

1 Appearances:

2 Jennifer Hill, FERC

3 David Turner, FERC

4 John Blair, FERC

5 Burke Wick, Chugach Electric

6 Steve Padula, Chugach Electric

7 Mike Massin, Pinon Services

8 Gary Prokosch, Alaska Department of Natural
9 Resources

10 Todd Glass, Chugach Electric (Heller, Ehrman)

11 Jim Ferguson, Alaska Department of Fish and Game

12 Cassie Thomas, National Park Service

13 Phil Brna, U.S. Forest Service

14 Dave Blanchet, U.S. Forest Service

15 Jan Konigsberg, NHI

16 Phil Steyer, Chugach Electric

17 Karen Demsey, Longview Associates

18

19 Reported By:

20 Susan Campbell, CSR

21

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23

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

2 MR. TURNER: Let's go ahead and
3 get started. I saw many of the faces I
4 recognized from last night or two nights -- yes,
5 last night.

6 MS. HILL: Two nights ago.

7 MR. TURNER: Two nights ago,
8 right. Welcome you to the Scoping Meeting for
9 the Cooper Lake Project. My name is David
10 Turner, if we haven't already met. I'm the
11 project coordinator for FERC for the
12 relicensing.

13 To my left is Jennifer Hill.
14 She's my supervisor in West Branch 1. And to
15 her left is John Blair who will be doing the
16 recreational resources issues for this project.
17 Our fishery biologist is preoccupied with other
18 issues given the Mississippi, so he couldn't
19 make it up here to this one.

20 Real quickly, what we want to do
21 is just make sure -- I'm going to run through
22 some of the objectives we want to accomplish for
23 scoping. Burke is going to give us a very,
24 very, very brief -- since everybody here is
25 familiar with the project -- the current status

1 and overview of the Settlement. And then we're
2 going to talk about the resource issues that
3 we've outlined in the scoping document.

4 The main thing here is we want to
5 make -- well, let me back up, just a few
6 housekeeping things. Hope everybody signed in
7 the sign-up sheets. We're going to give that to
8 the court reporter for the record.

9 And when you talk, we have a
10 couple mikes here just to make sure that she can
11 pick it up. I don't know that we need it. But
12 just to be sure, let's pass it around. And make
13 sure you state your name and your affiliation so
14 we can credit your comments to you.

15 Again, the main thing that we
16 want to talk about here is make sure that we
17 understand the Settlement Agreement that was
18 filed on August 31st, your objectives and the
19 alternatives that were being considered in that,
20 make sure that we've identified the issues that
21 need to be looked at in our environmental
22 assessment relative to those alternatives and
23 maybe talk about the depth of the analysis. If
24 there are some issues there that we've
25 identified that are basically no longer issues

1 or we've mischaracterized it, let us know.

2 With that, Burke, you want to
3 give it a real, real quick review, just for the
4 record?

5 MR. WICK: Sure. All right.
6 We're all familiar with the Cooper Lake Project.
7 This is a picture of Kenai Lake taken from the
8 plant. The Cooper Lake Project encompasses the
9 entire power project from Cooper Lake Dam,
10 intake structure, penstock system, power plant
11 and transmission line that runs from essentially
12 the power plant all the way to Anchorage.

13 We began the relicensing process
14 in 2002. Our license expires in 2007. And we
15 have filed a license application with FERC in
16 April of 2005 this year. And we expect FERC to
17 issue a new license between late 2006 and early
18 2007.

19 As part of the process, we
20 engaged state, federal, local agencies, Native
21 tribes, non-governmental agencies, interested
22 public and wholesale customers. And the major
23 areas of consultation were the project effects
24 on the environment, economic impacts of the
25 project power supply on our customers, cost of

1 the studies that we were going to be
2 undertaking. And we wanted to get an idea of
3 the mitigation measures involved. We engaged
4 everyone early on in working those programs out.

5 We filed a Settlement Agreement
6 based on all the studies we did and all the
7 mitigations people wanted to see in August of
8 this year with FERC. All parties were invited
9 to sign the Agreement. Not all did. But the
10 Settlement signatory parties agree that it's the
11 best framework for what we want to see as the
12 result. And we felt it was better than simply
13 all filing comments and allowing somebody else
14 to make a decision for us on what was going to
15 be your mitigations.

16 The benefits are the project will
17 continue as a cost effective source of power for
18 Chugach members and customers. It gives Chugach
19 assurances of costs over the term of the
20 license. And we would -- everybody has also
21 supported a longer than usual term license for
22 the project based on the costs of the
23 mitigations.

24 Non-power values are we're going
25 to restore some temperatures in Cooper Creek,

1 which should improve the fish habit up there.
2 That should lead to benefits for fish and other
3 wildlife in the area. There will be visual
4 enhancements, recreational enhancements as well
5 in the project.

6 The signatories were Chugach
7 Electric, Forest Service, Fish and Wildlife
8 Service, National Park Service, National Marine
9 Fisheries Service, Kenaitze Indian tribes,
10 Department of -- Alaska Department of Fish and
11 Game, and Alaska DNR, The Fish For Cooper Creek
12 Coalition, Alaska Flyfishers and Alaska Center
13 for the Environment. And just about
14 representatives of all of those groups have
15 attended at least one of these meetings.

16 Within six years of Chugach
17 receiving its new license, we will construct a
18 diversion structure and divert Stetson Creek
19 into Cooper Lake and then divert water out of
20 Cooper Lake into upper Cooper Creek, which will
21 be warmer.

22 This is a conceptual drawing of
23 the diversion structure for Stetson Creek. And
24 this is a conceptual drawing of where the route
25 will run. There was a tour of the project

1 yesterday. And you can see a good portion of
2 the route where surveyors had laid out a rough
3 estimate of where it was going to be so we could
4 do our studies in that area.

5 And this is a conceptual drawing
6 of what the diversion structure would look like
7 when it's constructed in the dam to spill water
8 from the lake into the upper reaches of Cooper
9 Creek.

10 When it's all said and done,
11 we'll be leasing back 10,256 acre-feet from
12 Cooper Creek on an annual basis. An interagency
13 committee will be formed to determine what
14 monthly flows should be released to make up that
15 10,256. There will be a net increase in in-flow
16 to the reservoir that will allow for some
17 additional generation that will help offset the
18 costs of doing mitigation.

19 Chugach will monitor stream flows
20 and temperatures. Agencies will monitor
21 sediment and fish conditions. And Chugach will
22 fund those. That's what the Settlement
23 Agreement says right now.

24 Reservoir operations will remain
25 very much as they are. There will be no new

1 operational restrictions on the project except
2 during the winter months, January through April,
3 will not shut down the plant when Kenai has low
4 flows in the upper river.

5 We're also developing a
6 Transmission Right-Of-Way access and maintenance
7 program as part of the relicensing for the
8 transmission line that is currently part of the
9 license, although was anticipated to be removed
10 from the license. This will still be used to
11 generate a special use permit for the license --
12 or for the transmission line.

13 The roads in the project will
14 continue to be maintained jointly by Chugach,
15 Forest Service and others in the future. The
16 Forest Service is going to continue to permit
17 certain recreation uses around Cooper Lake Dam.
18 As of yet, we're not proposing to open the
19 access road to the dam to recreation. It will
20 be non-motorized.

21 Chugach will construct and
22 maintain a winter use parking lot in the
23 vicinity where people park today near the
24 powerhouse for snow machining and other winter
25 activities in the area. And Chugach will paint

1 the powerhouse to reduce its visual impact on
2 the area.

3 And that's where we are now.
4 FERC has begun processing the final license
5 application. Settlement Agreement has been
6 filed. And FERC has begun their environmental
7 review. We're here to talk about that today.

8 And you all know Steve Padula and
9 myself, for those who want refreshment, that's
10 our contact if you have any questions to look
11 at. And that's it, Chugach's presentation.

12 MR. TURNER: Any questions? All
13 right.

14 With that, I think we can just
15 turn to the resource issues. Again, the main
16 thing I want to do is make sure that we've
17 captured the issues as we understand them. And
18 probably the easiest thing to do is just turn to
19 page 13 in the Scoping Document, if you have it.
20 If not, we have copies up here on the desk.

21 We'll start with Acquatic
22 Resources. Again, that's not my particular
23 expertise, but it is Jenny's. Our resources --
24 this is pretty self-explanatory. We phrased
25 them as questions, basically, as the issues and

1 the things we're going to try to look at and
2 analyze in our environmental assessment in
3 coming up with a decision whether or not the
4 measures proposed are adequate and are in the
5 public interest.

6 They are pretty self-explanatory.

7 The first ones we look at how the project
8 operates and any future land-disturbing
9 activities on water quality, including water
10 temperature, dissolved oxygen, gas saturation,
11 and turbidity in the various systems that are
12 associated with the project.

13 We're going to look at the
14 minimum flows that are necessary for enhancement
15 of aquatic resources in Cooper Creek and Stetson
16 Creek and the objectives associated with that
17 Settlement Agreement in terms of achieving
18 higher water temperatures -- or high water
19 temperatures.

20 We'll look at the flushing flows
21 that are needed to augment the natural flows to
22 maintain the geological processes,
23 geomorphological processes in Cooper Creek.

24 We want to also look at the
25 effect of routing the additional flow from the

1 Cooper Creek basin into the Kenai Lake and on
2 aquatic resources; project access roads and
3 culverts on aquatic resources and what are the
4 effects associated with those; what measures
5 will be necessary for operational compliance
6 monitoring; and whether Cooper Lake fluctuations
7 would have any adverse effects on aquatic
8 resources, particularly macroinvertebrates,
9 arctic char and rainbow trout.

10 We're going to look at the -- the
11 last bullet there is whether -- next to the last
12 bullet, whether diversion of the flow to the
13 powerhouse will cause entrainment of Cooper Lake
14 fish and what effects on aquatic resources would
15 occur from the discharge of the project penstock
16 into Porcupine Creek.

17 The ones with the asterisks
18 there, we intend to look at from the cumulative
19 effects analysis point of view; in other words,
20 the other actions that are going on in the basin
21 that maybe have a synergistic effect with -- of
22 relicensing of the project.

23 Have we missed any issues? Have
24 we characterized issues correctly? Does anybody
25 have any comments? Do we have any additional

1 information that hasn't been filed with the
2 application that may be useful in that analysis?
3 I'll take silence as no.

4 Like I said, we're going to have
5 a number of questions with regards to Settlement
6 Agreement to the actual terms that are included
7 in the Settlement Agreement. But I want to run
8 through the issues first to make sure that --
9 these are the things we're going to look at in
10 the EA as we analyze and make a recommendation
11 to the Commission. So I just want to make sure
12 that we've got the issues that you guys grappled
13 with as you developed the Settlement Agreement
14 and the things that kind of went to your
15 decision-making.

16 For Terrestrial Resources, we
17 looked at -- we're going to look at the increase
18 in Cooper Lake fluctuations on the botanical and
19 wildlife resources, particularly the pale poppy,
20 the effects on the botanical and wildlife
21 resources from the additional minimum flow
22 releases to enhance the trout and salmon habitat
23 in Cooper Creek, the effect on the maintenance
24 of the access roads.

25 And a portion of -- here a

1 portion of the transmission lines that are
2 proposed for inclusion that are currently under
3 license, but we've already made a
4 determination -- I hope everybody noted in
5 there -- that we believe there's enough
6 information to determine that the primary lines
7 are going to be limited to that 6.3 mile 69-kV
8 line to the Quartz Creek substation. So we're
9 going to limit our analysis to that segment.
10 And we're going to look at how that right-of-way
11 management is going to affect botanical and
12 wildlife resources and the spread of invasive
13 weeds.

14 We're also going to look at the
15 construction and operating of the diversion and
16 the access road on the fish and wildlife and
17 botanical resources, including vegetation
18 removal and habitat alteration and disturbance
19 to brown bears and other wildlife. And in the
20 same vein, how the access roads fit into
21 increasing human-bear interactions and hunting,
22 poaching pressure.

23 So any comments, questions?
24 Please give your name and affiliation for the
25 record.

1 MR. BLANCHET: I'm Dave Blanchet
2 with the Forest Service. The power line issue
3 we've discussed a lot amongst our group. But
4 you're saying -- I asked the question
5 frequently, you know, will or will not the power
6 lines be decoupled.

7 MR. BLAIR: Start again. Give
8 your name.

9 MR. BLANCHET: I'm Dave Blanchet
10 with the Forest Service. My question is the
11 power line, the transmission lines in this
12 wildlife section you're suggesting looking at
13 just from the powerhouse to Quartz Creek. Does
14 that imply that the rest of the power line would
15 be decoupled from the license?

16 MR. TURNER: Ultimately, I
17 believe so. We will probably -- the way we
18 typically handle these in other situations is
19 that the Commission retains jurisdiction from an
20 administrative point of view only over those
21 transmission lines until they had the necessary
22 permits.

23 But I just -- for practicality
24 reasons, if there's any specifics associated, I
25 didn't want to look at 90 miles of transmission

1 line that are not under our jurisdiction
2 technically and condition a license to that
3 manner. It's probably not a big deal. But just
4 from a -- from a practical point of view, we're
5 just going to limit the scope of our analysis,
6 if we can, to that first six miles.

7 MR. BLANCHET: Thank you.

8 MR. TURNER: Any other questions?

9 Cultural Resources are pretty
10 self-explanatory. We need to comply to section
11 106. We're going to look at, as part of our
12 NHPA analysis, whether operation and enhancement
13 measures are having any effect on historical and
14 archeological resources and what measures would
15 be necessary to resolve any of those effects.

16 Any questions? Comments?

17 Recreational issues are also
18 pretty well-defined. What effects would
19 creation of diversion and access road have on
20 recreational use? What effects would include
21 parking, traffic conditions on Cooper Lake Dam
22 access road have on recreation in the Cooper
23 Lake area and whether there's a need for
24 additional inventory and periodic assessment of
25 those recreational facilities and public access

1 and whether there's a need for measures to
2 enhance existing recreational sites and add new
3 facilities for improved public access. Okay.

4 MS. THOMAS: I have a comment and
5 a question. The comment is on the middle
6 bullet. I wasn't sure what improved parking and
7 traffic conditions we're talking about on the
8 dam access road as opposed to Snug Harbor Road.

9 MS. HILL: Would you give your
10 name for the record?

11 MS. THOMAS: I'm sorry. Cassie
12 Thomas, National Park Service.

13 MR. BLAIR: John Blair for FERC.
14 In fact, I just penned in, it should be Cooper
15 Lake Dam and Snug Harbor Roads. In other words,
16 you're going to have traffic -- we're going to
17 have to assess as equipment is being hauled up
18 Cooper Lake Dam Road to construct a Stetson
19 diversion. Obviously, that's going to affect
20 any foot traffic, horse traffic or bicycle
21 traffic on that road.

22 And then the same thing with
23 doing the parking lot on Snug Harbor Road. That
24 bullet should be amended to say conditions on
25 Cooper Lake Dam access -- Cooper Lake Dam and

1 Snug Harbor access roads, plural.

2 MS. THOMAS: Thank you. My other
3 comment is just as you're scoping this,
4 something we looked at in earlier phases of this
5 project included water-borne recreation. And if
6 anyone were to comment, that you're looking at
7 water-borne recreation, too. I'm not sure that
8 it's really captured in the Settlement
9 Agreement. But you should know that we did
10 study the suitability of Cooper Creek with some
11 flow restoration for boating, specifically
12 kayaking, creek boating in, you know, creek
13 kayaks.

14 And the conclusion we drew, with
15 a lot of speculation, because we didn't have any
16 actual flows, but we had a lot of people who,
17 you know, knew the resource and knew the kind of
18 recreational activity that might work there, was
19 that although you could potentially kayak the
20 creek, it didn't represent a particularly
21 significant resource compared to other regional
22 opportunities. And so, you know, we did look at
23 that issue. And we also, to a certain extent,
24 looked at the issue of use of the reservoir
25 itself for boating.

1 So I guess it would be accurate
2 to say we considered those things, but kind of
3 dismissed them as recreational enhancements that
4 were high priority within the settlement working
5 group, at least.

6 MS. HILL: Can you explain the
7 evaluations that you did for the lake? You
8 explained a little bit about the --

9 MS. THOMAS: Sure. I guess I
10 assumed that the actual study reports are part
11 of the record somewhere. But basically, the
12 subcontractor who worked on that particular
13 assessment based his work on a field visit that
14 about ten of us made, including several people
15 in this room, in June of '03, I think, two years
16 ago.

17 What we did is to boat across to
18 the dam and from the dam down to the Sterling
19 Highway at the mouth of Cooper Creek. We walked
20 in Cooper Creek as much as was possible. We
21 waded and walked and so on, basically, looking
22 at the creek's gradient and the kind of --
23 trying to guess if there were more water in it
24 what kinds of conditions you would have there if
25 you were in a kayak.

1 And it became clear to us that
2 you couldn't really kayak right from the dam,
3 because of the reach rate downstream of the dam
4 where beavers have been very active and it's
5 pretty brushy. But even if you put in a little
6 further downstream, there would be sections that
7 while runnable would be kind of marginal in
8 terms of navigability. And there would be some
9 short areas with pretty challenging conditions.

10 But overall, for the amount of
11 effort it would take a kayaker to carry their
12 boat in, given that there's no motorized access
13 on the dam access road -- and even if there
14 were, they would still have to find a way of
15 getting their boat off the dam access road and
16 down into the creek itself, which involves
17 navigating a pretty steep slope with a lot of
18 new slides coming in every winter too pushing
19 debris in, it would be a challenging hike in and
20 put-in for not a whole lot of reward.

21 So that wasn't one of the things
22 we focused on when we looked at the flow regime.
23 We weren't -- because it just didn't seem to be
24 a high enough priority to put flows in there for
25 creek boating.

1 And the other thing that's kind
2 of related to that is as you'll see in the
3 Settlement Agreement, there's a requirement that
4 Chugach not cease releasing water for more than
5 a very minimum period in winter. And the Kenai
6 River itself, which is fed in the winter in part
7 by flows that come from the powerhouse, is kept
8 open because of the flow, in part. Or at least
9 it's one of the ice-free rivers in the area.
10 And it is used by rafters all winter because
11 it's ice-free.

12 So that's something that was put
13 in there, I believe, to protect fishery
14 resources. It also will have a recreational
15 enhancement effect, or at least recreational
16 mitigation effect. So that's it.

17 MR. TURNER: As long as we're on
18 the recreation issue, we noticed that there's a
19 lot of discussion -- there have been measures
20 proposed for more the winter recreation aspects
21 off license. We were kind of wondering if you
22 could explain or somebody here could explain why
23 that was going off license as opposed to a
24 desire to have included in part of the license.

25 Anybody want to take a stab at

1 it?

2 MR. PROKOSCH: Are you talking
3 about the parking lot itself? The parking lot
4 itself is the --

5 MR. TURNER: Give your name, sir.

6 MR. PROKOSCH: This is Gary
7 Prokosch, Department of Natural Resources.

8 If we're talking about the
9 parking lot itself, the parking lot itself is
10 going to be constructed on state lands after
11 necessary permitting and such. And I can
12 guarantee you that the state does not want that
13 piece of property within the license boundary.
14 They want to keep as much control of it as they
15 can themselves.

16 Actually, there are other pieces
17 of state land within the boundary that we'd like
18 to see taken out of the boundary, but we know
19 that that's not going to happen, like the land
20 the powerhouse is sitting on and the land where
21 the penstocks are. But I know that we're not
22 going to want more lands added to the boundary.
23 And I can guarantee that.

24 MS. HILL: One of the things that
25 we look at in licensing is what's necessary for

1 public purposes and anything that's affiliated
2 with the project might fall under the license.
3 Are you indicating that there's -- that this is
4 something that would be required regardless of
5 the project being there and so there's not
6 sufficient nexus for us to include that in the
7 license? Because that's one of the things that
8 we look at. If there's a nexus, then we would
9 consider putting something like that in the
10 license.

11 MR. PROKOSCH: I guess what I'm
12 saying is that we're going to have a lease
13 agreement and an agreement with Chugach Electric
14 to build a parking lot at that point. And we
15 don't believe that -- and we believe that the
16 control of how it's built, where it's built,
17 why -- or how it's built and the maintenance of
18 stuff will be part of that agreement and lease
19 agreement with the State of Alaska and don't see
20 any other need for oversight of that portion of
21 the parking lot.

22 MR. TURNER: Let's look at it
23 this way. When you guys were reasoning that
24 that recreational access was needed, what
25 factored into that decision? Was there a desire

1 or a need to use Cooper Lake for those kind of
2 recreational purposes? Or was this unrelated to
3 the project?

4 MR. PROKOSCH: Personally, this
5 is -- my opinion is project there or not there,
6 that winter recreation has been taking place
7 already. It's been doing it for years. There's
8 been plenty of parking. It's not necessarily
9 part of the project. The project is not a
10 reason why they want a recreational --

11 MR. TURNER: Say that last part
12 again for the record. She couldn't hear you.

13 MR. PROKOSCH: Basically, I don't
14 believe that the -- that the parking -- that the
15 winter recreation is taking place due to the
16 fact that the project is there.

17 MR. TURNER: Cassie?

18 MS. THOMAS: Can I offer a
19 counterpoint? I think that's true. I mean,
20 obviously, it's not water-borne recreation that
21 is using the reservoir directly. But I think
22 one of the reasons why you see a concentration
23 of snowmachine use in that area and to a certain
24 extent people going skiing as well is just
25 because of the access road. And if the -- if

1 Snug Harbor Road to the intake didn't exist, you
2 might see people getting into that area using a
3 different route.

4 MR. TURNER: Based on some of our
5 earlier conversations during the site visit,
6 though, it's my understanding that although that
7 road was constructed by Chugach, it's actually a
8 Forest Service road that would be there and they
9 desire to be there, either way.

10 MS. THOMAS: That's complicated.
11 I'll have my colleague from the Forest Service
12 address that.

13 MR. BLANCHET: Let's see. The
14 road is situated all on state lands, but it's a
15 Forest Service easement. At the time it was
16 transferred to the state, the state apparently
17 did not want the responsibilities of the road.
18 So they stated -- Forest Service has a trail at
19 Cooper Lake, the Crescent Lakes trail and
20 recreational opportunities on the lake. So yes,
21 the road does provide access.

22 But the road -- well, the road
23 was built for the power project. It was built
24 for the power project. And the Forest Service
25 has been a partner, I guess I would say, with

1 Chugach on the use of that road.

2 In answer to your question --
3 because we went back and forth on this -- I
4 think from the Forest Service standpoint, we're
5 fairly neutral on the question you're asking,
6 should it be FERC or not be FERC. We are not
7 neutral on the fact that there seems to be a
8 problem here with snowmachine users having good
9 access -- I mean, a good parking area in the
10 winter. I know Chugach has had problems just
11 getting into the powerhouse at all because the
12 road gets blocked with snow machines.

13 And so the district ranger and
14 the park supervisor are very keen on seeing that
15 there's sort of a safe and feasible way for
16 snowmachine users to park. But whether or not
17 that's under FERC license, we've been fairly
18 neutral on.

19 MR. BLAIR: John Blair. Question
20 to the state. If we did include Snug Harbor
21 Road within the boundary, what would this do to
22 the Settlement Agreement?

23 MR. PROKOSCH: I don't know that
24 I can answer that. I can certainly bring it
25 back to my lands people, my land man and see

1 what they say. But, you know, again the state
2 certainly doesn't want to encumber its land any
3 more than it has to. And that would be an
4 encumbrance. And I'm sure that they would not
5 certainly like it.

6 Would it pull us out of the
7 Agreement? I can't say. But the chances are
8 unlikely that it would. But we'd still feel
9 very strongly that it not be part of that, the
10 parking lot itself not be within the boundary.

11 MS. HILL: To clarify, for the
12 reasons that you stated earlier, that it would
13 be necessary that the lands would be -- that the
14 parking lot would be necessary regardless of the
15 project being there.

16 MR. PROKOSCH: Right now, there's
17 no doubt in my mind that that parking lot is
18 necessary regardless of the project. The
19 parking lot is, in fact, necessary. And I think
20 the use of Snug Harbor Road anymore is -- you
21 know, I don't know that Chugach uses it any -- I
22 think the public uses that road more than
23 Chugach Electric does. I think it's more of a
24 public road. It's a recognized public road.
25 Everybody knows it's a public road.

1 MR. WICK: I can add something,
2 too. Burke Wick with Chugach Electric. The
3 Forest Service has indicated, too, that if
4 Chugach did not keep the road open in wintertime
5 for operations, they would not. So it would be
6 a closed road in the winter, which we all
7 recognize with historical use of the road, that
8 would cause a great deal of public consternation
9 to close a road that had previously been open.

10 So because we keep it open for
11 our activities, that gives everybody else the
12 opportunity to get back there. But if we
13 weren't plowing it, there would be more
14 difficult access for people to get back there.
15 So the real nexus is just the fact that we keep
16 the road open for our use.

17 MR. BLAIR: John Blair. Let me
18 tell you what I think I've heard. Snug Harbor
19 Road was built for the purpose of constructing
20 the project, initially. And you still need that
21 road to gain access to your powerhouse and
22 operations at the powerhouse and I assume
23 tendering to the surge tank. So Snug Harbor
24 Road is still vital and part of the project is
25 my initial cut listening to the discussion.

1 I hear the state's rights issue
2 sort of like the people in Montana. Keep the
3 Californians out of Montana. So, you know, less
4 government is better or less government is more
5 government.

6 But at least my initial reaction
7 is that Snug Harbor Road certainly sounds like
8 it's initial part of the current license project
9 to maintain the powerhouse and ongoing
10 operations. So I just want to give my reaction.

11 MR. GLASS: Todd Glass, Heller,
12 Ehrman, on behalf of Chugach. There's legal
13 points that I want to put in there because -- to
14 clarify what you've just said. First thing is
15 that it has been a Forest Service road since
16 1963, since the time it was built. The Forest
17 Service actually paid Chugach to build the road.
18 It was not in the initial project and it has
19 never been within the initial project.

20 Rather, the Forest Service paid,
21 I think, the sum of \$100,000 back in the late
22 '50s --

23 MR. WICK: 1957.

24 MR. GLASS: -- to have this road
25 built. And increasingly over time, there was a

1 recognition that the public use would go beyond
2 what Chugach's use was for the purpose of
3 building the project and maintaining the
4 project. Over time, the Forest Service has
5 taken over the greater maintenance of that road
6 for the use of the trails and the other public
7 lands up in that area.

8 So I think it would be incorrect
9 to say that it was ever a project road,
10 specifically. It has always been a Forest
11 Service road. And over time, it has
12 increasingly become a more publicly-used road.
13 And today, I think that there's counters on it
14 right now. The Forest Service is looking at the
15 use. And it's vastly more used by the public.

16 So I think that everybody that
17 was in the negotiating group, nobody ever
18 thought -- or the consensus of the group that
19 signed the Settlement was that Snug Harbor Road
20 should not be a project road. And I think that
21 it would be incorrect to say that it would be.

22 MR. BLANCHET: Well, I take
23 exception to what Todd said, that we felt that
24 it should not be, because the Forest Service has
25 asked repetetively that it be made a part of the

1 project. But that being said, we feel like the
2 Settlement process has been -- has met our
3 concerns for the issues of maintenance and so on
4 on Snug Harbor Road.

5 MR. TURNER: We're not
6 suggesting. We're just trying to get a handle
7 on the way things were laid out, the thought
8 processes that went into your Settlement
9 Agreement to understand it. The thing you have
10 to understand from our position is we look at
11 project resources. A major part of that is
12 recreation, providing recreational access to
13 resources associated with our project.

14 Looking at the Settlement
15 Agreement and the measures being proposed,
16 trying to understand where you're coming from in
17 proposing to do things off license, we want to
18 be able to explain that reasoning to the
19 Commission and as it makes its decision whether
20 or not this truly is needed for project purposes
21 and we would want to include it as part of our
22 license or to go along with the Settlement.

23 Staff isn't saying one way or the
24 other. We just want to have a good, clear
25 understanding of what's going on here. That's

1 the reason the questions and the discussion. So
2 thank you very much for your insights. And
3 we'll take it back.

4 Are there any other comments
5 before we go to something else?

6 MR. BLANCHET: Well, I guess one
7 thing I'd say about that is the reason we -- the
8 greatest reason, of course, we'd want it to be
9 under the license would be that then we would
10 have 4(e) conditioning authority on the road.
11 So that would give us a certain leverage.

12 But in the -- you know, speaking
13 for the Settlement, the Settlement process, I
14 think, was -- we all felt pretty good about it.
15 And so what I'm saying is the level of trust and
16 confidence between the group was pretty high.
17 And so from the Forest Service standpoint, when
18 I say we're neutral on this, we feel like we got
19 to a good place in terms of the sort of
20 conditions that we might be considering under
21 4(e) in the negotiation process.

22 MR. TURNER: Thank you. The last
23 two resource issues, just before we go into some
24 more questions on the Settlement Agreement, the
25 Visual Resources, we were looking at the effects

1 of creation of diversion dam and access road on
2 the visual quality of the environmental setting
3 as well as the effects of the existing project
4 facilities on the aesthetic quality of the
5 environment. Did we miss anything in terms of
6 the aesthetic issues?

7 And then lastly, we will look at
8 the developmental side. As always, we're
9 charged with trying to find a balance of what's
10 in the public interest of looking at the cost,
11 the economic cost of the project as well as the
12 benefits gained from those resources. So we'll
13 do an analysis of those things in making our
14 public interest considerations.

15 With that, I think we do have a
16 couple more questions for you on the Settlement
17 Agreement. You want to take this, John Blair?

18 MR. BLAIR: Yeah. On the
19 Settlement Agreement related to Visual
20 Resources, the article on Visual Resources
21 indicates that the powerhouse and the intake
22 structure to be painted. I understand it's
23 going to be bright orange; is that --

24 What about the surge tank? Is
25 that out of the picture? I just want to be able

1 to dismiss it if I need to with the others.
2 Surge tank is green right now. Powerhouse
3 intake is nice bright concrete.

4 MR. BLANCHET: The request for
5 painting came from Forest Service and the
6 landscape architect. And I think the main issue
7 there is that they identified the Cablevision
8 from the road. And in particular, the highway
9 along Kenai Lake going to Seward that the -- you
10 know, this was -- that the power plant was the
11 only really kind of visible structure for miles
12 and miles along the lake. And in certain
13 conditions, it was real visible.

14 The landscape architect did not
15 address the surge tank at all. And my sense of
16 that is that they didn't feel that that was a
17 visually obtrusive structure.

18 MR. BLAIR: Okay. Thank you.

19 MR. TURNER: Anything? A number
20 of the provisions in the -- there's one article
21 proposed in the Settlement Agreement that deals
22 with funding of a number of studies for
23 monitoring geomorphological processes. See if I
24 can put my finger on it.

25 MS. HILL: 405.

1 MR. TURNER: Article 405. Do
2 you -- this is kind of a heads-up type of an
3 issue as much as it is a question. The
4 Commission has been very -- has tried to be very
5 cognizant of these issues. We like to approve
6 measures as opposed to requiring of funding of
7 an issue. So the hook that we have is on the
8 licensee to accomplish something, not on other
9 entities.

10 A number of these measures may
11 very well be implemented by the state with all
12 the good intentions in the world, but we have no
13 abilities to ensure that unless we require the
14 licensee to implement the particular measure.
15 We've often seen this handled by requiring the
16 licensee to do it and then the licensee would go
17 out and contract with the state or whoever to
18 accomplish these measures or through a
19 consultant. But we don't usually like to see
20 just a requirement to write a check to go do
21 something.

22 So there's a couple of questions
23 here. But the first one was a point of
24 clarification. When we make a decision or
25 recommendation, depending on the outcome of our

1 recommendations, it may be that this particular
2 article was reorganized a little bit so Chugach
3 has the responsibility of conducting those
4 efforts. But ultimately, they -- at their will,
5 they may try to continue along with this
6 contract to fulfill the intent of the Settlement
7 Agreement.

8 MS. HILL: Generally, the way
9 that we would write an article -- in this case,
10 this is a study, so we would ask the licensee to
11 either file it as a study plan or in the best of
12 all worlds, we would approve a study plan to be
13 implemented. We would say, implement the study
14 plan that was filed with us, as in the state.

15 If you wish to do that, to file
16 with us a study plan, that's one option. Or we
17 may talk amongst ourselves and decide that we'd
18 like you to file a study plan. And so we'd ask
19 that of Chugach to develop that in consultation
20 with the agencies.

21 It's helpful for us to lay out
22 exactly what the licensee is required to
23 accomplish. And that is helpful for us. When
24 we do our NEPA analysis, it's difficult for us
25 to say what kind of benefit X number of dollars

1 will provide. It's a lot easiest for us to
2 evaluate under NEPA what kind of benefit a study
3 with this frequency of sampling in this
4 location, et cetera, will provide.

5 So we tend to want to write
6 license articles that require specific items.
7 To the extent that you wish to give us any
8 insights on that at this time, that would be
9 helpful. Or if you wish to file something with
10 us, too, that would be fine, too, to just let us
11 know that that's your intention.

12 MR. TURNER: And I think that
13 goes to FERC more than anything.

14 Do you guys have any -- I guess,
15 has there been any discussions about what kind
16 of monitoring these studies would take at this
17 point?

18 MR. WICK: Not specifically, no.
19 It's basically just to see what the outcome of
20 the diversion will have on the creek. It's
21 not -- there's no specific target set, but to
22 see if it works.

23 MR. TURNER: But in your
24 discussions, you don't have an idea of what kind
25 of bio monitoring you would do, stream

1 temperature monitoring? It's the concepts
2 you've come up with at this point, not the
3 details.

4 MR. WICK: No. We'll continue
5 things like funding the USGS gauge down there
6 with flow and stream monitoring at the mouth of
7 the river. Those kinds of things will continue.
8 But after the projects -- the diversion has been
9 in place for, say, five years or something,
10 we'll go in and see if there's -- what changes
11 have resulted to the fish populations or the
12 stream conditions since the changes were made.

13 And the agencies have indicated
14 the desire to do that. And one of the things
15 we've talked about is we'll fund them going and
16 doing that.

17 MR. KONIGSBERG: Maybe a --

18 MR. TURNER: Give your name.

19 MR. KONIGSBERG: Jan Konigsberg,
20 Natural Heritage Institute, representing the
21 NGOs that signed the Settlement Agreement.

22 And you guys may correct me if
23 I'm wrong. My understanding on the study, we
24 were being fairly conservative about what we
25 were holding Chugach responsible for, which was

1 the temperature and flow, not in terms of
2 mitigating the operations of the project. The
3 assumption was that if you get the water
4 temperature there that fish would return. But
5 no one's making any particular promises that's
6 going to happen. What we need to know is
7 whether we actually have flow and temp.

8 So I think that in terms of the
9 Settlement Agreement, the signatories, we
10 were -- we felt strongly they ought to be
11 checking temperature and flow in terms of the
12 actual study to see what kind of fish
13 populations were being restored. That was
14 secondary responsibility. And that would be
15 monitored by the state and federal fish and
16 wildlife agencies.

17 MS. HILL: So this is a study on
18 the temperature and the flow. So we know the
19 objectives of the study, to some extent.

20 MR. KONIGSBERG: Your point? I
21 didn't get --

22 MS. HILL: We have some idea of
23 the objectives of the study to some extent.
24 What kind of frequency was considered? I mean,
25 obviously, there's some cost considerations.

1 And I'm sure that someone had thought this
2 through at some point. Is that something that
3 you would want to check your notes and get back
4 to us on or discuss it at this junction?

5 MR. BLANCHET: I'd like -- I hope
6 I can relate some of the ideas that we had.
7 Clearly, we were making salami, I guess I'd say.
8 We weren't exactly sure where we were going.
9 But the intent -- the way the Settlement
10 Agreement is set up is there's an interagency
11 group that is basically charged with directing
12 Chugach Electric how to use or how to -- how the
13 flows from Cooper Lake should be -- should be
14 let out on a monthly basis or weekly basis.
15 That was part of the responsibility of the
16 interagency group.

17 And the other part was to both
18 before the project -- before the Stetson project
19 was implemented and afterwards monitor the fish
20 populations in Cooper Creek. And so the way the
21 interagency agreement reads is it says that in
22 terms of monitoring, our responsibilities are
23 to -- that Chugach will monitor flows and stream
24 temperatures at the mouth of Cooper Creek, which
25 is the USGS station FERC referred to, and that

1 they will also monitor outflows from Cooper Lake
2 on a continuous basis and that they will monitor
3 flows through the Stetson Creek diversion on a
4 continuous basis.

5 If I have this correct, I think
6 the interagency committee is saying we will look
7 at temperature at the outlet of the lake, which
8 our vision of it was a pretty continuous
9 recording thermograph in the -- into Cooper
10 Creek immediately below the dam. And then also
11 to have continuous temperature readings at --
12 immediately below the Stetson Creek diversion.
13 And again, that was a thermograph. And then
14 there's a monetary arrangement associated with
15 that where Chugach's going to make available so
16 many dollars per year to the interagency
17 committee to conduct the studies.

18 So the way the Settlement
19 Agreement is constructed right now is we will --
20 the interagency committee will collect
21 temperature data at those two sites and we will
22 monitor the fish populations in Cooper Creek.

23 Now, exactly how that's going to
24 take place has yet to be decided. I mean, the
25 way it's set up and assuming we go forward in

1 this fashion, the interagency committee needs to
2 get together and say, okay, exactly what
3 information do we believe we can afford to get
4 and what's the priority for that information.

5 And we've toyed around with a lot
6 of ideas. Should Forest Service collect this
7 data? Should Fish and Game collect this data?
8 And the one idea that keeps coming up that I
9 have a certain affinity to is to get a
10 university involved in actually collecting this
11 data, a long-term graduate program to look at
12 when a stream is changing from a -- you know,
13 where the conditions for fish are likely to
14 alter significantly, and get the university
15 involved in the monitoring.

16 So under that circumstance, the
17 interagency committee would basically be the
18 pass-through for the money to say, okay,
19 University of Alaska or whoever, you will
20 collect this data and then this is the sort of
21 products we're wanting to see from you. And if
22 you want to go any further that that would be
23 great. So that's the vision that's gone into it
24 so far. Is that --

25 MS. THOMAS: Channel morphology.

1 MR. BLANCHET: Oh, channel
2 morphology was a third issue. After the --
3 after the Stetson diversion goes into effect,
4 you know, there will be reduced flows in Cooper
5 Creek and reduced peak flows. So there's also
6 dollars set aside to monitor what, if any,
7 changes were occurring within the channel
8 morphology of Cooper Creek over time.

9 MR. PROKOSCH: This is Gary
10 Prokosch. I think in that whole -- everything
11 Dave said is exactly right. But I do believe
12 that we also anticipated that we would, in fact,
13 put together study plans prior to work being
14 done and those study plans be made available to
15 FERC at the time. So that group was going to
16 put together those study plans so that you'd
17 have something to look at.

18 MS. HILL: Okay. The typical way
19 that we would fashion a license article under
20 these kinds of circumstances would be to require
21 the development -- here again, to implement
22 something that you already filed with us or to
23 require the development of a study plan to
24 address objectives A, B and C developed in
25 consultation with a group of entities, which

1 might be yourselves. So that would seem to get
2 to the same place.

3 But the way that it's written
4 now, it's written in terms of dollars. And one
5 option that you might have is to send in in your
6 comments on scoping some revision of that to
7 require some revision of that aspect in the
8 Settlement Agreement or clarification of the
9 Settlement Agreement if that's, in fact, your
10 intent of the goals of that.

11 MR. PROKOSCH: This is Gary
12 Prokosch. I believe that the cooperative
13 agreement between the Forest Service and the
14 agencies spell that out much more clearly than
15 what we've talked about today. I mean, it's
16 already written in an agreement that's signed by
17 the agencies with the Forest Service as to how
18 things would be laid out.

19 MR. BLAIR: Has that agreement
20 been part of what was filed?

21 MR. PROKOSCH: It's part of the
22 Settlement Agreement. I believe it's part of
23 the Settlement Agreement.

24 MR. WICK: What's it called?

25 MR. TURNER: Supporting

1 statement?

2 MS. THOMAS: It's an appendix,
3 isn't it?

4 MR. TURNER: I got it. I hadn't
5 got that far back yet.

6 MS. HILL: I apologize. We've
7 been on the road reviewing this amidst other
8 meetings. So we haven't quite gotten all the
9 way through. That would be helpful. But a
10 heads up to you that that's not the way that we
11 would tend to craft an article putting it in
12 terms of funding versus putting it in terms of
13 dollars, the way we craft license articles.

14 MR. BLAIR: Todd, am I correct
15 that you're the primary author of the license
16 articles, based upon the input?

17 MR. GLASS: Yes.

18 MR. BLAIR: You were busy talking
19 to Steve. And what Jennifer was saying was that
20 any comments on SD1, that if you wanted to file
21 revised suggested language for license articles,
22 that would be a good time to do it. Based upon
23 what we just said here on what we could or might
24 not do on this funding issue, if you all can
25 reach agreement, you might just file with SD1

1 comments what you might like to see in lieu of
2 what we might be able to accept.

3 MR. GLASS: In response, I would
4 only state for the benefit of the group, that
5 would require an amendment of the Settlement
6 Agreement.

7 MS. HILL: Let me ask another
8 question while we're on this. Proposed Article
9 404, it says for purposes of ensuring compliance
10 with Article 402 and for scientific purposes.
11 Is that, in fact, Article 402 or 403 that's
12 being referred to there?

13 MR. GLASS: Probably 403. 402
14 came in afterwards. We separated 402 out of
15 401. And that's why the internal reference
16 might have been off.

17 MS. HILL: Okay. So we'll call
18 that Article 403 then. Let's see.

19 MR. BLAIR: John Blair. We had a
20 reaction to Article 402. Article 401 says we'll
21 do the Stetson Creek diversion. Article 402 is
22 a caveat that says but if we can't get the
23 permits, the water rights or some other unknown
24 factors enter into play, we won't. Then it goes
25 on to lay out consultation and how you might

1 accommodate the intent of Article 401 if, in
2 fact, you can't physically construct Stetson
3 Creek diversion.

4 Our general reaction is -- well,
5 not our general. Our reaction is that we're
6 licensing a diversion, not a what if. So in all
7 likelihood, we would not include Article 402 in
8 the license. Or wouldn't recommend it, I'll put
9 it that way.

10 MR. TURNER: If something were to
11 arise where you could not, then the licensee
12 would have the ability to come in and ask for
13 the amendment of that. So it makes essentially
14 this element of it impractical or really not
15 necessary, I don't think. That's our initial
16 gut -- that obviously is just staff's review.
17 So other parties may have other feelings.

18 MS. HILL: It's inherent in any
19 proposal that if once you get into it there are
20 problems with that that an entity might come in
21 and ask for amendment.

22 MR. GLASS: Todd Glass on behalf
23 of Chugach. I would hazard, subject to all the
24 people that signed the Agreement, I think that
25 the more important aspect is the provisions in

1 the Settlement Agreement which are the
2 commitments of the parties to meet in that type
3 of event and decide what is to be done. And so
4 long as that is preserved in the Settlement
5 Agreement, the commitment to confer and figure
6 out what needs to happen, so long as that
7 survives, the license article itself, ensconcing
8 that in the license is probably less important
9 as to the relationship among the parties. But
10 that's my interpretation subject to.

11 MS. HILL: And as you so aptly
12 pointed out, there is a signed Settlement
13 Agreement. So in any event, that caveat is
14 intact.

15 MR. TURNER: Under Article 403, I
16 was wondering if you guys could map out a little
17 bit, in my view and layman's view, of how you
18 were intending to document compliance. There's
19 a couple things going on here in terms of the
20 minimum flow. You're proposing to release a
21 certain acre-feet per year and then decide
22 amongst yourselves on a -- basically, it looks
23 like a quarterly basis -- on how you're going to
24 distribute that flow, minimum flow release on a
25 monthly basis.

1 From a compliance point of view,
2 it's a very difficult one for the Commission,
3 because, A, we don't know what you've decided
4 until it's long gone and we've already issued
5 it. And how do we know what you're going to be
6 implementing?

7 The other part of that is from
8 our environmental assessment point of view and
9 biological factors that are in place, it's much
10 easier to look at a defined flow at least on a
11 monthly basis to look at the benefits. Without
12 knowing how you might change that, it becomes
13 more difficult for us.

14 So as a heads up, we'll probably
15 look at the minimum flow requirements that
16 you've laid out in the Settlement Agreement on
17 the monthly basis, recognizing you're looking at
18 potentially varying that depending on your
19 monitoring requirements. So that's a heads up.

20 But the question is, how do you
21 guys intend -- were you envisioning to monitor
22 the minimum in-stream flow releases, recognizing
23 that we typically do that on a cfs basis, not an
24 acre-feet basis? And the variability of that
25 seems to be very complex to me.

1 MR. PROKOSCH: I'd like to at
2 least try to answer a portion of that. I can
3 tell you that we will -- we're willing to do it
4 on an annual basis. We're going to meet -- as
5 part of the memorandum of understanding
6 agreement between the parties, which is in your
7 document, we're going to meet on an annual basis
8 prior to the water year starting and lay it out
9 for them what we want done.

10 The default will always be those
11 numbers that are already listed. But we may, in
12 some cases, want additional water during a
13 certain time of the year when the temperature is
14 high or temperature is low.

15 As far as monitoring that type of
16 stuff, there will be, of course, conditions on
17 the state water rights that will lay out some of
18 these monitoring requirements also. That will
19 be pretty much exactly what FERC has -- will put
20 into the monitoring. But we may take that extra
21 step also to make sure that we have some type of
22 monitoring requirements related to those flows
23 when -- what type of metering they have to have
24 and when the reporting comes back to us. And,
25 of course, the state will be part of that

1 interagency group during this process.

2 MS. HILL: That helps us. It
3 seems like then this is to be the typical
4 condition, this default condition.

5 MR. PROKOSCH: That is the
6 default condition, yes.

7 MS. HILL: All right. Well, that
8 helps us from a NEPA standpoint so that we can
9 do our analysis on this. Obviously, doing an
10 analysis on the benefits of some acre-feet is a
11 little bit difficult to qualify the benefit. So
12 we'll use this as our basis for NEPA analysis on
13 the benefits.

14 MR. TURNER: There was a lot of
15 discussion about the annual fluctuations early
16 on in the process. I think a lot of that was
17 revolving around a misunderstanding or early
18 proposal for increasing reservoir levels and the
19 annual fluctuations and the effects on some of
20 the islands and shorebirds and some of the
21 vegetation.

22 Would the increased flows from
23 Stetson Creek -- we had a short discussion and a
24 site visit that suggests that's not going to be
25 that dramatically incremental to the change of

1 the current project operations. Is that still
2 everybody's feeling there, that the annual
3 fluctuations in the flows at the current level
4 are having a minimal effect and that there's
5 limited concern associated with the shorebirds
6 and the pale poppy and some of the other stuff?
7 Or did that go away?

8 Everybody seems to be focussing
9 on the downstream. Is this a balancing decision
10 or -- does anybody want to take a stab at
11 commenting on why we settled where you are?

12 MR. BRNA: Phil Brna, Fish and
13 Wildlife Service. That's a tough question to
14 answer. Fish and Wildlife Service, of course,
15 is responsible for protection of migratory birds
16 under the Migratory Bird Treaty Act. And it's
17 our belief that while the project has and will
18 continue to result in some mortality of
19 migratory birds, we're willing to live with
20 that, because we believe the overall practical
21 benefits outweigh that existing mortality.

22 The mortality is primarily to
23 gulls, which while they probably occurred there
24 before the project, the project resulted in an
25 increased population of gulls, because you've

1 got that unvegetated shoreline which didn't
2 occur before. So it's basically not in a
3 natural condition, if that makes sense.

4 MR. TURNER: I guess also that
5 part of that -- I understand, he is correct,
6 that we're not looking at any change in that
7 mortality due to the increasing diversion
8 associated with Stetson Creek.

9 MR. BRNA: Some years it may be
10 lower. Some years it may be less. Because the
11 lake fluctuates based on snowmelt. And so some
12 years when we have less snow, we'll probably
13 have less mortality. And we're talking less
14 nest inundation. And that's based on how
15 quickly the lake fills up in the spring as a
16 result of snowmelt. If it's -- if there's a low
17 snowpack, it fills up more slowly on the nests
18 and we have less nest inundation. Or if the
19 lake is higher, when the birds initiate nesting,
20 it doesn't fill up.

21 There's a lot of variables to
22 think about. We've played with this quite a
23 bit. Bottom line is we're willing to accept --
24 essentially accept the existing condition.

25 MR. TURNER: Okay.

1 MR. BLANCHET: I think I might
2 add one additional thing is just in terms of the
3 operations -- I mean, I've looked at the lake
4 fluctuations over the years. I think the
5 average lake fluctuation and the average annual
6 lake fluctuation is about 12 feet. And that's
7 based on the in-flow and out-flow. And there's
8 going to be more water coming in and more water
9 going out. And I suspect there will be more
10 fluctuation, too. I think that could be modeled
11 pretty readily. But that 12 feet might go to
12 14 feet or something like that, a range in
13 fluctuation as a result of the project, as a
14 result of the diversion.

15 So I think -- I mean, I think
16 clearly you can say there will be more
17 fluctuation. That's pretty straightforward.
18 The issue of what's the level of concern about
19 the shorebirds, we haven't heard a lot. Water
20 birds as well. Water birds, not shorebirds.

21 MR. TURNER: But the pale poppy
22 issues, they are outside of that fluctuation
23 zone or -- Steve, you're shaking your head.

24 MR. PADULA: My recollection is
25 the pale poppy exists because it is a

1 fluctuation zone. And fluctuation essentially
2 has eliminated competition from other
3 vegetation. And that provided the opportunity
4 for the pale poppy. Steve Padula.

5 MS. HILL: I'm seeing shaking of
6 heads from some of the resource agencies here.
7 So everyone concurs with that statement?

8 MR. BRNA: Correct.

9 MS. HILL: It's hard for the
10 court reporter to record those shaking of heads.

11 MS. THOMAS: I think it was more
12 of a shrug.

13 MR. PADULA: Could we go back to
14 the flow, the question on flow monitoring
15 question for just a minute?

16 MR. TURNER: Sure.

17 MR. PADULA: We're just
18 scrambling to look through the license articles.
19 And I am -- I think through a combination of
20 what's in Article 402 and 404 -- excuse me --
21 403 and 404, there's a combination of
22 requirements to monitor diversions and releases
23 and then a set of requirements for reporting
24 those results to both the interagency committee
25 and the Commission.

1 And I think as we crafted those
2 two articles, we tried to do that in unison so
3 that we were both generating the information and
4 reporting it to the Commission in a fashion, I
5 think, on a quarterly basis for the first five
6 years to essentially make sure we've worked out
7 the bugs of the system, et cetera, et cetera,
8 and then a continuing annual reporting after
9 that point.

10 Again, our intent was we would be
11 giving you sufficient information that you could
12 essentially confirm our compliance in terms of
13 meeting the monthly flow release schedule. And
14 we could also be confirming that we've lived
15 within the acre-feet.

16 Again, I realize that may have
17 given you a little bit of a curve in terms of
18 having acre-feet in there. But the acre-feet
19 was very important from the perspective of the
20 negotiating parties in terms of the amounts of
21 water put into the lake versus the amounts of
22 water released. But I think the real interests
23 from the resource agencies pertaining to the
24 creek was making sure that the water got
25 released on that monthly target schedule to try

1 to accomplish the temperature and flow
2 objectives that they had for the creek.

3 MS. HILL: To be sure, we'll have
4 our compliance folks that actually need to deal
5 with any license that we might issue look at
6 this.

7 MR. TURNER: So we can get this
8 out of our eyes, I just wanted to talk very
9 briefly. We do have two more questions. At
10 least I have two more questions, I think, with
11 regards to the Settlement Agreement. But so we
12 can just turn this off.

13 I want to let you folks know that
14 your comments are due, written comments are due,
15 if you intend to make any additional ones,
16 October 5th. We're projecting to issue our
17 Ready for Environmental Analysis Notice sometime
18 in December. And plan to issue a single EA by
19 June of next year.

20 MR. BLANCHET: Are you intending
21 to have a draft?

22 MR. TURNER: No, not at this
23 point. Right now, it looks like things are
24 pretty well-defined. I think we can pretty much
25 cover it in a single EA. If we get significant

1 comments that cause us to revise our analysis,
2 we will issue a final EA. Often, however, if we
3 get this right and we don't get too many
4 comments, we'll be able to go straight to the
5 order. And that's what we're proposing to do at
6 this point.

7 MS. HILL: If there are minor
8 revisions in analysis, sometimes we include that
9 in an order. But if it's substantive, we would
10 do an additional one.

11 MR. BLANCHET: You said October
12 5th. And this is saying October 10th. I'm
13 assuming -- I'm assuming 10th was the comment
14 date.

15 MR. TURNER: Yes. Scoping
16 comments are due --

17 MS. HILL: October '05, 2005.

18 MR. BLANCHET: It says October
19 10th. It says October 10th on this.

20 MS. HILL: That's correct. 2005.

21 MR. TURNER: October 10th, 2005.

22 MR. BLAIR: John Blair. When you
23 file comments -- it seems to be a very cordial
24 group and you had a good relationship -- we hope
25 your comments reflect the Settlement Agreement

1 and nothing changes.

2 MR. BRNA: Chugach is going to
3 write the comments for us and we're going to
4 sign them.

5 MR. TURNER: I have just two more
6 questions. Basically -- get my act together
7 here. As a heads up, in Article 406 -- it's
8 generally just the characterization -- it is
9 intended to say that they are going to continue
10 to operate the project reservoir and operations
11 as they basically currently have with the
12 addition of the Stetson flow.

13 We don't usually write an article
14 to reference the past license. This is going to
15 be the new license. And we're going to have to
16 define that operation. So in that regard, you
17 will likely see something different here. We
18 will define what the current operations are
19 expected to be over the next life of the
20 license.

21 And again, it goes to that
22 statement of annual fluctuations. While it may
23 increase and our analysis will talk about that,
24 we don't generally put that in as an article
25 noting that effect. So you see that change,

1 don't be surprised.

2 With regards to the transmission
3 line right-of-way, I'd like to get a better
4 handle from Chugach and the parties just what
5 permits you don't have and what you're going to
6 need before you would have all the rights to
7 continue operating the 90-mile segment of the
8 transmission line. I don't know if that's for
9 you, Todd, or for Burke.

10 MR. GLASS: Let me set it up.
11 And then I'll ask Mike Massin and Burke to
12 supplement. When the Commission issues an order
13 that says that the line past Quartz Creek
14 Substation all the way up to Anchorage is
15 outside the license but for your -- you know,
16 your administration responsibilities, Chugach's
17 lands people will go out and seek permits both
18 from the Forest Service for the use of Forest
19 Service lands, from the State Department of
20 Parks & Rec for their lands, from the
21 Municipality of Anchorage and a variety of
22 present landowners along the way.

23 It is anticipated that it will
24 take some time to gain all the necessary permits
25 and rights of way and easements necessary for

1 that line to be maintained under separate legal
2 agreements rather than under the project
3 license.

4 Mike Burke, was there any further
5 detail as far as you want to provide on that?

6 MR. MASSIN: Mike Massin, Pinon
7 Services on behalf of Chugach. I would say what
8 Tom -- or what Todd has said is --

9 MR. TURNER: Want to use the
10 microphone so she can pick it up?

11 MR. MASSIN: Anyway, what Todd
12 has said is correct. We do anticipate it's
13 going to take some time to secure all of the
14 permits from the various underlying landowners.
15 The transmission right-of-way and access
16 management plan was developed with the intent
17 that regardless of which way the portion of
18 transmission line ends up being left in or out,
19 we would use that as the underlying basis to
20 complete the process for securing those permits
21 from the underlying landowners.

22 MR. TURNER: I guess just from my
23 completely layman point of view, since we don't
24 have our general counsel here, it was our
25 understanding generally when we license a

1 project and it goes out and gets constructed,
2 they already have all the necessary lands and
3 easements required to construct that project,
4 with the exception of federal lands, obviously.
5 And that's basically an annual charges type of a
6 situation.

7 It's my understanding that
8 something is slightly different here in Alaska
9 that would be different from, say, what we were
10 expecting to issue in Washington and others
11 where they may not already have those easements.
12 And that's where I was going with my question.
13 Is there something unique here that you don't
14 already have underlying rights to those lands
15 that you attained initially when we constructed
16 the project?

17 MR. KONIGSBERG: Wait until the
18 city finds out.

19 MR. GLASS: In part -- Todd Glass
20 again. In part, the project was licensed
21 pre-statehood. And at that time, a lot of the
22 lands were federal lands. Some of them became
23 Forest Service and then they've been pulled out
24 either into State Parks lands and also through
25 borough expansion and borough lands.

1 All the way along, Chugach has a
2 land department that deals with the underlying
3 landowners whenever it does things on the
4 various lands. And all I can tell you is that
5 it's a very time-consuming process from their
6 standpoint. And they've told us that it will
7 take some time to get all of those things.

8 MR. TURNER: Okay. I just wanted
9 to make sure that it's there so that when I go
10 to our folks at the agency, I'm explaining why
11 we're waiting for a special use permit.

12 And I guess that is another part
13 of my question is, why are we waiting as the
14 article is constructed here until the license is
15 issued to pursue those permits? Is there any
16 reason not to do that now?

17 MR. GLASS: Dave Blanchet, from
18 your perspective?

19 MR. BLANCHET: I don't think --
20 no, there's no reason that the Forest Service
21 would not want to pursue them now. That leads
22 back to my earlier question. We've been
23 scratching our heads and wondering all along
24 whether or not the power lines were going to be
25 decoupled.

1 When the power lines
2 originally -- in the original license, the
3 transmission lines are under FERC jurisdiction
4 and are part of the project area. And I think
5 the Forest Service was sort of under the
6 misperception for a lot of years that we were
7 sort of the agency who was directing Chugach
8 what to do on the lines. And it hasn't been
9 well-defined.

10 And so through this licensing
11 process, the Forest Service has taken the
12 position of, gosh, we would like these lines to
13 go under a special use permit or some other type
14 of Forest Service permit. And we would like to
15 clarify where the access roads are, what the
16 maintenance schedules are, what types of
17 equipment will be used for maintenance, what
18 emergency access procedures will be implemented.

19 And so those are the questions
20 that we've been asking. And I think we've gone
21 a huge way in terms of defining those. So in
22 answer to your question, I think the Forest
23 Service is ready for them to go under a special
24 use permit at any point, assuming that they are
25 decoupled.

1 MR. TURNER: That's fine. I was
2 just trying to figure out why it says within six
3 months of license issuance they would seek a
4 special use permit as opposed to getting it done
5 now.

6 MR. PROKOSCH: I think the state
7 feels exactly the same way. We'll be ready to
8 go as soon as we finish the manual and stuff. I
9 don't think there's reason to wait.

10 MR. WICK: No. Burke Wick for
11 Chugach Electric. Likely, we would not wait.
12 But what we've been really waiting for is
13 definitive word from FERC that the lines will be
14 decoupled. What we don't want to do is go spend
15 a bunch of money and effort and time doing it
16 and find out that they are not going to be or
17 something like that. So that's essentially all
18 it is is we want --

19 MR. TURNER: Some certainty from
20 us.

21 MR. WICK: Yes. Our lands
22 department is always slammed with issues. And
23 we don't want to send them off working on
24 something that might not be the final product.
25 We don't have the staff and time to do that.

1 MS. HILL: And this Scoping
2 Document, we intended to give a very strong
3 heads up as to the direction that we thought we
4 would be going. We thought that might be
5 helpful towards the end of coming to these
6 agreements. But you're right, it's not a
7 decision until the order is issued. But it may
8 give you enough heads up to get on the heels of
9 something at that time.

10 MR. MASSIN: I guess I would just
11 add -- Mike Massin again -- that the development
12 of the transmission right-of-way and access
13 management plan, getting that completed, we
14 felt, Chugach, that it would make it much easier
15 to get special use permits issued, because the
16 transmission line segments or subsegments were
17 broken down into more manageable details that
18 made it much easier for the agencies to
19 understand what Chugach was going to be doing in
20 the future, be it access uses or segments along
21 the way.

22 MR. TURNER: I certainly agree
23 with that. It seems like a logical approach to
24 go to make it smoother.

25 One more question from me on your

1 project roads within project boundaries. As
2 just a kind of heads up again in terms of the
3 context of the statements that are put in here,
4 it seems that you've agreed to -- you were
5 trying to portray an agreement to seek a special
6 use permit with certain provisions like gating
7 the access to the Copper Lane Dam access road
8 and allowing those recreational access
9 consistent with Forest Service management
10 policies and guidelines.

11 Typically, we can't -- the way
12 this thing is constructed and reads is like
13 we're requiring the special use permit that
14 would include these measures. And we don't have
15 jurisdiction over the Forest Service's special
16 use permit. So we might actually need to do
17 some reconfiguring here. And I don't know
18 exactly how that would state. But I think I
19 understand the intent. And that's basically to
20 continue control of access, motorized access on
21 Cooper Lake Dam. So it's more of a heads up in
22 terms of the way that's constructed.

23 Any questions?

24 MR. BLANCHET: That road, though,
25 the Cooper Dam Road is currently under a special

1 use permit. Well, I'm not sure of that. Has
2 that been renewed?

3 MR. WICK: It's been added to the
4 memo -- memorandum of understanding or the
5 maintenance permit for Snug Harbor Road.

6 MR. BLANCHET: So the previous
7 memorandum of understanding which we are
8 basically renewing had that -- those access
9 restrictions incorporated into it. And I'm sure
10 they will continue to reside there.

11 MR. TURNER: It just says that
12 within three years of license issuance, they'd
13 seek a special use permit. So it's a little
14 confusing in that regard.

15 (Reading) Access road to Cooper
16 Lake Dam and Stetson Creek diversion.
17 Consistent with the applicable laws and
18 procedural requirements, licensee shall within
19 three years of issuance of a new license seek a
20 special use permit from the Forest Service for
21 licensee's use of the road across Forest Service
22 lands, which requires the licensee to control
23 that access for motorized use.

24 The way that's phrased, it looks
25 like we're trying to dictate the terms of the

1 special use permit. And we can't do that.

2 MR. BLANCHET: Right.

3 MR. GLASS: One point of
4 clarification, since we discussed this two days
5 ago. The three-year thing that was put in there
6 dealing with the dam access road, it was
7 anticipated during the first year to year and a
8 half after the license is issued would be when
9 Chugach would be figuring out the exact
10 alignment of the Stetson Creek diversion and
11 thereby the road that would be required. So
12 that work needs to actually be done before the
13 Forest Service would be able to issue a special
14 use permit.

15 So there is some staging that has
16 to go on. And that's why it took me a while to
17 remember why that was in there that way.

18 MR. TURNER: For the Stetson
19 Creek diversion part of it. Got you.

20 MS. HILL: That's why we have
21 these meetings.

22 MR. TURNER: I don't have
23 anything else. Do you?

24 MS. HILL: No. Except to say
25 that, of course, we'll work expeditiously

1 towards a licensing decision. And we wanted to
2 offer congratulations on working really hard to
3 come up with a comprehensive Settlement
4 Agreement. I know it took a lot of effort, time
5 and obviously ingenuity, taking a look at this,
6 to come up with this agreement.

7 And the Commission does support
8 Settlement Agreements in general. And
9 we'll weigh very heavily the considerations that
10 you've put before us.

11 MR. KONIGSBERG: If you want us
12 to work on any others --

13 MS. HILL: You're out for hire?

14 And we appreciate the time and
15 you coming out to give us your insights and to
16 clarify some of these issues and allow us to
17 tell you some of the concerns that we had on our
18 first blush look at this on the road.

19 MR. TURNER: I just echo Jenny's
20 comments. You did a lot of good hard work. And
21 I'm sure it will pay off in the end. So
22 congratulations. And if there's nothing else,
23 we'll adjourn the meeting.

24 Everybody else, please be sure to
25 sign in. I think I saw somebody come in late.

1 Thanks.

2 (Whereupon, the proceedings were
3 concluded at 2:43 p.m.)

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REPORTER'S CERTIFICATE

I, Susan Campbell, Certified Shorthand Reporter, hereby certify:

That I am a Certified Shorthand Reporter and Notary Public for the State of Alaska; that the foregoing proceedings were taken by me in stenographic shorthand and thereafter transcribed by me; that the transcript constitutes a full, true and correct record of said proceedings taken on the date and the time indicated there. Further, that I am a disinterested person to said action.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and affixed my official seal this 13th day of September 2005.

SUSAN CAMPBELL, CSR
NOTARY PUBLIC, State of Alaska

My Commission Expires April 26, 2008.