodologies, in
25 terms of deciphering adult upstream passage. But

1 yet those measures, as we are aware, have been
2 adopted or supported within the confines of the
3 document.

4 Also, absence of evidence should not excuse
5 Douglas PUD from also investigating current and
6 future effects to aquatics, such as juvenile lamprey
7 because certainly, the new license is expected to
8 range from 30 to 50 years, and effects may arise
9 over the course of this time frame.

10 Finally, the last thing I would like to note is
11 the document also discusses how a project affects
12 the bull trout at the Douglas PUD, Twisp Weir and
13 other off-site hatchery facilities and should not be
14 assessed since these facilities are located outside
15 the boundary. However, at least in our mind, that
16 represents a contradiction in terms of the analysis
17 that you presented in the document.

18 For example, as we are aware, the HCP forms the
19 foundation of the Aquatic Settlement Agreement and
20 its execution of various upstream and downstream
21 passage measures and tributary and hatchery
22 components. So, associated effects to bull trout
23 should be assessed since this species has been
24 documented to actually use this facility outside of
25 the project boundary.

1 In summary, therefore, we strongly recommend
2 that the final EIS accept the agreement, the
3 Aquatics Settlement Agreement and Services 10(j) and
4 Section 18 prescriptions in their entirety for any
5 license to be issued for this project. And that's
6 it. Thanks a lot.

7 MS. NGUYEN: Thank you, Steve. Just to
8 follow up. Our settlement agreement, which was
9 issued on September 21st, 2006, the settlement
10 policy, looked with great favor on settlements and
11 encourages them. However, it can not automatically
12 accept the settlement or any of the provisions in
13 the settlement. So what we've been doing recently .
14 . . . recently, there was a recent order is parsing
15 them out and breaking them up and looking at each
16 plan and provisions under each of those plans, not a
17 settlement as a whole when we do our NEPA analysis.

18 MS. IRLE: Hello, my name is Pat Irle.
19 The last name is spelled I-R-L-E. I work for the
20 Washington State Department of Ecology. I'm just
21 going to do a really brief statement here today,
22 overall view, but we do intend to provide a letter
23 before the end of the month. Just wanted to know .
24 . . . we're responsible for issuing this Section 401
25 certification under the Clean Water Act. We worked

1 with the other settlement parties, including the
2 U.S. Fish and Wildlife Service, the State Department
3 of Fish and Wildlife, the Yakama and Colville Tribes
4 - Who else? - the U.S. Bureau of Land Management
5 and Douglas PUD to develop the Wells Aquatic
6 Settlement and its six aquatic resource management
7 plans.

8 We worked together to develop studies and
9 project impacts, to evaluate the results and to
10 develop the goals and objectives and specific PMMEs
11 to be implemented under the new license. We also
12 worked together to develop procedures to continue to
13 work together to implement the measures, and we
14 signed the Aquatics Settlement Agreement.

15 We support the Aquatic Settlement Agreement
16 because it allows federal and state agencies and
17 tribes to use their technical expertise in a
18 flexible manner and, as new information becomes
19 available, to modify the activities to improve
20 implementation measures. Flexibility is a key
21 feature of adaptive management, and this, as someone
22 noted, is a 50 year license. It's a really
23 valueable feature.

24 But with adaptive management and work groups
25 were features of the 401 certifications for the

1 Rocky Reach and Priest Rapids projects as well,
2 mandatory conditions.

3 Just wanted to note a specific feature of water
4 quality parameters. The temperature TMDL was
5 included in those other two 401 certifications, as I
6 mentioned, and will be included in this 401
7 certification as well. We recognize the difficulty
8 this may pose in preparing an EIS, but it is also
9 necessary to provide this assurance that the water
10 quality standards of the state will be met. Thank
11 you.

12 MR. VERHEY: Hello, my name is Patrick
13 Verhey. I'm a biologist with the Washington State
14 Department of Fish and Wildlife. I'll make my
15 comments very short here. I would like to thank
16 members of FERC for travelling out here to Eastern
17 Washington to meet with us. We appreciate your
18 presence here and the ability to talk with you.

19 I want to recommend that you include all
20 elements of the Aquatic Settlement Agreement in the
21 staff recommendations in the final EIS, FERC staff
22 recommendations. Thank you.

23 MR. BICKFORD: Shane Bickford, Douglas
24 PUD. Just a little question about the HCP. The
25 applicant and all the interested parties have

1 recommended the reauthorization of the HCP, but as
2 currently written, the DEIS appears to treat the HCP
3 as a measure to carry forward based upon the 2004
4 order. And we were interested in whether the FEIS
5 was going to actually include consideration of
6 reauthorization as opposed to how it is currently
7 treated? So that's the first question, and I'll
8 have a follow-up.

9 MS. NGUYEN: We will have an article that
10 says, "Continue implementation of the HCP."

11 MR. BICKFORD: So, I guess this is a
12 question, but it might also come across as a
13 statement to clarify for me. You specifically
14 recommend that the FERC treat the HCP in a manner
15 similar to how they treated it in the Rocky Reach
16 EIS in the 2009 Rocky Reach License Order? The HCP
17 was specifically reauthorized, and its costs were
18 included in the developmental analysis and the
19 license determination for the project.

20 The current EIS, as written for Wells, does not
21 include the cost, but it includes the measures,
22 which is an audit construct, including the
23 requirements without giving the licensee credit for
24 all of the expenditure for future actions.

25 We feel this is a significant inconsistency

1 between two adjacent projects, and I would like to
2 see if there is a way that inconsistency can be
3 rectified?

4 MS. NGUYEN: And I know your inconsistency
5 with the Rocky because I worked on that. But as you
6 know, or if you have read, we flipped going from the
7 EIS in Rocky, between the EIS in Rocky, and the
8 order. In the order, although we stated in the EIS
9 that we included all of those costs in
10 consideration, but when it came time to the order,
11 that decision was overturned by the Commission. And
12 so, none of that was taken into account, because it
13 was considered to be already approved HCP measures.

14 MR. CUTLIP: I'd like to add to what Kim
15 is saying. I think if you look at the order and the
16 rehearing order, it specifically addresses that
17 issue towards the discussion of the license term.
18 And to me, it's pretty clear. I can point you to
19 where it says that.

20 MS. NGUYEN: I'm sure Shane has it
21 memorized.

22 MR. BICKFORD: Yeah, I have a copy of the
23 order. I know where it says that. I just was
24 trying to understand the inconsistency. It sounds
25 like staff went ahead and included the cost in the

1 EIS, but then the Commission actually overturned
2 that and said, "No, we're not including the copy."

3 MR. CUTLIP: Exactly.

4 MS. NGUYEN: That's exactly right.

5 MR. BICKFORD: I appreciate your
6 clarification.

7 MS. GONZALES: Hello, my name is Jessica
8 Gonzales. G-O-N-Z-A-L-E-S. I work for the U.S.
9 Fish and Wildlife Service, and I would like to first
10 thank the Commission for having this meeting, but
11 I'd also like to recognize Douglas PUD for the
12 excellent coordination and engagement that they've
13 had with the U.S. Fish and Wildlife Service
14 throughout this licensing.

15 And in regards to that comment, I would like to
16 ask the Commission to further explain the not
17 adopting a measure in the Bull Trout Management
18 Plan. It's on page 225. It states, "We do not
19 recommend the proposed plan measure that would
20 require Douglas PUD to participate in regional
21 information exchanges for bull trout research and
22 monitoring. While coordination and consultation
23 would be conducted during the implementation of bull
24 trout monitoring studies, participation in
25 information exchanges would be too broad in scope

1 and would not be an enforceable license condition
2 and would not be necessary to address or mitigate
3 project effects."

4 I would specifically like perhaps more comment
5 on what the Commission meant by, "Too broad in
6 scope, unenforceable and not necessary to address
7 mitigation project effects."

8 MR. CUTLIP: Well, I think what we were
9 talking with that specific measure is I'm not sure
10 how we could have a license article that says, "You
11 must participate in a regional conservation group."
12 I mean, I'm not sure to what end, I guess, would
13 that coordination and consultation entail? And then
14 how could we ensure that it was actually
15 accomplished according to these vague parameters
16 that are undefined at this point?

17 So, from an enforceability standpoint it seemed
18 very difficult to enforce. I don't even know how
19 you could craft a license article that would say
20 that. That DHAC could, at the end of the year could
21 say, "Oh yeah, they complied with that license
22 requirement."

23 And then also, the aspect related to the
24 nonproject related. The way we look at it is you're
25 talking about regional coordination, which is a very

1 broad, encompassing measure, again, not clearly
2 defined. It doesn't appear as though it would be a
3 specific measure to protect or enhance bull trout at
4 the project. It's just this sort of
5 all-encompassing . . . I mean, it wasn't specific
6 enough that I could see how we could write a license
7 article and then make it enforceable. And then
8 also, it just didn't appear to have a clear nexus to
9 the project.

10 MS. IRLE: Okay, well, perhaps we could
11 further clarify that. I think that the specificity
12 could be in the intent, and I think the intent of
13 good coordination, having a process and the process
14 can change, the Aquatic Settlement Agreement, I
15 believe, makes that flexibility and that the
16 communication would occur on these topics at a
17 regular basis. And that, that could be enforced
18 through meeting notes, through the participation
19 records and so forth. I think it's just vital that
20 coordination for a project in the Columbia go beyond
21 it's scope, to the management of the species
22 throughout the Columbia system.

23 MR. CUTLIP: And by all means, we would
24 appreciate . . . there is a pretty common recurring
25 theme in the comprehensive development where we had

1 problems with unspecific or not clearly defined
2 measures. We would definitely appreciate and
3 welcome more specific measures as we move forward to
4 the order.

5 MS. NGUYEN: We didn't see how we could
6 make you come to a meeting at 5:00 p.m. on
7 Wednesday.

8 MS. IRLE: Right, and I understand that.
9 I just think that the element of having coordination
10 on a regular basis with the entities that are
11 involved in fisheries management would be a
12 excellent thing to have as part of the license.

13 MR. LEWIS: Can't Douglas PUD provide
14 evidence of their activities on a yearly basis, for
15 the record? Because, they actually do these
16 activities right now.

17 MR. CUTLIP: And that's great, and we
18 completely encourage folks to do that. But as the
19 measure was written, again it's not . . . unless you
20 want us to start putting provisions in it to make it
21 more enforceable, I just wasn't sure really where to
22 go there. And I couldn't craft an article based on
23 what was provided in the settlement agreement.

24 MS. IRLE: Well, I guess we can talk in
25 the existing work group, that maybe include

1 something in the 401 cert that says, "And provide
2 annual notes about the meetings that you attend, or
3 something.

4 MR. BICKFORD: Yeah, the intent was the
5 annual report was going to provide the documentation
6 that the coordination took place. Similar to what
7 we did this year with the annual report.

8 MS. IRLE: Well yeah, one was for the work
9 group meetings.

10 COURT REPORTER: I'm sorry, the mic is not
11 picking you up.

12 (WHEREUPON, statements were made off the record,
13 with the permission of Ms. Nguyen.)

14 MR. LEWIS: I just had one last concern.
15 This is Steve Lewis, Fish and Wildlife Service.
16 S-T-E-V-E L-E-W-I-S. The applicant, Douglas PUD,
17 currently partakes in or facilitates the Aquatic
18 Settlement Working Group. And I just wanted to be
19 on the record to say that, that group is very
20 effective in terms of coordination of protection,
21 mitigation and enhancement measures as they relate
22 to those species, as well as to cross coordination
23 to the plant species under the guise of the mid
24 claim HCP.

25 So I guess my question is, and I read your

1 analysis within the confines of the document, but I
2 guess my question is, how can a measure such as
3 coordination or formulation of coordination groups
4 such as that respective group, the Aquatics
5 Settlement Working Group, as well as the Terrestrial
6 Working Group not be considered an actual license
7 article or license measure? And I'll take my
8 response on the line.

9 MR. CUTLIP: Would you like us to respond
10 to that?

11 MR. LEWIS: Yeah, please.

12 MR. CUTLIP: Okay. So when I looked at
13 the Aquatic Settlement Agreement, I didn't see a
14 specific proposal for a license requirement that
15 this Aquatic Working Group be established. So, I
16 think that's why you're not seeing an article. It's
17 talked about in the settlement agreement, but I
18 don't recall there actually being a specific
19 measure. There was recommendations submitted that,
20 "You must use these groups to coordinate and do this
21 and these sorts of things."

22 We wouldn't have a problem requiring them, like
23 for having a license article that says, "Establish
24 the Aquatic Settlement Working Group." We see those
25 things all the time in other settlement agreements

1 and other licenses in the region. I just didn't
2 remember seeing a specific proposal like a license
3 article or a plan that addressed that issue.

4 MR. LEWIS: So you want us just to tailor
5 it more towards actual acronym of that group? If
6 that makes sense.

7 MR. CUTLIP: I was thinking that they were
8 two different things. So there is the regional
9 coordination stuff, and then there is the Aquatic
10 Settlement Working Group.

11 MR. LEWIS: Right, right, they are, right.
12 Two separate things.

13 MR. CUTLIP: I mean, did we miss
14 something? Did you propose a Settlement Working
15 Group that you intended us to have an article to
16 address?

17 MR. LEWIS: Right.

18 MR. VASILE: My name is Jim Vasile. I am
19 with Davis Wright Tremaine; I'm the outside
20 licensing counsel for Douglas PUD.

21 And I think if you look at the Joint Offer of
22 Settlement that was made by all the parties, the
23 request was to accept and approve the Aquatic
24 Settlement Agreement and make it a part of the
25 license. And that ASA is the document within which

1 we created the Aquatic Settlement Working Group,
2 that is going to be the coordinating committee for
3 the implementation of all the management plans.

4 So it is an integral package, and I think the
5 concern we have is that it was only a brief mention
6 of the ASA in one paragraph in the DEIS, and then,
7 you went off and looked at each management plan in
8 isolation. And that's what we would like you to
9 reconsider and take a closer look because we feel
10 like we tried to adhere to the new Commission
11 policy, and stay away from things that made the
12 Commission concerned in the past about approving
13 settlement agreements.

14 And like the off-license agreement with WDF&W
15 . . . so again, we think that the ASA is squarely
16 within the Commission's jurisdiction and we would
17 like that to be considered and adopted in the new
18 license process.

19 MR. FRANSEN: My name is Steve Fransen,
20 last name F-R-A-N-S-E-N. I'm with the National
21 Marine Fisheries Service. I did not sign up to
22 speak, but I have been a part of may relicensings
23 and other settlement agreements. And just on
24 listening to this, thought maybe I would offer a
25 comment regarding the Aquatic Settlement Agreement.

1 And having worked with the FERC a time or two over
2 the last 20 some years.

3 I think that settlement agreements seem to work
4 best when we forward them to you folks. Where in
5 each part I note that this settlement agreement
6 includes plans for sturgeon, bull trout, lamprey and
7 other species, that if each of those begins with a
8 part that says, "For potential license inclusion and
9 convenience, the licensee shall," followed by the
10 performance of some action, whatever the action is.
11 Is that sort of, you were saying, Matt, that you
12 didn't see some enforceable action. You need to be
13 able to check off your list at the end of the year
14 of did the licensee perform the specified action
15 under their license?

16 And it sounds like there is a disconnect in
17 provisions of the Aquatic Agreement and that sort of
18 thing. Not being familiar with it, not being a part
19 of it, I'm kind of venturing out on a limb. But,
20 just hoping to offer a useful comment.

21 MR. CUTLIP: Yeah, I mean, there were
22 things that to us would appear difficult to enforce,
23 difficult to craft. License articles that DHAC
24 would be able to look at and really check off -
25 exactly as you were saying - at the end of year.

1 That yes, this measure was done, and it was done
2 within this clearly defined.

3 MR. FRANSEN: So if the parties had
4 something in mind when they crafted this, then it
5 sounds like it's almost a matter of semantics and
6 word smithing and rearranging this, so as to get it
7 into effective license language? Is that . . . am I
8 way far out here?

9 MR. BICKFORD: I think it's a good
10 question, Steve. We did submit in the Joint Offer
11 of Settlement proposed license articles for
12 implementation of each of the individual management
13 plans. So it's just as the exact statement that you
14 made earlier, Lamprey Plan, Bull Trout Plan, falling
15 into each one of those. That was our intent, to not
16 necessarily burden FERC with having to administer
17 the coordination requirements or the GAP-

18 MR. FRANSEN: Administering coordination
19 is really complicated.

20 MR. BICKFORD: Yeah, and instead just say,
21 "The licensee shall implement the Lamprey Management
22 Plan as described in the Aquatic Settlement
23 Agreement." And if there are differences that FEC
24 has, they could always strip, with these exceptions.
25 But instead they just-

1 MR. CUTLIP: Yeah, I'm not-

2 MR. BICKFORD: Haven't been treated at all.

3 MR. CUTLIP: Well, with the way it was
4 presented, I mean, clearly, we looked at your
5 aquatic license articles, but the way it was
6 structured didn't really work for FERC when it comes
7 to writing a license.

8 MR. FRANSEN: It sounds like there is a
9 path through this. It just remains to be found.

10 MR. BICKFORD: Is there any guidance FERC
11 can give us on how to-

12 MR. CUTLIP: Let me give you an example.
13 When it comes to all of the adaptive management
14 provisions . . . because I think that the way it
15 was structured. The way I interpreted it, you had
16 the articles set up so that you were going to come
17 in and do the adaptive management measures in the
18 future, through your article, through your annual
19 reporting mechanism?

20 Where I've seen that work in the past is only
21 when you have a clearly defined set of parameters
22 that the annual report basically would facilitate
23 choosing those parameters moving forward, based on
24 whether you achieve or do not achieve a certain
25 performance criteria or whatever. So, depending on

1 what you're talking about. But for example, on the
2 recently issued Clackamus license, the settlement
3 parties had a proposal to address downstream fish
4 passage at one of their large dams using a tiered
5 approach. And it was set out in the settlement
6 agreement that each tier would be selected based on
7 whether or not certain performance standards for
8 downstream passage were achieved after
9 implementation of each tier. So everything was
10 clearly defined. Then they would use the annual
11 report to come in and say, "Okay, we either met or
12 did not meet it. Now we're moving forward to the
13 next tier, if necessary."

14 In this instance, what we have is a lot of very
15 undefined future potential measures that would be
16 implemented if certain things happen. And if you
17 look at the settlement policy statement, it very
18 clearly addresses this very issue, and it says, "The
19 only way adaptive management works for the
20 Commission is if we have an opportunity at
21 relicensing to evaluate the effects of the future
22 potential measures that would be implemented." So
23 just from a very basic level, the settlement
24 agreement doesn't work for FERC because of the way
25 the adaptive management was structured.

1 I don't know what else to say. To me, it's
2 pretty clear if you look at the settlement agreement
3 and recent precedent that, that's the way we deal
4 with adaptive management. If you look at the Rocky
5 Reach order, you see things in the Article 401(b)
6 that are the very same things that you're talking
7 about here, future potential measures to improve
8 bull trout passage and so forth.

9 It says, "You must first file an application to
10 amend the license before we will be able to approve
11 those measures."

12 MR. WINCHELL: I think one important
13 element that the Commission is looking for is some
14 kind of bounds and understanding of what the range
15 of measures that might be implemented to meet those
16 objectives within adaptive management. So they need
17 to know, sort of the nature of the measure and what
18 are some of the extremes, in terms of the costs and
19 the types of measures that might be implemented.

20 MR. LEWIS: Well, what if you don't have
21 the appropriate methodologies to assess a particular
22 life history stage? I think resorting to an
23 amendment of the license does not favor the species.
24 It takes a long period of time to file an amendment,
25 and that's at the risk of the species.

1 So I think it's better, and maybe that's . . .
2 we can kind of work when we submit our modifieds.
3 But I think it's better to have a construct, which
4 we attempted to do with our preliminaries, that
5 defines that process in the license articles. But
6 just to simply throw it out or pick and choose it,
7 to resort to a license amendment, I don't think is
8 in the public interest or the interest of the
9 various aquatic species.

10 MR. CUTLIP: Yeah, and I understand what
11 you're saying. But for example, I'm assuming
12 you're talking about, like juvenile lamprey?

13 MR. LEWIS: Right.

14 MR. CUTLIP: And the lack of a technology
15 to study survival through the project, things of
16 that nature? We can't do our benefits and cost
17 analysis on what the cost of that study would be
18 because we have no idea what the technology would
19 look like. So, if at some point down the road they
20 do develop a technology, but it costs a million
21 dollars - this is just clearly an exaggeration - but
22 a million dollars a tag to do it? We would be a
23 pre-approving something now that could be very
24 costly in the future. And it's pretty clear if you
25 look at the Settlement Policy Statement in the

1 recent orders that, that's inconsistent with
2 Commission policy and recent precedent.

3 MR. LEWIS: If I'm not mistaken, I do
4 believe the Boundary proceedings as well as a couple
5 of other proceedings had similar measures. And yet,
6 within your NEPA document, those synonomous measures
7 have been actually approved through the Commission's
8 analysis?

9 MR. CUTLIP: Well, I think if you're
10 talking about Boundary, we haven't issued an order
11 yet. So I'm not sure the Commission has had an
12 opportunity to act on that. If it's something that
13 was recommended by staff, I wouldn't be able to
14 speak on that because I didn't work on that project.
15 The only thing I can look at is what's happened in
16 the past that was approved by the Commission.

17 MR. LEWIS: Okay, I understand.

18 MR. BICKFORD: But nothing approved by the
19 Commission prior to 2006, because of the new
20 Settlement Guidance Policy?

21 MR. CUTLIP: Things have changed since
22 2006, if that's what you're asking, correct. So
23 yes, it would not be in your best interests to look
24 at things that were issued in the earlier part of
25 the decade.

1 MR. BICKFORD: So what about the Rocky
2 Reach reauthorization of HCP that includes adaptive
3 management for all the HCP committees?

4 MR. CUTLIP: Are you sure it was
5 reauthorized, or was it just-

6 MS. NGUYEN: Continued.

7 MR. CUTLIP: Continued implementation, per
8 a mandatory condition that said, "You must continue
9 to implement the HCP."?

10 MR. VASILE: Jim Vasile. It seems clear.
11 Are you suggesting that the Commission doesn't have
12 to look at the HCP and new licensing and ask whether
13 it satisfies the relicensing criteria at that time,
14 on the record? I mean is that your position?

15 MR. CUTLIP: I think what I'm saying is I
16 think we have a mandatory condition from NIMFS,
17 Section 18 prescription that says, "You must
18 continue to implement the Wells HCP." And so, I
19 think what staff is recommending is continue
20 implementation of the HCP. I don't know that we
21 need to go any further than that because it's
22 already a mandatory condition.

23 MR. VASILE: But it seems to me then, in
24 the 2004 order approving the HCP, it was a specific
25 recognition, I think it was in paragraph 54 or 55,

1 that the HCP approval at that time, would not
2 necessarily be binding on the Commission at
3 relicensing, citing the Yakama document. That there
4 would have to be a reevaluation, that while the 2004
5 decision would likely influence the relicensing
6 decision, it couldn't predetermine it.

7 MR. CUTLIP: I don't want to speak any
8 further to that because I don't want to tell you
9 what the Commission would do in an order. Whether
10 it would reauthorize or just say continue to
11 implement, that's more of a Commission action. I
12 think at this time, all we're saying in the EIS is
13 that staff is recommending continued implementation
14 of the Wells HCP, consistent with your proposal,
15 NIMFS Section 18 prescription. I don't know what
16 else I can say at this time.

17 MR. LEWIS: Well, that's a little
18 confusing. That seems a little contrary to the
19 actual concept of the Section 18. You just stated
20 that the fish rate prescriptions for . . . under the
21 guise of NOAA Fisheries are mandatory. And so,
22 you're adopting those or continued or whatever the
23 terminology is. And yet, for other measures related
24 to mandatory conditions for lamprey and bull trout,
25 you just kind of pick and choose some of those

1 measures and throw some of those out and/or support
2 those. So you see where I'm kind of coming from?
3 There's no consistency across the board in reference
4 to the non plan species or the planned species.

5 MR. CUTLIP: We're recommending continued
6 implementation of the Wells HCP, which was already
7 authorized by FERC in 2004. Whether it needs to be
8 reauthorized is up to the Commission.

9 I understand what you're saying. There may be
10 things in the HCP that seem to be inconsistent with
11 current Commission policy.

12 MR. LEWIS: Right.

13 MR. CUTLIP: But the HCP was implemented,
14 was authorized in 2004. Policy has changed since
15 that time, and I don't know what else to say about
16 it at this time.

17 MR. LEWIS: I understand.

18 MS. NGUYEN: Anything else? I think Shane
19 might go again.

20 MR. VASILE: Jim Vasile again. I just had
21 a question as to whether you feel that the HCP is
22 outside the scope of your obligation to consult,
23 under Section 7 of the ESA, in connection with the
24 relicensing? That seems to be the message that I
25 got when I read your DEIS, and I'm just puzzling

1 over that.

2 MR. CUTLIP: There were three, basically,
3 issues that we dealt with or that we sort of
4 separated out when we came to our conclusion of,
5 "Not likely to adversely affect." And the first one
6 was we don't see a need to reinitiate consultation
7 on the Wells HCP for UCR steelhead and UCR Chinook
8 because there was already a consultation that was
9 done in 2004. A biological opinion was issued as
10 well as incidental take permits through 2054.

11 We did say we were consulting on the effects of
12 the Wells HCP on designated critical habitat for
13 those species, which was not previously consulted
14 on. And we are also consulting on the effects of
15 the Aquatic Settlement Agreement, on both UCR
16 steelhead, UCR spring Chinook and the critical
17 habitat because that actually was not previously
18 consulted on.

19 So those three different issues resulted in a,
20 "Not likely to adversely affect," call from the
21 Commission. And we are awaiting, well, NIMFS just
22 responded, and it appears as though they are going
23 to ratify it all.

24 MS. NGUYEN: Anything else? Well, thank
25 you very much for coming and thank you for the nice

1 weather.

2 (WHEREUPON, The proceedings were concluded at 11:40
3 p.m.)

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