

1                   BEFORE THE  
2           FEDERAL ENERGY REGULATORY COMMISSION

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4 IN THE MATTER OF:                   :  
5 FERC ILP EFFECTIVENESS EVALUATION :  
6 TECHNICAL CONFERENCE                   :

7 -----X

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9                                       Hearing Room 2C  
10                   Federal Energy Regulatory Commission  
11                                       888 First Street, N.E.  
12                                       Washington, D. C. 20426

13  
14                                       Wednesday, November 3, 2010

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17           The above-entitled matter came on for technical  
18 conference, pursuant to notice, at 11:00 a.m.

19  
20 BEFORE:

21           ANNA WEST, FACILITATOR  
22           DAVID TURNER, FERC  
23           ANN MILES, FERC  
24           JOHN KATZ, FERC  
25           LIZ MOLLOY, FERC

1 PANEL PARTICIPANTS:

2 CHRIS SHUTES, CA Sportfishing Protection Alliance

3 FRANK SIMMS, American Electric Power

4 JULIE TUPPER, US Forest Service

5 MATT RICE, American Rivers

6 LARRY THOMPSON, NOAA NMFS

7 BARBARA GREENE, Seattle City Light

8 MIKE IYALL, Cowitz Indian Tribe

9 DAVID DEEN, CRWC

10 RUSS JOHNSON, Tri-County Relicensing Committee

11 DAN LISSNER, Free Flow Power Corporation

12 (As well as others by phone and in the audience.)

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2 (10:57 a.m.)

9 I'm coordinating this effort for the Commission,  
10 and I guess the first thing I want to do is really thank all  
11 of your taking your time and efforts to come out and share  
12 your thoughts. We welcome those thoughts. We hope to --  
13 I'm sure those thoughts will ultimately help future  
14 licensees and us implement the ILP better.

25 Just kind of a procedural thing the manual also

1 covers. We're going to need to all speak in the  
2 microphones, to make sure the folks on the phone lines can  
3 hear, as well as the court reporter get your name and  
4 affiliation, and to be able to record your comments.

5 Finally, we're going to -- I'm going to turn it  
6 over to Anna here in a moment, Anna West with Kearns and  
7 West. We've contracted with them to help us facilitate and  
8 do this effectiveness study. Anna has got a long history in  
9 hydropower licensing, not only working with, indirectly with  
10 licensees to implement the ILP, but helping craft the ILP  
11 and doing our first effectiveness study.

12 So without further ado, I think I'll turn it over  
13 to Anna to introduce her panel and her staff.

14 MS. WEST: Do we have -- I'm just wondering, do  
15 you know is the phone line open? Do we have folks on the  
16 phone? Yes, okay. So welcome folks on the phone.

17 MR. TURNER: Yes, you do.

18 MS. WEST: Ahh, a voice. All right. Thanks  
19 again everybody for coming, and I'll take a few minutes to  
20 introduce the panel here and then go through the format of  
21 the day. Hopefully all of you who are here or on the phone  
22 got the slides in advance, but we'll be putting them up  
23 shortly and walking through them.

24 So let me just start, as David mentioned, I'm  
25 Anna West with Kearns and West, and we have several other

1 Kearns and West people here. Stephanie O'Bady is probably a  
2 familiar name to all of you, because she's been helping run  
3 the effort, and Anne Gunny is somewhere here, who helped --  
4 is part of this project and was on the Eastern Region  
5 workshops and also Ken Kearns.

6 Let me just go around and have the panelists each  
7 introduce yourselves, your name and organization, and maybe  
8 the state you're from, so we can understand who's  
9 participating in this first part of the discussion. So Dan,  
10 since you're on the end. Oh, and does everybody have their  
11 microphone on on the panel?

12 MR. LISSNER: Yes. My name is Dan Lissner from  
13 Freeport Power Corporation, here from Massachusetts.

14 MR. JOHNSON: My name is Russell Johnson from  
15 Virginia, representing the four governments of Franklin,  
16 Pennsylvania, Bedford and Campbell.

17 MR. DEEN: My name is David Dean. I am river  
18 steward for the Upper Connecticut River for the Connecticut  
19 River Watershed Council. The Connecticut River is a border  
20 river between the states of Vermont- New Hampshire up my  
21 way, so I work in both Vermont and New Hampshire.

22 MR. IYALL: My name is Mike Iyall. I'm with the  
23 Cowitz Indian tribe. We're in Western Washington. We have  
24 projects on the Cowitz River, the Lewis River, and we are  
25 watching the Columbia River as well. Thank you.

1 MS. GREENE: I'm Barbara Greene from Seattle,  
2 Washington. I managed the relicensing of our largest dam,  
3 Boucher Dam, which is located in Northeast Washington.

4 MR. THOMPSON: I'm Larry Thompson from NOAA's  
5 National Marine Fisheries Service. I work in Sacramento,  
6 California. I work on hydroelectric licensings throughout  
7 California.

8 MR. RICE: I'm Matt Rice with American Rivers. I  
9 work in the Southeast region. I live in Columbia, South  
10 Carolina and do hydropower relicensing work in North  
11 Carolina, South Carolina and Alabama.

12 MS. TUPPER: Hi. I'm Julie Tupper. I'm with the  
13 Forest Service in California. I'm the regional hydropower  
14 program and energy manager, and we have lots of  
15 relicensings.

16 MR. SIMMS: Good morning. I'm Frank Sims. I'm  
17 the manager of Hydro Operations for American Electric Power.  
18 We have projects in Indiana, Michigan, West Virginia, Ohio  
19 and Virginia. My office is located in Roanoke, Virginia.

20 MR. SHUTES: I'm Chris Shutes with the California  
21 Sportfishing Protection Alliance. I work on projects  
22 throughout California.

23 MS. WEST: And everybody else has been  
24 introduced, okay.

25 MR. THORSON: Randy Thorson, National Park

1 Service. I work on hydro projects in the Midwest as well as  
2 helping out in the Pacific West region.

3 MS. WEST: Okay, thanks. I was actually going to  
4 just have the panelists introduce themselves, and then we'll  
5 get into the session itself. But I appreciate knowing who's  
6 there.

7 MR. THORSON: Thank you.

8 MS. WEST: Thanks. So let me see. I'll do some  
9 mechanics, see if I get them all. First of all, the  
10 important things on the agenda. We'll be taking a break at  
11 lunch time and if you need the restroom, it's to the left  
12 and behind the elevators. So that's one detail.

13 Another detail is there is, as you all are doing  
14 so well already, no food or drink in the Commission meeting  
15 room. So in the hall or in the cafeteria, but not here.

16 Just a bit about the structure of today's  
17 session. We're trying to maximize the opportunity to get a  
18 good exchange, additional solutions and ideas from  
19 everybody. So the way we'll be structuring it, I'll be  
20 going through the front end of the slides in each section,  
21 raising what we've heard from interviews and workshops to  
22 date in this process.

23 So I'll be sharing the issues and challenges.  
24 Then I'll be talking about the solutions, and we have a fair  
25 number of great ideas that have been generated through this

1 effort to date. Then I'll be turning to the panel and  
2 asking the panelists who want to comment on that one  
3 section, either comments on the solutions or issues and  
4 other solutions you might have. So we're still trying to  
5 generate more good ideas on how to implement this process.

6 After we've heard from the panel, I will turn to  
7 folks in the audience here, and anybody who would like to  
8 offer additional solutions please do. Then I will turn to  
9 people on the phone, and for folks on the phone, probably  
10 the best is if you hit the pound sign twice so I know you'd  
11 like to speak, and then we'll take your thoughts and ideas.

12 And for all of us, for the reporter's purposes,  
13 could you please when you're offering a comment, we need  
14 your name and organization so we have that for the record.  
15 So that's the kind of process. Now how do I get these  
16 slides going? It works. Okay.  
17 Maybe it works.

18 (Pause.)

19 MS. WEST: There we go, okay. So the goals of  
20 the conference is we want to share what we've heard about  
21 the process so far through this effort. We want to seek  
22 additional input and build your feedback on that from all  
23 the efforts to take, identify what's working and explore  
24 ideas and solutions.

25 I want to mention that I'm going to be prompting,



1 when we get to the discussion slide. The solutions I'm  
2 hoping we're going to be all taking responsibilities for all  
3 sectors that participate in this process. So what are  
4 solutions that FERC can do, what are solutions that  
5 applicants can do, what are solutions from NGOs and for  
6 resource agencies and tribes. So think about all the  
7 sectors and what each sector can do to help us.

8       Some of the process ground rules. I believe you  
9 all know, but today is not about specific proceedings. We  
10 need to be discussing this at a programmatic level. So  
11 please don't raise any specific projects. As always in  
12 these processes, please depersonalize. Focus on the issues  
13 rather than the individuals or organizations when you're  
14 thinking of things.

15       We want to be very solution-oriented. Help us  
16 find new ways to address issues. So if you have issues in  
17 mind, convert that to what would you do about it to make it  
18 better. Obviously seek solutions that are going to satisfy  
19 the mutual interests of all participants, and as I said,  
20 focus on all the sectors and what ideas we can come up with  
21 for each of us to do going forward.

22       Then just some functional ground rules. Respect  
23 everybody in the room. You may have differences and  
24 different perspectives. All are important and need to be  
25 respected. Speak one at a time. I think that's not going

1 to be a problem, but just let me know so I'll take your

2 hands so we don't have multiple conversations.

3 Please avoid side conversations. It's a

4 complicated process talking in this room and with those on

5 the phone. So we need to make sure everybody can hear.

6 Silence your cell phones, which is normally what I forget to

7 do but I did mine today. So if you haven't already, silence

8 your cell phones, and as I said, we need you to speak into

9 the microphones.

10 For folks on the phone, you need to hit the

11 button to let me know if you'd like to speak. If you're on

12 the phone already, we're not hearing background noise, which

13 is great. But if you can mute your phones, that's great.

14 But don't put it on hold, especially if you have some kind

15 of music that plays, because then we'll all listen to the

16 music, which has happened before.

17 Okay. So the agenda, this is kind of all the

18 sections. I just sort of tracks with the ILP licensing

19 process segments, and as I said, I'll just go through each.

20 In the interest of time, I will try and have as strong a

21 discussion as we can on each section, but I might need to

22 move us along if we're reaching our time limit on a topic.

23 So we make sure we can cover all the session topics between

24 now and three this afternoon, 3:00 east coast time.

25 And let me also say to those on the phone, I know

1 many of you are from the west coast and some of you are even  
2 from Alaska. So huge thank yous for getting on the phone at  
3 what, seven in the morning your time and participating with  
4 us. So I appreciate it, or we all appreciate it.

5 Before I dive into the first section on study  
6 criteria, I just wanted to emphasize that there are a lot of  
7 very positive things we've heard about the ILP in the  
8 process. So we've only dedicated one slide, but I don't  
9 want to diminish the significance of what we heard as the  
10 strengths of the ILP. But we thought our time is better  
11 spent on the issues, challenges and solutions so we can  
12 improve it.

13 But just to cover that, some of the strengths we  
14 heard from all sectors' views, the deadlines and time lines  
15 help keep everybody on schedule. Sometimes they're  
16 daunting, but we heard positive feedback about those  
17 deadlines and time line.

18 We heard favorably that the ILP encourages issues  
19 to be resolved locally. Those on the ground who better  
20 understand the project can better come up with the studies  
21 and the PM&E measures. It can be easier to understand each  
22 other -- sorry. Oh, sorry. Re-reading my own thing.

23 So people felt as though this process was easier  
24 to understand than others, that it was straightforward and  
25 very clear process plan with clear time frames and

1 deadlines. So we heard that that was positive, although for  
2 newcomers it can be daunting and complex.

3 We heard that it's valuable that the ILP is  
4 strict, but at the same time there is some flexibility and  
5 that that's useful, and very strong support for integrating  
6 NEPA into the process by having scoping up front, etcetera.  
7 So there was a lot more positive things we heard, but again  
8 we thought we wouldn't dwell on it today.

9 So here we go digging into study criteria, and  
10 I'm going to roll through a lot of these slides, because we  
11 really want to get to the discussion. So here we go.

12 Issues and challenges on study criteria. Some  
13 feel it helps us focus on the right effort, so that's a  
14 positive. We heard that the project nexus is either not  
15 clear or not consistently applied. So there's concern about  
16 the project nexus criteria.

17 Understanding of the study criteria can vary.  
18 Agencies and NGOs have difficulty accurately estimating  
19 cost. That's another study criteria and not all feel  
20 comfortable or skilled in estimating the costs.

21 Additional issues. Some feel FERC interprets the  
22 study criteria differently, depending on who submits it, or  
23 that there's a variation across different cases. Some are  
24 unclear about how rigid the study criteria area. If it  
25 doesn't meet a study criteria, can they reformulate and

1 resubmit the study to better address that. People aren't  
2 clear if they can do that or not. And some are not clear  
3 about how cumulative effects are considered in the project  
4 nexus criteria.

5       So on to some suggested solutions on this. Many  
6 suggested that there be early meetings with applicants,  
7 FERC, agencies and NGOs, to identify baseline information.  
8 If you have baseline information collected, then you can  
9 better identify how that affects project nexus. It's that  
10 criteria evaluation.

11       If applicants have conducted baseline studies in  
12 advance, stakeholders suggest that it's important to share  
13 that information with the other stakeholders, so they also  
14 have that baseline information. It was suggested that there  
15 be an initial tutorial meeting with FERC for guidance prior  
16 to the NOI, to explain roles, expectations, the process and  
17 study criteria.

18       I'm throwing a lot at you. I hope you all got  
19 the slides to digest this. Have FERC staff involved in the  
20 onset of an ILP. Lots of positive feedback on FERC's direct  
21 participation. Clarify the process and study criteria in  
22 the scoping meetings. Clarify project effects and project  
23 nexus up front and frequently. So hearing for some it's a  
24 hard and complex definition or explanation, and so saying it  
25 frequently and often is helpful. An additional suggestion

1 on that is to possibly post an explanation of project nexus  
2 on the FERC website.

3 More solutions. Help shift the focus to the  
4 reason for the study. Why is the study important, so people  
5 really start to explore interests associated with the study  
6 that you're talking about. Prepare written guidance  
7 clarifying the study criteria, and perhaps also share  
8 examples. How have those study criteria been applied in  
9 other projects? How would that help people understand how  
10 to apply it in their specific situation?

11 Consider project operations and how the project  
12 affects the resources as a way to inform study development.  
13 Collaborate to submit stronger study requests through  
14 working groups. Prioritize study needs collaboratively to  
15 determine which studies are absolutely needed. Are you  
16 saying you want every study in the universe, or is there  
17 really a set of priority studies that are essential?

18 FERC and agencies should work together to  
19 facilitate studies that are mutually beneficial. On cost  
20 estimates, perhaps consider developing tools or examples to  
21 understand how to put together an accurate estimate, and  
22 another idea was to just rank study cost as high-medium-low,  
23 sort of with a gut check rather than a great deal of  
24 analysis on costs, to address that criteria.

25 All right. So now it's time to turn to

1 discussion. Based on all those thoughts, here I am again.

2 Based on all those thoughts, can we go back to the slides,  
3 because there was a set of -- I guess we need it so people  
4 can see the participants, sorry.

5 Okay. Based on that discussion, panelists, do  
6 you want to -- who would like to weigh in with some  
7 suggestions? Go ahead, Russ.

8 MR. JOHNSON: Hi. This is Russ Johnson. I think  
9 I'd like to just put out three or four principles up ahead  
10 of why I came here and brought them, that affects the  
11 section we've just gone through.

12 In all the slides, you don't see the term "local  
13 government," and yet to me, one of the objectives of the ILP  
14 process was to involve the citizens around the project, and  
15 how it affects them, etcetera. The only way that can be  
16 done functionally is to involve the local governments.

17 If the assumption is that the state resource  
18 agencies would play that role, we didn't see that unfold in  
19 our project. So if you look at these slides and all the  
20 slides, number one, we don't see local government actually  
21 being listed, thought of, involved and that's something that  
22 perhaps constructively would help in the future.

23 All in all, our position of something that would  
24 make this section more worthwhile is if the Commission  
25 performed the studies, not the licensee, and if the

1 Commission brought up front five or six basic studies that  
2 are probably in common to all relicensing efforts.

3 Now it's true they all would have to be tweaked,  
4 based on local circumstances and so on. But rather than  
5 spend a lot of up front time in a reinvention of the wheel,  
6 that by your expertise you already know and have, we thought  
7 it would benefit the process if you said "We're going to do  
8 is study on water quality, we're going to do a study on  
9 these things," put that up front.

10 Then you would spend just half the time trying to  
11 see are there any other studies that are needed and if so  
12 why, and what are the tweaks within these studies. The  
13 other part of this is that in the Department of Defense  
14 sometimes experience, they help resource agencies or they  
15 help local governments with the impact of a major project.  
16 They help them with funding or they help them with staffing.

17 It was a struggle for us to stay up with this,  
18 even though it was clear, laid out, all those positives,  
19 because local government normally doesn't have the resources  
20 to stay with the project multiple years over. But we found  
21 a way to do that.

22 But the consideration should be given, I believe  
23 by the Commission, that perhaps when you look at a study and  
24 you look at the cost of the study, the cost could be very  
25 prohibitive to the organization that says we want this study



1 done, unless it's done as part of an agreement with the  
2 licensee. Here, I believe you could step in if your staff  
3 was convinced of the value of that study, and fund it.

4 So those in general, are our commissions. We  
5 find ourselves as local government not being very much  
6 thought of in this process, not being listed as part of this  
7 process. If the assumption is that the resource agencies do  
8 that, it's not a criticism, but just in our world that was  
9 not a role they play.

10 MS. WEST: Okay, thank you. Other panelists?

11 Yes Mike.

12 MR. IYALL: Mike Iyall, Cowitz Tribe. Yeah, I  
13 would echo what was just spoken. These licensings bring a  
14 huge burden on staff, and you don't often have enough staff  
15 to cover these issues. I would also echo the idea that why  
16 not, why shouldn't we have boilerplate studies. I mean as  
17 long as we're talking hydro, hydro has a given amount of  
18 consistent issues that yeah, they need to be localized.

19 One of the things that we, I sat on an  
20 implementation panel as well, and one of the standards we  
21 used that helped us keep on track was peer review standard.  
22 If you submitted this to peer review, is this study needed,  
23 or would the outcome pass peer review muster. That helped  
24 keep us on track. That really made it very easily  
25 functional. It helped isolate the frivolous.

1           The other thing that the ILP faces for us is that  
2   anomalous weather. If you're doing a study of snow pack on  
3   a high Alpine lake, and there was no snow, what do you do?  
4   I mean if you're trying to measure gravel transport in an  
5   abnormally dry spring. So I think anomalous weather can be  
6   easily reviewed. I mean you just look at the past 20 years'  
7   forecast and, you know, catch the pertinent details.

8           Because no environmental studies are going to be  
9   valid if you're in a spell of anomalous weather. So they  
10   can't be done accurately.

11          The other piece for us that was a real bone of  
12   contention was the aerial potential effect. I'm sure that  
13   everybody that has a dam, the first thing that happens  
14   downstream is once the flow of the river gets metered to  
15   where there's no longer the surges, people start building  
16   houses, in what used to be the channel migration zone.

17          So now the area of potential effect is the water  
18   in front of the project, downstream of the project, because  
19   I can tell you that, you know, looking at three or four dams  
20   and the housing that's come in below them, those dams are  
21   going to be there forever, because houses and ultimately  
22   cities would be subject to seasonal flooding if not for the  
23   presence of the project. Thank you.

24          MS. WEST: Larry?

25          MR. THOMPSON: Yes. My comment --

1 MS. WEST: Introduce yourself, name.

2 MR. THOMPSON: Oh Larry Thompson, National Marine  
3 Fisheries Service. Going back to which solutions do we  
4 recommend for the study criteria, I think first we have to  
5 distinguish between study request criteria that are laid out  
6 in the regulations in 5.9(b), and the study plan criteria  
7 that are laid out in criteria 5.11(d).

8 The study request criteria are obviously required  
9 of anyone submitting a request for a study. The study plan  
10 criteria are nearly identical, and they apply to the study  
11 plan that is filed by the applicant. I think that's an  
12 important point.

13 I want to say I think I support what I heard here  
14 about core studies being developed or core outlines for  
15 studies at least. However, if FERC were to take that on,  
16 they also should lay out using the study criteria, exactly  
17 the rationale for the study, what the project nexus is, what  
18 it's to accomplish.

19 We all know FERC can order studies at any time,  
20 and they do that often when they need information on a  
21 project and they feel it's not there. However, I have seen  
22 instances where FERC has ordered a study but is not clear  
23 about why the study is being ordered, and what it's to be  
24 used for. Thank you.

25 MS. WEST: So you're suggesting a more detailed

1 explanation would be helpful?

2 MR. THOMPSON: I think what I'm suggesting is  
3 that the Commission staff should follow the regulations as  
4 well as in their studies, any ordered studies, yes.

5 MS. WEST: Chris.

6 MR. SHUTES: Chris Shutes, California  
7 Sportfishing Protection Alliance. I neglected to mention  
8 before I'm also representing the Hydropower Reform  
9 Coalition. In a sort of big picture sense on the study  
10 criteria, the HRC thinks that case by case collaboration is  
  
11 important, but it's not going to solve some of the problems  
12 that we've had.

13 The HRC recommends two sort of broad measures.  
14 One is a guidance document that sort of addresses -- in  
15 which the Commission would address global issues relating to  
16 the application of the study criteria. A second is within  
17 each study determination, discussing criteria more  
18 explicitly, especially those that have been identified as  
19 problematic and most frequently criteria 5 and 7.

20 MS. WEST: And those are, just so everybody  
21 knows?

22 MR. SHUTES: Those are -- they each have two  
23 parts. Criteria 5 is nexus and will a project -- will a  
24 study inform license conditions. Seven is cost and what  
25 existing information exists.

1 I'd like to address Criterion 5 more explicitly  
2 for a minute. In the guidance document, I think that FERC  
3 should lay out that direct-indirect or cumulative effects  
4 are appropriate for establishing nexus, and sometimes I  
5 think that language becomes confusing and would suggest that  
6 sometimes using terms like multiple effects or combined  
7 effects or interactive effects is a different way of looking  
8 at that particular, the questions of whether a project that  
9 is -- works in conjunction with other water operations is  
10 appropriately addressed in nexus.

11 Another problem we've had is how certain must an  
12 effect be before it is determined to be appropriate for  
13 study? So and a lot of times we don't know the answer to  
14 that until we do the study. One of the problems we've had  
15 is that it seems that decisions have been made before  
16 studies have been completed about whether there is an  
17 effect, and it's the study that's going to give us  
18 information about whether that effect exists.

19 So part of what we need to do when we're looking  
20 at effects is to determine them, if appropriate to quantify  
21 them, and then look at feasible mitigations that the  
22 licensees can perform in order to address them.

23 Similarly with license conditions, we don't  
24 always know whether a license condition is going to be -- is  
25 going to result from implementation of a study, and we think

1 the appropriate standard, as we've laid out in some of our  
2 filings, is a reasonable likelihood that a license condition  
3 will result from the study. Again, we don't know in many  
4 cases.

5 So in sum, the threshold ought to be that you can  
6 reasonably demonstrate the presence of an effect and  
7 reasonably foresee a license condition.

8 Very briefly on Criterion 7, we haven't had as  
9 many problems with estimating the cost. We found that we  
10 can make a phone call to the consultants or consult with  
11 licensees, or look at studies that have been completed in  
12 the past and what the cost estimates were for those.

13 But we have had questions about is there  
14 sufficient information that exists, and sometimes studies we  
15 thought were appropriate were dismissed because information  
16 that existed was felt to be adequate.

17 One of the things I think that should help in  
18 making decisions about this is, is there some degree of  
19 controversy about a particular resource issue, and how  
20 important is a resource issue and its management in a  
21 particular project? That's it.

22 MS. WEST: Thank you. Frank?

23 MR. SIMMS: Frank Simms, AEP. Actually, I don't  
24 disagree with a lot of these comments that are being made.  
25 Staffing is an issue, not only for the agencies, as we've

1 seen, as we've gone through the process in the local  
2 governments; it's even an issue for us. I mean we're  
3 somewhat limited on staff too.

4 I think though, as for a boilerplate study, I  
5 don't know if you could say "let's have boilerplate studies  
6 because of the variety of issues that you have on particular  
7 projects." But I think you could have boilerplate  
8 assessments. In other words, there's particular things that  
9 you want to look at for every project.

10 As the gentleman next to me said, there's a lot  
11 of cases where you have a lot of information that's already  
12 available on the resource, so why reinvent the wheel at a  
13 very expensive cost? If the costs get out of hand for the  
14 studies, I'll be honest with you. There's a tendency of the  
15 applicant to become more defensive with those monies as we  
16 come down to the end of the process with the mitigation,  
17 when you've already spent millions up front.

18 So I think where I see a weakness, and it might  
19 depend on the applicant itself, is getting that information  
20 up front. There should be a lot more up front that's  
21 available from the agencies, local governments and everybody  
22 else.

23 Once you have that, then getting a good, full  
24 assessment from the Commission as to is that adequate; will  
25 that be adequate to make the assessment that's referring to?

1 MS. WEST: So could you explain what you mean by  
2 the assessment? A review of what studies?

3 MR. SIMMS: When you get into -- you know, you  
4 put in your pre-application document, and you say "Okay,  
5 here's the studies that I'm going to propose, as the  
6 applicant." But you have all this background information.

7 It would be interesting to see where that  
8 background information or how much of that background  
9 information would preclude the Commission from saying  
10 "You're right. You don't need to perform that study because  
11 there's adequate information to make that assessment," as  
12 you go into the environmental assessment.

13 MS. WEST: Is that similar to what you were  
14 proposing Chris, or different? I'm just trying --

15 MR. SHUTES: I think it's a different way of  
16 getting at it.

17 MS. WEST: All right, okay. Barbara and then  
18 Matt.

19 MS. GREENE: Barbara Greene, Seattle City Light.  
20 That's an interesting idea, because in our process, we had  
21 just volumes and volumes of information in our pre-  
22 application document, including a lot of existing  
23 information that sort of begs the question about what really  
24 needed to be studied.

25 The challenge was that the agencies and some of



1 the other parties were so short-staffed, I don't think they  
2 really spent any time reading it. So it was almost like  
3 when you got together to -- we collaboratively developed the  
4 study plan, it was like a reeducation constantly about  
5 whether we really needed to study something, or whether we  
6 had adequate information.

7       We did additional information-gathering before  
8 the actual study program began, so we had a lot of  
9 information. I'd be a little hesitant to think about a  
10 boilerplate because I think Frank's right. You have some  
11 basic things you need to find out in every licensing, but  
12 the details of every project is so different that you'd  
13 really have to work with folks to actually tailor the study  
14 to get at the information you need.

15       I also wanted to say something about operations,  
16 which is, of course, one of the central issues in most  
17 relicensings. Understanding the operations of the project  
18 is really key, and so more education, I think up front,  
19 about the operations of the project, in terms of educating  
20 the parties would be really helpful, because people, it  
21 seems, tend to have certain assumptions about what  
22 operations are doing to the surrounding environment without  
23 really taking a look at some of the details, and  
24 understanding it.

25       I know that's sort of a challenge, because when

1 you deal with a lot of parties, they don't necessarily come  
2 from that sort of a background and have the ability to  
3 understand that. But that seems to be the crux of a lot of  
4 where the nexus issue becomes problematic for people.

5 They have certain interests they bring to the  
6 table, and they carry those interests throughout the entire  
7 process, regardless sometimes of what the study effects  
8 actually show.

9 MS. WEST: Matt was next.

10 MS. MILES: Can I ask a question?

11 MS. WEST: Sure.

12 MS. MILES: I want to ask a question on this  
13 existing --

14 MS. WEST: Introduce yourself.

15 MS. MILES: Oh, Ann Miles, FERC. On the existing  
16 information, because that was an element when we all  
17 designed the ILP, was getting what existing information is  
18 out there.

19 I'm wondering if that's not really -- if people  
20 aren't digesting it out there, is there something that could  
21 be done early in the process? I mean could -- how would the  
22 applicants feel about early on kind of explaining what's in  
23 there, so it's clear that everyone's aware of what that  
24 existing information is and operation? Is that what you're  
25 suggesting on both of those?

1 MS. GREENE: Right. I think yes. I think we  
2 attempted to do that, but there was so much information, and  
3 as soon as the PAD comes out, you're already into the study  
4 planning phase. So we tried to wrap those two together in  
5 specific resource work groups, and to try and explain it.  
6 But there's just so much.

7 MS. WEST: So what do you do, do it earlier prior  
8 to the PAD filing?

9 MS. GREENE: We started. We started our  
10 engagement 18 months before the PAD was filed. It's a large  
11 project, and not all the parties had their staffing lined  
12 up. You know, as typical in many processes, some parties  
13 didn't have the ability to staff constantly, so there was  
14 always a sort of catch-up.

15 We did a tremendous amount of consultation. We  
16 met constantly for five years. It's hard to know what else  
17 you could have done.

18 MS. WEST: Okay. We're going to go to Matt and  
19 David. I'm trying to get to people who haven't yet had a  
20 chance.

21 MR. RICE: Matt Rice, American Rivers. I just  
22 wanted to follow up a little bit with what Chris was talking  
23 about, and specifically I think the big issue with Study  
24 Criterion 7, which is "Describe the considerations of cost  
25 and practicality, and why any proposed alternatives would

1 not be sufficient to meet the stated information needs," I  
2 think one problem is that it's hard to understand, you know,  
3 how FERC assigns value to information, as far as incremental  
4 information you get from cost of studies.

5 Chris mentioned the guidance document that would  
6 help better define nexus, with examples. I mean this is  
7 something that I think should be included in the guidance  
8 document as well, a description of how FERC assigns value to  
9 information, with examples.

10 MS. WEST: Could you explain what do you mean by  
11 "assigns value to information"?

12 MR. RICE: Well what -- when asked to, how much a  
13 certain study is going to cost or whatever, and how much  
14 that information is worth, as opposed to how much that study  
15 is worth. So that's not clear to many stakeholders I know.

16 MS. WEST: So the magnitude of the cost is still  
17 worth it, because it's such a significant issue?

18 MR. RICE: Yeah, in determining whether or not  
19 it's a reasonable study or not.

20 MS. WEST: David and then Julie.

21 MR. DEEN: Some of this discussion is very  
22 seductive, in terms of having FERC assume costs that as the  
23 small non-governmental organization, there is no way we can  
24 meet in terms of studies.

25 But that said, the determination of studies is

1 the first point, in my experience, where you are beginning  
2 to strike the balance between production of power for either  
3 public or private gain, and the environment, and working  
4 your way through a study and a study plan is, in my opinion,  
5 and we don't have any staff to do this versus other stuff,  
6 is worth the investment.

7 Because this is the first time you're engaging  
8 that question of power versus the environment, in terms of  
9 existing information, having gone through a non-ILP process  
10 recently, where information is 20 years ago. That is not  
11 acceptable. In terms of gathering information, because our  
12 knowledge of rivers has progressed tremendously in the last  
13 20 years.

14 So evaluating that information for what it's  
15 worth relative to conditions now on the ground is important,  
16 and sometimes you do a cursory read when there's a date that  
17 there's 20 years' difference. Lastly, the notion of FERC  
18 examples, that's fine. FERC checklists, that's fine. But I  
19 don't, I wouldn't want to see a FERC guidance document morph  
20 into a definitive list of studies that are the list of  
21 studies.

22 Because when you get on the ground, as Chris  
23 mentioned, every dam is different. You've mentioned it; I  
24 think we've all mentioned it. Every dam is different. So I  
25 don't want that chiseled in stone, and all of the sudden we

1 find ourselves locked into having to follow a particular  
2 path.

3 MS. WEST: Julie.

4 MS. TUPPER: Julie Tupper, Forest Service. We're  
5 on our fifth or sixth ILP in California. I work  
6 nationally, so the Forest Service has others we've done.  
7 ALPs, traditional and ILP has some definite advantages, I  
8 think. ALP is also nice. But I think there's two things.

9 There tend to be a group of studies that are  
10 always done, but I think the issue comes down to the issue  
11 of nexus, and I think that is a clear issue that we need to  
12 work on. There's a level of uncertainty, and as a federal  
13 agency who has mandatory conditioning authority, we believe  
14 sometimes, as this gentleman just mentioned, we have old  
15 information.

16 We need to update that information, to make sure  
17 that we are proposing conditions in our mandatory conditions  
18 that are appropriate. Usually we have found that the best  
19 thing that we've done, at least in California, as you'll  
20 discover, we started out at the ILP, and through each  
21 relicensing, we have started earlier and earlier and  
22 earlier, primarily because there is an amazing amount of  
23 material provided to the participants.

24 As an agency, we have a budget, but it still  
25 isn't enough, and we wonder how many of the NGOs manage to

1 participate. In our latest relicensing, I think we started  
2 two years early, and all we did was meet two days a week --  
3 let's say, two days per month for like a year ahead of time,  
4 primarily just so that there'd be different topics that  
5 people could come, and we could present information.

6 I think without doing that, the study process  
7 time frame is so compressed it ends up becoming contentious  
8 when sometimes it doesn't need to be. I always believe  
9 there will be some contention there, because not everyone's  
10 going to agree on what's needed.

11 But I think if the two big issues of uncertainty,  
12 and one thing that I think people need to realize, at least  
13 from the Forest Service perspective, is doing a study and  
14 finding out that there is very little project effect, we  
15 don't need a condition, is actually a valuable piece of  
16 information to us.

17 It's not that we need to do worthless studies,  
18 but sometimes we need to go out and find out that oh, the  
19 fishery is in good condition. There has been very little  
20 effect in the past 20 years since the last time anyone  
21 bothered to look at the fishery, and that we're okay with  
22 the instream flow.

23 But to go out and say "Oh, the fish are okay  
24 because 25 years ago that's what a study showed" is usually  
25 not sufficient information for us to make a decision and say

1 we can leave the stream flow. We get challenged on our  
2 conditions just as FERC does, and so we believe that there  
3 needs to be at least be a level of certainty.

4 So we need to strive to get studies that provide  
5 -- I don't think you're going to have certainty, but at  
6 least you will have less uncertainty.

7 MS. WEST: Okay, thanks. Frank, okay, and then  
8 I'm going to need to turn to the audience too. So Frank,  
9 Dan --

10 MR. SIMMS: Frank Simms, American Electric Power.  
11 I agree with what everybody's saying. You know, if a study  
12 is so old that the information's not valid, then the study  
13 is too old and the information's not valid, and then you  
14 need to get the information.

15 But I think my comments are coming out because we  
16 had a number of projects in the Class of '93, and believe it  
17 or not, those projects are coming up again in 2023, which  
18 means we're going to be starting this process again in 2016.  
19 I'm going to retire before that starts.

20 (Laughter.)

21 MR. DEEN: Once was enough.

22 MR. SIMMS: Once was enough. But when you look  
23 at the conditions of the licenses that were received in the  
24 Class of '93, and the comparison to what was prior to that  
25 Class of '93 licenses, there's a lot of monitoring and other



1 requirements, where there's an awful lot of information

2 that's coming up and being provided as it goes.

3 I think what the FERC needs to do is to look at

4 that as coming up, and if that information is available, and

5 it is now really historical information over a period of

6 time; it's relatively new information, if that information's

7 available, then you have to look at why would we go and do

8 another study when it's really collaborated what was stated

9 in the first license. That's more where my point's coming

10 from.

11 MS. WEST: Sorry. You three and then Dan, Russ

12 and then Larry.

13 MR. LISSNER: Dan Lissner from Free Flow Power.

14 I want to echo Julie's comments about the timing, and I

15 think she touched on an issue that's particularly applicable

16 in the new development projects, rather than relicensing,

17 and I think is benefitted across the board by the ILP.

18 Free Flow Power is developing conventional

19 hydropower projects and hydrokinetic projects, and I'll

20 focus on the hydrokinetic, because those are the slate of

21 projects that incorporate the ILP as well.

22 There's a constant tension that we encounter

23 between project operations and study nexus, that it's a

24 chicken and an egg problem that I'm not sure exists as

25 constantly, or at least as evident in existing projects that

1 are relicensing, or even in conventional hydropower projects  
2 at a dam, where you have an uncommercially-deployed  
3 technology, or you have flexibility about where projects can  
4 be located.

5       The developer is continually striving to get  
6 information from the stakeholders about demonstrated project  
7 nexus. Tell me how this relates to our projects, and the  
8 information we're receiving back from the stakeholders is  
9 well first, you need to tell us what your projects are going  
10 to look like. Then we respond we can't tell you what the  
11 projects are going to look like until you tell us what the  
12 resource agency, what the resource issues will be.

13       It's in some respects a vicious cycle, but where  
14 the ILP benefits this, and I think the attribute of the ILP  
15 that we prize above all is that it encourages, even forces  
16 the developer and the stakeholders to engage in this  
17 interaction early and frequently and intensely, and to  
18 really discuss these issues and look at them fresh and head  
19 on.

20       The situations in which this has worked best  
21 between the developer and the stakeholders is when both  
22 parties, from our perspective, when stakeholders have come  
23 to the table, willing to engage in that fully informed on  
24 the issues of concern, and willing to look critically at  
25 what they actually need.

1 Chris, from representing the Hydropower Reform  
2 Coalition, I'll note that one thing that the HRC has done  
3 particularly well, I think, is in putting information out on  
4 its website available to individual stakeholders and smaller  
5 groups about how to engage in the FERC process. That's a  
6 tremendous benefit to everyone involved.

7 Where we've run into challenges have been where  
8 people have come from both sides with preconception about  
9 what is valid as a matter of law, or what the boilerplate  
10 studies might be. We find that creates a roadblock that  
11 just isn't compatible with the time frame of the ILP.

12 Where that's happened, FERC has been consistently  
13 available, either through formal dispute resolution or  
14 through informal technical conferences, to mediate and to  
15 get the parties to the table where you can have that sort of  
16 conversation. So where it interacts with the time, the  
17 challenge is it takes a long time.

18 I don't know how you start early enough in order  
19 to fully vet all of these issues. But it's definitely an  
20 aspect that we've found has been beneficial across the  
21 projects.

22 MS. WEST: Russ and Larry, and then I'm going to  
23 need to go. So sorry.

24 MR. JOHNSON: I just want to make three other  
25 quick --

1 MS. WEST: Quick comments.

2 MR. JOHNSON: --comments about the study part.

3 First, this issue of nexus is really troubling, and to limit  
4 it to a discussion of project effect or operations effect is  
5 really not -- well, we struggle with it. We struggle with  
6 the nexus in recreation, the nexus with safety, all of the  
7 different things that a 401 license says you'll be  
8 responsible for as an operator in our opinion, where nexus  
9 is to the project, and therefore worthy of review and  
10 discussion.

11 Second, I think that there is obviously within  
12 FERC subjects that are not going to be studied. So don't  
13 bring it up. My comment is if there are studies that are  
14 out of bounds for this project or this type of project or  
15 whatever, then if you put it up front, because we've talked  
16 about the value of this phase, as getting more things up  
17 front.

18 If you put it up front and say we're not going to  
19 study this, it would be a lot less contention. To peel it  
20 away and finally halfway, several months, almost a year  
21 later be told we're not going to study this. FERC doesn't  
22 study this, not going to be done.

23 The most overriding part of this though is this  
24 comment, which I did make in my first round, is I think  
25 FERC, as a regulatory agency, needs to look at the potential

1 conflict of receiving money from a licensee, while they're  
2 regulating the licensee. It almost starts to remind you of  
3 a little bit about British Petroleum's relationship with its  
4 regulators and so on.

5 I'm not making an analogy or a match. But what  
6 I'm saying is the reason why I would like to have FERC do  
7 the studies in the first place, is to put the licensee in  
8 the same position as all the other stakeholders are in,  
9 instead of letting the licensee drive the process, where  
10 there is a vested interest in money, a vested interest in  
11 nexus and a vested interest in outcome.

12 No matter how pure the licensee performs those  
13 roles and studies and interprets them, it's always subject  
14 to the beholder saying "is this a vested interest decision,  
15 or is this a scientific fact or conclusion that we can deal  
16 with?"

17 MS. WEST: Okay Larry, and then we really need to  
18 go to the audience.

19 MR. THOMPSON: Larry Thompson, National Marine  
20 Fisheries Service. I think Dan, you touched on one of my  
21 points, and that's that we're talking here about projects  
22 where there's a lot of existing information, or there's an  
23 existing license and they're seeking a new license.

24 But we have to be aware of those cases where the  
25 ILP is being applied to an original license application, or

1 an applicant seeking an original license and there's little

2 to no baseline information.

3 You have the same time crunch between PAD

4 issuance and getting all the studies done, and that is

5 really compressed. Just take for example, Alaska. Take a

6 case where there is a project proposed in a watershed, where

7 there may be little or no stream gauge information. That's

8 where you're starting from. So we need to keep that in

9 mind, and --

10 MS. WEST: Do you have suggestions for it?

11 MR. THOMPSON: I think FERC should take a look at

12 extending that time frame between PAD and the deadline for

13 study requests, expand it when -- in cases where an original

14 license is sought.

15 Now I had a couple of other things to say. NMFS

16 is really after information. We're talking about studies a

17 lot. We're really after satisfactory information about the

18 effects of the project on the resource to be studied.

19 There's a little bit of clarification, I think needed by

20 FERC, in that Section 5.9 talks about information or study

21 requests.

22 It's not clear to me if the study criteria are to

23 be applied to an information request. Some of them don't

24 make any sense, a standard method -- applying a standard

25 methodology, for example, makes no sense, because you're not

1 performing a study. But what you're putting forward is an  
2 information request. So I think some clarification there  
3 would help.

4 MS. WEST: Okay, thanks. I'm having a hard time  
5 moving to the audience. John.

6 MR. KATZ: Sorry. John Katz with FERC. I just  
7 wanted to clarify a couple of things in response to some  
8 things that were said, primarily I think by Mike and Russ  
9 about funding and studies and so on.

10 With regard to FERC actually performing studies,  
11 Congress doesn't authorize the Commission funds to conduct  
12 studies, so that money just isn't there.

13 There is a part of Section 10(e)(1) of the Power  
14 Act that provides that funds collected through annual  
15 charges from licensees will be used to defray the costs of  
16 federal, state and other resource agencies, for them to do  
17 studies and otherwise participate in Commission activities.

18 That's subject to annual appropriations, and  
19 Congress has never appropriated any funds to do that. But  
20 it might be a worthwhile thing if it's a concern to local  
21 folks to approach their members of Congress, and ask them to  
22 put some funds into the Commission's budget to do that,  
23 because that is something that's been in the Act for many  
24 years, but Congress has never given the Commission any funds  
25 to actually defray the costs of the agency's.

1           And then with regard to annual charges, the last  
2 thing in response to what I think Mike just said -- or I'm  
3 sorry, Russ. That the Commission with regard to annual  
4 charges, the statute requires the Commission to charge all  
5 the industries it regulates, the natural gas industry, the  
6 electric industry as well as the hydro industry. It's  
7 essentially a user fee.

8           So if the Commission collects, you know, \$100  
9 million from its licensees, Ann and my salaries don't go up  
10 or down as compared to if the Commission collects \$10  
11 million. It's just the Commission is supposed to  
12 essentially -- I mean it's one of the oldest and most  
13 original user fee arrangements, where the costs of  
14 regulating these entities are paid for by those entities, so  
15 no one else has to do it. But it's not a question of sort  
16 of money being made or anyone getting more or less money  
17 through that process.

18          MS. WEST: Thanks. So let me turn to the  
19 audience here. There are like one or two folks with  
20 comments, solutions, suggestions? One, okay. Again, we  
21 need your name and organization, and then I'll turn to those  
22 of you on the phone.

23          MR. REID: Hi. I'm Mitch Reid from the Alabama  
24 Rivers Alliance. A couple of things that I've heard, and by  
25 the way I'm here as a member of the HRC as well, for



1 clarification.

2       One thing I hear about the funding and the  
3 assistance, I am one of three staff members in an NGO and  
4 the only person that does policy work for the entire state  
5 of Alabama on relicensing issues, and we currently have any  
6 number of ongoing relicensing. So I get it when we talk  
7 about taking the information, trying to analyze the  
8 information and trying to do something beneficial in the  
9 process.

10       To the extent that we are short-staffed and it's  
11 an overwhelming amount of information, we certainly need the  
12 assistance of FERC to help us weed through, I like something  
13 that Matt said, give us an indication of where you're  
14 weighting information.

15       Certainly, if you've got monitoring information,  
16 where you've been conducting monitoring of a stream, you  
17 know, below a project for 20 years, then that information  
18 should be weighted in favor of, you know, rather than a  
19 study.

20       But if you've got information that is provided  
21 from base conditions of when the hydropower utility started,  
22 you know, built the dam 50 years ago, well that's, you know,  
23 that's not the information we need. We need the  
24 information, you know, current information. So I would say  
25 that FERC involvement in that as much as possible.

1 I agree with the anomalous weather conditions.

2 We had a weird time in Alabama, where we would go from  
3 drought, and then the next year we'd have floods, and then  
4 maybe we're going back into drought. But you know, to the  
5 extent that you need to extend out and say you still have to  
6 go collect the information, we need that support.

7 I think that everything else I had has probably  
8 been circled around.

9 MS. WEST: All right, thanks. Let me -- oh, one  
10 more comment from the audience, and then I'll go to the  
11 phone.

12 MR. LEAHEY: This is Jeff Leahey from the  
13 National Hydropower Association. So I think I would just  
14 say that NHA continues to support the study criteria as a  
15 whole, though clearly if there were additional guidance or  
16 clarifications on certain portions of it that are needed, I  
17 think we would be all in favor of having FERC issue those or  
18 work to figure out what those clarification or guidance  
19 should be.

20 One of the things I've started to hear, and this  
21 isn't a study criteria question necessarily; it's more of a  
22 time line process issue, is the tension between all of this  
23 information that we all need and have as part of the  
24 licensing process, and the time lines. I do get a little  
25 bit concerned about some discussion about needing to expand

1 the time lines or expand the process as a whole.

2 That might be appropriate, and I think there is  
3 some flexibility built into the process. But I also do want  
4 to point that out, as one of the things that we were trying  
5 to do when we first did the ILP eight years ago was to  
6 address the issue of licenses and licensing proceedings that  
7 were going on for 8, 10, 15 years.

8 I think this process has really helped that. At  
9 least that's what I hear from the industry members who talk  
10 to me, and hopefully some of the flexibility that's built  
11 into that system can accommodate some of what we have heard  
12 here today.

13 MS. WEST: Okay. So folks on the phone. I think  
14 we have -- we're a little over in this segment, but I know  
15 it's important. We have time for a handful of comments, one  
16 or two if you want to push the pound sign twice and let me  
17 know if you'd like to contribute something? Okay. Who was  
18 that?

19 MR. KANZ: Russ Cans with the State Water Board  
20 in California.

21 MS. WEST: Hi Russ. Go ahead.

22 MR. KANZ: Okay. So there's a couple of things.  
23 One is, and this is based on my experience with every type  
24 of relicensing process, is I don't think it's realistic to  
25 decide \$30 million worth of studies in two months. It's

1 just not enough time, and experience has shown that.

2 The other thing is you don't know what you don't  
3 know, and I think there's -- the ILP has forced a little bit  
4 of inflexibility in the process, that doesn't allow a phased  
5 approach to studies. I think there's a lot of benefit to  
6 phased approaches, but you just can't do that in a two month  
7 time period. It's just not enough time.

8 MS. WEST: All right. Anybody else on the phone?

9 Thanks, Russ. Yep, who's that? I think I've got two  
10 people. Who was the first beep?

11 MS. MANJI: That's hard to know.

12 (Laughter.)

13 MS. WEST: Just whoever wants to speak up, name  
14 and organization and your comment.

15 MS. MANJI: This is Annie Manji.

16 MS. WEST: Hi Annie. Go ahead.

17 MS. MANJI: I'm with the California Department of  
18 Fish and Game, and for us, the purpose of these studies  
19 typically comes down to helping inform our recommendations  
20 later on in the process. That's perhaps a narrow purpose  
21 not shared by everybody, but one of the dilemmas we run into  
22 with the nexus question is that it's not so much the project  
23 impact that we want to study; we want to study the  
24 feasibility of future mitigation, future license conditions.

25 Often, the nexus, we stumble over the nexus

1 because it's not that we question whether there's an impact.  
2 For instance, if there's absolutely no passage at a dam,  
3 nobody's questioning whether or not that's an impact. But  
4 there is questions as to what would be a feasible mitigation  
5 measure to address that impact.

6 Do you want a hatchery? Do you want volitional  
7 passage? Do you want trap or haul, or you're going to have  
8 to go for an alternative type of mitigation, perhaps a flow  
9 regime. So for us, the study nexus, if they could be  
10 expanded to include not just project impacts, but that idea  
11 of feasibility of future mitigation measures. I think Chris  
12 touched on that earlier. Thank you.

13 MS. WEST: Thanks, Annie. So just to clarify,  
14 you're suggesting you might modify project nexus to not only  
15 evaluate project impacts but feasibility of PM&E measure?

16 MS. MANJI: Yes. Thank you.

17 MS. WEST: Is there somebody else on the phone?  
18 All right.

19 VOICE: You have someone in the audience who  
20 wanted to respond.

21 MS. WEST: Oh, I'm sorry. Wait. We need you  
22 with a microphone.

23 MR. SEEBACH: Okay. This is John Seebach with  
24 American Rivers and the Hydropower Reform Coalition. I just  
25 wanted to follow up -- sorry, wait. That's better. John

1 Seebach with American Rivers.

2 I wanted to follow up on Annie's point, and I'm  
3 not even sure that requires a change to what nexus is. I  
4 think that -- read from my notes as I was writing here. I  
5 think the question is not whether an effect exists, because  
6 clearly we wouldn't be studying it if there wasn't something  
7 causing that effect.

8 But the studies are often intended to try to  
9 quantify the relationship of that effect that we know is  
10 existing to the project, sort of figure out what that  
11 relationship is, and then also quantify the project's  
12 relationship, the project's ability to address that effect,  
13 to see whether it's possible to make changes to the project  
14 that could either mitigate for that effect, avoid it or  
15 enhance the resource in question.

16 So I think there's flexibility built into the  
17 criteria, as I read it, to be able to handle those  
18 situations. Thank you.

19 MS. WEST: Thanks. Ann?

20 MS. MILES: Ann Miles, FERC. I've noted that  
21 this issue has come up in some of the other meetings, so  
22 we've had a little bit of a conversation about it.

23 I think we also are hoping for a phased approach,  
24 that there may be any number of projects where you sort of  
25 have to figure out in the first instance is there an effect,

1 what is that effect, what's going on, and a result of what  
2 you figure out. Then you would look at what is the  
3 potential PM&E measure.

4 So it may be an area where I think every  
5 intention was that that was the way. You know, there are  
6 two years of studies and that that would be the two. Figure  
7 it out first, and then the second, if there is a need to do  
8 something, what are your options for doing it, what would  
9 they cost, those kinds of things.

10 Maybe we need to be doing that more clearly in  
11 our study determinations. Maybe as everybody in this room  
12 lays out their study plans, we should be laying them out  
13 more clearly, you know, with determination of effect and  
14 then, if so, what are those measures. I think it's  
15 something that we probably all can do a little better.

16 MS. WEST: Thanks. I think we need to move on to  
17 the next segment. Here we go. So study plan development  
18 and review. Again, I'll just walk through the front end and  
19 then have the discussion. So first up is the informal study  
20 plan process and FERC study plan determination. Some of  
21 this we've already been talking about, but here we go.

22 There's a short time period in which to develop  
23 the study plans. FERC study plan determinations are brief,  
24 with little explanation. Stakeholders don't have a complete  
25 understanding of why studies have been rejected in the study

1 plan determination process.

2       The approved study plan does not always satisfy  
3 the study needs of mandatory conditioning agencies. If the  
4 applicant and the mandatory conditioning agency agree to a  
5 study, but FERC doesn't include it in their study plan  
6 determination, sometimes there's confusion on whether or not  
7 the study should proceed or not.

8       Those were the issues and challenges. Now the  
9 solutions on studies. Encourage collaboration to reach  
10 agreements on study needs. This helps foster acceptance of  
11 study results later. So ideally you all will agree on the  
12 studies, and then you'll more likely accept the results that  
13 come out.

14       Develop phased or threshold-dependent study  
15 plans. I guess that's what we were just talking about a  
16 second ago. Have collaborative meetings to try to avoid  
17 formal dispute resolution. I think it's pretty universal  
18 that everybody thinks it's better if you cannot have to get  
19 to formal dispute resolution.

20       Clarify up front what the Federal Power Act's  
21 requirements are and Clean Water Act's requirements, and how  
22 FERC incorporates those, the 401 conditions into the  
23 license. So I think people are suggesting you need clearer  
24 understanding of all the roles of the conditioning agencies,  
25 and how that combines together into the license.



1 More solutions. Study requesters should clarify  
2 the specific study needs. Thorough requests really help.  
3 Have FERC actively participate throughout, particularly on  
4 contentious topics. So if you know you have a tough issue,  
5 people appreciate having FERC there.

6 So next I'm moving onto the dispute resolution  
7 process, the formal dispute resolution process in PM&Es.  
8 Formal dispute, study dispute resolution is a resource-  
9 intensive process with tight time frames. We all recognize  
10 that issue.

11 FERC's decisions don't always align with the  
12 recommendations of the dispute panel. The time frames and  
13 opportunities for comment can be unclear or not fully  
14 understood. It's challenging to complete studies and  
15 develop PM&E measures in time to file your license  
16 application, much less in time to file either the DLA or the  
17 preliminary license proposal.

18 Solutions. Encourage dispute resolution  
19 panelists to find additional information. This has happened  
20 in some situations where they sought additional information,  
21 which helped come up, inform their recommendations. Clarify  
22 with participants the process for formal dispute resolution,  
23 so everybody understands it up front.

24 Meet regulatory to discuss study results and  
25 potential PM&E measures to help manage time and the amount

1 of information you all have to manage in the review process.  
2 Discuss potential PM&Es prior to all the study results being  
3 available. So can you take it in bite size pieces. As some  
4 study results come in, talk about PM&E measures associated  
5 with that.

6 The PM&Es in developing applications. Create a  
7 schedule up front of when study results will be ready for  
8 review so everybody's primed and prepared to review the  
9 results. Consider a waiver of the preliminary license  
10 proposal or draft license application if it's fully  
11 supported by stakeholders, so you have more time to develop  
12 PM&E measures and then go to the final.

13 Incorporate draft management plans in the PLP DLA  
14 so stakeholders can provide input on those draft plans, and  
15 their input can then be reflected in the final plans that go  
16 in the final license application.

17 Okay. Lots covered, and okay. Barbara's up  
18 front, but I'm going to Mike, because I made him hold silent  
19 before.

20 MR. IYALL: Okay. One of the things that's  
21 going to drive a study is the presence of ESA-listed  
22 species, and as a utility, you want to produce a license  
23 that has minimal or adequately mitigated the impact. In  
24 Washington, we have utility holders being sued for the value  
25 of lost fish for 30 or 40 years. These are lawsuits that

1 are momentous in dollar value.

2       You don't want to be there. So it's in your best  
3 interest to produce, as a utility, a license that has  
4 minimal impact on listed species. So that should help drive  
5 the need for the studies. I mean are you making yourself  
6 vulnerable by bullying the agency people into minimizing  
7 their studies? I mean go ahead, because there's lawyers  
8 that will love that.

9       MS. WEST: Now remember the ground rule of  
10 respect.

11       MR. IYALL: Oh no. I'm just saying that it's in  
12 all of our best interest to produce a license that has  
13 minimal impact or mitigated impacts, and that's what we all  
14 really want to work for. With that, you know, I think that  
15 that's where -- I'd be the first to say we're wasting our  
16 time on frivolous studies. It doesn't do anybody any good.

17       I trained a young biologist in working on  
18 relicensing. I gave her four feet of material. I mean  
19 stacked on the floor. She had four feet of material to  
20 review. When you say "well, it's already been done." Yeah,  
21 it has, and it would fill this room. It's not adequately  
22 catalogued. I doubt anybody has any catalogue of it. In  
23 all research-based material, the devil's in the details.  
24 Are you going to read 500 pounds of paper and understand the  
25 details? So thank you.

1 MS. GREENE: Thanks. I'm going to maybe start  
2 from the general and go to the specific. So the ILP time  
3 line that we've talked a little bit about that, and we've  
4 heard some ideas about extending it. From our point of view  
5 as a licensee, it's a long time frame already and it costs a  
6 lot of money. Let's be honest about it.

7 We wouldn't necessarily be in favor of extending  
8 the time line. What I want to talk about maybe is the  
9 biggest crunch time, which is you do your first year of  
10 studies and hopefully you've done a collaborative approach  
11 in developing your study plans, and you're on track. Then  
12 you evaluate them after the first year and you tweak them.  
13 That's what the second year, at least that's how we utilize  
14 the second year. You tweak them to see what you might need.

15 But then when you get the study results, you're  
16 definitely in a crunch time after the USR, to actually file  
17 a PLP or a DLA. I'm not sure that it makes, at least in our  
18 situation, didn't make a whole lot of sense to spend too  
19 much time thinking about PM&Es before you had the study  
20 results, because some of the study results were a bit of a  
21 surprise.

22 If you are taking your study plan seriously, you  
23 want to use those results to build up, to build your PM&E  
24 package. So we didn't spend a whole lot of time dreaming up  
25 PM&Es. I'm sure some folks had them on their mind, but as

1 the licensee, we were focused on what do the studies

2 actually say, and where do they point you.

3 So that was a terrible crunch time, and in

4 retrospect, I've been thinking a lot about that whole PLP

5 phase. We did the USR. We talked about study results with

6 our parties. We barely had time to put the PLP together and

7 it was almost as an after-thought. It wasn't that

8 comprehensive because we didn't have enough time to

9 assimilate that information.

10 MS. WEST: So are you supporting the idea of

11 perhaps asking for a waiver on the PLP?

12 MS. GREENE: I think people should think more

13 seriously than perhaps we did, that it might have been a

14 better move to not spend time putting that document

15 together, but to think through more what the results of the

16 studies were, and really what were the best mitigation

17 measures that we should be talking about.

18 I want to add one point. I think I mentioned

19 this earlier. It's difficult. People always carry their

20 interests with them, as hard as we try to be collaborative

21 and open-minded. But the interests from parties really

22 drive their thought process about what the mitigation

23 package should be, and sometimes the study results are --

24 well, they don't matter, because people still have an

25 interest in certain measures. So that's problematic, but

1 that's human nature.

2 But yeah, I would go back and reiterate.

3 Considering the request for a waiver of a PLP, because the

4 license application then theoretically would be far more

5 robust. You'd have time to think through the issues and the

6 mitigation package that you want to propose.

7 MS. WEST: Matt.

8 MR. RICE: Matt Rice, American Rivers. We've

9 been -- I want to talk about one of the points, the solution

10 points that was brought up during this effectiveness

11 analysis, and also what Barbara said and what we've all been

12 kind of saying, talking about collaboration.

13 It's really good and it's really good that FERC

14 encourages it through this process. But not all applicants

15 are necessarily inclined to collaborate, and because of the

16 time frame of this process, it really allows them to drive

17 it and to really determine the outcome.

18 Maybe one suggestion, what a lot of folks have

19 talked about on this, and I saw this was a solution on the

20 previous slide, is really increasing FERC's presence on the

21 front end of these proceedings, I think in two ways. One is

22 a -- one, it's kind of a neutral party that is neutral to

23 all stakeholders, but is an advocate for building a strong

24 record that can help inform them later on in NEPA.

25 Then another is just being there, and maybe you

1 know, kind of acting alongside consultants as a facilitator.  
2 In my experience, the tone is very much different in  
3 meetings that FERC attends than meetings in which FERC does  
4 not attend. That would help build trust, collaboration.  
5 It's really important, I think, for FERC to see the dynamic  
6 between stakeholders and the applicants.

7 MS. WEST: Okay. Were you speaking there Frank?

8 I know you --

9 MR. SIMMS: Frank Simms, AEP. I'd like to go  
10 back to Barbara's point. I think she said on a very key  
11 issue with us in all of the ILPs that we've been involved  
12 in, and that's that crunch at the end. She's absolutely  
13 right, that when you get the study results, that's what  
14 you're going to be basing your management plans on, not just  
15 your mitigation.

16 In other words, those study results, we want to  
17 put together management plans that are going to make sense,  
18 that are going to allow for the proper management of the  
19 resource as you go on through the next license. In some  
20 instances what you're held to, in the instances we had, I  
21 know we shouldn't have details, but we only had about a  
22 three or four month period between the time that we had the  
23 study results and the time that we had to get the management  
24 plans in. You're saying well what kind of management plan  
25 can you develop?

1           On the business side of things, when we develop  
2 management plan, the resource that my supervisors and the  
3 people above me are looking at well, how much is this going  
4 to cost us to do this management plan.

5           And they're going to ask the question well, is  
6 the FERC saying you have to do this? Because if they're  
7 saying you don't have to do it, then why would we do it,  
8 because we have budgets. We have money to consider here  
9 too.

10          Yes, we want to protect the resource, but we have  
11 to balance everything out. My suggestion is that if you're  
12 experience in the ILP process, and you have to know your  
13 projects to a certain point as to what the environmental  
14 issues are going to be, as to how contentious it's going to  
15 be. I hear people talking about this back end as being the  
16 area where we need the extension of time.

17          Personally, I think where the extension of time  
18 needs to be is at the front end. I mean I realize that  
19 under the Federal Power Act and so on and so forth, we have  
20 that five to five and a half year time period, where we --  
21 before the license ends to notify that we have an intent to  
22 relicense.

23          But if you have a recognition of some of these  
24 things that are going to be a problem, weather, whatever,  
25 and you're thinking about that in the back of your head, why



1 would we not go up front and say yes, we understand this is  
2 going to take a little longer and we need more time to start  
3 from the beginning to get to the end.

4 Which is contrary, I know, to Mr. Lissner, who's  
5 probably saying boy, we'd like to shorten this. I think  
6 later on, we could discuss that. There's also ways that you  
7 could shorten these processes. But I do think that the  
8 constraint is sometimes this five to five and a half years  
9 of shoving it in.

10 Why could we not go in with a schedule that  
11 follows basically the ILP, but says we're going to start a  
12 little earlier? We're intending to start a little bit  
13 earlier, so we can answer some of these issues.

14 MS. WEST: So can't you do that already, pre the  
15 NOI?

16 MR. SIMMS: You can pre-NOI all you want to,  
17 which we do. One of the things we did is a draft PAD.  
18 Let's get everybody involved. We started two years in  
19 advance.

20 I heard other people who did the same thing. But  
21 that still doesn't substitute for the schedule, because once  
22 you get into that five to five and a half year schedule  
23 ahead of time, then you're following this schedule that says  
24 well within so many days you're going to do this, so many  
25 days you're going to do that, which is kind of the conundrum

1 or trap we got into.

2 No matter how hard we tried, when you got into  
3 the second year of studies, doggonit we had three months  
4 left at the end, and you know, I think the management plans  
5 we did, bless everybody that sat down in the meetings. You  
6 put together as much as you could to get out as much as you  
7 could and put it together. But they could have been better.

8 MS. WEST: So you -- I'm just trying to clarify.  
9 So you're suggesting maybe a say six-year rather than five  
10 and a half year and put a whole process plan together?

11 MR. SIMMS: I'm not suggesting a definitive time  
12 frame. What I'm suggesting is you go in up front with a  
13 schedule time frame that you say, just as what the intent of  
14 the ILP is, is that we are to hold to this particular time  
15 schedule.

16 We've sat down pre-NOI with the agency,  
17 stakeholders and others, and have decided this time frame,  
18 once we look at this project and what we see potentially  
19 coming ahead, is the one that would make sense for us, so  
20 here's our notice of intent.

21 MS. WEST: So flexibility to create a modified  
22 time frame?

23 MR. SIMMS: Yes, yeah. That --

24 MS. WEST: All right. So Julie and then --

25 MS. TUPPER: Julie Tupper, Forest Service. He

1 hit the nail on the head. We have had several cases where  
2 the second year studies actually were reported several  
3 months after the DLA was due, just because of the way the  
4 time frame worked.

5 It becomes very difficult, because then it kicks  
6 into other mandatory things, the ILP and as the Forest  
7 Service, we have other time lines to follow. We were trying  
8 to make decisions based on information we didn't really  
9 have.

10 I want to back up just a second though on the  
11 phasing. It's something that Russ said. If you are in a  
12 crunch trying to develop your study plan, where we've run  
13 into problems is trying to develop good triggers, and I have  
14 to say not all utilities are as collaborative as all. Some  
15 are very easy to work with; others are a little more  
16 difficult.

17 A study costs money, and so when you're trying to  
18 decide if you need to do a second year study, it can be a  
19 very contentious process. Sometimes, we didn't put as good  
20 a thought into what that trigger is to do the second year  
21 study. We end up spending a lot of time fighting over the  
22 second year.

23 I think looking back, in many cases that's  
24 because we were so busy trying to write the first year  
25 study, we barely got it out. We didn't put as good an

1 effort as we could have. In some cases a few folks have  
2 said we don't know what we don't know. So it became  
3 difficult to write the appropriate trigger.

4 But one of the things we've thought about  
5 proposing to FERC is exactly what Frank has said, is that in  
6 some cases, you need to see where the time frames fall.  
7 We've actually had utilities, as you've said, agree to start  
8 studies before we're really in the process, just because we  
9 know the second season ends up being the same time they're  
10 trying to write the PLPs or the draft license application,  
11 or they're actually running up against final license  
12 applications, just because the way the time frame works.

13 If you sit down seven or eight years ahead of  
14 time, and you actually have to do that, and figure out how  
15 your studies would work, I think you could propose to FERC  
16 that if we set the time frame up now, we will hit all of the  
17 time spots within the ILP, but it will be within a time  
18 frame that makes sense, that we get a good product at the  
19 end, instead of a rushed product.

20 We're not sure what regulation change that would  
21 be, but I think you could try and build that flexibility in,  
22 especially we're sort of winding down. But I think we see  
23 other projects coming forward now in the next probably four  
24 or five years. Even in California, we're back into -- I'm  
25 going to retire too -- here we go again. I think we'd like

1 to be able to have a little more flexibility on those  
2 projects.

3 MS. WEST: So I've got a lot of hands, sorry.  
4 Dan and then David, Russ, Larry.

5 MR. LISSNER: Dan Lissner from Free Flow Power.  
6 Frank and Julie's comments about time line are well-taken,  
7 and it's interesting about the tension, to discuss about the  
8 time crunch that occurs in a five-year relicensing process.

9 It seems counter-intuitive to describe a more  
10 contracted time frame for development of a license  
11 application on a new project, and we talk about -- it  
12 certainly seems counter-intuitive, where the expectations  
13 and the resources are less understood. But that tension is  
14 not arbitrary.

15 From the developer's standpoint, the only  
16 protection available to a developer's investment in a new  
17 project is the preliminary permit, and it's only viable as  
18 long as that preliminary permit exists, which is three  
19 years.

20 For a developer to contemplate a new development  
21 project and a time frame that would not enable them to file  
22 a license application at the end of that three-year permit,  
23 essentially leave that developer unprotected to collateral  
24 license applications beyond that point in time, during a  
25 time when they would continue to be expected to invest, not

1 only unprotected investment of the time and resources spent  
2 up to that point, but to continue to pursue developments  
3 during a period of time outside of the preliminary permit.

4 It's tempting to consider what it would be if  
5 there were different schedules for preliminary permits and  
6 there were more time, but that's not a discretionary  
7 determination on FERC's standpoint. That's statutory at  
8 this point in time.

9 So in the meantime, our perspective is the best  
10 use is to focus on what can be accomplished within the  
11 current statutory guidelines, and find a way to -- where  
12 collaboration and pursuit of the meaningful issues, rather  
13 than frivolous ones and advancing the time frame as  
14 productively as possible within that three years.

15 MR. DEEN: I saw this whole discussion as a  
16 matter of time and energy. Dave Deen, Connecticut River  
17 Watershed Council, sorry.

18 MS. WEST: Thank you.

19 MR. DEEN: In terms of the suggestion of  
20 collaborative meetings to avoid formal study dispute  
21 resolution, that's a function for FERC. Given that they  
22 would have as uninvested a role as possible, to be able to  
23 facilitate those informal resolutions, hopefully speeding up  
24 anything there.

25 The notion that 401 studies are every bit as

1 important, but may not be on FERC's list of items that they  
2 think is important, is something that you have to resolve.  
3 FERC has to resolve that, because the state work is every  
4 bit as important. That is a second forum that river  
5 advocates look to, and if the studies are not done, then the  
6 401 does not complete and the 401's not ready to go relative  
7 to the license.

8 MS. WEST: Can I just add on the point that it's  
9 all sectors? So it sounds to me as though it's something  
10 this 401 agency and FERC would need to work out, right?  
11 It's not solely FERC's role there.

12 MR. DEEN: Correct, yeah. No, but I don't know  
13 where the rub is, and as someone who addressed both forums  
14 as part of a relicensing, I don't care. But it should be  
15 worked out. My favorite issue, CEII, is a time barrier.

16 MS. WEST: So you'd better explain that for us.

17 MR. DEEN: Critical Energy Infrastructure  
18 Information. If a document or a part of a document is so  
19 classified, parties to the proceeding do not have access to  
20 that unless they file and request a waiver from FERC. This  
21 is not an ILP issue, but I missed a comment period because I  
22 didn't get the document released from FERC.

23 Suggestion. As parties are identified going into  
24 the process, that in fact those parties fill out the non-  
25 disclosure agreement, and that they in fact be sent, by the

1 applicant, information that when it hits FERC would be  
2 classified CEII, that there's an understanding in the  
3 process that you have a party. This is a serious part of  
4 it.

5 Connecticut River Watershed Council's been  
6 involved with every FERC proceeding in the valley, in the  
7 watershed for at least the ten years that I've been around.

8 If the parties, applicant included, reach a  
9 consensus agreement that in fact the time frame is too  
10 tight, it's forcing incomplete or otherwise less competent  
11 work, I would hope that FERC does not see the ILP process as  
12 such an icon that they would not allow all the parties to  
13 reach an agreement that yeah, we're going to need another  
14 six, nine, twelve months.

15 The ILP process was to stop 10, 15, 18, 20-year  
16 non-licensing, not to stop one year, 18 month situations.  
17 So I would just hope that FERC could, if you have a  
18 consensus agreement with the stakeholders, allow some  
19 flexibility to get the job done right.

20 MS. WEST: Thank you. Russ, and then Larry.

21 MR. JOHNSON: Two quick questions. It's almost a  
22 broken record, but I'll just stay with you. On Slide 17,  
23 you refer to mandatory conditioning agency. I'm supposing  
24 that a mandatory conditioning agency might be U.S. Fish and  
25 Wildlife or it might be the Environmental Protection Agency.



1           From the local government point of view, perhaps  
2 because we don't appear on the list, we never had any  
3 communications from the decisions they made on our project,  
4 from them to us. It came, their communications came to the  
5 resource agencies, which I think that's a natural  
6 expectation that they would. But they never got anything  
7 down to the stakeholders, the NGOs and the local  
8 governments.

9           So that's why we identify who stakeholders are on  
10 our lists, for those times when local governments are  
11 involved, as are the people they represent. It would be  
12 nice that they would be on the list and subject to the same  
13 flow of information as others.

14          A second quick point, because it's one I agree  
15 with, is I think Mr. Simms is correct, because we worked  
16 very hard with him on the project of the leap to create the  
17 management plans. It was extremely difficult for all the  
18 above. I think the management plans, when we get to the  
19 section later on this afternoon where we talk about it,  
20 needs some more conversation. I'll just say that to remind  
21 myself.

22          MS. WEST: I'll put you back in queue. So I have  
23 Larry, Chris and then Barbara.

24          MR. THOMPSON: Larry Thompson, National Marine  
25 Fisheries Service. I want to make some suggestions about

1 how to improve the study plan review process. NMFS believes  
2 that we do need clarification of the study criteria, better  
3 definitions and some clarifications.

4 We don't think that's going to do it. That's not  
5 going to be enough to really improve, in a substantial way,  
6 the effectiveness of the ILP in the study phase. We really  
7 think what's needed is action by FERC staff, to do a better  
8 job with the study plan determination document.

9 I say that because I had an experience as a  
10 panelist on a dispute resolution process. The first  
11 document, you know, I was relatively unfamiliar with the  
12 project. The first document that I looked at was the study  
13 plan determination. I wanted to know which requests were  
14 accepted and which were denied. I wanted to know the  
15 rationale for accepting or denial of a request.

16 It was difficult, the second part. The rationale  
17 was really difficult to find. They were just very brief;  
18 they referenced the criteria. The FERC staff referenced the  
19 criteria, that this criteria was not met or this one was not  
20 met, for example, the 5.9(b) criteria. But the rationale or  
21 explanation was lacking.

22 As a panelist, I was looking for comment,  
23 explanation of how a request, a study request met or did not  
24 meet the 5.9(b) criteria. Likewise, I was looking for  
25 rationale for why a study plan was adopted, and how it met

1 the requirements under 5.11(d). Again, I could not find  
2 that.

3 So again, reason for acceptance or denial is what  
4 you're looking for. What you're looking for is the nature  
5 of the dispute. You're asked to settle a dispute. That's a  
6 key document. So I really think FERC needs to do -- I would  
7 just implore you to do a more thorough job.

8 It may be that the regulations need to be  
9 adjusted there. If you look at the regulations under 5.13,  
10 they're not clear about what FERC's requirements are, you  
11 know. What are the requirements of a study plan  
12 determination? It's not clear, and there doesn't seem to be  
13 a good connection between, for example, the study plan  
14 requirements under 5.11(d) and the requirements for FERC to  
15 evaluate a plan under those, see that it meets those  
16 requirements. Okay, that's one suggestion I have.

17 Mike brought up a really good point about ESA  
18 consultation earlier. I think that deserves some mention.  
19 The regulations at 5.9(a) ask agencies like mine to put  
20 forward requests for information or study that would inform  
21 the ESA consultation that's to come later. But if you look  
22 at that requirement, it sort of drops away after that.

23 So those requests we put forward are not even --  
24 we're not allowed to dispute. If FERC determines that  
25 they're not going to take a request we filed under 5.9(a)

1 and accept it, we are not able to take that to dispute  
2 resolution. We can only take to dispute resolution studies  
3 that directly relate to our mandatory conditioning  
4 authority, which would be Section 18, Fishway Prescription  
5 Authority.

6 So I think that needs to be really looked at, and  
7 I'm thinking back to the interagency task force agreements  
8 back in the early 2000's, where this was sort of all laid  
9 out. It seems to have, you know, it doesn't seem to show up  
10 in the ILP sufficiently. I think I'll stop there. Thanks.

11 MS. WEST: Okay. Just let me ask, are there any  
12 recommendations for what NMFS might do to address some of  
13 these?

14 MR. THOMPSON: Well, I think -- I took a look at  
15 the interagency task force agreements that Commerce,  
16 Agriculture, Interior and the FERC agreed to back in around  
17 2000. I think if we go back and look at that, and work  
18 better to facilitate the ESA process, that would help. But  
19 we certainly cannot just put a criteria or a requirement out  
20 there to put forward information or study requests, and then  
21 let it drop out of the ILP.

22 That really looks like what's happening now, and  
23 Mike put his finger on it. If you get later and you don't  
24 have that information, you are going to subject that  
25 licensing to significant delays, or if you issue a license

1 that's not protective of those species, there are  
2 ramifications.

3 MS. WEST: So it sounds like there's some seeds  
4 in the ITF document for re-discussing between the  
5 organizations, to see if you can find some new solutions.  
6 Ann.

7 MS. MILES: Ann Miles, FERC. I do think that  
8 would be worthwhile. The ITF was done before the ILP. So  
9 it doesn't incorporate anything of the ILP, and I think it  
10 would be very valuable for the Endangered Species Act  
11 agencies to get together and see what we could work on with  
12 that.

13 MS. WEST: Okay, thanks. Is yours directly Mike,  
14 because Chris was next.

15 MR. IYALL: Yeah. I'll be real quick. I just,  
16 where I was trying to go is is that when the FERC process  
17 fails to resolve your concerns, you shouldn't have to say  
18 that's okay, we'll clean it up in court. I mean that means  
19 the FERC processes need to resolve these ESA-listed issues.

20 Then again, we don't have to say "don't worry  
21 about it, we'll clean it up in court," because that means  
22 the process isn't adequately addressing those concerns.  
23 Thank you.

24 MS. WEST: These are all about solutions that  
25 don't get you there. So Chris.

1 MR. SHUTES: Chris Shutes, California

2 Sportfishing Protection Alliance and Hydropower Reform

3 Coalition. I'd like to go into a couple of particular

4 things, and then talk about a more general topic.

5 When we were talking about phased studies, one of

6 the problems we've found is that sometimes studies are

7 phased based on models, and this presents a more general

8 problem that we've had with models in the relicensing

9 process. They tend to be the, and I'm talking about water

10 balance models and water temperature models in particular.

11 They tend to be the things that get produced last, and when

12 we're in that period that others have discussed, where we're

13 getting down to studies and trying to interpret them, they

14 seem to be the ones that lag.

15 Basing a phase study on a water balance model

16 really seems to be a problem, because they usually just

17 don't get done. One of the things that some licensees have

18 done that's positive, in terms of addressing this problem,

19 is developing unimpaired hydrology, and even developing

20 water balance models before relicensing.

21 Although I don't think the Commission can require

22 that, I think as a policy matter, something in the guidance

23 document that suggests that would be a positive step. We

24 are going to run into questions about whether the scope of a

25 water balance model is appropriate.

1 I would like to see the Commission consider  
2 requesting that water balance models for projects include  
3 watersheds, and not just a specific project, or at minimum  
4 can it effectively interface with existing models that  
5 already are present for watersheds.

6 So I think those are particular issues that have  
7 come up in the phase study question. I'm not sure that  
8 Larry's issues about study determinations need to be -- need  
9 to occasion a rewriting of the rules. But I think that some  
10 of the issues that he raised certainly would be  
11 appropriately addressed in the guidance document.

12 So one of the issues we've had, I think, relating  
13 to one of the other less-discussed study criteria is the  
14 agency goals in the relicensing. Sometimes agencies have  
15 been reticent to list those goals, fearing that that's sort  
16 of established the entire universe of what their goals might  
17 be in a process.

18 I think an appropriate step or an appropriate  
19 topic for discussion, a guidance document, would be the fact  
20 that agency goals, as stated in study plan proposals, are  
21 preliminary, and that they don't encompass the entire world  
22 of the agencies. Because we've run into problems later on,  
23 because we haven't had clear definition between what the  
24 goals are and how they relate to the study plans, and it  
25 sort of becomes as vicious circle for the agencies, when

1 they're considering what they put in a study proposal.

2 MS. WEST: So just to clarify, Chris, you're

3 suggesting getting the agencies to identify their

4 preliminary goals up front, so you could then evaluate the

5 studies?

6 MR. SHUTES: Yeah, but that in a policy document,

7 FERC articulate that that doesn't sort of define the entire

8 terrain of what they might say at a later point, as things

9 iteratively evolve.

10 MS. WEST: Okay.

11 MR. SHUTES: Then on a more general issue. Study

12 development, we've talked about it needs to inform

13 Endangered Species Act requirements. But it also is

14 basically something that lays the table for NEPA, and it

15 goes hand in hand with scoping.

16 We don't always know what, in NEPA terms, the

17 significance of impacts are going to be early in the

18 process. What we look to do is to try to understand the

19 effects, and quantify those effects. But we can't say what

20 the significance is until we've done the studies.

21 So I think it's important to recognize that the

22 Commission needs to look at an expansive role for studies,

23 in developing a good NEPA process and document. I think

24 we've addressed some of these issues in some of our filings,

25 and I won't go into them more extensively. But I think it's



1 a very important point.

2 Finally, I'd like to say that the integrative  
3 licensing process really ought to be integrating, and it  
4 ought to be integrating NEPA and it ought to be integrating  
5 ESA, and it ought to be integrating the needs of the 401  
6 agencies, and that's the idea.

7 When that doesn't happen, then on the back end we  
8 have delays. Some of those were discussed a little bit  
9 earlier, and while the Commission isn't required to order a  
10 study that does not -- that would fulfill only the  
11 requirements of say a 401 agency, it might be a productive  
12 thing to do.

13 If it really feels that it can't order that, it  
14 ought to suggest to an applicant that it might be in  
15 everyone's best interest to expedite the process.

16 MS. WEST: You're teeing up this afternoon's  
17 conversation well.

18 MR. SHUTES: Very good. So I'll stop with that.

19 MS. WEST: Barbara, and then I wanted to turn to  
20 the audience. We'll go a little bit longer on this topic  
21 and then just restart a little later. Go ahead.

22 MS. GREENE: I want to think about some of the  
23 challenges, not necessarily process-related, but in reality,  
24 when you think about the long five and a half year period.  
25 I still maintain that I think that's enough time, because

1 frankly if you extend it, it just keeps getting extended  
2 more and more and more. I'm not sure that you ever finish  
3 the process.

4       So you know, there is time always in the  
5 beginning. If you want to start early, you can start early.  
6 You can start gathering people far before the NOI if you'd  
7 like. But this gets to my key point. One of the biggest  
8 challenges is getting all the parties to get together, and  
9 to keep coming together.

10       That speaks, I know, to a lot of both agency and  
11 NGOs and tribes and their budgets. It's very challenging.  
12 But as a licensee, when I think about the kind of resources  
13 we poured into this program for the last eight years, it is  
14 a source of frustration that agencies staff would come in  
15 and out and not be really tracking everything because they  
16 had too many things to do.

17       So maybe this is a little bit -- maybe it rubs  
18 people the wrong way. I don't mean to do that, but when we  
19 sat down to do this process, we looked at it. We looked at  
20 a very long time frame. We looked at the budget. We put it  
21 all together like it was a program, so that we could get  
22 through it.

23       What we ran into were folks who would come in and  
24 out because they had other things to do, and they weren't  
25 fully informed. It was really an impediment, because you

1 ended up discussing things over and over again. When you  
2 got to the point of writing management plans, that's new,  
3 and folks were a little stunned that they had to complete  
4 those before filing the final license application.

5 It got done, you know. People can do this stuff  
6 if they put their mind to it. But --

7 MS. WEST: So do you have a solution?

8 MS. GREENE: Well, you know, I'm not naive about  
9 how some of these organizations run. But a little bit of  
10 planning and recognizing that if you have a very large  
11 project in your back yard, you need to actually dedicate  
12 some staff to getting through the process, particularly if  
13 you have conditioning authority at the end.

14 It's disingenuous to think that you'll just wait  
15 until the end and file your prescriptions, particularly when  
16 other folks are spending a lot of time and a lot of  
17 resources trying to gather people around the table to come  
18 up with solutions from an early stage.

19 Another thought occurred to me, and I'll just  
20 throw this out for people to think about. A lot of what  
21 we're talking about, I think, are projects going through  
22 their first relicensing, where when these facilities were  
23 built, there weren't environmental laws around. There  
24 wasn't information.

25 Through the course of the first relicensing,

1 going for your second license, you develop a tremendous  
2 amount of information, and you develop monitoring. So it  
3 sort of begs the question when you go around the next time,  
4 like the Class of '93 is going to come up, is that going to  
5 be different?

6 Again, I would hesitate to change the process  
7 based on experiences going through your first relicensing,  
8 because the next round should be a little bit easier.

9 MS. WEST: Okay. Ann.

10 MS. MILES: Ann Miles, FERC. I have -- there's  
11 one point in the process that I haven't heard much  
12 conversation about, and it's between when the applicant  
13 files their proposed study plan and you get the comments on  
14 the studies. There's 120 days, and the goal of that time  
15 frame was to be able to informally resolve the studies, so we  
16 wouldn't have to go a dispute.

17 Is that working from folks' point of view? Is  
18 there something we should be doing differently in that? You  
19 know, it's four good months where some solid conversation  
20 might resolve some things.

21 MS. WEST: I have Julie and then Chris.

22 MS. TUPPER: Four months isn't even close to  
23 enough. It takes us on average 18 months to write study  
24 plans. We start a year early because in California, we do -  
25 - you're right. We have a group of study plans but we were

1 one of the first ones, and in the four months, when we  
2 actually tried to follow the rules of what are the first  
3 studies, we weren't even --

4 The only thing we ended up doing was grabbing old  
5 study plans we'd written under old projects, threw them out  
6 there, tried to change them. But we weren't -- then we ran  
7 into issues down the road, because we realized there were  
8 things we hadn't thought about.

9 I do, in a simple licensing, it might be easy.  
10 But in our licenses, I don't think you could come up with a  
11 study plan, because you have to know enough information. So  
12 you have to sort of have a pre-PAD, so we know what we want,  
13 and then we -- maybe you can do it in a year. But I know  
14 four months is not even close to enough.

15 MS. MILES: Let me just ask. You should have --  
16 the applicant should have given a study plan, so it should  
17 be responding to one. Are we not getting it detailed enough  
18 to be able to respond to it?

19 MS. TUPPER: Well, the way the process works is  
20 after the NOI comes out, the agencies propose study plans,  
21 and then it comes -- which we think is backwards, but we  
22 won't go there, and then the utilities, usually the  
23 licensees, come back with those.

24 That process, that time frame still does not --  
25 I'm just being realistic. It hasn't worked yet. We start

1 way before that now, because we can't get the process

2 through. The amount of time when we have -- okay.

3       From when the NOI comes out until when we have to  
4 basically comment on the PAD and proposed study plans, as  
5 the Forest Service is a mandatory agency, where we really  
6 have to take this seriously and propose studies, if we don't  
7 have the studies done, we physically can't do them.

8       We'd have to work 24 hours a day. They're that  
9 complicated, and there's review and all sorts of things.  
10 Then the licensee takes those and moves forward. I'm just  
11 being realistic. We can't -- other people who work with me,  
12 Larry, Chris, we've all said there's not enough time.

13       So we start literally by the time the PAD comes  
14 out, we hope to have about half the study plans written, so  
15 that we can spend that time frame getting the other half  
16 that are more complicated or contentious done.

17       MS. WEST: Chris.

18       MR. SHUTES: Yeah. I think that it varies from  
19 project to project, and it depends a lot on how many you've  
20 done on the front end, even before the PADs come out. If  
21 you've had the opportunity to work with the licensee and  
22 develop collaborative study plans, it certainly helps.

23       What you could perhaps hope to do in the four  
24 month period, you can't hope to write them all. I don't  
25 think that's realistic. But what you might be able to hope

1 to do is address the ones where there's problems. I think  
2 the FERC staff actually has an important role to play there,  
3 and it goes back to something that Barbara said before.

4 If FERC staff, in addition to other stakeholders,  
5 really understands the projects, and understands not only  
6 the projects but the processes and how they've gone up 'til  
7 then, what the issues of disagreement are, that can be a  
8 very positive thing, and it helps move things along in the  
9 process.

10 Unless there may be some cases where folks say  
11 well, "We just -- we're doing fine. Just leave us be." But  
12 that's one thing I think that could help. But I don't think  
13 that the anticipated four months, I agree with Julie; it's  
14 just not enough time to develop all these things.

15 Oftentimes, the studies proposed by the licensees  
16 are fairly -- they're sufficiently detailed, but I think  
17 they haven't often addressed some of the issues that some of  
18 the other stakeholders have, find as being important, unless  
19 they've been developed collaboratively.

20 MS. WEST: Larry, and then Russ.

21 MR. THOMPSON: I just had a real brief statement.  
22 Larry Thompson, National Marine Fisheries Service. I think  
23 we should look at this, the ILP process, and look at the  
24 evidence that's been presented here today, that we are --  
25 we're moving away from it. We're creating processes. We're

1 making it up as we go along to sort of plug holes in the  
2 process.

3 I think I've heard several people say that, you  
4 know, different things about that today. We're starting way  
5 in advance of the PAD, issues with the draft license  
6 application stage. Julie talked about studies, you know,  
7 the Forest Service starting, you know, a year and a half  
8 ahead of time.

9 So I mean I think we should take that to heart.  
10 What lessons can we learn here today about I mean why are we  
11 separating ourselves from this process? It's evidence that  
12 it may not be working. Thank you.

13 MS. WEST: I'm not sure that's my lunch break  
14 moment. Russ?

15 MR. JOHNSON: Our experience to your question is  
16 different. We had in the four month period of time enough  
17 time to respond to the studies in and of themselves. We  
18 probably exhausted perhaps too much of even our four month  
19 time with the discussions over what's not being studied, and  
20 trying to get them included. We had more than enough time  
21 to respond to the ones that were provided.

22 The rub came from us is that when we finally felt  
23 that the only way we were going to get something studied was  
24 to propose the study itself and bear the cost of the study  
25 itself, that would have fallen out of the four month



1 criteria. But because of the cost of the study itself, we

2 simply dropped the issue.

3 So our experience of can you respond in a four-

4 month period of time to what is provided by an applicant?

5 Yeah. And can you try to influence some other studies that

6 you want? Yes.

7 But if "no" stays through that process, and

8 you're left now with writing your own study and funding your

9 own study, then that would have fallen out of the four

10 months. That seems to be, I think what I hear, an exception

11 rather than the ongoing rule.

12 MS. WEST: Okay. In the interest of time, I want

13 to turn to the audience here, and then to the folks on the

14 phone. They're bringing you a microphone.

15 MR. O'KEEFE: Tom O'Keefe, American Whitewater,

16 and I just wanted to respond to Ann's question there, and

17 just sort of sidestep the question for a moment of whether

18 the four months is enough time, but just focus on how to use

19 that time most efficiently.

20 Two thoughts that I had is one, you know,

21 Commission staff participation. It's already been

22 mentioned, and really encouraging collaboration between the

23 parties and, you know, more than just, you know, one

24 meeting, and more active encouragement from Commission staff

25 on that point.

1           The other thing that's also been previously  
2 mentioned is just clear guidance and rationale, which allows  
3 us to use that time most efficiently, because what I've  
4 found in practice is we spin our wheels a little bit, just  
5 trying to, you know, figure out this mystical process of the  
6 study plan determination, and you know, some more clearance  
7 guidance on that point would be really helpful.

8           I know it's made a big difference in our  
9 settlement discussions, having that, a policy statement on  
10 settlements and when things start going off in left field,  
11 you know, we're able to refer to that. It was very helpful  
12 in having something like that, as has previously been  
13 mentioned in the study plan development and the  
14 determination to be really helpful. Thanks.

15           MS. WEST: And just adding what I'm hearing from  
16 Chris and from Tom, you're saying FERC's participation is to  
17 also help focus on the specific most difficult topics -- the  
18 time frame?

19           MR. O'KEEFE: Absolutely. That's been my  
20 experience.

21           MS. WEST: Anybody else in this audience?

22           (No response.)

23           MS. WEST: Okay, folks on the phone, rather than  
24 beep beep, why don't you just chime in with your name and  
25 organization, and we'll try and take it that way. Anybody

1 want to add a thought or two?

2 MR. DACH: Yes. This is Bob Dach with Indian

3 Affairs. I just wanted to note --

4 MS. WEST: Hold on. Bob Dach with Bureau of

5 Indiana Affairs. Go ahead, Bob.

6 MR. DACH: I wanted to note two things. First, I

7 thought what Ann was bringing up was the 90-day time period

8 to resolve study disputes, which happens after this four-

9 month period to actually develop the studies. So I didn't

10 really hear if that had been -- if that was being used

11 effectively, that 90-day time period to resolve any study

12 disputes.

13 On another issue prior to that, most of the times

14 I haven't seen agencies come with completely developed study

15 plans to the table. So the fact that the Forest Service

16 does that I think is impressive, but I haven't really seen

17 that in most, at least of the licensings that I've

18 participated in.

19 I think that's a great idea if you can do that,

20 and I encourage our folks to do that. But I don't see it

21 that often. Something that may help that process, where you

22 need more time to fully develop your study plans is FERC

23 does send out a notice to all of the licensees at some point

24 in advance of their licensing process, and I can't remember

25 when it was.

1           It was like five -- a year before they have to  
2 start or something, they get an update that says "Hey, don't  
3 forget you have to license." It could be at that time where  
4 the license applicants or the licensees who become the  
5 applicants at least get ahold of those other folks who might  
6 be interested, and say hey, we got this process. It's going  
7 to start in a year. It's a good time to start working on  
8 your studies.

9           But I do sort of as a summary want to say that  
10 I'm not that optimistic or that excited about making the  
11 licensing process any longer than it already is either. In  
12 every case that I've been involved with, if we've had two  
13 years to work on something, it will take us two and a half  
14 years. If we have six months to work on something, it will  
15 take us 12 months.

16           I think that we will work within the time frames  
17 provided. We just have to apply the appropriate resources  
18 to it.

19           MS. WEST: Just a note. I'm hearing from  
20 applicants and agencies some want flexibility and a bigger  
21 time frame, and applicants and agencies who don't. So I'm  
22 hearing an array. Any other -- go ahead, David.

23           MR. DEEN: There may be reason for shifting the  
24 time frame within the presumed five and a half years for  
25 individual activities.

1 MS. WEST: So that's maybe a third way to  
2 approach this.

3 MR. DEEN: Right, and again, I don't want to see  
4 ILP lionized to the point where it can't be flexible,  
5 particularly if the parties agree.

6 MS. WEST: Okay. Anybody else on the phone?

7 MS. MANJI: This is Annie Manji with California  
8 Fish and Game, going to how to make that, these compressed  
9 time periods more efficient, and I heard Barbara and I can  
10 relate to that idea, that the agency personnel can be sort  
11 of intermittent in their participation, and I hear your  
12 frustration.

13 One of the things we've been hoping for or  
14 advocating for is for the investment in technologies, such  
15 as the one we're using today, so that I didn't have to fly  
16 to Washington, D.C. but I can still participate, because  
17 travel becomes a big issue when you're dealing with a large  
18 region.

19 So if the applicants can help us participate  
20 without having to be there, that's very helpful, and then  
21 also facilitating meetings, where information that is  
22 brought forward is documented, so that you don't feel like  
23 you're going to endless meetings, same thing, and nothing is  
24 coming out of it. That tends to discourage agency  
25 participation if we feel like our comments didn't go

1 anywhere.

2 Not that you always have to agree with us, but we

3 are always right. I should point that out.

4 (Laughter.)

5 MS. MANJI: But at our comments or our concerns

6 somehow get documented in meeting notes somehow, and

7 facilitators tend to help with that. So that we can say

8 "Hey yeah, we've been saying that for the past two years.

9 See, we were right." Just so those things could help

10 increase the efficiency of these very narrow time frames.

11 Thank you.

12 MS. WEST: Thanks, Annie. Anybody else on the

13 phone?

14 (No response.)

15 MS. WEST: All right. Why don't we take a break?

16 I think it's time for either lunch or breakfast, depending

17 on where you reside. How about realistically, by the time

18 we get through, we need 45 minutes probably, or can we do it

19 in a half an hour? Let's try 1:35 this time, and see if we

20 can restart then. So that's roughly just 30 minutes from

21 now, and then we'll translate on all the other time zones.

22 So thanks folks. We'll take a 30 minute break.

23 MS. MANJI: Just a question. Should we hang up

24 on the phone and call back in?

25 VOICE: It's your option in terms of doing that.

1 I think it might functionally be better just go hang on, but

2 you can call in --

3 MS. MANJI: I can do that. Thank you.

4 MS. WEST: Great.

5 (Whereupon, at 1:02 p.m., a luncheon recess was

6 taken.)

7 MS. WEST: In the interest of covering

8 everything, we need to, in the next hour and a quarter.

9 Even though we're not all here, I'm going to reconvene us,

10 thank you. I'm going to modify. We've got three segments

11 yet to go and an hour and a quarter.

12 So I'm going to go through this next, the post-

13 filing coordination from now until 2:15. We'll see if this

14 works. The good process ideas from 2:15 to 2:45, and then

15 we'll wrap up 2:45 to 3:00, and this is all east coast time.

16 So I'm going to hope, continue with the quality

17 exchange that we're having, but we need to be a little bit

18 more efficient in the conversation. So teeing up

19 efficiency, I'll go right into the slides, and again if

20 there are new people on the phone, the format is I'll review

21 the slides. We'll have a panel discussion, go to the

22 audience here and then folks on the phone.

23 So next up. Post-filing is this topic, issues

24 and challenges. Actually, we were just teeing up this

25 process before. The regulatory steps post-filing, and how

1 they're linked and how they affect schedules is not always  
2 clear and understood. Improved coordination of regulatory  
3 processes has not been as successful as intended.

4 Some ESA and 401 agencies suggest that FERC  
5 environmental documents are not developed in a way that  
6 suits their needs. State and federal resource agencies have  
7 staffing constraints that make timely processing  
8 challenging. We certainly discussed that one.

9 It is clear when and how stakeholders may comment  
10 and stay involved in the post-filing process. Suggestions.  
11 Have FERC and the agencies discuss environmental information  
12 and analysis needed in the NEPA document to support other  
13 agencies' requirements, ESA, 401, 4E, etcetera, up front.  
14 Meaning pre the post-filing process, so then when the NEPA  
15 document comes out, it might better meet all those agencies'  
16 needs.

17 Improve timing and coordination between state and  
18 federal agencies and FERC on their licensing needs. Begin  
19 coordination among FERC and the agencies as early as  
20 possible, to identify key goals and deliverables. Increase  
21 coordination pre-filing.

22 More solutions. Establish a coordinated  
23 interagency time line, not only for the pre-filing but also  
24 for the post-filing process. Seek support for resource  
25 agency staffing. Sounds like especially in the Northwest,



1 from what I was hearing, but I'm sure it's universal.

2 Provide more robust communications tool to keep stakeholders

3 aware of the process and milestones post-filing.

4 So that was a quick round-up to save more time

5 for discussion. Panelists, thoughts, reactions on the post-

6 filing process? Okay, David, Michael and Matt.

7 MR. DEEN: This is a repeat of something said --

8 David Deen, Connecticut River Watershed Council. In the

9 post-filing suggestions, improve timing and coordination

10 between state and federal agencies and FERC, the NGO world

11 should be part of that process, so that we're not in a

12 position of asking something of either the state, in the 401

13 process, or FERC, something that can't happen, won't happen

14 and we're not wasting people's time. That was something

15 that I had mentioned earlier also.

16 Communication tools. I haven't seen it done in a

17 FERC process, but establish what I believe is called a

18 Listserv, so that there's mailing address of participants,

19 players in the process, that if you send it to one, you send

20 it to all.

21 In terms of large documents, one of the things we

22 use in a process I'm involved with is an FTP server, where

23 you can put documents, so that if you want to download them,

24 and they are of particular interest to you. I am not

25 particularly interested in Section 106 documents, historic

1 preservation, which normally is part of this.

2 But anything to do with fisheries, I'll want a  
3 copy of that document, and I may have misplaced the hard  
4 copy that was given to me. An FTP server allows me to go  
5 and get that. A suggestion might be that FERC set up a site  
6 server for licenses going through the ILP, and if not FERC,  
7 then look around for a volunteer state agency that might  
8 host such a site.

9 I highly recommend having FERC and the state  
10 agencies discuss environmental information and analysis  
11 needed, which is again something else that I had brought up  
12 earlier, that they've got to work together so that we, as  
13 the NGO advocacy organization, know to whom to speak.

14 MS. WEST: Okay, thanks.

15 MR. IYALL: Mike Iyall, Cowitz Indian Tribe.

16 Yeah, I have a couple of suggestions. One was already  
17 mentioned before, and that would be to allow the  
18 stakeholders, with agreement, to adjust the schedules.

19 So if the stakeholders say hey, we need more time  
20 on this one area, then FERC should be, you know, should have  
21 a process to where, within 30 days, we can get our extension  
22 or whatever.

23 Another piece is to help get around the  
24 contraction of agency staff, because it's huge out where I  
25 am. All the boomers have retired and nobody's replaced

1 them. We discussed this a little at lunch. If there's  
2 clearly an area that calls for mitigation, maybe we just  
3 need to progress to the mitigation step, rather than debate  
4 whether or not it would be called for. Let's -- and we  
5 could even put the mitigation planning even ahead of notice.

6 If you have issues that you know of, you need to  
7 mitigate for, why not begin mitigation planning with the  
8 assumption you'll get the license. Thank you.

9 MS. WEST: That's a pre-filing comment, right?

10 MR. IYALL: Yes.

11 MS. WEST: So I think Matt.

12 MR. RICE: Matt Rice, American Rivers, and I kind  
13 of had a pre-filing comment as well. One thing, but I think  
14 that it, you know, most certainly applies to some of the  
15 issues and challenges identified here, and also some of the  
16 -- and it's consistent with some of the suggested solutions.

17 You know, one thing we haven't talked about is  
18 actual implementation of the studies. For example, and I  
19 think what I suggested before, to have a FERC, FERC staff  
20 participate kind of more robustly in the process, one that's  
21 an advocate for building a record, for building the record  
22 could help with this. For example, work on a project where  
23 a study has been completed, and the results were essentially  
24 "I don't know."

25 Now in a month, two months, they're going to be -

1 - we're going to get the PLP. So that obviously presents

2 problems later on, and it's hard not to anticipate delay.

3 So I just kind of really want to emphasize --

4 MS. WEST: And do you have a solution for that?

5 MR. RICE: Well no. Like I said, maybe, you

6 know, more participation, more kind of you know obviously I

7 think more coordination is definitely the answer. Just I

8 think at times, some of these kind of need to be held to the

9 fire, I guess.

10 MS. WEST: I think Barbara and then Julie.

11 MS. GREENE: I thought some of the solutions that

12 were suggested were really very good. The idea of

13 establishing a coordinated interagency time line in theory

14 could really be helpful, so that all the agencies and

15 working in concert with FERC, understand one thing, that

16 certain things are going to happen.

17 It also speaks again to the coordination within

18 the agencies, and being able to plan appropriately, both

19 with staffing and identifying the needs that the agency see

20 at least up front and as they go through the process.

21 I also think it's important that the agencies

22 with conditioning authority are clear throughout the process

23 about issues they see coming up, and throughout. So for

24 example in our process, when we were in negotiations last

25 year, there was a fair amount of discussion during the

1 negotiations about what would be needed in Section 7 and  
2 401.

3       So that as we went through things, we would try  
4 to make sure that we had things on the record that were  
5 going to be needed for those processes, and we clarified  
6 what the time lines were. Now we'll see if all that works  
7 out. Of course, the 401 is always a challenge in the  
8 process time line.

9       But just being cognizant of those issues as you  
10 go through, and what the agencies are going to need post-  
11 filing to finish their regulatory part of the process, I  
12 think, is really important.

13       MS. WEST: Okay. Julie.

14       MS. TUPPER: Julie Tupper, Forest Service. I  
15 think what we see, at least as the Forest Service is a  
16 mandatory conditioning agency, is that this is a time where  
17 we also need to have a little bit of leeway in time frames.  
18 We hope that when the license application comes out that  
19 we've all agreed on what the proposed management conditions  
20 will be, the PM&Es.

21       But in many cases, because of the crunch when  
22 that license application comes out, we haven't reached  
23 agreement. What happens then is if FERC too quickly, i.e.  
24 immediately follows their time line and however many days  
25 this is, issues the REA, that triggers the Forest Service

1 filing our preliminary 4E conditions, which then triggers  
2 the action of the Energy Policy Act, and it gets us into  
3 more of a litigation-type process.

4 In a couple of cases, we've seen FERC actually  
5 delay the REA. This comes to FERC having staff involved,  
6 because sometimes if we had a few more weeks, sometimes it  
7 doesn't matter.

8 But I think the FERC staff would have a good  
9 handle on that, we could actually probably find some good  
10 compromises. We're close. It's a real big push time after  
11 the FLA comes out, because we basically have to start filing  
12 our preliminary 4Es.

13 So we're looking at the FLA and seeing no, we  
14 don't agree with that or we, the studies didn't point to  
15 that. We need to have some time to talk. So I think one of  
16 the -- it seems that FERC feels that maybe they really  
17 don't, but they have at least given us a little slack in a  
18 couple of cases, and have sort of held off on filing the  
19 REA.

20 Because we've said if you give us a couple more  
21 weeks, we think we can get to some place where we could have  
22 agreement, we can file the preliminary 4Es that everybody,  
23 the agencies at least in California we usually have a pretty  
24 good agency caucus, so that the State Water Board, the  
25 fisheries agencies and the Forest Service are all on the

1 same page.

2 The NGOs are there with us, advising what they'd  
3 like, and we can file our preliminary 4Es. We can get the  
4 10Js in, and they agree. Then the rest of it's smooth  
5 sailing.

6 If we don't agree, at least from the Forest  
7 Service point of view and the other mandatory agencies,  
8 because of the Energy Policy Act, it then becomes more  
9 contentious and we would like to avoid -- we'd like to see  
10 that as a last resort, instead of right now it seems to be  
11 what happens, is we always end up in the Energy Policy Act  
12 doing more negotiations that we wish we could have done  
13 prior to that.

14 But I think some of that was, as we look back,  
15 has to do with not having quite enough time to reach  
16 consensus on what the real conditions in the license should  
17 be.

18 MS. WEST: So I'm hearing flexibility on when the  
19 REA notice comes out, and I heard FERC staff involvement so  
20 they'd know that it was feasible. But I guess, did I also  
21 hear that you might reach out, the agencies could contact  
22 FERC and say "Look, I think we can do this in a few weeks.  
23 Could you give us the time?"

24 MS. TUPPER: We have -- we and the utilities, the  
25 licensees, have written letters to FERC saying could you

1 please delay the REA. But I think some of that's because we  
2 felt like there hasn't been good FERC staff involvement, so  
3 they're not aware of what's going on.

4 MS. WEST: So that's just another solution,  
5 right, is to send those letters.

6 MS. TUPPER: Yes.

7 MS. WEST: Okay. Frank, and then Chris.

8 MR. SIMMS: All right. Frank Simms, American  
9 Electric Power. One thing we've tried to do in our license  
10 applications is on the 401 in particular is to try to run  
11 everything with the 401 agencies, and their requirements  
12 parallel with FERC relative to studies and so on.

13 But I think there does have to be some way that  
14 the FERC and the state agencies understand where they are in  
15 process and how they're working together. I know we're not  
16 supposed to be particular, but I'm going to use an example  
17 of a project where we're in the midst of the 401  
18 certification process with the state.

19 Just before we get to sitting down with the state  
20 and to their public meetings and so on, the FERC, and I'm  
21 glad they were so responsive, came out with the draft  
22 environmental assessment, which then puts us into conflict  
23 or sitting in the middle of a conflict between the two  
24 agencies, relative to who's going to do what? Which way are  
25 we going to go?



1           Because as a business, when we see these things  
2 come out, we're trying to set ourselves up for the next two  
3 years, three years, five years, to say okay, based on our  
4 best guess of what's going to be required of us, we're going  
5 to have to set up budgets, staffing, planning operations and  
6 so on.

7           The other aspect even goes beyond that, is there  
8 are states whose 401 certification does not run concurrent  
9 with the FERC license, and actually stops midpoint. Then  
10 it's a question of certainty. Where do you go from there?  
11 I could see it's going to be fun legal discussion, but I'm  
12 just saying for the applicant, we're sitting there saying  
13 "Okay, what happens after 15 years or 20 years or 10 years,  
14 whenever the one stops and the other continues on?"

15           MS. WEST: So what's your solution?

16           MR. SIMMS: I have no solution. My thing is to  
17 keep, to coordinate it together to best understand, and keep  
18 things going together. But I do have a solution on those,  
19 something that was suggested about so how does everybody  
20 follow this process, and really it would simplify things if  
21 the FERC were to separate out licensing proceedings into  
22 their own website.

23           That website basically would do nothing more than  
24 be reflective of schedule, even have little reminders  
25 "you're at this point on the schedule. Here's what happens

1 next." Then whatever correspondence is going back and forth  
2 or whatever orders are out there, are specific just to that  
3 one website. So it's kind of a one-stop shop so everybody  
4 knows what's going on.

5 MS. WEST: Don't you have that with where they  
6 house it by project now?

7 MR. SIMMS: Docket is interesting, but it's not  
8 necessarily clear. It's much better than what we've had  
9 before, but I think even though you have the sub numbers,  
10 not everybody understands all the sub numbers and everything  
11 else.

12 I think when we -- when you get into this  
13 process, this goes beyond us in this room. I don't care  
14 whether you're a local government, I don't care if you're an  
15 agency, the FERC or an applicant, you have a certain  
16 expertise how to handle some of these things.

17 But you also have the general public, and the  
18 general public wants to know what's going on too. This is a  
19 very public proceeding. That's the way it's intended to be  
20 and the way it should be. I think anybody that's out there  
21 with I don't care what kind of computer they have, should  
22 have the ability to very simply go to the site and say "This  
23 is project." Not project number. This is the name of the  
24 project or however they hunt it down, and be able to see  
25 what's going on, so they can be a participant in the

1 process, especially when you have all the public meetings  
2 that we have.

3 MS. WEST: So one more question, and then I know  
4 Dave you had a specific answer on that one, and then I'll go  
5 to Chris. Doesn't the applicant often put a website  
6 together like that?

7 MR. SIMMS: Yes, they do. At least we did, okay.  
8 But still not all do that.

9 VOICE: Not all do that.

10 MR. SIMMS: And this is a -- this is a process  
11 that's under the purview of the FERC.

12 MS. MILES: Let me just ask -- Ann Miles, FERC.  
13 Are your participants e-Subscribing? I mean we are  
14 constantly asking them to e-Subscribe, and then they should  
15 be getting everything, both that we issue and that anyone  
16 files.

17 MR. SIMMS: You know, even if you say e-  
18 Subscribe, and I understand what you're saying Ann, you and  
19 I understand that. Most of the people in this room  
20 understand that. But we have people at our projects that if  
21 we tell them to e-file, they just look at you. What we're  
22 trying to say is I guess I've always learned what's the old  
23 KISS method? Keep it simple.

24 MS. MILES: Yes. I do understand what you're  
25 saying. A lot of -- FERC has put a lot of time and effort

1 into its electronic system, and what I'd like to see is a  
2 way we can explain and have people participate in it. Maybe  
3 there's something we could do to make people who aren't as  
4 savvy explain it in a better way.

5 I mean one of the things that we've done with  
6 small hydro, and we'll see how that's working, is to put up  
7 a website that explains it in plain English. Anyway, I hear  
8 what you're saying. I think there may be other options for  
9 doing it than having FERC develop something when they've  
10 kind of got something.

11 I know what feedback I'll get. You've got to be  
12 kidding. We've got this. But I think there may be other  
13 ways to look at making things more available to people if  
14 that's not working.

15 MR. SIMMS: And I think where we're at here Ann  
16 is, you know, it's the identification of how do we improve  
17 the process, and the process was an improvement in the  
18 beginning. But it's based on, you know, what am I hearing  
19 from people that are involved, because we're in three or  
20 four license processes right now.

21 You know, this is what I'm hearing from them is  
22 the simplification.

23 MS. WEST: Okay. Dan, was your comment specific?

24 MR. LISSNER: Sure, and very briefly I concur  
25 completely with Frank's comments. Dan Lissner, Free Flow

1 Power, with Frank's comments about the challenges of  
2 planning and resource allocation when you're entering the  
3 phase of the process that's focused on the interaction  
4 between the FERC and agencies.

5 We have a lot of uncertainty about that as well.

6 But the element, the trend that we see and very much  
7 encourage the FERC to continue to do is this approach to  
8 entering into cooperating agency agreements with agencies or  
9 states. We see that as a very positive development. We're  
10 encouraged to see agencies approaching the FERC and willing  
11 to do this.

12 Colorado's setting a great example of trying to  
13 define the terms of engagement at the beginning. Whatever  
14 the terms are, if it's more clear, it's easier and more  
15 manageable for us to allocate our resources and expectations  
16 appropriately.

17 MS. WEST: So let me just test. You're talking  
18 about coordinating agency, not formal cooperating agency  
19 status?

20 MR. LISSNER: It depends upon the specific  
21 engagement. The extent to which that relationship can be  
22 formalized, the more formal the better. A memorandum of  
23 understanding has been helpful at working towards the issue  
24 between FERC and MMS regarding the offshore issue. The  
25 Coast Guard, I believe, is a cooperating agency with the

1 FERC process. I know there's progress towards the Corps of  
2 Engineers.

3       We're particularly focused on how are states  
4 going to incorporate their 401 processes, or any of their  
5 state regulatory processes, with the work that we have  
6 already done pre-filing through the FERC process. The more  
7 that terms of engagement can be defined before we have gone  
8 all the way down the FERC process, and then find out later  
9 if that was acceptable towards the Section 10 permit  
10 application, or if that was acceptable towards the Section  
11 106 process.

12       If we can plan it ahead, we can adjust our  
13 behavior appropriately.

14       MS. WEST: Okay, and I -- after panelists speak,  
15 I've got some ideas from some stakeholders I'd like to  
16 suggest. But go ahead Chris, and then Julie.

17       MR. SHUTES: Chris Shutes, California  
18 Sportfishing Protection Alliance. The applicants and their  
19 consultants in California have done a very good job of  
20 creating websites and making them available, accessible. We  
21 don't always agree with how they organize them, but that's  
22 mostly a question of just getting through any website.

23       So I think for us, that hasn't been as big a  
24 problem as it seems to have been for other folks. On  
25 occasion, entities have decided not to create websites, and

1 that's clearly a problem.

2 As far as the cooperating agency issue goes, one  
3 of the things that we at the HRC in particular has pursued  
4 over a long period of time, is trying to figure out a way  
5 where state agencies in particular can create non-decisional  
6 staff or separated staff or something, so that they can at  
7 once cooperate on NEPA documents, but still have the right  
8 to intervene in licensing proceedings.

9 If they can't do that, then the likelihood that  
10 they're going to actually enter into formal cooperation and  
11 participate is just not going to happen. It's not  
12 reasonable to expect a state agency to give up that part of  
13 its regulatory opportunity. So work on that, I think, could  
14 be very helpful in improving NEPA, and creating NEPA  
15 documents that serve multiple needs.

16 MS. WEST: Another stakeholder raised -- that was  
17 my first point from another stakeholder. Good.

18 MR. SHUTES: Finally, and I'll try not to steal  
19 anyone else's thunder --

20 MS. WEST: That's okay.

21 MR. SHUTES: As far as the REA notice is  
22 concerned, we think it's really important that it not be  
23 issued until all studies are complete. Even more, that  
24 essential studies have some time or sufficient time for  
25 review. I'll go back to my models issue again. We've had

1 models that have been created really at the last minute, and  
2 no sooner do they hit the street then an REA notice is  
3 forthcoming.

4 Those are often critical when you're down to  
5 negotiation or just analysis. Those are often really  
6 critical parts of the bigger puzzle that are needed in order  
7 to inform NEPA, and in order to inform conditions for the  
8 different -- and recommendations for the different agencies.

9 MS. WEST: Julie and Larry.

10 MS. TUPPER: Two points, and Chris hit on both of  
11 them, I think. But briefly, I work nationwide for the  
12 Forest Service, and Chris is right. In California, most of  
13 the utilities are large enough or the water agencies that  
14 they create their own websites.

15 The problem is many of the intermediate forums,  
16 where people need to engage, isn't something that anybody  
17 would file at FERC, so it doesn't end up on the FERC  
18 website, those intermediate documents.

19 But the public, I think in California, at least  
20 on the larger projects, has been -- they understand that  
21 they can go -- they can even go to the utilities' website  
22 and they usually have a link that says "Go over here if you  
23 want to know about Project X." That's helpful, but I think  
24 we run into, especially from the Forest Service, we have  
25 some small projects that there's very few people involved.



1           We've put links, sort of made our own little  
2   linky websites with our limited -- it would be helpful if  
3   the FERC staff could work with some of these other  
4   utilities, I think, to at least help them get a public  
5   website that has the intermediate things that really don't  
6   need to fill up the FERC docket.

7           That would really help with public involvement,  
8   especially in small projects where it has a very limited  
9   exposure. Those people have -- it's tough to communicate to  
10   them, and they come in at the last minute, and then we have  
11   to sort of back up lots of times.

12          If my attorney was here, he'd bash me over the  
13   head. But I think Chris brought up a very important point  
14   about the difference between cooperation and intervention,  
15   especially in terms of NEPA. From the Forest Service  
16   perspective, we primarily do not cooperate, because we feel  
17   that it limits our intervention capability later. I'm not  
18   the attorney, but I know that's our advice.

19          But I know in many cases, since we use FERC's  
20   NEPA for some of our own decisions, it is helpful, and in  
21   some cases we feel that maybe this is just because the FERC  
22   staff isn't as closely involved in some issues. There's a  
23   misunderstanding over some rule or regulation that we're  
24   trying to bring forward in our mandatory 4E conditions, and  
25   that the NEPA is incorrectly portraying the Forest Service

1 rule or regulation, and it seems like we go round and round  
2 in circles.

3 So it would be helpful during the NEPA phase.

4 Right now, we realize we're a member of the public. We  
5 provide comments in DEIS. But it seems like it's so arms-  
6 length that we spend more time trying to communicate than we  
7 need to. That's one thing that would be nice to find a  
8 solution.

9 MS. WEST: So are you suggesting in pre-filing  
10 there could be additional consultation to clarify your rules  
11 and regs and what you need in the NEPA document?

12 MS. TUPPER: It could be. That could help them.  
13 It's not just what we need in the NEPA reg. There's many  
14 cases of misunderstandings on roads and it's usually not  
15 stream flow. It's usually our odd things, like visual  
16 requirements, forest plan standards and guidelines and how  
17 that affects an interpretation of roads and agreements, and  
18 all sorts of things like that that get misrepresented.

19 We spend -- and I don't think it's an intentional  
20 misrepresentation. I think it's a misunderstanding. So we  
21 end up spending lots of time trying to clarify or correct  
22 what's in the record. I think if we could avoid that, it  
23 would make the process go a lot smoother.

24 MS. WEST: Okay. Larry?

25 MR. THOMPSON: Yes. A few comments about

1 improving post-filing coordination. Larry Thompson,  
2 National Marine Fisheries Service. It's obvious that  
3 improving post-filing coordination requires improving the  
4 pre-filing process, and we've been over that a lot. But  
5 just to emphasize it again with regard to ESA consultation,  
6 which comes post-filing.

7 I mention 5.9(a) regulation not carrying through  
8 in the ILP. It's there early, but there's no ability to  
9 dispute if a information request under 5.9(a) isn't  
10 fulfilled.

11 Chris Shutes early made a great comment about  
12 consistency with scoping. We are seeing that FERC study  
13 plan determinations will be inconsistent with their earlier  
14 scoping decision. So a scoping decision will be made, for  
15 example, on geographic scoping, and say that the scoping  
16 extends for ESA species 50 miles downstream, or say 30 miles  
17 downstream.

18 Then in a FERC study plan determination, we'll  
19 find that FERC determines that all studies two miles  
20 downstream of the project dam have no nexus to the resource.  
21 So that inconsistency needs repair. Then to get to a NEPA  
22 document, where that NEPA document, where components of the  
23 NEPA document can or cannot suffice as a biological  
24 assessment.

25 I mean it's clear that the action area has to be

1 adequately established, and that goes back to scoping. One  
2 has to assess the effects of interrelated and actions that  
3 are interrelated and interdependent with the FERC project,  
4 such as diversions for municipal use or irrigation,  
5 consumptive water uses.

6 If those interrelated and interdependent actions  
7 and their effects are not assessed, we get to the ESA  
8 consultation stage, we have a requirement to assess those,  
9 and the information isn't there. That extends also to  
10 indirect effects and cumulative effects. That's good,  
11 thanks.

12 MS. WEST: All right, thank you. Anybody in the  
13 audience here who would like to comment on post-filing?

14 (No response.)

15 MR. RAMIREZ: Hi. This is Rick Ramirez with the  
16 California Department of Water Resources. Even though we're  
17 part of our natural resources agency, we actually are a  
18 licensee, so my comments, I guess, are more from the  
19 licensee perspective, and it relates to the discussion about  
20 separated staff among agencies, in order to preserve some of  
21 their authorities or ability to weigh in or exercise their  
22 authorities without having to compromise that through the  
23 collaborative phase.

24 I certainly understand that, and it is something  
25 we have experienced. At the same time, it also has a danger

1 perhaps. If that separated staff provides input later in  
2 the process, being much different perhaps than what the non-  
3 separated staff may have provided during the collaborative  
4 phases.

5       It sets up the potential for a real disconnect  
6 for those participants, not just the licensee but other  
7 stakeholders who have collaborated and produced documents,  
8 to see them perhaps treated a bit differently during that  
9 final stage, when the agencies are exercising their  
10 authority.

11       I guess my solution is perhaps those agencies  
12 that have that ability or authority, provide a little more  
13 connectivity between the collaborative discussions that  
14 their staff provides, versus their actual orders that are  
15 then implemented post-filing.

16       MS. WEST: So thank you. You raised both an  
17 issue and a solution. So that's good for the issue. Well,  
18 folks on the phone, post-filing, and I know we have some  
19 states represented. So I'm particularly interested in  
20 hearing from you on this.

21       MS. WYNN: This is Brenda Wynn. I'm with the  
22 Virginia Department of Environmental Quality, and I work in  
23 the Virginia Water Protection Permit Program, which is our  
24 401 cert program. I just wanted to make a few quick  
25 comments.

1 I'm very interested in helping resolve some of  
2 the timing issues between application for a FERC license and  
3 application for the state 401 permit, particularly in states  
4 where like Virginia, we have our own state laws regarding  
5 401 actions. I'm new, relatively new to the whole FERC  
6 process, but I'm finding that we've had several experiences  
7 already where our -- the applicants are submitting permit  
8 applications at a point where it's difficult and challenging  
9 for us to actually make a decision, a case decision within  
10 what is typically the federally mandated one year time line.

11 So I noticed, I heard some panel -- somebody on  
12 the panel mention that there was some development of a  
13 coordinated agency time line group possibly, and I just  
14 wanted to ask that we be notified if that actually develops,  
15 or if you're looking for people to participate.

16 And I noted also, I believe it was Frank Simms,  
17 who I've had the pleasure to work with recently on the other  
18 side of his troubled project that he noted, and I would  
19 agree that there needs to be a much broader effort to  
20 include the public or get the public up to speed on what's  
21 happening with projects that are applying for FERC  
22 licensing, because there is often this, it seems like a very  
23 huge lapse in involvement with the public stakeholders.

24 By the time we get to the 401 permit process, I  
25 would have thought that some of these issues would have been

1 pretty fully vetted, and we're finding that may not be  
2 always the case. You can't drag people to a meeting, I  
3 understand that. But I think that any effort, such as doing  
4 some more education on the FERC's e-File and e-Library  
5 system, supporting applicant web pages that they develop or,  
6 you know, doing all of these things, the Listserv, the  
7 website, the FTP site, even Wiki sites are now becoming  
8 popular. Anything to get word out earlier would be very,  
9 very helpful.

10 I think that was all I had. I do like the idea,  
11 and I was poking around online, looking for potential  
12 solutions to deal with the timing disconnect between our  
13 particular state 401 process and the FERC licensing process.  
14 It's promising that someone mentioned these contracts or  
15 agreements with how to lay out the process ahead of time. I  
16 think that sounds like an interesting thing for us to look  
17 into.

18 MS. WEST: Thank you. Okay Matt, and then I need  
19 to move to the next section.

20 MR. RICE: Matt Rice, American Rivers. Yeah,  
21 regarding the public participation that's been brought up  
22 several times today, one suggestion could be possibly  
23 funding the Office of Public Participation. Section 825 of  
24 the Q-1B1 of the Federal Power Act. To my understanding  
25 it's not funded now, but that could be a role that it could

1 play.

2 MS. WEST: Thanks.

3 MR. DEEN: Just one quick fact from my reality,  
4 and why I was calling for FERC to take some additional  
5 responsibility on communications. I'm involved with eight  
6 FERC licensing or relicensing. Only one is larger than a  
7 megawatt, and that one's 1.1 megawatts. Those owners  
8 applicants will not put up a coordinate website, so that you  
9 can track where you are.

10 You know, even in your motel room, they give you  
11 a chart that says "you are here and here's the fire exit."  
12 We don't know where we are sometimes.

13 (Laughter.)

14 MS. WEST: You can do better than fire exits.

15 Let's go to the next section, if I can get back to this.

16 Can we get the slides on?

17 MR. KANZ: Hey Anna?

18 MS. WEST: Yeah. Oh, is that Russ?

19 MR. KANZ: It is.

20 MS. WEST: Hi.

21 MR. KANZ: Can I weigh in here?

22 MS. WEST: Sure. I'm sorry. Russ Kanz, can you  
23 introduce yourself again for the reporter?

24 MR. KANZ: Sure. It's Russ Kanz with the State  
25 Water Resource Control Board in California. I want to take



1 step back and talk a little bit about FERC staff, and I  
2 didn't get a chance to do this earlier, and in some ways, I  
3 work for a board. So throughout the relicensing process,  
4 you know, we can't be predecisional about decisions.

5 I think FERC staff are in that same role. One of  
6 the things that I had brought at some of the earlier  
7 meetings, and this really almost goes back to the study plan  
8 determination process, it would be really good for FERC  
9 staff to say throughout the process "Hey, I think that's  
10 something I can recommend to the Commission."

11 It's the same thing we at the State Water Board  
12 do as staff. You know, we can't tell you what our board's  
13 actions will be in the end, but we can say "Hey, that's  
14 something I can recommend to the board." On the other hand,  
15 if you say "Hey, that's something I'm not going to recommend  
16 to the board," people should really listen to that.

17 You know, FERC staff can be more direct about  
18 that, as we try to be. I think that's going to be really  
19 helpful.

20 Another thing, and this may be a little bit ahead  
21 of what you're going to get into, but the ex parte rules at  
22 FERC are a real roadblock, and you know, it's a big deal  
23 here because we have the California Environmental Quality  
24 Act, which is like NEPA, and it's difficult to integrate  
25 those processes.

1           We have been talking to FERC about ways to do  
2   that, but the ex parte rules, I think this is the only  
3   federal agency that has ex parte rules that start at the  
4   time the application is filed. I'm still a little confused  
5   why those rules are there, and what that does to help the  
6   agency.

7           But I just think it's a real roadblock, and it  
8   would help if those weren't in place, I think, for everyone.

9           MS. WEST: Okay, thanks. All right. Now we're  
10   going to next section, and I do have -- okay quickly,  
11   because I think we need to adjourn at three o'clock here,  
12   twelve o'clock Pacific, just in the interest of people's  
13   schedules. So I'll go through.

14          Let's see. Oh, still on suggested solutions on  
15   process, is that right? Encourage applicants to cast a wide  
16   -- oh, let me back up. Yeah, okay, sorry. So this is sort  
17   of the grab bag of process ideas. I will try and go through  
18   it quickly. Issues and challenges. Those who are new to  
19   the ILP may not understand it, their role and how to  
20   participate.

21          Coordination with FERC and the agencies and  
22   stakeholders can be unclear. Time frames are limiting.  
23   We've talked a lot about that. Sometimes decision-makers  
24   are not familiar with a project area. Not all stakeholders  
25   are involved early. Not all applicants appreciate the value

1 of collaboration prior to the NOI. Scheduling meetings so  
2 all can participate can be challenging.  
3 Solutions. Timely updates and good process for  
4 sharing information is important for efficient use of  
5 resources, and there's a list of some of the suggestions. I  
6 won't read through them all. Encourage applicants to cast a  
7 wide net to involve stakeholders early and throughout the  
8 pre-NOI process and post-NOI.

9 Again, there's a list of communications tools,  
10 and I think early in this session, Annie Manji mentioned the  
11 webinars and teleconferences as one of those tools.

12 FERC guidance. Provide a clear understanding of  
13 expectations of all participants early in the process.  
14 Everybody, you know, if you know what's coming up, you'll  
15 understand the different regulatory requirements and what  
16 everybody's role is, what the process looks like. That  
17 really helps.

18 Opportunities for guidance. The FERC website  
19 trainings and scoping meetings. People thought those were  
20 good forums for getting people informed on the process. We  
21 talked about FERC website already, but this was an idea of  
22 considering adjusting the website by project name rather  
23 than license number, because not everybody knows how to find  
24 the license number.

25 Early meetings and collaboration. I don't know

1 that you need me to repeat all these, but I think they're  
2 largely there, have been said today already. But resource-  
3 based work groups has been recommendations across many of  
4 you, and identifying stakeholders' interests up front and  
5 clarifying your interests throughout. I think companion to  
6 that is the regulatory requirements.

7 Now we're onto discussion. Back to the  
8 panelists, and I have a few more ideas to inject in here as  
9 well. Julie?

10 MS. TUPPER: One thing I want to commend FERC on,  
11 because this one, adjust the FERC website so that you can  
12 search by project name as well as license number. I believe  
13 that works now. I've had several people say that if you go  
14 into a search on the library and type in the project name  
15 because you don't know the number, it actually comes up with  
16 something.

17 That's a relatively recent -- you used to be able  
18 to have to -- well, prior to this, you had to have a pretty  
19 good idea of what the name of the project was. You had to  
20 be close and it would find it. Now you can be relatively  
21 general and it will find it. So whoever designed your  
22 website, they did a better job of providing the ability to  
23 search for projects. So I think that's actually been  
24 helpful.

25 MS. WEST: Thanks. Any other process

1 suggestions. David.

2 MR. DEEN: David Deen, Connecticut River  
3 Watershed Council. Exactly, because most people in the  
4 general public don't know to put "P dash whatever" in front  
5 of the number, and FERC just continues to come back and say  
6 "There's no such project." So being able to search by name  
7 is a vast improvement.

8 MS. WEST: Any other comments? I've got a few  
9 other ideas I want to test out, but I don't want to  
10 shortchange anyone.

11 MS. TUPPER: I was going to save this until last,  
12 by my Forest Service FERC coordinators have a really -- you  
13 can take this as tongue in cheek, but there should never --  
14 you should never require an official comment period. They  
15 should all end either by December 10th, or they should start  
16 after February 1st.

17 We think that your FERC staff perhaps has a  
18 perverse sense of humor, because I cannot tell you how many  
19 of our official comments are due on Christmas or  
20 Thanksgiving. So we think the staff should really look at  
21 the time frames of when things are required, and sort of  
22 figure it out.

23 MR. DERR: This is David Derr. Including us  
24 writing EISs over Christmas?

25 MS. TUPPER: We'll give you the same --

1 (Laughter.)

2 MS. WEST: Any other comments on this section?

3 Larry, go ahead. Mike, and then or Larry.

4 MR. THOMPSON: Larry Thompson, NMFS. Last week a

5 gentleman contacted me, knowing nothing about the FERC

6 process whatsoever. I sent him a quick email, told him to

7 ut the P dash in there. I told him where to put it, gave

8 him ferc.gov's website. He's now e-Filed comments. He's

9 getting e-Notification. I just gave him the FERC support

10 email and phone numbers and he called up and got -- they

11 walked him through the process.

12 So I think it's pretty good. I will say though,

13 it is nice to also have a licensee or applicant website that

14 is -- especially the large projects. But just a shout out

15 to FERC, I think that is working. I think the electronic

16 tools are good.

17 MR. IYALL: I just wanted to thank you guys for

18 inviting me. I'm going to go catch a plane. Thank you.

19 MS. WEST: Thanks for being here. Barbara.

20 MS. GREENE: Barbara Greene, Seattle City Light.

21 I wanted to speak just for a minute about the FERC staff.

22 We used both the decisional staff and non-decisional staff

23 and found it to be extremely helpful, both in terms of

24 process questions as we went through it, and then in the

25 end, in negotiating a fairly complicated set of agreements

1 that were attached together, that would address both a  
2 relicensing project and a decommissioning project, I thought  
3 the non-decisional staff being made available was really  
4 important, because it really helped give us perspective on  
5 how the Commission might react to how we were putting the  
6 settlement provisions together, as well as how to structure  
7 some of the complimentary settlements that needed to go  
8 along with these, with the package.

9       They provided good advice on what settlement  
10 provisions might not be within the Commissions' purview. So  
11 when I think back to the conversation we had prior to the  
12 non-decisional staff involvement, and the direction we were  
13 going in, I realized in retrospect just how important it was  
14 to actually being able to submit a series of documents,  
15 settlement agreements that the Commission can actually act  
16 on, without having to tinker with them because they weren't  
17 put together consistent with FERC policy.

18       MS. WEST: Thank you. Frank.

19       MR. SIMMS: Okay. I've been with this ILP  
20 process from the very beginning. It's worked great for us.  
21 I'm going to be honest about it. Staff's been great. One  
22 of the things that helped us quite a bit is when a license  
23 order is ready to come out that it comes out.

24       In other words, if it's supposed to take two  
25 years through the process and the license order comes out at

1 18 months, you would not believe how much that helps us,  
2 because then it gets us prepared for our operational  
3 changes, our staff changes and our budgeting for the next  
4 year.

5 Because we have that certainty as to where we're  
6 going to go with it. So when a license comes out like that,  
7 I think that's great and the ILP, I think, has helped that  
8 occur.

9 One other comment, I know I've talked a lot, but  
10 it has to do with something we've talked about a little bit  
11 again, is when you have a project, and I don't care if it's  
12 a developer or a company like ours that has small projects,  
13 for example, or Class of '93 projects.

14 When you have a project that it's pretty clear-  
15 cut there's not a lot of issues with it. The information's  
16 there, everybody can agree look, there doesn't need to be a  
17 lot of effort put into this particular licensing or  
18 relicensing, either way.

19 That you go through a process, let's say of your  
20 notice of intent with your pre-application document, and  
21 that pre-application document you say make it into your,  
22 essentially your application, and say this is our  
23 application, and let the FERC make a decision as to the  
24 adequacy of that, and potentially cut some processes down  
25 from five years to seven years, to the three years of a



1 preliminary application or whatever.

2 Because one thing we have to look at is, you  
3 know, we're a renewable resource, and the inclination right  
4 now is to get this renewable resource and to be able to grow  
5 it, and to grow it at existing projects and at existing  
6 facilities. If we could set up processes that allowed that,  
7 even for these smaller projects, I think it's to everybody's  
8 benefit.

9 MS. WEST: Thank you. So anybody from the  
10 audience or the whole group, and then I have some additional  
11 ideas to test out on you.

12 MS. HART: This is Joan Hart from the National  
13 Park Service. One of the comments that I often hear from  
14 the Park Service staff that get involved in these projects,  
15 as well as the public, is at the very initial stages, when  
16 the first notices come out or included in the PAD would be  
17 to have a Google Earth link to the location of the project,  
18 as being a way to solve a lot of people's problems, to  
19 figure out just where the project is and to make it easy, so  
20 that everybody doesn't have to go through looking it up  
21 where it is, but have that link readily available.

22 MS. WEST: Thanks. Go ahead.

23 MR. McCARTY: Hi. I'm Mike McCarty with the law  
24 firm Brickfield, Burchette, Ritts and Stone. I just wanted  
25 to address an issue that came up earlier. I think the

1 gentleman here, Mr. Lissner from the independent power  
2 producer, and it's also that's come up in the Commission's  
3 workshops on facilitating small hydro development, and that  
4 is the sort of disconnect between the ILP and the  
5 preliminary permit provisions of the Federal Power Act.

6 The fact that you can't get through enough of the  
7 ILP to file your license application within the term limit  
8 of a preliminary permit, which I guess is three years.

9 MS. WEST: Could you clarify why you can't get  
10 through it in that three-year time frame?

11 MR. McCARTY: Well, I mean, I think it's just  
12 accepted that the study process, if you've got a significant  
13 original license application that's going on, frequently you  
14 cannot get through all the studies, especially if there's a  
15 second year of studies, and through a draft application or a  
16 preliminary licensing document, a PLP, and then get to the  
17 final application stage within the term of your permit.  
18 It's just often not feasible.

19 I think that the Commission could address that in  
20 the relatively rare case of original licensings, which are  
21 becoming more common with, you know, the hydrokinetic  
22 technologies and the ocean technologies, is to provide,  
23 through your regulations in Section 4.30-something, I can't  
24 remember where it is, but where you say when you will and  
25 will not accept permit applications and development

1 applications.

2       You could provide that within your existing  
3 authorities, that if there is a preliminary permittee who  
4 timely files a PAD and an NOI and is still actively involved  
5 in the licensing process, that the Commission will not  
6 accept a competing permit or development application during  
7 that process, up until the time that they would otherwise  
8 accept competing applications anyway. So --

9       MS. WEST: Okay. Anybody on the phone who wants  
10 to add thoughts on this section, good process ideas?

11       (No response.)

12       MS. WEST: All right. Let me test some out that  
13 I've received from an anonymous stakeholder. Here you go,  
14 so get ready and listen. So one idea is "Develop specific  
15 protocols to govern post-licensing adaptive management  
16 plans. Post-licensing adaptive management is becoming more  
17 and more frequent and resolves many issues related to pre-  
18 licensing data collection.

19       "Most issues regard certainty to both licensees  
20 and stakeholders. Better-defined adaptive management  
21 process and parameters may help to stimulate and streamline  
22 settlement agreements." So any thoughts and reactions to  
23 that folks? Larry.

24       MR. THOMPSON: I think incorporating adaptive  
25 management -- Larry Thompson, National Marine Fisheries

1 Service -- is a great idea. I mean --

2 MS. WEST: And this is suggesting there might be  
3 specific protocols or more up front guidance?

4 MR. THOMPSON: I think so. I think it's out  
5 there. There are some good documents on adaptive  
6 management. I think there is, you know, Julie brought it up  
7 early and others did too about uncertainty. There's  
8 uncertainty in what we do. Matt brought up the  
9 implementation of studies. Studies don't always return the  
10 information they're intended to return.

11 So it's information we're really after, not  
12 execution of a study. That study may or may not give you  
13 that information. Adaptive management is a way say okay,  
14 let's take a look at this. What did we do right, what can  
15 we do better, adjust, readjust, try again.

16 So even in the study phase, I think it's  
17 important, but also in the post-licensing. I think also  
18 these are, you know, 20, 30, 50 year licenses, and a lot  
19 happens in that time frame. We're going to see, for  
20 example, the effects of global warming on those time scales,  
21 and I don't think -- you know, a point we probably missed  
22 here, I don't see adequate temporal scoping in some of the  
23 FERC documents, taking that into account.

24 So I agree with adaptive management. I think  
25 it's a positive thing, yes.

1 MS. WEST: Chris.

2 MR. SHUTES: Chris Shutes, California

3 Sportfishing Protection Alliance. Whether it's included in

4 the guidance document or not, the issues we've had with

5 adaptive management are there have to be specific time

6 lines. There have to be clear decision points, and the

7 realm of possible options has to be laid out.

8 And we've gotten into trouble when we haven't had

9 those things. Whether that's laid out in a particular

10 settlement document or a license, or in a -- whether we have

11 a global sort of policy on that from FERC, those things need

12 to be incorporated, and I think there's -- procedurally,

13 there's arguments to be made for either.

14 But I don't think FERC should be issuing licenses

15 that don't include some of those important elements.

16 MS. WEST: Okay. Any other comments? Let's go

17 to the next one. Let's see. "Agencies to develop licensing

18 regulations governing implementation of mandatory

19 authorities."

20 MR. KANZ: Hey Anna?

21 MS. WEST: Yeah.

22 MR. KANZ: Sorry. This is Russ Kanz again. Can

23 I weigh in on that issue?

24 MS. WEST: Sorry, the adaptive management?

25 MR. KANZ: The adaptive, yes.

1 MS. WEST: Sure. Go ahead.

2 MR. KANZ: Sure. This is an interesting issue  
3 and it's an important issue for us here at the Water Board  
4 in California, and I think FERC has sort of made some  
5 determinations on this lately, or expressed their interest  
6 in this.

7 But my concern is deferred decision-making, and  
8 there have been some licenses that have had a lot of post-  
9 license plans which are really deferred decision-making, and  
10 I agree with Larry, that none of these new licenses and none  
11 of our 401 certs are going to be locked in stone. They're  
12 all going to have reopeners. They're going to have a way  
13 to, at some level, adaptively manage over time.

14 But I think it's really important to make that  
15 distinction, that it's, you know, don't defer some hard  
16 decisions or important decisions post-license, just because  
17 they're hard to make, you know, during the relicensing  
18 process. From an environmental review point, it's difficult  
19 to deal with that level of uncertainty.

20 MS. WEST: Thanks. Okay. Next up, "Agencies to  
21 develop licensing regulations governing implementation of  
22 mandatory authorities. This should help clarify  
23 expectations and improve consistencies between agencies and  
24 projects." That's a question to agencies. Is that clear?

25 What do you think of that idea?

1 MR. THOMPSON: Would you read that again? I

2 missed, yeah.

3 MS. WEST: Agencies to develop licensing

4 regulations governing implementation of mandatory

5 authorities. So maybe I didn't get to fully speak to this

6 person, but I think that's saying clarifying what your

7 mandatory authorities are and how you implement them, so

8 people understand up front what your responsibilities are

9 and how you go about it.

10 Would that kind of clarification from the

11 agencies be helpful and improve consistency within your

12 agency? Russ?

13 MR. JOHNSON: I think there's two things to that.

14 I think that in the locale where any of the project sits,

15 that both FERC and the applicant needs to be aware of what

16 the state and local laws and requirements and codes are.

17 Because in cases in the shoreline management plan

18 in particular, we see the intrusion of decisions that we

19 think violate the federal supremacy law, that in fact the

20 right to regulate the zoning within a project boundary, if

21 it affects the right for the local government or the state

22 to regulate the zoning right above the project, we believe

23 that the state or the local government has the priority, and

24 not the FERC.

25 So if that's part of the question that's being

1 raised, the way we have been particularly concerned in the  
2 last two relicensing, particularly the shoreline management  
3 plan, that we have upzoning, which is not within the  
4 prerogative of the project to do.

5 MS. WEST: Any other comments?

6 MR. JOHNSON: If that is what the question was  
7 trying to get at, then I guess we're in concurrence with the  
8 issue of the fact of any project sits within a state and  
9 local boundary set of laws and requirements and codes. It  
10 needs to reflect that in the decision-making process.

11 We do not believe that they drive us. We believe  
12 that they follow us and had agreed to in the placement of  
13 the project to always implement by state laws.

14 MS. WEST: I think this was raised for a  
15 different reason, but I think what you're saying is if you  
16 put what you thought all the laws or regulations by the  
17 different agencies were up front and understood that, you  
18 would have uncovered that dispute, I think. Forest Service  
19 and NOAA, any comments on this recommendation?

20 MR. THOMPSON: Larry Thompson, National Marine  
21 Fisheries Service. It seems like the questioner could look  
22 at examples, in that I know when the Forest Service puts out  
23 its mandatory conditions, they have an accompanying  
24 rationale document. Similarly when NMFS puts forward its  
25 Section 18 fishway prescription, we do them in such a way



1 that we're prepared to defend them if we have to in a trial-  
2 type hearing.

3 So we put the rationale alongside why we're  
4 putting forward the prescription. So I think there's a --  
5 rather than an overarching document or a summary of how we  
6 implement our mandatory conditioning authority, you could  
7 start by just looking at some of the examples and filings  
8 around the country, to see how that's been done.

9 MS. WEST: Okay Julie, and then I have Barbara  
10 and David.

11 MS. TUPPER: I'm not sure where you got that  
12 question from, but I know in California, in a couple of  
13 other states in the west, where hydroelectric projects are  
14 located on National Forest System land, by Forest Service  
15 policy the FERC NEPA and the FERC commissioner is the  
16 decision-maker, and we do not make a separate decision.

17 I know some members of our public have been  
18 confused, because we will go rebuild the campground or do a  
19 project, and they ask us where is your decision document,  
20 and we point to the FERC document, because by regulation and  
21 policy, the FERC commissioner made that and it was  
22 disclosed.

23 There is confusion, and we've actually been  
24 talking locally, because we've had some issues lately, since  
25 we seem to be implementing more licenses, to make it clear

1 to the public how the decision process happens, because in  
2 many cases you do a relicensing and it's ten years before  
3 they rebuild the campground, or they do something in an area  
4 and maybe the local people weren't even really involved in  
5 the license at the time.

6 Then they're suddenly saying "Well, why is this  
7 happening here at my favorite site? You just changed where  
8 I go fishing or you changed something," and we point back  
9 and say it was ordered by the license.

10 We don't disagree with that person if that's one  
11 of their issues, because we're trying to work with our  
12 national forest and the forest supervisors to, when an  
13 action occurs as part of a FERC license, many times 10, 15  
14 years down the road, that that decision was made and that's  
15 just sort of how it works.

16 But to do a better job, I think of disclosure and  
17 communication, work with our utilities lately to hold public  
18 meetings, instead of just going out and doing something.  
19 Hold public meetings, even though it's not required.

20 MS. WEST: Okay Barbara and David, and then I'm  
21 going to ask. Okay, David.

22 MR. DEEN: David Deen, Connecticut River  
23 Watershed Council. I hear the question a little  
24 differently, as opposed to justifying actions after what I'm  
25 hearing in that suggestion, is that, and maybe this is an

1 NGO perspective or a public perspective.

2 Again, tell us up front what your areas of  
3 responsibility are in terms of impacting conditions within  
4 the license, so that I, as a participant, understand that  
5 it's project lands and the use of project lands, I talk to  
6 you. If it's in fact a resource, a trust resource fish or  
7 whatever, I talk to you. So that --

8 MS. WEST: Yes. That's more what the suggestion  
9 is.

10 MR. DEEN: So I just hear it differently from  
11 sort of the less experienced public getting involved with  
12 the process, knowing to whom to speak.

13 MS. WEST: Okay. Let me just, I'm looking at  
14 time. One more thing to raise, and then I'll go into the  
15 last segment, which should be brief.

16 MR. DACH: Anna, before you go on to that, can I  
17 -- sorry, this is Bob Dach.

18 MS. WEST: Sure Bob.

19 MR. DACH: I just wanted to weigh in a little bit  
20 on that. From the sounds of it, and I think I agree with  
21 it, it's more along the lines of if you look at FERC and the  
22 Commission and all the different parties that are regularly  
23 engaged in licensings, the only one that -- the only group  
24 that really has a set of guidelines out there by regulation  
25 is the Commission.

1 But as we've identified here for most of the  
2 conversations today, there are other big decisions made by  
3 other mandatory parties, not only on FERC stuff but on ESA  
4 stuff. I would offer that most folks have no idea how those  
5 decisions are going to be made.

6 I would also offer that those decisions are made  
7 differently, depending upon where you're at in the country  
8 and which agency you're working with. So it seems to me as  
9 far as a more efficient process, those other decision-making  
10 processes need to be much better defined than they are  
11 currently.

12 MS. WEST: Thanks. Thanks, Bob. Last one, not  
13 mentioned before. "More flexibility by FERC in allowing  
14 off-site restoration measures without increasing the project  
15 boundary." Folks reactions to that one? Barbara?

16 MS. GREENE: It's a great idea.

17 MS. WEST: David.

18 MR. DEEN: We established a mitigation and  
19 enhancement fund that went to the entire watershed, well  
20 beyond the project boundary. FERC in fact did not recognize  
21 it, in terms of a license condition. It was part of our  
22 settlement agreement. It was, everybody, you know, and we  
23 carried it in. This was not an ILP license, but it's an  
24 actual situation.

25 So I think it's a good idea that FERC, you know,

1 sort of broaden and realize that improving the watershed is  
2 not just a function of the footprint of the project on the  
3 land.

4 MS. WEST: So you're saying better to be able to  
5 have broader PM&E measures, but you don't necessarily have  
6 to therefore expand the project boundary?

7 MR. DEEN: Correct.

8 MS. GREENE: Yeah, I'm sorry. That's exactly  
9 what I was thinking, David. Thank you. When you think  
10 about what you're really trying to do, which is to improve  
11 the resource, sometimes the footprint is really not the best  
12 place to do that. So certainly our settlement agreements  
13 have a lot of offsite mitigation, because that was the best  
14 way that all the resource agencies and all the participants  
15 saw to actually do something. The best thing for the  
16 resource could be accomplished in a broader area than  
17 spending a lot more money in a smaller area.

18 So it's just taking a more holistic approach to  
19 it, you know. How you do that in regulation may be far more  
20 difficult. But in reality what we're going to get, I  
21 believe, is a far better product.

22 MS. WEST: Chris.

23 MR. SHUTES: I want to focus for a second on the  
24 -- not on the offsite part, but on the FERC boundary part,  
25 and I think there's been confusion about when and under what

1 circumstances an offsite mitigation would be included as  
2 part of a FERC boundary, or whether the Commission feels  
3 that it needs to include it as part of a FERC boundary.  
4 There's been a lot of speculation about that in various  
5 processes.

6 I think it would be a good idea for the  
7 Commission in some way to try to have a global clarification  
8 of that. It's one, an issue. Maybe it already exists and I  
9 don't know about it, and if so, I apologize for my  
10 ignorance.

11 But it is one area, I think, that comes up with  
12 some frequency, and a little more clarity about the function  
13 and the understanding of FERC project boundaries and how  
14 they might relate to offsite mitigations in particular would  
15 be a productive thing for the Commission to set out.

16 MR. KATZ: John Katz with FERC. Just in that  
17 regard, I recommend folks look at the FERC policy statement  
18 on settlements, which does have some discussion of that  
19 topic.

20 MS. WEST: Julie, were you saying something on  
21 this or no?

22 MS. TUPPER: I was agreeing. We, I think,  
23 particularly in the Northwest, less so in California, we've  
24 used offsite mitigation as the appropriate solution, because  
25 we're limited in what we can do onsite, and I don't think

1 there's a feeling that we have to have these mitigations in  
2 the project boundary.

3 But we feel that by FERC ignoring them, they  
4 become disassociated from the project, and by FERC saying  
5 "Yes, this is something that is mitigation for this project"  
6 and including it not necessarily in a boundary, but just  
7 acknowledging it, that it's a part of the project, it ties  
8 the project together in a little neater package.

9 MS. GREENE: The boundary, project boundary is  
10 the tougher issue, you know. How far are you going to  
11 extend the project boundary, which then puts a lot more  
12 responsibility on the licensee.

13 MS. WEST: Okay. Any other comments on this  
14 point, folks in the audience or folks on the phone?

15 MR. DACH: This is Bob Dach on the phone.

16 MS. WEST: Go ahead, yes.

17 MR. DACH: Okay. The big issue in my mind on the  
18 project boundary is you can get offsite mitigation, but  
19 under the FERC regs, it's a one-time action, without  
20 increasing the project boundary. What we're after is a  
21 mitigation effort that will offset project effects, so they  
22 need to go for the term of the license.

23 So when you put those two things together, you  
24 end up running into this concern that by showing a  
25 responsibility over a stream restoration project for the

1 term of the license, runs the risk of FERC potentially  
2 drawing a project boundary around the entire stream segment,  
3 which could be huge. So and that's what we're trying to get  
4 away from.

5       The problem is is right now it limits, we're  
6 limited in our ability to find good, reasonable solutions,  
7 that the licensees can get credit for. When I say that,  
8 they spend the money under their license, so it can be  
9 considered in their license term issue, without increasing  
10 the project boundary so much that it makes it an unrealistic  
11 proposition.

12       MS. WEST: Thank you. If folks don't mind, I'm  
13 going to suggest we adjourn at 3:15, to see if we can just  
14 roll through this and see if we can read it. I'm going to  
15 go into the next section, and some of the things -- if I can  
16 get slides there -- we've already covered, so I'll be real  
17 quick.

18       We talked about the challenges. This is overall  
19 challenges in the ILP. Participation, the seasonal factor  
20 for studies we've mentioned, concerns about who is allowed  
21 to file informal study disputes, that those are limited.  
22 The process moves quickly and requires resources, i.e.,  
23 time, effort, money to be engaged.

24       For large, complex projects, time frames can be  
25 challenging. We just heard this one before about original



1 projects and hydrokinetic projects. It may be challenging  
2 in the time frames.

3       Suggested solutions. Prepare project-specific  
4 information and materials to help inform participants, so  
5 they know what the process is about. We heard this  
6 suggestion before on neutral facilitation, to keep meeting  
7 summaries, reporting issues and concerns, track actions,  
8 etcetera. Keeping participants aware of deadlines is  
9 helpful. Build and maintain relationships throughout the  
10 process, and understanding that this process puts clear  
11 deadlines and formal steps in between the collaborative  
12 steps. I think that's particularly important and  
13 challenging.

14       Allow more stakeholders to be involved in the  
15 dispute resolution process, or an opportunity to submit  
16 comments and information. Encourage collaboration we've  
17 heard. Begin early. If an applicant intends to develop a  
18 settlement agreement with stakeholders, communicate this up  
19 front, so everybody's prepared.

20       I think sometimes people use the word "settlement  
21 agreement" and they might just mean collaboratively  
22 developing PM&E measures. So in either case, communicate  
23 that up front. Offer guidance on what to include to justify  
24 using the TLP process rather than the ILP so it's less  
25 onerous, for those who would like to not use the ILP. Help

1 them know what they should do.

2 Educate small and new hydro developers, so they  
3 better understand the ILP process. I think this is related  
4 to there are many one-time licensees, and it's all new and  
5 daunting to them. Okay. Back to discussion, and this is  
6 sort of the parting shot of any other comments, a free for  
7 all of those comments or anything else you'd like to make in  
8 parting comments on the process.

9 MS. GREENE: Oh, I think the ILP is both a  
10 strength and a weakness. Its strength is, at least from a  
11 licensee's point of view, it has certainty, it has  
12 deadlines. You know when you need to get things done. You  
13 can plan for them, and in the best case scenario, that's  
14 what you do. You sit back and you look at that, whatever  
15 period of time for us, it was eight years, and you figure  
16 out how you're going to get through it.

17 The weakness, of course, is even if you have your  
18 A team, like we did, there's some crunch times that are  
19 really, really tough. I'm not sure there's anything you can  
20 do about that except work hard and get through it. I mean  
21 really, the longer the process goes on, the more you spend,  
22 and for a licensee, having some certainty about the future,  
23 particularly about if it's going to require significant  
24 investments over the course of the next 20, 30, 50 years,  
25 you want to know that as soon as you can, and your decision-

1 makers that run the organization are going to want to know  
2 that as soon as you can.

3 I think the study criteria actually helped a lot,  
4 and again on the nexus issue, I think it's just very  
5 difficult for some participants to separate their interests  
6 and what they want, and what they believe they wanted out of  
7 that project, long before the relicensing started, to  
8 separate that from what the facts are actually showing them.  
9 I think that's human nature.

10 But I thought the process was a good one, and you  
11 know, with some tweaks that I think we've heard some really  
12 good suggestions here today, that's the process I would  
13 recommend for an organization that needs to be able to plan  
14 into the future. I would only hope that some of the other  
15 parties involved in it could do a little bit better planning  
16 up front.

17 MS. WEST: Thanks. Russ.

18 MR. JOHNSON: I think we second that. We think  
19 the ILP process, given the wide variety of circumstances and  
20 uniqueness that it addresses throughout the United States,  
21 is a very good process, and most of the recommendations are  
22 our ability to respond to it, not the ability to change or  
23 want to change the process itself.

24 If you start changing this process, well we will  
25 take it and make it longer and longer and longer, which will

1 address exactly the weaknesses that we have today in  
2 responding to it. Which is why at least we brought forth  
3 the suggestions of trying to help some of the resource  
4 agencies, try to help some of the local governments, perhaps  
5 even, as Mr. Simms brought up, the licensee themselves, with  
6 either money or staffing, to help them get through and meet  
7 the deadlines.

8 But as far as the ILP itself, we have very little  
9 criticism, in the fact that it is simply a structure in  
10 which a wide variety of projects needs to fall. As I said,  
11 our struggle with it is simply a resource, predominantly on  
12 our side.

13 The other parts of it that have helped by being  
14 suggested by everyone, the up front idea of putting the flow  
15 of the project online, putting the vocabulary online,  
16 because we do have a misunderstanding at times of what a  
17 nexus is and your language, our language is not necessarily  
18 identical.

19 So with the suggestions that are here, I think  
20 you have a very good process. I wouldn't want to see you  
21 tinker with it too much, so the point where it becomes now  
22 we have to go and evaluate a different process. The things  
23 that I've tried to bring to you were simply made under the  
24 guise of can we making an existing process better. That's  
25 the way we feel about the ILP.

1 MS. WEST: Thanks, Russ. Chris.

2 MR. SHUTES: Chris Shutes, California

3 Sportfishing Protection Alliance and Hydropower Reform

4 Coalition. I have a couple of small, specific points and a

5 general thought or two.

6 One of the things that's on the PowerPoint here

7 regards the limitations on who can participate in study

8 disputes, and I think in a guidance document, one thing that

9 might be productive for the Commission to consider is, is

10 there an appropriate role for 10J agencies in support of 401

11 agencies in formal study dispute.

12 I have seen situations where that was allowed in

13 the past, and I think it would be helpful and might provide

14 some encouragement to some of the 10J agencies, if there was

15 a policy on that, particularly if it permitted that.

16 The initial and updated study reports haven't

17 been discussed today, and one of the problems we've had in

18 general in the ILP is that studies don't come in at an even

19 rate. We have them coming in piece by piece over different

20 periods of times, and the function initially imagined for

21 the ISR and the USR, if I have those acronyms correct, are

22 it hasn't really worked out the way it was planned.

23 I think that that's an ongoing question that the

24 Commission ought to consider, in terms of how you can have

25 check-ins, but how you can also have those as useful and

1 useable in the process as possible. Overall, the front-  
2 loading of the ILP is both its weakness and its strength.  
3 If you start out from the beginning -- well, the merits of  
4 front-loading I won't go into. I think a lot of folks have  
5 discussed those today.

6       If you don't make the decisions up front, it  
7 tends to trickle down throughout the process and lead to  
8 problems throughout, and increases the likelihood of a  
9 contested outcome or a delayed outcome. So a lot of the  
10 focus that the Hydropower Reform Coalition has had has been  
11 on making those good decisions up front, having an expansive  
12 view of NEPA, and accommodating the needs for other  
13 processes such as ESA and 401 within the study process, so  
14 that we can truly integrate the integrated licensing  
15 process.

16       Overall finally, we support that there's been a  
17 lot of good process statements that have been made today,  
18 about general good process, goals, mechanics, and we  
19 certainly support those. I think that a lot of progress has  
20 been made in making that part of the process and making the  
21 process work well.

22       MS. WEST: Thanks. Frank.

23       MR. SIMMS: We were one of the -- Frank Simms,  
24 American Electric Power. I remember coming in here a few  
25 years ago, because we were asked to be one of the first

1 companies to go through the ILP, and if somebody were to ask  
2 me right now was it worth it, was it good, would we do it  
3 again, the answer to all of that is yes, because we're still  
4 here and we're still using it on the other projects, and we  
5 think it's worked very well.

6 I think the comments we heard today, they're all  
7 good comments. But what I'm getting out of this is that  
8 maybe it's really not the ILP that has the major problems,  
9 but maybe it's some of these other things, such as you know,  
10 the 401 and the 4E issues and these types of things.

11 It's that post-license application type thing, or  
12 pre-license, in getting everything to work together.  
13 Because in any process you're going to have similar  
14 problems, you're going to have similar issues. First,  
15 you've got the collaboration. Everybody's got to work  
16 together, start in the beginning, let's work it together.

17 Two is you need the communication. If you don't  
18 have the proper communication all the way through, I don't  
19 care what kind of process you put in front of us, it's not  
20 going to work.

21 But the third thing, and I think is the thing  
22 that needs the most work, is the clarity. As more and more  
23 I heard again about how the agencies all work together, or  
24 in some cases don't work together, how we could bring that  
25 all together is going to make the process a lot better on

1 everybody.

2 MS. WEST: Integrating the integrated licensing  
3 process.

4 MR. SIMMS: Integrating it together, right.

5 MS. WEST: David.

6 MR. DEEN: Yes. One of my notes is to integrate  
7 the integrated licensing process, and that's a help for  
8 river advocates, so we know who we're talking with or should  
9 be talking with. Consistency between projects relative to  
10 process management. Having been at a couple of these  
11 meetings, I have heard different stories in terms of how  
12 FERC has dealt with similar situations, in other words, and  
13 so a consistency, I think, would help.

14 I am not necessarily advocating for a lengthening  
15 of the process, but I am advocating for allowing a consensus  
16 decision to move deadlines, both within the process in the  
17 5.5 years, and if it can avoid litigation and other  
18 extending actions beyond the licensing process, that  
19 flexibility for an end date somehow.

20 I don't know what that standard is, Chris has  
21 talked about you have to have some definitions and whatever.  
22 I haven't thought all the way through that. But I do  
23 believe that there's a reason, in the interest of saving  
24 time overall, from start to complete license, for extending  
25 or potentially extending the process.



1 I understand from the business point of view,  
2 business hates blinking yellow lights. They want a green  
3 light or they want a red light. It really does help the  
4 licensees to get some clarity.

5 Lastly, my favorite issue. We need to adjust  
6 critical energy infrastructure information rules relative to  
7 the licensing process. I have been denied -- one of my key  
8 issues. I sometimes wear two hats going into a process.  
9 Both the Connecticut River Watershed Council and Trout  
10 Unlimited. So my issues are fisheries and passage.

11 I now have a long-standing request in under CEI  
12 to FERC for drawings of fish passage structures on a license  
13 that we are considering or that FERC is considering right  
14 now. We have to rethink that process, and my suggestion is  
15 once parties are identified, that in fact the same  
16 courtesies be extended to them as to the agencies that have  
17 powers in terms of license conditions.

18 That is you guys get copies of this stuff. We  
19 don't. Once we're in, I think it would be helpful and move  
20 the process along if we got copies. Thank you.

21 MS. WEST: Okay. So Dan, Larry, Matt, Julie have  
22 not commented. Any parting comments?

23 MR. LISSNER: Sure.

24 MS. WEST: Go ahead.

25 MR. LISSNER: Let me just make a quick point.

1 I'm glad that this conversation has focused not just on what  
2 FERC can do for us to make this project work better, but the  
3 role that we as developers, as resource agencies, as  
4 stakeholders and individuals play in this process.

5 Many of the things we've talked about specific to  
6 the ILP. Many of the suggestions we've talked about are  
7 not. They're kindergarten skills. It's communicate, be  
8 diligent, don't procrastinate, play nicely with others, and  
9 all of these lessons, I think it's valuable for us to take  
10 them back and to incorporate them in our practices what they  
11 are, and to acknowledge FERC, and thank you FERC and thank  
12 you Anna for organizing this conference.

13 There are not a lot of entities I've encountered  
14 that have been as willing to engage with their constituents,  
15 not just on doing our work, but on how we can improve the  
16 process to make it better for us. So this is valuable and I  
17 appreciate the opportunity to be here and discuss it today.

18 MS. WEST: Thanks. Julie.

19 MS. TUPPER: Julie Tupper, Forest Service. I  
20 think the ILP was a good attempt to try and rein in some of  
21 the long and over-long relicensings that we worked on. I  
22 had the pleasure to work on a couple of those, and after 28  
23 years, I was told when I was finishing them up they got  
24 done, and I don't disagree that that's a really bad idea.

25 But I think the ILP, it provides structure, but

1 in some cases I think that structure has become a stumbling  
2 block. I agree with a few folks here that, not that we need  
3 a ten-year structure, but I think there's times when we need  
4 to have some flexibility, and the regulations tend to be  
5 very strict, that no, you have 30 days to do this and if it  
6 takes 45, sorry, you're done, because that actually, in a  
7 licensing proceeding, which tends to be contentious, that  
8 just adds to the contentiousness, and that's not helpful.

9       The other part that nobody's brought up here and  
10 Chris sort of did, is at least from my coordinators in the  
11 National Forest, we have FERC coordinators who are full-time  
12 because it's a full time job, and a lot of what they do is  
13 provide correspondence.

14       During the ILP, there is a correspondence  
15 overload. Part of the problem we see during relicensing is  
16 that the licensee will say "Okay, I have to go prepare this  
17 document to send to FERC. We can't meet for the next 45  
18 days. We'll come back." It could be at a critical point  
19 when maybe we need to talk.

20       Then on the other hand, the Forest Service and  
21 some of the other agencies have the same problem. It's like  
22 sorry, we can't meet with you. It's going to take us two or  
23 three weeks to write our response to what you just spent 45  
24 days writing. In fact, we're on, right now in some  
25 processes. We're just all on hiatus, because we're all

1 busily writing things.

2       The documentation is good, but I think we need to  
3 really rethink how the time frames and the kinds of things  
4 we need documented. The study reports when they come out,  
5 they don't come out all at the same time, so we end up  
6 having to write responses to study reports and the licensee  
7 writes back about that.

8       We end up -- I'm from the Forest Service, we just  
9 joke that you're keeping us in business cutting trees down,  
10 you know, publishing paper. So I think, I guess our  
11 suggestion would be somehow that we could look at how to  
12 restructure, within the statutory regulations already part  
13 of the ILP, to add a little flexibility and to see where we  
14 have stumbling blocks, because I think there are some that  
15 actually add to some issues that don't need to be issues.

16       I think part of it has to do with people feeling  
17 the shortness of time, and that just raise people's blood  
18 pressure to the point that we have, you know, we get into  
19 problems that didn't need to be problems, but they feel  
20 pressured.

21       The process, you know, this is a complicated  
22 process. You hand this to a member of the public and they  
23 go "Oh my goodness," and then you're trying to explain it to  
24 them. I see the need for it because some of the other  
25 processes perhaps didn't put enough pressure or constraints

1 on folks. But I think we sort of lost a little flexibility  
2 when we went to the ILP that it would be nice to get back,  
3 to perhaps make the process more beneficial to all parties  
4 involved.

5 MS. WEST: Okay, thanks. Matt.

6 MR. RICE: Yes, I've got a few things to close  
7 here, I suppose, on top of FERC providing clear, written  
8 guidance to clarify its interpretation of study plan  
9 criteria, specifically 5 and 7 that we talked about earlier.

10 You know, I think that -- well, it is an  
11 efficient process even with the strict time lines, and  
12 that's good. I think it also, and this may be the exception  
13 rather than the rule, it's a process that can be used by the  
14 applicant to really determine the outcome.

15 For that reason, I think that it's critically  
16 important that FERC actively participates from the  
17 beginning, as far as from the study plans through the study  
18 implementation, to developing PM&E measures prior to filing.  
19 It's -- I think that that would be very helpful.

20 You know, we are talking about 30 to 50 year  
21 licenses, and I understand -- you know, I understand the  
22 interest in keeping it tight and not going over five years,  
23 and a lot of folks are interested in that. But you know, I  
24 think -- another thing I think, I think that a second study  
25 season should be absolutely standard in the process. We

1 need good data to make decisions.

2 MS. WEST: Okay, thanks. Larry.

3 MR. THOMPSON: Larry, National Marine Fisheries

4 Service. I agree with what was said here about time. I

5 think at times we're trying to save months and it's costing

6 us years or maybe tens of years. So I really think we

7 should rethink that. I'll go back to something I said

8 earlier, that we're now creating work-arounds to get around

9 the ILP shortcomings, and we're seeing parallel processes

10 really going on.

11 That just doubles your work, because you still

12 have to meet the ILP filing deadlines, at the same time

13 you're trying to work in meetings where you're really doing

14 things that are outside the ILP. To give you a quick

15 example, we're going to get a PAD on a project. The

16 meetings are already progressing to the stage that they're -

17 - decisions are being made on study plans and going final

18 with study plans. We do not yet have an NOI or a PAD.

19 That's a pretty extreme work-around of the ILP.

20 I think so the positive thing there, let's look at those

21 areas where that's happening, because I think those are the

22 areas that need improvement.

23 I want to second something Matt said about multi-

24 year studies. I didn't bring that up earlier, that I deal

25 with anadromous fishes, and they're complicated and there

1 are ocean cycles. There are years of drought, different  
2 water year types, warm summers, etcetera, and then there are  
3 just unforeseen circumstances you cannot plan for.

4 So I really think we need to start looking at  
5 multi-year studies up front, not agreeing only to do one  
6 year, but agree to do a multi-year study with the adaptive  
7 management in the middle, to readjust, and I think that's  
8 it.

9 MS. WEST: All right. We're over my time. Any  
10 other parting shots from the audience here and then I'll go  
11 to the folks on the phone.

12 MR. LEAHEY: Jeff Leahey with the National  
13 Hydropower Association. NHA obviously still strongly  
14 supports the ILP, but if there are improvements that need to  
15 be made, we'd love to continue to work with FERC and the  
16 other stakeholders on what those improvements could be and  
17 hope that we can come up with some innovative strategies,  
18 some of which I think are here, as opposed to possibly  
19 falling into the box of just thinking that additional time  
20 or additional process is what's needed.

21 I think we heard that there are some things that  
22 could be done that don't necessarily require that.  
23 Secondly, I'd just like to take it up to the 30,000 foot  
24 level and say, and follow up on what Frank said.

25 You know, hydro is a renewable resource. We

1 talked a lot about how the existing infrastructure is being  
2 relicensed, but we're also seeing now new development and we  
3 want to see new development more forward hopefully, and  
4 trying to find a way that we could do that in the ILP, which  
5 I think is possible, and perhaps even see some more  
6 efficiencies in process.

7 When you look to the wind industry or the natural  
8 gas industry and they're able to get projects in in two  
9 years or three years, and hydro is competing against those  
10 technologies. Whether you be a new developer or a utility  
11 who's trying to make decisions about what technology you  
12 want to pursue.

13 MR. THAPALIYA: Hi. This is Rupak Thapaliya with  
14 the Hydropower Reform Coalition. I just wanted to briefly  
15 mention, go back to the points regarding the public being  
16 able to find information about any particular project,  
17 especially people that do not have the technical knowledge.  
18 They don't know the project number and they don't have the  
19 ability to navigate through the FERC e-Library.

20 I just wanted to mention that the Hydropower  
21 Reform Coalition does have a website where you can search  
22 for a project by the project number or the project name, or  
23 even on a map, a Google-based map, with which you can not  
24 only see where the project is, but what other projects there  
25 are on the waterway or in the state.



1 But and it also contains information about, you  
2 know, the resource issues related to the project, other  
3 information like the capacity and who the licensee is and,  
4 you know, when the expiration date and all of that. It also  
5 will take you to the FERC docket directly.

6 Obviously, not all of that is complete. We're  
7 still developing our database. So if there's anyone who  
8 would like to help us, FERC or developers, help us build  
9 that database, we would be happy to work with you, and  
10 hopefully help the public get that information that we want  
11 the public to get.

12 MS. WEST: Another collaborative opportunity. So  
13 anybody on the phone. I'm going to try and forward the  
14 slides at the same time, so we can just make sure.

15 MR. KANZ: This is Russ. This is Russ.

16 MS. WEST: Oh, sorry. Was that Russ?

17 MR. KANZ: Yeah, it's Russ.

18 MS. WEST: Hi Russ, go ahead.

19 MR. KANZ: Again, Russ Kanz with the State Water  
20 Board in California. A couple of things is I really  
21 appreciate Julie's comments about the time frame. I guess I  
22 mentioned that before. I just think that up front they're  
23 too condensed.

24 The other thing is I really would like to see  
25 FERC actively and FERC staff actively involved from the very

1 beginning, being very clear about what they think is  
2 necessary for the Commission to make a decision, and also, I  
3 mean from the perspective of a 401 agency, when we say we  
4 need a study, people should take that very seriously.

5       You know, we in California have authorities that  
6 are beyond the Federal Power Act that we can use, but we  
7 don't like to use those. We'd like to work within the FERC  
8 process. So you know, it would be great if FERC staff had  
9 the disagreement, to call us up and talk to us about that.  
10 That just doesn't seem to happen.

11       The other thing is FERC staff really should be  
12 watching the studies being completed as all the agency, NGO,  
13 tribal reps do. You know, if a study's going south or if  
14 we're providing comments that a study isn't being completed  
15 correctly, you know, FERC staff should deal with that  
16 actively, you know. Talk to people about that and try to  
17 resolve that.

18       It still feels like we're dealing with the old  
19 process, where FERC staff sort of sit back and wait for the  
20 application to get filed, and then deal with it. It still  
21 feels like all of us at the front end are doing the heavy  
22 lifting. So I just think that would be a huge improvement  
23 to the process.

24       MS. WEST: Thanks. Anybody else on the phone?

25       MR. DACH: This is Bob Dach. Is it my turn?

1 MS. WEST: Yep.

2 MR. DACH: I hate to be the naysayer on FERC  
3 involvement, and keep in mind that I love Ann Miles and John  
4 Katz dearly, but I'm not convinced that we want FERC staff  
5 at every meeting all the time throughout the process.

6 There was some good logic that went into the ILP  
7 regs, and they were the results of a lot of issues that were  
8 raised over the years on the ALP and the TLP. So for folks  
9 that are just working with the ILP regs now, it would  
10 probably be good to have some conversations as to why things  
11 were done the way they were done. Not today of course, but  
12 at some point in the future.

13 But I just, want to just put my last two cents  
14 in, that they seem to be working as they were designed. The  
15 issues that are being raised I think are issues that we, for  
16 the most part anticipated. But we felt that the trade-offs  
17 were fair.

18 So all in all, I think, you know, some clean-up  
19 on the regs might be worthwhile, but I'd second. I'd hate  
20 to throw the baby out with the bath water on this.

21 MS. WEST: Thanks, Bob. Anybody else on the  
22 phone?

23 (No response.)

24 MS. WEST: Right. So just some final slides up  
25 there, just to remind you that this going to be compiled

1 into an updated guide book. There's the guide book already  
2 up there, and based on all of these efforts we'll be putting  
3 a draft together with your great suggestions so far, and to  
4 remind you that this is up on the docket. We gave you the  
5 URL. You have this in the slides, and I wanted to thank you  
6 all.

7       So one other detail. I think there's a comment  
8 period. That comment period is extended until December 3rd.  
9 So if you didn't get all your thoughts in now, you still  
10 have an opportunity to provide written thoughts by December  
11 3rd. I don't know if you want to say anything, David or  
12 Ann, but I'd just like to thank everybody for a great  
13 effort.

14       You obviously took this all quite seriously, came  
15 forward with some really great ideas, and I appreciate those  
16 of you who traveled across the country, and also those of  
17 you who hung out on the phone for a long time. Any other  
18 comments, David or Ann?

19       MR. TURNER: I couldn't have said it better,  
20 other than thanks very much. We welcome your comments. I  
21 guess two things I walk away from is probably we need better  
22 communication, I think some greater clarity in some of our  
23 decisions or our positions. So we need to look at some of  
24 the options you've given us in terms of how we accomplish  
25 that.

1 MS. MILES: And I would just ditto both Anna and  
2 David's comments. We really appreciate everyone giving us  
3 their feedback, and we certainly will look very carefully on  
4 what you all have said, and we will be doing the guidance, a  
5 guidance document. We certainly have some areas that I  
6 think people have asked for some clarification on, and then  
7 if there are other things that need to be followed up, you  
8 certainly will hear about it. Thank you very much.

9 MS. WEST: Thanks. Thanks folks on the phone.

10 (Whereupon, at 3:29 p.m., the meeting was  
11 adjourned.)

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1        PANEL PARTICIPANTS:

2                    CHRIS SHUTES, CA Sportfishing Protection Alliance

3                    FRANK SIMMS, American Electric Power

4                    JULIE TUPPER, US Forest Service

5                    MATT RICE, American Rivers

6                    LARRY THOMPSON, NOAA NMFS

7                    BARBARA GREENE, Seattle City Light

8                    MIKE IYALL, Cowitz Indian Tribe

9                    DAVID DEEN, CRWC

10                   RUSS JOHNSON, Tri-County Relicensing Committee

11                   DAN LISSNER, Free Flow Power Corporation

12                   (As well as others by phone and in the audience.)

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

2 (10:57 a.m.)

3 MR. TURNER: Well, it looks like everybody is  
4 here. We might as well get started a few minutes early.  
5 We've got a lot to cover anyway. First welcome to the ILP  
6 Effectiveness Technical Conference. I'm David Turner. I'm  
7 with the -- in the Office of Energy Projects in the Division  
8 of Hydropower Licensing.

9 I'm coordinating this effort for the Commission,  
10 and I guess the first thing I want to do is really thank all  
11 of your taking your time and efforts to come out and share  
12 your thoughts. We welcome those thoughts. We hope to --  
13 I'm sure those thoughts will ultimately help future  
14 licensees and us implement the ILP better.

15 I want to take the opportunity now to kind of  
16 introduce some FERC staff that are here in the audience.  
17 First, Bern Mosley with the Deputy Director, Energy  
18 Projects; also Ann Miles, Director of the Division of  
19 Hydropower Licensing and John Katz in our Office of General  
20 Counsel; and Liz Molloy, who's in our Office of General  
21 Counsel. She's one of the team members that are also  
22 helping me implement this, as well as Alan Kramer and  
23 Samantha, who will be handing and walking around with  
24 microphones.

25 Just kind of a procedural thing the manual also

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1 covers. We're going to need to all speak in the  
2 microphones, to make sure the folks on the phone lines can  
3 hear, as well as the court reporter get your name and  
4 affiliation, and to be able to record your comments.

5 Finally, we're going to -- I'm going to turn it  
6 over to Anna here in a moment, Anna West with Kearns and  
7 West. We've contracted with them to help us facilitate and  
8 do this effectiveness study. Anna has got a long history in  
9 hydropower licensing, not only working with, indirectly with  
10 licensees to implement the ILP, but helping craft the ILP  
11 and doing our first effectiveness study.

12 So without further ado, I think I'll turn it over  
13 to Anna to introduce her panel and her staff.

14 MS. WEST: Do we have -- I'm just wondering, do  
15 you know is the phone line open? Do we have folks on the  
16 phone? Yes, okay. So welcome folks on the phone.

17 MR. TURNER: Yes, you do.

18 MS. WEST: Ahh, a voice. All right. Thanks  
19 again everybody for coming, and I'll take a few minutes to  
20 introduce the panel here and then go through the format of  
21 the day. Hopefully all of you who are here or on the phone  
22 got the slides in advance, but we'll be putting them up  
23 shortly and walking through them.

24 So let me just start, as David mentioned, I'm  
25 Anna West with Kearns and West, and we have several other  
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1       Kearns and West people here. Stephanie O'Bady is probably a  
2       familiar name to all of you, because she's been helping run  
3       the effort, and Anne Gunny is somewhere here, who helped --  
4       is part of this project and was on the Eastern Region  
5       workshops and also Ken Kearns.

6               Let me just go around and have the panelists each  
7       introduce yourselves, your name and organization, and maybe  
8       the state you're from, so we can understand who's  
9       participating in this first part of the discussion. So Dan,  
10      since you're on the end. Oh, and does everybody have their  
11      microphone on on the panel?

12             MR. LISSNER: Yes. My name is Dan Lissner from  
13      Freeport Power Corporation, here from Massachusetts.

14             MR. JOHNSON: My name is Russell Johnson from  
15      Virginia, representing the four governments of Franklin,  
16      Pennsylvania, Bedford and Campbell.

17             MR. DEEN: My name is David Dean. I am river  
18      steward for the Upper Connecticut River for the Connecticut  
19      River Watershed Council. The Connecticut River is a border  
20      river between the states of Vermont- New Hampshire up my  
21      way, so I work in both Vermont and New Hampshire.

22             MR. IYALL: My name is Mike Iyall. I'm with the  
23      Cowitz Indian tribe. We're in Western Washington. We have  
24      projects on the Cowitz River, the Lewis River, and we are  
25      watching the Columbia River as well. Thank you.

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1 MS. GREENE: I'm Barbara Greene from Seattle,  
2 Washington. I managed the relicensing of our largest dam,  
3 Bounder Dam, which is located in Northeast Washington.

4 MR. THOMPSON: I'm Larry Thompson from NOAA's  
5 National Marine Fisheries Service. I work in Sacramento,  
6 California. I work on hydroelectric licensings throughout  
7 California.

8 MR. RICE: I'm Matt Rice with American Rivers. I  
9 work in the Southeast region. I live in Columbia, South  
10 Carolina and do hydropower relicensing work in North  
11 Carolina, South Carolina and Alabama.

12 MS. TUPPER: Hi. I'm Julie Tupper. I'm with the  
13 Forest Service in California. I'm the regional hydropower  
14 program and energy manager, and we have lots of  
15 relicensings.

16 MR. SIMMS: Good morning. I'm Frank Sims. I'm  
17 the manager of Hydro Operations for American Electric Power.  
18 We have projects in Indiana, Michigan, West Virginia, Ohio  
19 and Virginia. My office is located in Roanoke, Virginia.

20 MR. SHUTES: I'm Chris Shutes with the California  
21 Sportfishing Protection Alliance. I work on projects  
22 throughout California.

23 MS. WEST: And everybody else has been  
24 introduced, okay.

25 MR. THORSON: Randy Thorson, National Park  
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1       Service. I work on hydro projects in the Midwest as well as  
2       helping out in the Pacific West region.

3               MS. WEST: Okay, thanks. I was actually going to  
4       just have the panelists introduce themselves, and then we'll  
5       get into the session itself. But I appreciate knowing who's  
6       there.

7               MR. THORSON: Thank you.

8               MS. WEST: Thanks. So let me see. I'll do some  
9       mechanics, see if I get them all. First of all, the  
10      important things on the agenda. We'll be taking a break at  
11      lunch time and if you need the restroom, it's to the left  
12      and behind the elevators. So that's one detail.

13              Another detail is there is, as you all are doing  
14      so well already, no food or drink in the Commission meeting  
15      room. So in the hall or in the cafeteria, but not here.

16              Just a bit about the structure of today's  
17      session. We're trying to maximize the opportunity to get a  
18      good exchange, additional solutions and ideas from  
19      everybody. So the way we'll be structuring it, I'll be  
20      going through the front end of the slides in each section,  
21      raising what we've heard from interviews and workshops to  
22      date in this process.

23              So I'll be sharing the issues and challenges.  
24      Then I'll be talking about the solutions, and we have a fair  
25      number of great ideas that have been generated through this  
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1 effort to date. Then I'll be turning to the panel and  
2 asking the panelists who want to comment on that one  
3 section, either comments on the solutions or issues and  
4 other solutions you might have. So we're still trying to  
5 generate more good ideas on how to implement this process.

6 After we've heard from the panel, I will turn to  
7 folks in the audience here, and anybody who would like to  
8 offer additional solutions please do. Then I will turn to  
9 people on the phone, and for folks on the phone, probably  
10 the best is if you hit the pound sign twice so I know you'd  
11 like to speak, and then we'll take your thoughts and ideas.

12 And for all of us, for the reporter's purposes,  
13 could you please when you're offering a comment, we need  
14 your name and organization so we have that for the record.  
15 So that's the kind of process. Now how do I get these  
16 slides going? It works. Okay.  
17 Maybe it works.

18 (Pause.)

19 MS. WEST: There we go, okay. So the goals of  
20 the conference is we want to share what we've heard about  
21 the process so far through this effort. We want to seek  
22 additional input and build your feedback on that from all  
23 the efforts to take, identify what's working and explore  
24 ideas and solutions.

25 I want to mention that I'm going to be prompting,  
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1       when we get to the discussion slide. The solutions I'm  
2       hoping we're going to be all taking responsibilities for all  
3       sectors that participate in this process. So what are  
4       solutions that FERC can do, what are solutions that  
5       applicants can do, what are solutions from NGOs and for  
6       resource agencies and tribes. So think about all the  
7       sectors and what each sector can do to help us.

8               Some of the process ground rules. I believe you  
9       all know, but today is not about specific proceedings. We  
10      need to be discussing this at a programmatic level. So  
11      please don't raise any specific projects. As always in  
12      these processes, please depersonalize. Focus on the issues  
13      rather than the individuals or organizations when you're  
14      thinking of things.

15             We want to be very solution-oriented. Help us  
16      find new ways to address issues. So if you have issues in  
17      mind, convert that to what would you do about it to make it  
18      better. Obviously seek solutions that are going to satisfy  
19      the mutual interests of all participants, and as I said,  
20      focus on all the sectors and what ideas we can come up with  
21      for each of us to do going forward.

22             Then just some functional ground rules. Respect  
23      everybody in the room. You may have differences and  
24      different perspectives. All are important and need to be  
25      respected. Speak one at a time. I think that's not going

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1 to be a problem, but just let me know so I'll take your  
2 hands so we don't have multiple conversations.

3 Please avoid side conversations. It's a  
4 complicated process talking in this room and with those on  
5 the phone. So we need to make sure everybody can hear.  
6 Silence your cell phones, which is normally what I forget to  
7 do but I did mine today. So if you haven't already, silence  
8 your cell phones, and as I said, we need you to speak into  
9 the microphones.

10 For folks on the phone, you need to hit the  
11 button to let me know if you'd like to speak. If you're on  
12 the phone already, we're not hearing background noise, which  
13 is great. But if you can mute your phones, that's great.  
14 But don't put it on hold, especially if you have some kind  
15 of music that plays, because then we'll all listen to the  
16 music, which has happened before.

17 Okay. So the agenda, this is kind of all the  
18 sections. I just sort of tracks with the ILP licensing  
19 process segments, and as I said, I'll just go through each.  
20 In the interest of time, I will try and have as strong a  
21 discussion as we can on each section, but I might need to  
22 move us along if we're reaching our time limit on a topic.  
23 So we make sure we can cover all the session topics between  
24 now and three this afternoon, 3:00 east coast time.

25 And let me also say to those on the phone, I know  
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1 many of you are from the west coast and some of you are even  
2 from Alaska. So huge thank yous for getting on the phone at  
3 what, seven in the morning your time and participating with  
4 us. So I appreciate it, or we all appreciate it.

5 Before I dive into the first section on study  
6 criteria, I just wanted to emphasize that there are a lot of  
7 very positive things we've heard about the ILP in the  
8 process. So we've only dedicated one slide, but I don't  
9 want to diminish the significance of what we heard as the  
10 strengths of the ILP. But we thought our time is better  
11 spent on the issues, challenges and solutions so we can  
12 improve it.

13 But just to cover that, some of the strengths we  
14 heard from all sectors' views, the deadlines and time lines  
15 help keep everybody on schedule. Sometimes they're  
16 daunting, but we heard positive feedback about those  
17 deadlines and time line.

18 We heard favorably that the ILP encourages issues  
19 to be resolved locally. Those on the ground who better  
20 understand the project can better come up with the studies  
21 and the PM&E measures. It can be easier to understand each  
22 other -- sorry. Oh, sorry. Re-reading my own thing.

23 So people felt as though this process was easier  
24 to understand than others, that it was straightforward and  
25 very clear process plan with clear time frames and  
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1 deadlines. So we heard that that was positive, although for  
2 newcomers it can be daunting and complex.

3 We heard that it's valuable that the ILP is  
4 strict, but at the same time there is some flexibility and  
5 that that's useful, and very strong support for integrating  
6 NEPA into the process by having scoping up front, etcetera.  
7 So there was a lot more positive things we heard, but again  
8 we thought we wouldn't dwell on it today.

9 So here we go digging into study criteria, and  
10 I'm going to roll through a lot of these slides, because we  
11 really want to get to the discussion. So here we go.

12 Issues and challenges on study criteria. Some  
13 feel it helps us focus on the right effort, so that's a  
14 positive. We heard that the project nexus is either not  
15 clear or not consistently applied. So there's concern about  
16 the project nexus criteria.

17 Understanding of the study criteria can vary.  
18 Agencies and NGOs have difficulty accurately estimating  
19 cost. That's another study criteria and not all feel  
20 comfortable or skilled in estimating the costs.

21 Additional issues. Some feel FERC interprets the  
22 study criteria differently, depending on who submits it, or  
23 that there's a variation across different cases. Some are  
24 unclear about how rigid the study criteria area. If it  
25 doesn't meet a study criteria, can they reformulate and  
26

1 resubmit the study to better address that. People aren't  
2 clear if they can do that or not. And some are not clear  
3 about how cumulative effects are considered in the project  
4 nexus criteria.

5 So on to some suggested solutions on this. Many  
6 suggested that there be early meetings with applicants,  
7 FERC, agencies and NGOs, to identify baseline information.  
8 If you have baseline information collected, then you can  
9 better identify how that affects project nexus. It's that  
10 criteria evaluation.

11 If applicants have conducted baseline studies in  
12 advance, stakeholders suggest that it's important to share  
13 that information with the other stakeholders, so they also  
14 have that baseline information. It was suggested that there  
15 be an initial tutorial meeting with FERC for guidance prior  
16 to the NOI, to explain roles, expectations, the process and  
17 study criteria.

18 I'm throwing a lot at you. I hope you all got  
19 the slides to digest this. Have FERC staff involved in the  
20 onset of an ILP. Lots of positive feedback on FERC's direct  
21 participation. Clarify the process and study criteria in  
22 the scoping meetings. Clarify project effects and project  
23 nexus up front and frequently. So hearing for some it's a  
24 hard and complex definition or explanation, and so saying it  
25 frequently and often is helpful. An additional suggestion  
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1 on that is to possibly post an explanation of project nexus  
2 on the FERC website.

3 More solutions. Help shift the focus to the  
4 reason for the study. Why is the study important, so people  
5 really start to explore interests associated with the study  
6 that you're talking about. Prepare written guidance  
7 clarifying the study criteria, and perhaps also share  
8 examples. How have those study criteria been applied in  
9 other projects? How would that help people understand how  
10 to apply it in their specific situation?

11 Consider project operations and how the project  
12 affects the resources as a way to inform study development.  
13 Collaborate to submit stronger study requests through  
14 working groups. Prioritize study needs collaboratively to  
15 determine which studies are absolutely needed. Are you  
16 saying you want every study in the universe, or is there  
17 really a set of priority studies that are essential?

18 FERC and agencies should work together to  
19 facilitate studies that are mutually beneficial. On cost  
20 estimates, perhaps consider developing tools or examples to  
21 understand how to put together an accurate estimate, and  
22 another idea was to just rank study cost as high-medium-low,  
23 sort of with a gut check rather than a great deal of  
24 analysis on costs, to address that criteria.

25 All right. So now it's time to turn to  
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1 discussion. Based on all those thoughts, here I am again.  
2 Based on all those thoughts, can we go back to the slides,  
3 because there was a set of -- I guess we need it so people  
4 can see the participants, sorry.

5 Okay. Based on that discussion, panelists, do  
6 you want to -- who would like to weigh in with some  
7 suggestions? Go ahead, Russ.

8 MR. JOHNSON: Hi. This is Russ Johnson. I think  
9 I'd like to just put out three or four principles up ahead  
10 of why I came here and brought them, that affects the  
11 section we've just gone through.

12 In all the slides, you don't see the term "local  
13 government," and yet to me, one of the objectives of the ILP  
14 process was to involve the citizens around the project, and  
15 how it affects them, etcetera. The only way that can be  
16 done functionally is to involve the local governments.

17 If the assumption is that the state resource  
18 agencies would play that role, we didn't see that unfold in  
19 our project. So if you look at these slides and all the  
20 slides, number one, we don't see local government actually  
21 being listed, thought of, involved and that's something that  
22 perhaps constructively would help in the future.

23 All in all, our position of something that would  
24 make this section more worthwhile is if the Commission  
25 performed the studies, not the licensee, and if the  
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1 Commission brought up front five or six basic studies that  
2 are probably in common to all relicensing efforts.

3 Now it's true they all would have to be tweaked,  
4 based on local circumstances and so on. But rather than  
5 spend a lot of up front time in a reinvention of the wheel,  
6 that by your expertise you already know and have, we thought  
7 it would benefit the process if you said "We're going to do  
8 is study on water quality, we're going to do a study on  
9 these things," put that up front.

10 Then you would spend just half the time trying to  
11 see are there any other studies that are needed and if so  
12 why, and what are the tweaks within these studies. The  
13 other part of this is that in the Department of Defense  
14 sometimes experience, they help resource agencies or they  
15 help local governments with the impact of a major project.  
16 They help them with funding or they help them with staffing.

17 It was a struggle for us to stay up with this,  
18 even though it was clear, laid out, all those positives,  
19 because local government normally doesn't have the resources  
20 to stay with the project multiple years over. But we found  
21 a way to do that.

22 But the consideration should be given, I believe  
23 by the Commission, that perhaps when you look at a study and  
24 you look at the cost of the study, the cost could be very  
25 prohibitive to the organization that says we want this study  
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1       done, unless it's done as part of an agreement with the  
2       licensee. Here, I believe you could step in if your staff  
3       was convinced of the value of that study, and fund it.

4               So those in general, are our commissions. We  
5       find ourselves as local government not being very much  
6       thought of in this process, not being listed as part of this  
7       process. If the assumption is that the resource agencies do  
8       that, it's not a criticism, but just in our world that was  
9       not a role they play.

10              MS. WEST: Okay, thank you. Other panelists?  
11       Yes Mike.

12              MR. IYALL: Mike Iyall, Cowitz Tribe. Yeah, I  
13       would echo what was just spoken. These licensings bring a  
14       huge burden on staff, and you don't often have enough staff  
15       to cover these issues. I would also echo the idea that why  
16       not, why shouldn't we have boilerplate studies. I mean as  
17       long as we're talking hydro, hydro has a given amount of  
18       consistent issues that yeah, they need to be localized.

19              One of the things that we, I sat on an  
20       implementation panel as well, and one of the standards we  
21       used that helped us keep on track was peer review standard.  
22       If you submitted this to peer review, is this study needed,  
23       or would the outcome pass peer review muster. That helped  
24       keep us on track. That really made it very easily  
25       functional. It helped isolate the frivolous.

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1           The other thing that the ILP faces for us is that  
2       anomalous weather. If you're doing a study of snow pack on  
3       a high Alpine lake, and there was no snow, what do you do?  
4       I mean if you're trying to measure gravel transport in an  
5       abnormally dry spring. So I think anomalous weather can be  
6       easily reviewed. I mean you just look at the past 20 years'  
7       forecast and, you know, catch the pertinent details.

8           Because no environmental studies are going to be  
9       valid if you're in a spell of anomalous weather. So they  
10      can't be done accurately.

11          The other piece for us that was a real bone of  
12      contention was the aerial potential effect. I'm sure that  
13      everybody that has a dam, the first thing that happens  
14      downstream is once the flow of the river gets metered to  
15      where there's no longer the surges, people start building  
16      houses, in what used to be the channel migration zone.

17          So now the area of potential effect is the water  
18      in front of the project, downstream of the project, because  
19      I can tell you that, you know, looking at three or four dams  
20      and the housing that's come in below them, those dams are  
21      going to be there forever, because houses and ultimately  
22      cities would be subject to seasonal flooding if not for the  
23      presence of the project. Thank you.

24                 MS. WEST: Larry?

25                 MR. THOMPSON: Yes. My comment --

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1 MS. WEST: Introduce yourself, name.

2 MR. THOMPSON: Oh Larry Thompson, National Marine  
3 Fisheries Service. Going back to which solutions do we  
4 recommend for the study criteria, I think first we have to  
5 distinguish between study request criteria that are laid out  
6 in the regulations in 5.9(b), and the study plan criteria  
7 that are laid out in criteria 5.11(d).

8 The study request criteria are obviously required  
9 of anyone submitting a request for a study. The study plan  
10 criteria are nearly identical, and they apply to the study  
11 plan that is filed by the applicant. I think that's an  
12 important point.

13 I want to say I think I support what I heard here  
14 about core studies being developed or core outlines for  
15 studies at least. However, if FERC were to take that on,  
16 they also should lay out using the study criteria, exactly  
17 the rationale for the study, what the project nexus is, what  
18 it's to accomplish.

19 We all know FERC can order studies at any time,  
20 and they do that often when they need information on a  
21 project and they feel it's not there. However, I have seen  
22 instances where FERC has ordered a study but is not clear  
23 about why the study is being ordered, and what it's to be  
24 used for. Thank you.

25 MS. WEST: So you're suggesting a more detailed  
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1 explanation would be helpful?

2 MR. THOMPSON: I think what I'm suggesting is  
3 that the Commission staff should follow the regulations as  
4 well as in their studies, any ordered studies, yes.

5 MS. WEST: Chris.

6 MR. SHUTES: Chris Shutes, California  
7 Sportfishing Protection Alliance. I neglected to mention  
8 before I'm also representing the Hydropower Reform  
9 Coalition. In a sort of big picture sense on the study  
10 criteria, the HRC thinks that case by case collaboration is  
11 important, but it's not going to solve some of the problems  
12 that we've had.

13 The HRC recommends two sort of broad measures.  
14 One is a guidance document that sort of addresses -- in  
15 which the Commission would address global issues relating to  
16 the application of the study criteria. A second is within  
17 each study determination, discussing criteria more  
18 explicitly, especially those that have been identified as  
19 problematic and most frequently criteria 5 and 7.

20 MS. WEST: And those are, just so everybody  
21 knows?

22 MR. SHUTES: Those are -- they each have two  
23 parts. Criteria 5 is nexus and will a project -- will a  
24 study inform license conditions. Seven is cost and what  
25 existing information exists.

26

1           I'd like to address Criterion 5 more explicitly  
2     for a minute. In the guidance document, I think that FERC  
3     should lay out that direct-indirect or cumulative effects  
4     are appropriate for establishing nexus, and sometimes I  
5     think that language becomes confusing and would suggest that  
6     sometimes using terms like multiple effects or combined  
7     effects or interactive effects is a different way of looking  
8     at that particular, the questions of whether a project that  
9     is -- works in conjunction with other water operations is  
10    appropriately addressed in nexus.

11           Another problem we've had is how certain must an  
12    effect be before it is determined to be appropriate for  
13    study? So and a lot of times we don't know the answer to  
14    that until we do the study. One of the problems we've had  
15    is that it seems that decisions have been made before  
16    studies have been completed about whether there is an  
17    effect, and it's the study that's going to give us  
18    information about whether that effect exists.

19           So part of what we need to do when we're looking  
20    at effects is to determine them, if appropriate to quantify  
21    them, and then look at feasible mitigations that the  
22    licensees can perform in order to address them.

23           Similarly with license conditions, we don't  
24    always know whether a license condition is going to be -- is  
25    going to result from implementation of a study, and we think  
26

1       the appropriate standard, as we've laid out in some of our  
2       filings, is a reasonable likelihood that a license condition  
3       will result from the study. Again, we don't know in many  
4       cases.

5               So in sum, the threshold ought to be that you can  
6       reasonably demonstrate the presence of an effect and  
7       reasonably foresee a license condition.

8               Very briefly on Criterion 7, we haven't had as  
9       many problems with estimating the cost. We found that we  
10      can make a phone call to the consultants or consult with  
11      licensees, or look at studies that have been completed in  
12      the past and what the cost estimates were for those.

13              But we have had questions about is there  
14      sufficient information that exists, and sometimes studies we  
15      thought were appropriate were dismissed because information  
16      that existed was felt to be adequate.

17              One of the things I think that should help in  
18      making decisions about this is, is there some degree of  
19      controversy about a particular resource issue, and how  
20      important is a resource issue and its management in a  
21      particular project? That's it.

22              MS. WEST: Thank you. Frank?

23              MR. SIMMS: Frank Simms, AEP. Actually, I don't  
24      disagree with a lot of these comments that are being made.  
25      Staffing is an issue, not only for the agencies, as we've  
26

1       seen, as we've gone through the process in the local  
2       governments; it's even an issue for us. I mean we're  
3       somewhat limited on staff too.

4               I think though, as for a boilerplate study, I  
5       don't know if you could say "let's have boilerplate studies  
6       because of the variety of issues that you have on particular  
7       projects." But I think you could have boilerplate  
8       assessments. In other words, there's particular things that  
9       you want to look at for every project.

10              As the gentleman next to me said, there's a lot  
11      of cases where you have a lot of information that's already  
12      available on the resource, so why reinvent the wheel at a  
13      very expensive cost? If the costs get out of hand for the  
14      studies, I'll be honest with you. There's a tendency of the  
15      applicant to become more defensive with those monies as we  
16      come down to the end of the process with the mitigation,  
17      when you've already spent millions up front.

18              So I think where I see a weakness, and it might  
19      depend on the applicant itself, is getting that information  
20      up front. There should be a lot more up front that's  
21      available from the agencies, local governments and everybody  
22      else.

23              Once you have that, then getting a good, full  
24      assessment from the Commission as to is that adequate; will  
25      that be adequate to make the assessment that's referring to?

26

1 MS. WEST: So could you explain what you mean by  
2 the assessment? A review of what studies?

3 MR. SIMMS: When you get into -- you know, you  
4 put in your pre-application document, and you say "Okay,  
5 here's the studies that I'm going to propose, as the  
6 applicant." But you have all this background information.

7 It would be interesting to see where that  
8 background information or how much of that background  
9 information would preclude the Commission from saying  
10 "You're right. You don't need to perform that study because  
11 there's adequate information to make that assessment," as  
12 you go into the environmental assessment.

13 MS. WEST: Is that similar to what you were  
14 proposing Chris, or different? I'm just trying --

15 MR. SHUTES: I think it's a different way of  
16 getting at it.

17 MS. WEST: All right, okay. Barbara and then  
18 Matt.

19 MS. GREENE: Barbara Greene, Seattle City Light.  
20 That's an interesting idea, because in our process, we had  
21 just volumes and volumes of information in our pre-  
22 application document, including a lot of existing  
23 information that sort of begs the question about what really  
24 needed to be studied.

25 The challenge was that the agencies and some of  
26

1       the other parties were so short-staffed, I don't think they  
2       really spent any time reading it. So it was almost like  
3       when you got together to -- we collaboratively developed the  
4       study plan, it was like a reeducation constantly about  
5       whether we really needed to study something, or whether we  
6       had adequate information.

7               We did additional information-gathering before  
8       the actual study program began, so we had a lot of  
9       information. I'd be a little hesitant to think about a  
10      boilerplate because I think Frank's right. You have some  
11      basic things you need to find out in every licensing, but  
12      the details of every project is so different that you'd  
13      really have to work with folks to actually tailor the study  
14      to get at the information you need.

15             I also wanted to say something about operations,  
16      which is, of course, one of the central issues in most  
17      relicensings. Understanding the operations of the project  
18      is really key, and so more education, I think up front,  
19      about the operations of the project, in terms of educating  
20      the parties would be really helpful, because people, it  
21      seems, tend to have certain assumptions about what  
22      operations are doing to the surrounding environment without  
23      really taking a look at some of the details, and  
24      understanding it.

25             I know that's sort of a challenge, because when  
26

1       you deal with a lot of parties, they don't necessarily come  
2       from that sort of a background and have the ability to  
3       understand that. But that seems to be the crux of a lot of  
4       where the nexus issue becomes problematic for people.

5               They have certain interests they bring to the  
6       table, and they carry those interests throughout the entire  
7       process, regardless sometimes of what the study effects  
8       actually show.

9               MS. WEST: Matt was next.

10              MS. MILES: Can I ask a question?

11              MS. WEST: Sure.

12              MS. MILES: I want to ask a question on this  
13       existing --

14              MS. WEST: Introduce yourself.

15              MS. MILES: Oh, Ann Miles, FERC. On the existing  
16       information, because that was an element when we all  
17       designed the ILP, was getting what existing information is  
18       out there.

19              I'm wondering if that's not really -- if people  
20       aren't digesting it out there, is there something that could  
21       be done early in the process? I mean could -- how would the  
22       applicants feel about early on kind of explaining what's in  
23       there, so it's clear that everyone's aware of what that  
24       existing information is and operation? Is that what you're  
25       suggesting on both of those?

26



1 MS. GREENE: Right. I think yes. I think we  
2 attempted to do that, but there was so much information, and  
3 as soon as the PAD comes out, you're already into the study  
4 planning phase. So we tried to wrap those two together in  
5 specific resource work groups, and to try and explain it.  
6 But there's just so much.

7 MS. WEST: So what do you do, do it earlier prior  
8 to the PAD filing?

9 MS. GREENE: We started. We started our  
10 engagement 18 months before the PAD was filed. It's a large  
11 project, and not all the parties had their staffing lined  
12 up. You know, as typical in many processes, some parties  
13 didn't have the ability to staff constantly, so there was  
14 always a sort of catch-up.

15 We did a tremendous amount of consultation. We  
16 met constantly for five years. It's hard to know what else  
17 you could have done.

18 MS. WEST: Okay. We're going to go to Matt and  
19 David. I'm trying to get to people who haven't yet had a  
20 chance.

21 MR. RICE: Matt Rice, American Rivers. I just  
22 wanted to follow up a little bit with what Chris was talking  
23 about, and specifically I think the big issue with Study  
24 Criterion 7, which is "Describe the considerations of cost  
25 and practicality, and why any proposed alternatives would  
26

1 not be sufficient to meet the stated information needs," I  
2 think one problem is that it's hard to understand, you know,  
3 how FERC assigns value to information, as far as incremental  
4 information you get from cost of studies.

5 Chris mentioned the guidance document that would  
6 help better define nexus, with examples. I mean this is  
7 something that I think should be included in the guidance  
8 document as well, a description of how FERC assigns value to  
9 information, with examples.

10 MS. WEST: Could you explain what do you mean by  
11 "assigns value to information"?

12 MR. RICE: Well what -- when asked to, how much a  
13 certain study is going to cost or whatever, and how much  
14 that information is worth, as opposed to how much that study  
15 is worth. So that's not clear to many stakeholders I know.

16 MS. WEST: So the magnitude of the cost is still  
17 worth it, because it's such a significant issue?

18 MR. RICE: Yeah, in determining whether or not  
19 it's a reasonable study or not.

20 MS. WEST: David and then Julie.

21 MR. DEEN: Some of this discussion is very  
22 seductive, in terms of having FERC assume costs that as the  
23 small non-governmental organization, there is no way we can  
24 meet in terms of studies.

25 But that said, the determination of studies is  
26

1       the first point, in my experience, where you are beginning  
2       to strike the balance between production of power for either  
3       public or private gain, and the environment, and working  
4       your way through a study and a study plan is, in my opinion,  
5       and we don't have any staff to do this versus other stuff,  
6       is worth the investment.

7               Because this is the first time you're engaging  
8       that question of power versus the environment, in terms of  
9       existing information, having gone through a non-ILP process  
10      recently, where information is 20 years ago. That is not  
11      acceptable. In terms of gathering information, because our  
12      knowledge of rivers has progressed tremendously in the last  
13      20 years.

14             So evaluating that information for what it's  
15      worth relative to conditions now on the ground is important,  
16      and sometimes you do a cursory read when there's a date that  
17      there's 20 years' difference. Lastly, the notion of FERC  
18      examples, that's fine. FERC checklists, that's fine. But I  
19      don't, I wouldn't want to see a FERC guidance document morph  
20      into a definitive list of studies that are the list of  
21      studies.

22             Because when you get on the ground, as Chris  
23      mentioned, every dam is different. You've mentioned it; I  
24      think we've all mentioned it. Every dam is different. So I  
25      don't want that chiseled in stone, and all of the sudden we  
26

1 find ourselves locked into having to follow a particular  
2 path.

3 MS. WEST: Julie.

4 MS. TUPPER: Julie Tupper, Forest Service. We're  
5 on our fifth or sixth ILP in California. I work  
6 nationally, so the Forest Service has others we've done.  
7 ALPs, traditional and ILP has some definite advantages, I  
8 think. ALP is also nice. But I think there's two things.

9 There tend to be a group of studies that are  
10 always done, but I think the issue comes down to the issue  
11 of nexus, and I think that is a clear issue that we need to  
12 work on. There's a level of uncertainty, and as a federal  
13 agency who has mandatory conditioning authority, we believe  
14 sometimes, as this gentleman just mentioned, we have old  
15 information.

16 We need to update that information, to make sure  
17 that we are proposing conditions in our mandatory conditions  
18 that are appropriate. Usually we have found that the best  
19 thing that we've done, at least in California, as you'll  
20 discover, we started out at the ILP, and through each  
21 relicensing, we have started earlier and earlier and  
22 earlier, primarily because there is an amazing amount of  
23 material provided to the participants.

24 As an agency, we have a budget, but it still  
25 isn't enough, and we wonder how many of the NGOs manage to

26

1       participate. In our latest relicensing, I think we started  
2       two years early, and all we did was meet two days a week --  
3       let's say, two days per month for like a year ahead of time,  
4       primarily just so that there'd be different topics that  
5       people could come, and we could present information.

6               I think without doing that, the study process  
7       time frame is so compressed it ends up becoming contentious  
8       when sometimes it doesn't need to be. I always believe  
9       there will be some contention there, because not everyone's  
10      going to agree on what's needed.

11             But I think if the two big issues of uncertainty,  
12      and one thing that I think people need to realize, at least  
13      from the Forest Service perspective, is doing a study and  
14      finding out that there is very little project effect, we  
15      don't need a condition, is actually a valuable piece of  
16      information to us.

17             It's not that we need to do worthless studies,  
18      but sometimes we need to go out and find out that oh, the  
19      fishery is in good condition. There has been very little  
20      effect in the past 20 years since the last time anyone  
21      bothered to look at the fishery, and that we're okay with  
22      the instream flow.

23             But to go out and say "Oh, the fish are okay  
24      because 25 years ago that's what a study showed" is usually  
25      not sufficient information for us to make a decision and say  
26

1 we can leave the stream flow. We get challenged on our  
2 conditions just as FERC does, and so we believe that there  
3 needs to be at least be a level of certainty.

4 So we need to strive to get studies that provide  
5 -- I don't think you're going to have certainty, but at  
6 least you will have less uncertainty.

7 MS. WEST: Okay, thanks. Frank, okay, and then  
8 I'm going to need to turn to the audience too. So Frank,  
9 Dan --

10 MR. SIMMS: Frank Simms, American Electric Power.  
11 I agree with what everybody's saying. You know, if a study  
12 is so old that the information's not valid, then the study  
13 is too old and the information's not valid, and then you  
14 need to get the information.

15 But I think my comments are coming out because we  
16 had a number of projects in the Class of '93, and believe it  
17 or not, those projects are coming up again in 2023, which  
18 means we're going to be starting this process again in 2016.  
19 I'm going to retire before that starts.

20 (Laughter.)

21 MR. DEEN: Once was enough.

22 MR. SIMMS: Once was enough. But when you look  
23 at the conditions of the licenses that were received in the  
24 Class of '93, and the comparison to what was prior to that  
25 Class of '93 licenses, there's a lot of monitoring and other  
26

1 requirements, where there's an awful lot of information  
2 that's coming up and being provided as it goes.

3 I think what the FERC needs to do is to look at  
4 that as coming up, and if that information is available, and  
5 it is now really historical information over a period of  
6 time; it's relatively new information, if that information's  
7 available, then you have to look at why would we go and do  
8 another study when it's really collaborated what was stated  
9 in the first license. That's more where my point's coming  
10 from.

11 MS. WEST: Sorry. You three and then Dan, Russ  
12 and then Larry.

13 MR. LISSNER: Dan Lissner from Free Flow Power.  
14 I want to echo Julie's comments about the timing, and I  
15 think she touched on an issue that's particularly applicable  
16 in the new development projects, rather than relicensing,  
17 and I think is benefitted across the board by the ILP.

18 Free Flow Power is developing conventional  
19 hydropower projects and hydrokinetic projects, and I'll  
20 focus on the hydrokinetic, because those are the slate of  
21 projects that incorporate the ILP as well.

22 There's a constant tension that we encounter  
23 between project operations and study nexus, that it's a  
24 chicken and an egg problem that I'm not sure exists as  
25 constantly, or at least as evident in existing projects that  
26

1 are relicensing, or even in conventional hydropower projects  
2 at a dam, where you have an uncommercially-deployed  
3 technology, or you have flexibility about where projects can  
4 be located.

5 The developer is continually striving to get  
6 information from the stakeholders about demonstrated project  
7 nexus. Tell me how this relates to our projects, and the  
8 information we're receiving back from the stakeholders is  
9 well first, you need to tell us what your projects are going  
10 to look like. Then we respond we can't tell you what the  
11 projects are going to look like until you tell us what the  
12 resource agency, what the resource issues will be.

13 It's in some respects a vicious cycle, but where  
14 the ILP benefits this, and I think the attribute of the ILP  
15 that we prize above all is that it encourages, even forces  
16 the developer and the stakeholders to engage in this  
17 interaction early and frequently and intensely, and to  
18 really discuss these issues and look at them fresh and head  
19 on.

20 The situations in which this has worked best  
21 between the developer and the stakeholders is when both  
22 parties, from our perspective, when stakeholders have come  
23 to the table, willing to engage in that fully informed on  
24 the issues of concern, and willing to look critically at  
25 what they actually need.

26



1 Chris, from representing the Hydropower Reform  
2 Coalition, I'll note that one thing that the HRC has done  
3 particularly well, I think, is in putting information out on  
4 its website available to individual stakeholders and smaller  
5 groups about how to engage in the FERC process. That's a  
6 tremendous benefit to everyone involved.

7 Where we've run into challenges have been where  
8 people have come from both sides with preconception about  
9 what is valid as a matter of law, or what the boilerplate  
10 studies might be. We find that creates a roadblock that  
11 just isn't compatible with the time frame of the ILP.

12 Where that's happened, FERC has been consistently  
13 available, either through formal dispute resolution or  
14 through informal technical conferences, to mediate and to  
15 get the parties to the table where you can have that sort of  
16 conversation. So where it interacts with the time, the  
17 challenge is it takes a long time.

18 I don't know how you start early enough in order  
19 to fully vet all of these issues. But it's definitely an  
20 aspect that we've found has been beneficial across the  
21 projects.

22 MS. WEST: Russ and Larry, and then I'm going to  
23 need to go. So sorry.

24 MR. JOHNSON: I just want to make three other  
25 quick --

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1 MS. WEST: Quick comments.

2 MR. JOHNSON: --comments about the study part.

3 First, this issue of nexus is really troubling, and to limit  
4 it to a discussion of project effect or operations effect is  
5 really not -- well, we struggle with it. We struggle with  
6 the nexus in recreation, the nexus with safety, all of the  
7 different things that a 401 license says you'll be  
8 responsible for as an operator in our opinion, where nexus  
9 is to the project, and therefore worthy of review and  
10 discussion.

11 Second, I think that there is obviously within  
12 FERC subjects that are not going to be studied. So don't  
13 bring it up. My comment is if there are studies that are  
14 out of bounds for this project or this type of project or  
15 whatever, then if you put it up front, because we've talked  
16 about the value of this phase, as getting more things up  
17 front.

18 If you put it up front and say we're not going to  
19 study this, it would be a lot less contention. To peel it  
20 away and finally halfway, several months, almost a year  
21 later be told we're not going to study this. FERC doesn't  
22 study this, not going to be done.

23 The most overriding part of this though is this  
24 comment, which I did make in my first round, is I think  
25 FERC, as a regulatory agency, needs to look at the potential  
26

1 conflict of receiving money from a licensee, while they're  
2 regulating the licensee. It almost starts to remind you of  
3 a little bit about British Petroleum's relationship with its  
4 regulators and so on.

5 I'm not making an analogy or a match. But what  
6 I'm saying is the reason why I would like to have FERC do  
7 the studies in the first place, is to put the licensee in  
8 the same position as all the other stakeholders are in,  
9 instead of letting the licensee drive the process, where  
10 there is a vested interest in money, a vested interest in  
11 nexus and a vested interest in outcome.

12 No matter how pure the licensee performs those  
13 roles and studies and interprets them, it's always subject  
14 to the beholder saying "is this a vested interest decision,  
15 or is this a scientific fact or conclusion that we can deal  
16 with?"

17 MS. WEST: Okay Larry, and then we really need to  
18 go to the audience.

19 MR. THOMPSON: Larry Thompson, National Marine  
20 Fisheries Service. I think Dan, you touched on one of my  
21 points, and that's that we're talking here about projects  
22 where there's a lot of existing information, or there's an  
23 existing license and they're seeking a new license.

24 But we have to be aware of those cases where the  
25 ILP is being applied to an original license application, or  
26

1 an applicant seeking an original license and there's little  
2 to no baseline information.

3 You have the same time crunch between PAD  
4 issuance and getting all the studies done, and that is  
5 really compressed. Just take for example, Alaska. Take a  
6 case where there is a project proposed in a watershed, where  
7 there may be little or no stream gauge information. That's  
8 where you're starting from. So we need to keep that in  
9 mind, and --

10 MS. WEST: Do you have suggestions for it?

11 MR. THOMPSON: I think FERC should take a look at  
12 extending that time frame between PAD and the deadline for  
13 study requests, expand it when -- in cases where an original  
14 license is sought.

15 Now I had a couple of other things to say. NMFS  
16 is really after information. We're talking about studies a  
17 lot. We're really after satisfactory information about the  
18 effects of the project on the resource to be studied.  
19 There's a little bit of clarification, I think needed by  
20 FERC, in that Section 5.9 talks about information or study  
21 requests.

22 It's not clear to me if the study criteria are to  
23 be applied to an information request. Some of them don't  
24 make any sense, a standard method -- applying a standard  
25 methodology, for example, makes no sense, because you're not  
26

1 performing a study. But what you're putting forward is an  
2 information request. So I think some clarification there  
3 would help.

4 MS. WEST: Okay, thanks. I'm having a hard time  
5 moving to the audience. John.

6 MR. KATZ: Sorry. John Katz with FERC. I just  
7 wanted to clarify a couple of things in response to some  
8 things that were said, primarily I think by Mike and Russ  
9 about funding and studies and so on.

10 With regard to FERC actually performing studies,  
11 Congress doesn't authorize the Commission funds to conduct  
12 studies, so that money just isn't there.

13 There is a part of Section 10(e)(1) of the Power  
14 Act that provides that funds collected through annual  
15 charges from licensees will be used to defray the costs of  
16 federal, state and other resource agencies, for them to do  
17 studies and otherwise participate in Commission activities.

18 That's subject to annual appropriations, and  
19 Congress has never appropriated any funds to do that. But  
20 it might be a worthwhile thing if it's a concern to local  
21 folks to approach their members of Congress, and ask them to  
22 put some funds into the Commission's budget to do that,  
23 because that is something that's been in the Act for many  
24 years, but Congress has never given the Commission any funds  
25 to actually defray the costs of the agency's.

26

1                   And then with regard to annual charges, the last  
2                   thing in response to what I think Mike just said -- or I'm  
3                   sorry, Russ. That the Commission with regard to annual  
4                   charges, the statute requires the Commission to charge all  
5                   the industries it regulates, the natural gas industry, the  
6                   electric industry as well as the hydro industry. It's  
7                   essentially a user fee.

8                   So if the Commission collects, you know, \$100  
9                   million from its licensees, Ann and my salaries don't go up  
10                  or down as compared to if the Commission collects \$10  
11                  million. It's just the Commission is supposed to  
12                  essentially -- I mean it's one of the oldest and most  
13                  original user fee arrangements, where the costs of  
14                  regulating these entities are paid for by those entities, so  
15                  no one else has to do it. But it's not a question of sort  
16                  of money being made or anyone getting more or less money  
17                  through that process.

18                 MS. WEST: Thanks. So let me turn to the  
19                 audience here. There are like one or two folks with  
20                 comments, solutions, suggestions? One, okay. Again, we  
21                 need your name and organization, and then I'll turn to those  
22                 of you on the phone.

23                 MR. REID: Hi. I'm Mitch Reid from the Alabama  
24                 Rivers Alliance. A couple of things that I've heard, and by  
25                 the way I'm here as a member of the HRC as well, for  
26

1 clarification.

2 One thing I hear about the funding and the  
3 assistance, I am one of three staff members in an NGO and  
4 the only person that does policy work for the entire state  
5 of Alabama on relicensing issues, and we currently have any  
6 number of ongoing relicensing. So I get it when we talk  
7 about taking the information, trying to analyze the  
8 information and trying to do something beneficial in the  
9 process.

10 To the extent that we are short-staffed and it's  
11 an overwhelming amount of information, we certainly need the  
12 assistance of FERC to help us weed through, I like something  
13 that Matt said, give us an indication of where you're  
14 weighting information.

15 Certainly, if you've got monitoring information,  
16 where you've been conducting monitoring of a stream, you  
17 know, below a project for 20 years, then that information  
18 should be weighted in favor of, you know, rather than a  
19 study.

20 But if you've got information that is provided  
21 from base conditions of when the hydropower utility started,  
22 you know, built the dam 50 years ago, well that's, you know,  
23 that's not the information we need. We need the  
24 information, you know, current information. So I would say  
25 that FERC involvement in that as much as possible.  
26

1           I agree with the anomalous weather conditions.  
2       We had a weird time in Alabama, where we would go from  
3       drought, and then the next year we'd have floods, and then  
4       maybe we're going back into drought. But you know, to the  
5       extent that you need to extend out and say you still have to  
6       go collect the information, we need that support.

7           I think that everything else I had has probably  
8       been circled around.

9           MS. WEST: All right, thanks. Let me -- oh, one  
10      more comment from the audience, and then I'll go to the  
11      phone.

12          MR. LEAHEY: This is Jeff Leahey from the  
13      National Hydropower Association. So I think I would just  
14      say that NHA continues to support the study criteria as a  
15      whole, though clearly if there were additional guidance or  
16      clarifications on certain portions of it that are needed, I  
17      think we would be all in favor of having FERC issue those or  
18      work to figure out what those clarification or guidance  
19      should be.

20          One of the things I've started to hear, and this  
21      isn't a study criteria question necessarily; it's more of a  
22      time line process issue, is the tension between all of this  
23      information that we all need and have as part of the  
24      licensing process, and the time lines. I do get a little  
25      bit concerned about some discussion about needing to expand  
26



1 the time lines or expand the process as a whole.

2 That might be appropriate, and I think there is  
3 some flexibility built into the process. But I also do want  
4 to point that out, as one of the things that we were trying  
5 to do when we first did the ILP eight years ago was to  
6 address the issue of licenses and licensing proceedings that  
7 were going on for 8, 10, 15 years.

8 I think this process has really helped that. At  
9 least that's what I hear from the industry members who talk  
10 to me, and hopefully some of the flexibility that's built  
11 into that system can accommodate some of what we have heard  
12 here today.

13 MS. WEST: Okay. So folks on the phone. I think  
14 we have -- we're a little over in this segment, but I know  
15 it's important. We have time for a handful of comments, one  
16 or two if you want to push the pound sign twice and let me  
17 know if you'd like to contribute something? Okay. Who was  
18 that?

19 MR. KANZ: Russ Cans with the State Water Board  
20 in California.

21 MS. WEST: Hi Russ. Go ahead.

22 MR. KANZ: Okay. So there's a couple of things.  
23 One is, and this is based on my experience with every type  
24 of relicensing process, is I don't think it's realistic to  
25 decide \$30 million worth of studies in two months. It's

26

1 just not enough time, and experience has shown that.

2 The other thing is you don't know what you don't  
3 know, and I think there's -- the ILP has forced a little bit  
4 of inflexibility in the process, that doesn't allow a phased  
5 approach to studies. I think there's a lot of benefit to  
6 phased approaches, but you just can't do that in a two month  
7 time period. It's just not enough time.

8 MS. WEST: All right. Anybody else on the phone?  
9 Thanks, Russ. Yep, who's that? I think I've got two  
10 people. Who was the first beep?

11 MS. MANJI: That's hard to know.

12 (Laughter.)

13 MS. WEST: Just whoever wants to speak up, name  
14 and organization and your comment.

15 MS. MANJI: This is Annie Manji.

16 MS. WEST: Hi Annie. Go ahead.

17 MS. MANJI: I'm with the California Department of  
18 Fish and Game, and for us, the purpose of these studies  
19 typically comes down to helping inform our recommendations  
20 later on in the process. That's perhaps a narrow purpose  
21 not shared by everybody, but one of the dilemmas we run into  
22 with the nexus question is that it's not so much the project  
23 impact that we want to study; we want to study the  
24 feasibility of future mitigation, future license conditions.

25 Often, the nexus, we stumble over the nexus

26

1       because it's not that we question whether there's an impact.  
2       For instance, if there's absolutely no passage at a dam,  
3       nobody's questioning whether or not that's an impact. But  
4       there is questions as to what would be a feasible mitigation  
5       measure to address that impact.

6               Do you want a hatchery? Do you want volitional  
7       passage? Do you want trap or haul, or you're going to have  
8       to go for an alternative type of mitigation, perhaps a flow  
9       regime. So for us, the study nexus, if they could be  
10      expanded to include not just project impacts, but that idea  
11      of feasibility of future mitigation measures. I think Chris  
12      touched on that earlier. Thank you.

13             MS. WEST: Thanks, Annie. So just to clarify,  
14      you're suggesting you might modify project nexus to not only  
15      evaluate project impacts but feasibility of PM&E measure?

16             MS. MANJI: Yes. Thank you.

17             MS. WEST: Is there somebody else on the phone?  
18      All right.

19             VOICE: You have someone in the audience who  
20      wanted to respond.

21             MS. WEST: Oh, I'm sorry. Wait. We need you  
22      with a microphone.

23             MR. SEEBACH: Okay. This is John Seebach with  
24      American Rivers and the Hydropower Reform Coalition. I just  
25      wanted to follow up -- sorry, wait. That's better. John  
26

1       Seebach with American Rivers.

2               I wanted to follow up on Annie's point, and I'm  
3       not even sure that requires a change to what nexus is. I  
4       think that -- read from my notes as I was writing here. I  
5       think the question is not whether an effect exists, because  
6       clearly we wouldn't be studying it if there wasn't something  
7       causing that effect.

8               But the studies are often intended to try to  
9       quantify the relationship of that effect that we know is  
10      existing to the project, sort of figure out what that  
11      relationship is, and then also quantify the project's  
12      relationship, the project's ability to address that effect,  
13      to see whether it's possible to make changes to the project  
14      that could either mitigate for that effect, avoid it or  
15      enhance the resource in question.

16              So I think there's flexibility built into the  
17      criteria, as I read it, to be able to handle those  
18      situations. Thank you.

19              MS. WEST: Thanks. Ann?

20              MS. MILES: Ann Miles, FERC. I've noted that  
21      this issue has come up in some of the other meetings, so  
22      we've had a little bit of a conversation about it.

23              I think we also are hoping for a phased approach,  
24      that there may be any number of projects where you sort of  
25      have to figure out in the first instance is there an effect,  
26

1        what is that effect, what's going on, and a result of what  
2        you figure out. Then you would look at what is the  
3        potential PM&E measure.

4                So it may be an area where I think every  
5        intention was that that was the way. You know, there are  
6        two years of studies and that that would be the two. Figure  
7        it out first, and then the second, if there is a need to do  
8        something, what are your options for doing it, what would  
9        they cost, those kinds of things.

10                Maybe we need to be doing that more clearly in  
11        our study determinations. Maybe as everybody in this room  
12        lays out their study plans, we should be laying them out  
13        more clearly, you know, with determination of effect and  
14        then, if so, what are those measures. I think it's  
15        something that we probably all can do a little better.

16                MS. WEST: Thanks. I think we need to move on to  
17        the next segment. Here we go. So study plan development  
18        and review. Again, I'll just walk through the front end and  
19        then have the discussion. So first up is the informal study  
20        plan process and FERC study plan determination. Some of  
21        this we've already been talking about, but here we go.

22                There's a short time period in which to develop  
23        the study plans. FERC study plan determinations are brief,  
24        with little explanation. Stakeholders don't have a complete  
25        understanding of why studies have been rejected in the study  
26

1 plan determination process.

2 The approved study plan does not always satisfy  
3 the study needs of mandatory conditioning agencies. If the  
4 applicant and the mandatory conditioning agency agree to a  
5 study, but FERC doesn't include it in their study plan  
6 determination, sometimes there's confusion on whether or not  
7 the study should proceed or not.

8 Those were the issues and challenges. Now the  
9 solutions on studies. Encourage collaboration to reach  
10 agreements on study needs. This helps foster acceptance of  
11 study results later. So ideally you all will agree on the  
12 studies, and then you'll more likely accept the results that  
13 come out.

14 Develop phased or threshold-dependent study  
15 plans. I guess that's what we were just talking about a  
16 second ago. Have collaborative meetings to try to avoid  
17 formal dispute resolution. I think it's pretty universal  
18 that everybody thinks it's better if you cannot have to get  
19 to formal dispute resolution.

20 Clarify up front what the Federal Power Act's  
21 requirements are and Clean Water Act's requirements, and how  
22 FERC incorporates those, the 401 conditions into the  
23 license. So I think people are suggesting you need clearer  
24 understanding of all the roles of the conditioning agencies,  
25 and how that combines together into the license.

26

1           More solutions. Study requesters should clarify  
2           the specific study needs. Thorough requests really help.  
3           Have FERC actively participate throughout, particularly on  
4           contentious topics. So if you know you have a tough issue,  
5           people appreciate having FERC there.

6           So next I'm moving onto the dispute resolution  
7           process, the formal dispute resolution process in PM&Es.  
8           Formal dispute, study dispute resolution is a resource-  
9           intensive process with tight time frames. We all recognize  
10          that issue.

11          FERC's decisions don't always align with the  
12          recommendations of the dispute panel. The time frames and  
13          opportunities for comment can be unclear or not fully  
14          understood. It's challenging to complete studies and  
15          develop PM&E measures in time to file your license  
16          application, much less in time to file either the DLA or the  
17          preliminary license proposal.

18          Solutions. Encourage dispute resolution  
19          panelists to find additional information. This has happened  
20          in some situations where they sought additional information,  
21          which helped come up, inform their recommendations. Clarify  
22          with participants the process for formal dispute resolution,  
23          so everybody understands it up front.

24          Meet regulatory to discuss study results and  
25          potential PM&E measures to help manage time and the amount  
26

1 of information you all have to manage in the review process.  
2 Discuss potential PM&Es prior to all the study results being  
3 available. So can you take it in bite size pieces. As some  
4 study results come in, talk about PM&E measures associated  
5 with that.

6 The PM&Es in developing applications. Create a  
7 schedule up front of when study results will be ready for  
8 review so everybody's primed and prepared to review the  
9 results. Consider a waiver of the preliminary license  
10 proposal or draft license application if it's fully  
11 supported by stakeholders, so you have more time to develop  
12 PM&E measures and then go to the final.

13 Incorporate draft management plans in the PLP DLA  
14 so stakeholders can provide input on those draft plans, and  
15 their input can then be reflected in the final plans that go  
16 in the final license application.

17 Okay. Lots covered, and okay. Barbara's up  
18 front, but I'm going to Mike, because I made him hold silent  
19 before.

20 MR. IYALL: Okay. One of the things that's  
21 going to drive a study is the presence of ESA-listed  
22 species, and as a utility, you want to produce a license  
23 that has minimal or adequately mitigated the impact. In  
24 Washington, we have utility holders being sued for the value  
25 of lost fish for 30 or 40 years. These are lawsuits that  
26



1       are momentous in dollar value.

2                   You don't want to be there. So it's in your best  
3       interest to produce, as a utility, a license that has  
4       minimal impact on listed species. So that should help drive  
5       the need for the studies. I mean are you making yourself  
6       vulnerable by bullying the agency people into minimizing  
7       their studies? I mean go ahead, because there's lawyers  
8       that will love that.

9                   MS. WEST: Now remember the ground rule of  
10      respect.

11                  MR. IYALL: Oh no. I'm just saying that it's in  
12      all of our best interest to produce a license that has  
13      minimal impact or mitigated impacts, and that's what we all  
14      really want to work for. With that, you know, I think that  
15      that's where -- I'd be the first to say we're wasting our  
16      time on frivolous studies. It doesn't do anybody any good.

17                  I trained a young biologist in working on  
18      relicensing. I gave her four feet of material. I mean  
19      stacked on the floor. She had four feet of material to  
20      review. When you say "well, it's already been done." Yeah,  
21      it has, and it would fill this room. It's not adequately  
22      catalogued. I doubt anybody has any catalogue of it. In  
23      all research-based material, the devil's in the details.  
24      Are you going to read 500 pounds of paper and understand the  
25      details? So thank you.

26

1                   MS. GREENE: Thanks. I'm going to maybe start  
2 from the general and go to the specific. So the ILP time  
3 line that we've talked a little bit about that, and we've  
4 heard some ideas about extending it. From our point of view  
5 as a licensee, it's a long time frame already and it costs a  
6 lot of money. Let's be honest about it.

7                   We wouldn't necessarily be in favor of extending  
8 the time line. What I want to talk about maybe is the  
9 biggest crunch time, which is you do your first year of  
10 studies and hopefully you've done a collaborative approach  
11 in developing your study plans, and you're on track. Then  
12 you evaluate them after the first year and you tweak them.  
13 That's what the second year, at least that's how we utilize  
14 the second year. You tweak them to see what you might need.

15                  But then when you get the study results, you're  
16 definitely in a crunch time after the USR, to actually file  
17 a PLP or a DLA. I'm not sure that it makes, at least in our  
18 situation, didn't make a whole lot of sense to spend too  
19 much time thinking about PM&Es before you had the study  
20 results, because some of the study results were a bit of a  
21 surprise.

22                  If you are taking your study plan seriously, you  
23 want to use those results to build up, to build your PM&E  
24 package. So we didn't spend a whole lot of time dreaming up  
25 PM&Es. I'm sure some folks had them on their mind, but as

26

1       the licensee, we were focused on what do the studies  
2       actually say, and where do they point you.

3               So that was a terrible crunch time, and in  
4       retrospect, I've been thinking a lot about that whole PLP  
5       phase. We did the USR. We talked about study results with  
6       our parties. We barely had time to put the PLP together and  
7       it was almost as an after-thought. It wasn't that  
8       comprehensive because we didn't have enough time to  
9       assimilate that information.

10              MS. WEST: So are you supporting the idea of  
11       perhaps asking for a waiver on the PLP?

12              MS. GREENE: I think people should think more  
13       seriously than perhaps we did, that it might have been a  
14       better move to not spend time putting that document  
15       together, but to think through more what the results of the  
16       studies were, and really what were the best mitigation  
17       measures that we should be talking about.

18              I want to add one point. I think I mentioned  
19       this earlier. It's difficult. People always carry their  
20       interests with them, as hard as we try to be collaborative  
21       and open-minded. But the interests from parties really  
22       drive their thought process about what the mitigation  
23       package should be, and sometimes the study results are --  
24       well, they don't matter, because people still have an  
25       interest in certain measures. So that's problematic, but  
26

1       that's human nature.

2               But yeah, I would go back and reiterate.

3       Considering the request for a waiver of a PLP, because the  
4       license application then theoretically would be far more  
5       robust. You'd have time to think through the issues and the  
6       mitigation package that you want to propose.

7               MS. WEST: Matt.

8               MR. RICE: Matt Rice, American Rivers. We've  
9       been -- I want to talk about one of the points, the solution  
10      points that was brought up during this effectiveness  
11      analysis, and also what Barbara said and what we've all been  
12      kind of saying, talking about collaboration.

13              It's really good and it's really good that FERC  
14      encourages it through this process. But not all applicants  
15      are necessarily inclined to collaborate, and because of the  
16      time frame of this process, it really allows them to drive  
17      it and to really determine the outcome.

18              Maybe one suggestion, what a lot of folks have  
19      talked about on this, and I saw this was a solution on the  
20      previous slide, is really increasing FERC's presence on the  
21      front end of these proceedings, I think in two ways. One is  
22      a -- one, it's kind of a neutral party that is neutral to  
23      all stakeholders, but is an advocate for building a strong  
24      record that can help inform them later on in NEPA.

25              Then another is just being there, and maybe you  
26

1 know, kind of acting alongside consultants as a facilitator.  
2 In my experience, the tone is very much different in  
3 meetings that FERC attends than meetings in which FERC does  
4 not attend. That would help build trust, collaboration.  
5 It's really important, I think, for FERC to see the dynamic  
6 between stakeholders and the applicants.

7 MS. WEST: Okay. Were you speaking there Frank?  
8 I know you --

9 MR. SIMMS: Frank Simms, AEP. I'd like to go  
10 back to Barbara's point. I think she said on a very key  
11 issue with us in all of the ILPs that we've been involved  
12 in, and that's that crunch at the end. She's absolutely  
13 right, that when you get the study results, that's what  
14 you're going to be basing your management plans on, not just  
15 your mitigation.

16 In other words, those study results, we want to  
17 put together management plans that are going to make sense,  
18 that are going to allow for the proper management of the  
19 resource as you go on through the next license. In some  
20 instances what you're held to, in the instances we had, I  
21 know we shouldn't have details, but we only had about a  
22 three or four month period between the time that we had the  
23 study results and the time that we had to get the management  
24 plans in. You're saying well what kind of management plan  
25 can you develop?  
26

1                   On the business side of things, when we develop  
2                   management plan, the resource that my supervisors and the  
3                   people above me are looking at well, how much is this going  
4                   to cost us to do this management plan.

5                   And they're going to ask the question well, is  
6                   the FERC saying you have to do this? Because if they're  
7                   saying you don't have to do it, then why would we do it,  
8                   because we have budgets. We have money to consider here  
9                   too.

10                  Yes, we want to protect the resource, but we have  
11                  to balance everything out. My suggestion is that if you're  
12                  experience in the ILP process, and you have to know your  
13                  projects to a certain point as to what the environmental  
14                  issues are going to be, as to how contentious it's going to  
15                  be. I hear people talking about this back end as being the  
16                  area where we need the extension of time.

17                  Personally, I think where the extension of time  
18                  needs to be is at the front end. I mean I realize that  
19                  under the Federal Power Act and so on and so forth, we have  
20                  that five to five and a half year time period, where we --  
21                  before the license ends to notify that we have an intent to  
22                  relicense.

23                  But if you have a recognition of some of these  
24                  things that are going to be a problem, weather, whatever,  
25                  and you're thinking about that in the back of your head, why  
26

1 would we not go up front and say yes, we understand this is  
2 going to take a little longer and we need more time to start  
3 from the beginning to get to the end.

4 Which is contrary, I know, to Mr. Lissner, who's  
5 probably saying boy, we'd like to shorten this. I think  
6 later on, we could discuss that. There's also ways that you  
7 could shorten these processes. But I do think that the  
8 constraint is sometimes this five to five and a half years  
9 of shoving it in.

10 Why could we not go in with a schedule that  
11 follows basically the ILP, but says we're going to start a  
12 little earlier? We're intending to start a little bit  
13 earlier, so we can answer some of these issues.

14 MS. WEST: So can't you do that already, pre the  
15 NOI?

16 MR. SIMMS: You can pre-NOI all you want to,  
17 which we do. One of the things we did is a draft PAD.  
18 Let's get everybody involved. We started two years in  
19 advance.

20 I heard other people who did the same thing. But  
21 that still doesn't substitute for the schedule, because once  
22 you get into that five to five and a half year schedule  
23 ahead of time, then you're following this schedule that says  
24 well within so many days you're going to do this, so many  
25 days you're going to do that, which is kind of the conundrum  
26

1 or trap we got into.

2 No matter how hard we tried, when you got into  
3 the second year of studies, doggonit we had three months  
4 left at the end, and you know, I think the management plans  
5 we did, bless everybody that sat down in the meetings. You  
6 put together as much as you could to get out as much as you  
7 could and put it together. But they could have been better.

8 MS. WEST: So you -- I'm just trying to clarify.  
9 So you're suggesting maybe a say six-year rather than five  
10 and a half year and put a whole process plan together?

11 MR. SIMMS: I'm not suggesting a definitive time  
12 frame. What I'm suggesting is you go in up front with a  
13 schedule time frame that you say, just as what the intent of  
14 the ILP is, is that we are to hold to this particular time  
15 schedule.

16 We've sat down pre-NOI with the agency,  
17 stakeholders and others, and have decided this time frame,  
18 once we look at this project and what we see potentially  
19 coming ahead, is the one that would make sense for us, so  
20 here's our notice of intent.

21 MS. WEST: So flexibility to create a modified  
22 time frame?

23 MR. SIMMS: Yes, yeah. That --

24 MS. WEST: All right. So Julie and then --

25 MS. TUPPER: Julie Tupper, Forest Service. He  
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1 hit the nail on the head. We have had several cases where  
2 the second year studies actually were reported several  
3 months after the DLA was due, just because of the way the  
4 time frame worked.

5 It becomes very difficult, because then it kicks  
6 into other mandatory things, the ILP and as the Forest  
7 Service, we have other time lines to follow. We were trying  
8 to make decisions based on information we didn't really  
9 have.

10 I want to back up just a second though on the  
11 phasing. It's something that Russ said. If you are in a  
12 crunch trying to develop your study plan, where we've run  
13 into problems is trying to develop good triggers, and I have  
14 to say not all utilities are as collaborative as all. Some  
15 are very easy to work with; others are a little more  
16 difficult.

17 A study costs money, and so when you're trying to  
18 decide if you need to do a second year study, it can be a  
19 very contentious process. Sometimes, we didn't put as good  
20 a thought into what that trigger is to do the second year  
21 study. We end up spending a lot of time fighting over the  
22 second year.

23 I think looking back, in many cases that's  
24 because we were so busy trying to write the first year  
25 study, we barely got it out. We didn't put as good an  
26

1 effort as we could have. In some cases a few folks have  
2 said we don't know what we don't know. So it became  
3 difficult to write the appropriate trigger.

4 But one of the things we've thought about  
5 proposing to FERC is exactly what Frank has said, is that in  
6 some cases, you need to see where the time frames fall.  
7 We've actually had utilities, as you've said, agree to start  
8 studies before we're really in the process, just because we  
9 know the second season ends up being the same time they're  
10 trying to write the PLPs or the draft license application,  
11 or they're actually running up against final license  
12 applications, just because the way the time frame works.

13 If you sit down seven or eight years ahead of  
14 time, and you actually have to do that, and figure out how  
15 your studies would work, I think you could propose to FERC  
16 that if we set the time frame up now, we will hit all of the  
17 time spots within the ILP, but it will be within a time  
18 frame that makes sense, that we get a good product at the  
19 end, instead of a rushed product.

20 We're not sure what regulation change that would  
21 be, but I think you could try and build that flexibility in,  
22 especially we're sort of winding down. But I think we see  
23 other projects coming forward now in the next probably four  
24 or five years. Even in California, we're back into -- I'm  
25 going to retire too -- here we go again. I think we'd like  
26

1 to be able to have a little more flexibility on those  
2 projects.

3 MS. WEST: So I've got a lot of hands, sorry.  
4 Dan and then David, Russ, Larry.

5 MR. LISSNER: Dan Lissner from Free Flow Power.  
6 Frank and Julie's comments about time line are well-taken,  
7 and it's interesting about the tension, to discuss about the  
8 time crunch that occurs in a five-year relicensing process.

9 It seems counter-intuitive to describe a more  
10 contracted time frame for development of a license  
11 application on a new project, and we talk about -- it  
12 certainly seems counter-intuitive, where the expectations  
13 and the resources are less understood. But that tension is  
14 not arbitrary.

15 From the developer's standpoint, the only  
16 protection available to a developer's investment in a new  
17 project is the preliminary permit, and it's only viable as  
18 long as that preliminary permit exists, which is three  
19 years.

20 For a developer to contemplate a new development  
21 project and a time frame that would not enable them to file  
22 a license application at the end of that three-year permit,  
23 essentially leave that developer unprotected to collateral  
24 license applications beyond that point in time, during a  
25 time when they would continue to be expected to invest, not  
26

1       only unprotected investment of the time and resources spent  
2       up to that point, but to continue to pursue developments  
3       during a period of time outside of the preliminary permit.

4               It's tempting to consider what it would be if  
5       there were different schedules for preliminary permits and  
6       there were more time, but that's not a discretionary  
7       determination on FERC's standpoint. That's statutory at  
8       this point in time.

9               So in the meantime, our perspective is the best  
10      use is to focus on what can be accomplished within the  
11      current statutory guidelines, and find a way to -- where  
12      collaboration and pursuit of the meaningful issues, rather  
13      than frivolous ones and advancing the time frame as  
14      productively as possible within that three years.

15              MR. DEEN: I saw this whole discussion as a  
16      matter of time and energy. Dave Deen, Connecticut River  
17      Watershed Council, sorry.

18              MS. WEST: Thank you.

19              MR. DEEN: In terms of the suggestion of  
20      collaborative meetings to avoid formal study dispute  
21      resolution, that's a function for FERC. Given that they  
22      would have as uninvested a role as possible, to be able to  
23      facilitate those informal resolutions, hopefully speeding up  
24      anything there.

25              The notion that 401 studies are every bit as  
26

1       important, but may not be on FERC's list of items that they  
2       think is important, is something that you have to resolve.  
3       FERC has to resolve that, because the state work is every  
4       bit as important. That is a second forum that river  
5       advocates look to, and if the studies are not done, then the  
6       401 does not complete and the 401's not ready to go relative  
7       to the license.

8               MS. WEST: Can I just add on the point that it's  
9       all sectors? So it sounds to me as though it's something  
10      this 401 agency and FERC would need to work out, right?  
11      It's not solely FERC's role there.

12             MR. DEEN: Correct, yeah. No, but I don't know  
13      where the rub is, and as someone who addressed both forums  
14      as part of a relicensing, I don't care. But it should be  
15      worked out. My favorite issue, CEII, is a time barrier.

16             MS. WEST: So you'd better explain that for us.

17             MR. DEEN: Critical Energy Infrastructure  
18      Information. If a document or a part of a document is so  
19      classified, parties to the proceeding do not have access to  
20      that unless they file and request a waiver from FERC. This  
21      is not an ILP issue, but I missed a comment period because I  
22      didn't get the document released from FERC.

23             Suggestion. As parties are identified going into  
24      the process, that in fact those parties fill out the non-  
25      disclosure agreement, and that they in fact be sent, by the  
26

1       applicant, information that when it hits FERC would be  
2       classified CEII, that there's an understanding in the  
3       process that you have a party. This is a serious part of  
4       it.

5               Connecticut River Watershed Council's been  
6       involved with every FERC proceeding in the valley, in the  
7       watershed for at least the ten years that I've been around.

8               If the parties, applicant included, reach a  
9       consensus agreement that in fact the time frame is too  
10      tight, it's forcing incomplete or otherwise less competent  
11      work, I would hope that FERC does not see the ILP process as  
12      such an icon that they would not allow all the parties to  
13      reach an agreement that yeah, we're going to need another  
14      six, nine, twelve months.

15              The ILP process was to stop 10, 15, 18, 20-year  
16      non-licensing, not to stop one year, 18 month situations.  
17      So I would just hope that FERC could, if you have a  
18      consensus agreement with the stakeholders, allow some  
19      flexibility to get the job done right.

20              MS. WEST: Thank you. Russ, and then Larry.

21              MR. JOHNSON: Two quick questions. It's almost a  
22      broken record, but I'll just stay with you. On Slide 17,  
23      you refer to mandatory conditioning agency. I'm supposing  
24      that a mandatory conditioning agency might be U.S. Fish and  
25      Wildlife or it might be the Environmental Protection Agency.

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1                   From the local government point of view, perhaps  
2                   because we don't appear on the list, we never had any  
3                   communications from the decisions they made on our project,  
4                   from them to us. It came, their communications came to the  
5                   resource agencies, which I think that's a natural  
6                   expectation that they would. But they never got anything  
7                   down to the stakeholders, the NGOs and the local  
8                   governments.

9                   So that's why we identify who stakeholders are on  
10                  our lists, for those times when local governments are  
11                  involved, as are the people they represent. It would be  
12                  nice that they would be on the list and subject to the same  
13                  flow of information as others.

14                 A second quick point, because it's one I agree  
15                 with, is I think Mr. Simms is correct, because we worked  
16                 very hard with him on the project of the leap to create the  
17                 management plans. It was extremely difficult for all the  
18                 above. I think the management plans, when we get to the  
19                 section later on this afternoon where we talk about it,  
20                 needs some more conversation. I'll just say that to remind  
21                 myself.

22                 MS. WEST: I'll put you back in queue. So I have  
23                 Larry, Chris and then Barbara.

24                 MR. THOMPSON: Larry Thompson, National Marine  
25                 Fisheries Service. I want to make some suggestions about  
26

1       how to improve the study plan review process. NMFS believes  
2       that we do need clarification of the study criteria, better  
3       definitions and some clarifications.

4               We don't think that's going to do it. That's not  
5       going to be enough to really improve, in a substantial way,  
6       the effectiveness of the ILP in the study phase. We really  
7       think what's needed is action by FERC staff, to do a better  
8       job with the study plan determination document.

9               I say that because I had an experience as a  
10       panelist on a dispute resolution process. The first  
11       document, you know, I was relatively unfamiliar with the  
12       project. The first document that I looked at was the study  
13       plan determination. I wanted to know which requests were  
14       accepted and which were denied. I wanted to know the  
15       rationale for accepting or denial of a request.

16              It was difficult, the second part. The rationale  
17       was really difficult to find. They were just very brief;  
18       they referenced the criteria. The FERC staff referenced the  
19       criteria, that this criteria was not met or this one was not  
20       met, for example, the 5.9(b) criteria. But the rationale or  
21       explanation was lacking.

22              As a panelist, I was looking for comment,  
23       explanation of how a request, a study request met or did not  
24       meet the 5.9(b) criteria. Likewise, I was looking for  
25       rationale for why a study plan was adopted, and how it met  
26



1 the requirements under 5.11(d). Again, I could not find  
2 that.

3 So again, reason for acceptance or denial is what  
4 you're looking for. What you're looking for is the nature  
5 of the dispute. You're asked to settle a dispute. That's a  
6 key document. So I really think FERC needs to do -- I would  
7 just implore you to do a more thorough job.

8 It may be that the regulations need to be  
9 adjusted there. If you look at the regulations under 5.13,  
10 they're not clear about what FERC's requirements are, you  
11 know. What are the requirements of a study plan  
12 determination? It's not clear, and there doesn't seem to be  
13 a good connection between, for example, the study plan  
14 requirements under 5.11(d) and the requirements for FERC to  
15 evaluate a plan under those, see that it meets those  
16 requirements. Okay, that's one suggestion I have.

17 Mike brought up a really good point about ESA  
18 consultation earlier. I think that deserves some mention.  
19 The regulations at 5.9(a) ask agencies like mine to put  
20 forward requests for information or study that would inform  
21 the ESA consultation that's to come later. But if you look  
22 at that requirement, it sort of drops away after that.

23 So those requests we put forward are not even --  
24 we're not allowed to dispute. If FERC determines that  
25 they're not going to take a request we filed under 5.9(a)  
26

1       and accept it, we are not able to take that to dispute  
2       resolution. We can only take to dispute resolution studies  
3       that directly relate to our mandatory conditioning  
4       authority, which would be Section 18, Fishway Prescription  
5       Authority.

6               So I think that needs to be really looked at, and  
7       I'm thinking back to the interagency task force agreements  
8       back in the early 2000's, where this was sort of all laid  
9       out. It seems to have, you know, it doesn't seem to show up  
10      in the ILP sufficiently. I think I'll stop there. Thanks.

11             MS. WEST: Okay. Just let me ask, are there any  
12      recommendations for what NMFS might do to address some of  
13      these?

14             MR. THOMPSON: Well, I think -- I took a look at  
15      the interagency task force agreements that Commerce,  
16      Agriculture, Interior and the FERC agreed to back in around  
17      2000. I think if we go back and look at that, and work  
18      better to facilitate the ESA process, that would help. But  
19      we certainly cannot just put a criteria or a requirement out  
20      there to put forward information or study requests, and then  
21      let it drop out of the ILP.

22             That really looks like what's happening now, and  
23      Mike put his finger on it. If you get later and you don't  
24      have that information, you are going to subject that  
25      licensing to significant delays, or if you issue a license  
26

1       that's not protective of those species, there are  
2       ramifications.

3               MS. WEST: So it sounds like there's some seeds  
4       in the ITF document for re-discussing between the  
5       organizations, to see if you can find some new solutions.  
6       Ann.

7               MS. MILES: Ann Miles, FERC. I do think that  
8       would be worthwhile. The ITF was done before the ILP. So  
9       it doesn't incorporate anything of the ILP, and I think it  
10      would be very valuable for the Endangered Species Act  
11      agencies to get together and see what we could work on with  
12      that.

13              MS. WEST: Okay, thanks. Is yours directly Mike,  
14      because Chris was next.

15              MR. IYALL: Yeah. I'll be real quick. I just,  
16      where I was trying to go is is that when the FERC process  
17      fails to resolve your concerns, you shouldn't have to say  
18      that's okay, we'll clean it up in court. I mean that means  
19      the FERC processes need to resolve these ESA-listed issues.

20              Then again, we don't have to say "don't worry  
21      about it, we'll clean it up in court," because that means  
22      the process isn't adequately addressing those concerns.  
23      Thank you.

24              MS. WEST: These are all about solutions that  
25      don't get you there. So Chris.

26

1                   MR. SHUTES: Chris Shutes, California  
2 Sportfishing Protection Alliance and Hydropower Reform  
3 Coalition. I'd like to go into a couple of particular  
4 things, and then talk about a more general topic.

5                   When we were talking about phased studies, one of  
6 the problems we've found is that sometimes studies are  
7 phased based on models, and this presents a more general  
8 problem that we've had with models in the relicensing  
9 process. They tend to be the, and I'm talking about water  
10 balance models and water temperature models in particular.  
11 They tend to be the things that get produced last, and when  
12 we're in that period that others have discussed, where we're  
13 getting down to studies and trying to interpret them, they  
14 seem to be the ones that lag.

15                  Basing a phase study on a water balance model  
16 really seems to be a problem, because they usually just  
17 don't get done. One of the things that some licensees have  
18 done that's positive, in terms of addressing this problem,  
19 is developing unimpaired hydrology, and even developing  
20 water balance models before relicensing.

21                  Although I don't think the Commission can require  
22 that, I think as a policy matter, something in the guidance  
23 document that suggests that would be a positive step. We  
24 are going to run into questions about whether the scope of a  
25 water balance model is appropriate.

26

1           I would like to see the Commission consider  
2     requesting that water balance models for projects include  
3     watersheds, and not just a specific project, or at minimum  
4     can it effectively interface with existing models that  
5     already are present for watersheds.

6           So I think those are particular issues that have  
7     come up in the phase study question. I'm not sure that  
8     Larry's issues about study determinations need to be -- need  
9     to occasion a rewriting of the rules. But I think that some  
10    of the issues that he raised certainly would be  
11    appropriately addressed in the guidance document.

12           So one of the issues we've had, I think, relating  
13    to one of the other less-discussed study criteria is the  
14    agency goals in the relicensing. Sometimes agencies have  
15    been reticent to list those goals, fearing that that's sort  
16    of established the entire universe of what their goals might  
17    be in a process.

18           I think an appropriate step or an appropriate  
19    topic for discussion, a guidance document, would be the fact  
20    that agency goals, as stated in study plan proposals, are  
21    preliminary, and that they don't encompass the entire world  
22    of the agencies. Because we've run into problems later on,  
23    because we haven't had clear definition between what the  
24    goals are and how they relate to the study plans, and it  
25    sort of becomes as vicious circle for the agencies, when  
26

1       they're considering what they put in a study proposal.

2               MS. WEST: So just to clarify, Chris, you're  
3       suggesting getting the agencies to identify their  
4       preliminary goals up front, so you could then evaluate the  
5       studies?

6               MR. SHUTES: Yeah, but that in a policy document,  
7       FERC articulate that that doesn't sort of define the entire  
8       terrain of what they might say at a later point, as things  
9       iteratively evolve.

10              MS. WEST: Okay.

11              MR. SHUTES: Then on a more general issue. Study  
12       development, we've talked about it needs to inform  
13       Endangered Species Act requirements. But it also is  
14       basically something that lays the table for NEPA, and it  
15       goes hand in hand with scoping.

16              We don't always know what, in NEPA terms, the  
17       significance of impacts are going to be early in the  
18       process. What we look to do is to try to understand the  
19       effects, and quantify those effects. But we can't say what  
20       the significance is until we've done the studies.

21              So I think it's important to recognize that the  
22       Commission needs to look at an expansive role for studies,  
23       in developing a good NEPA process and document. I think  
24       we've addressed some of these issues in some of our filings,  
25       and I won't go into them more extensively. But I think it's

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1 a very important point.

2 Finally, I'd like to say that the integrative  
3 licensing process really ought to be integrating, and it  
4 ought to be integrating NEPA and it ought to be integrating  
5 ESA, and it ought to be integrating the needs of the 401  
6 agencies, and that's the idea.

7 When that doesn't happen, then on the back end we  
8 have delays. Some of those were discussed a little bit  
9 earlier, and while the Commission isn't required to order a  
10 study that does not -- that would fulfill only the  
11 requirements of say a 401 agency, it might be a productive  
12 thing to do.

13 If it really feels that it can't order that, it  
14 ought to suggest to an applicant that it might be in  
15 everyone's best interest to expedite the process.

16 MS. WEST: You're teeing up this afternoon's  
17 conversation well.

18 MR. SHUTES: Very good. So I'll stop with that.

19 MS. WEST: Barbara, and then I wanted to turn to  
20 the audience. We'll go a little bit longer on this topic  
21 and then just restart a little later. Go ahead.

22 MS. GREENE: I want to think about some of the  
23 challenges, not necessarily process-related, but in reality,  
24 when you think about the long five and a half year period.  
25 I still maintain that I think that's enough time, because

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1       frankly if you extend it, it just keeps getting extended  
2       more and more and more. I'm not sure that you ever finish  
3       the process.

4               So you know, there is time always in the  
5       beginning. If you want to start early, you can start early.  
6       You can start gathering people far before the NOI if you'd  
7       like. But this gets to my key point. One of the biggest  
8       challenges is getting all the parties to get together, and  
9       to keep coming together.

10              That speaks, I know, to a lot of both agency and  
11       NGOs and tribes and their budgets. It's very challenging.  
12       But as a licensee, when I think about the kind of resources  
13       we poured into this program for the last eight years, it is  
14       a source of frustration that agencies staff would come in  
15       and out and not be really tracking everything because they  
16       had too many things to do.

17              So maybe this is a little bit -- maybe it rubs  
18       people the wrong way. I don't mean to do that, but when we  
19       sat down to do this process, we looked at it. We looked at  
20       a very long time frame. We looked at the budget. We put it  
21       all together like it was a program, so that we could get  
22       through it.

23              What we ran into were folks who would come in and  
24       out because they had other things to do, and they weren't  
25       fully informed. It was really an impediment, because you  
26



1 ended up discussing things over and over again. When you  
2 got to the point of writing management plans, that's new,  
3 and folks were a little stunned that they had to complete  
4 those before filing the final license application.

5 It got done, you know. People can do this stuff  
6 if they put their mind to it. But --

7 MS. WEST: So do you have a solution?

8 MS. GREENE: Well, you know, I'm not naive about  
9 how some of these organizations run. But a little bit of  
10 planning and recognizing that if you have a very large  
11 project in your back yard, you need to actually dedicate  
12 some staff to getting through the process, particularly if  
13 you have conditioning authority at the end.

14 It's disingenuous to think that you'll just wait  
15 until the end and file your prescriptions, particularly when  
16 other folks are spending a lot of time and a lot of  
17 resources trying to gather people around the table to come  
18 up with solutions from an early stage.

19 Another thought occurred to me, and I'll just  
20 throw this out for people to think about. A lot of what  
21 we're talking about, I think, are projects going through  
22 their first relicensing, where when these facilities were  
23 built, there weren't environmental laws around. There  
24 wasn't information.

25 Through the course of the first relicensing,  
26

1       going for your second license, you develop a tremendous  
2       amount of information, and you develop monitoring. So it  
3       sort of begs the question when you go around the next time,  
4       like the Class of '93 is going to come up, is that going to  
5       be different?

6               Again, I would hesitate to change the process  
7       based on experiences going through your first relicensing,  
8       because the next round should be a little bit easier.

9               MS. WEST: Okay. Ann.

10              MS. MILES: Ann Miles, FERC. I have -- there's  
11       one point in the process that I haven't heard much  
12       conversation about, and it's between when the applicant  
13       files their proposed study plan and you get the comments on  
14       the studies. There's 120 days, and the goal of that time  
15       frame was to be able to informally resolve the studies, so we  
16       wouldn't have to go a dispute.

17              Is that working from folks' point of view? Is  
18       there something we should be doing differently in that? You  
19       know, it's four good months where some solid conversation  
20       might resolve some things.

21              MS. WEST: I have Julie and then Chris.

22              MS. TUPPER: Four months isn't even close to  
23       enough. It takes us on average 18 months to write study  
24       plans. We start a year early because in California, we do -  
25       - you're right. We have a group of study plans but we were

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1       one of the first ones, and in the four months, when we  
2       actually tried to follow the rules of what are the first  
3       studies, we weren't even --

4               The only thing we ended up doing was grabbing old  
5       study plans we'd written under old projects, threw them out  
6       there, tried to change them. But we weren't -- then we ran  
7       into issues down the road, because we realized there were  
8       things we hadn't thought about.

9               I do, in a simple licensing, it might be easy.  
10       But in our licenses, I don't think you could come up with a  
11       study plan, because you have to know enough information. So  
12       you have to sort of have a pre-PAD, so we know what we want,  
13       and then we -- maybe you can do it in a year. But I know  
14       four months is not even close to enough.

15              MS. MILES: Let me just ask. You should have --  
16       the applicant should have given a study plan, so it should  
17       be responding to one. Are we not getting it detailed enough  
18       to be able to respond to it?

19              MS. TUPPER: Well, the way the process works is  
20       after the NOI comes out, the agencies propose study plans,  
21       and then it comes -- which we think is backwards, but we  
22       won't go there, and then the utilities, usually the  
23       licensees, come back with those.

24              That process, that time frame still does not --  
25       I'm just being realistic. It hasn't worked yet. We start  
26

1 way before that now, because we can't get the process  
2 through. The amount of time when we have -- okay.

3 From when the NOI comes out until when we have to  
4 basically comment on the PAD and proposed study plans, as  
5 the Forest Service is a mandatory agency, where we really  
6 have to take this seriously and propose studies, if we don't  
7 have the studies done, we physically can't do them.

8 We'd have to work 24 hours a day. They're that  
9 complicated, and there's review and all sorts of things.  
10 Then the licensee takes those and moves forward. I'm just  
11 being realistic. We can't -- other people who work with me,  
12 Larry, Chris, we've all said there's not enough time.

13 So we start literally by the time the PAD comes  
14 out, we hope to have about half the study plans written, so  
15 that we can spend that time frame getting the other half  
16 that are more complicated or contentious done.

17 MS. WEST: Chris.

18 MR. SHUTES: Yeah. I think that it varies from  
19 project to project, and it depends a lot on how many you've  
20 done on the front end, even before the PADs come out. If  
21 you've had the opportunity to work with the licensee and  
22 develop collaborative study plans, it certainly helps.

23 What you could perhaps hope to do in the four  
24 month period, you can't hope to write them all. I don't  
25 think that's realistic. But what you might be able to hope  
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1 to do is address the ones where there's problems. I think  
2 the FERC staff actually has an important role to play there,  
3 and it goes back to something that Barbara said before.

4 If FERC staff, in addition to other stakeholders,  
5 really understands the projects, and understands not only  
6 the projects but the processes and how they've gone up 'til  
7 then, what the issues of disagreement are, that can be a  
8 very positive thing, and it helps move things along in the  
9 process.

10 Unless there may be some cases where folks say  
11 well, "We just -- we're doing fine. Just leave us be." But  
12 that's one thing I think that could help. But I don't think  
13 that the anticipated four months, I agree with Julie; it's  
14 just not enough time to develop all these things.

15 Oftentimes, the studies proposed by the licensees  
16 are fairly -- they're sufficiently detailed, but I think  
17 they haven't often addressed some of the issues that some of  
18 the other stakeholders have, find as being important, unless  
19 they've been developed collaboratively.

20 MS. WEST: Larry, and then Russ.

21 MR. THOMPSON: I just had a real brief statement.  
22 Larry Thompson, National Marine Fisheries Service. I think  
23 we should look at this, the ILP process, and look at the  
24 evidence that's been presented here today, that we are --  
25 we're moving away from it. We're creating processes. We're  
26

1 making it up as we go along to sort of plug holes in the  
2 process.

3 I think I've heard several people say that, you  
4 know, different things about that today. We're starting way  
5 in advance of the PAD, issues with the draft license  
6 application stage. Julie talked about studies, you know,  
7 the Forest Service starting, you know, a year and a half  
8 ahead of time.

9 So I mean I think we should take that to heart.  
10 What lessons can we learn here today about I mean why are we  
11 separating ourselves from this process? It's evidence that  
12 it may not be working. Thank you.

13 MS. WEST: I'm not sure that's my lunch break  
14 moment. Russ?

15 MR. JOHNSON: Our experience to your question is  
16 different. We had in the four month period of time enough  
17 time to respond to the studies in and of themselves. We  
18 probably exhausted perhaps too much of even our four month  
19 time with the discussions over what's not being studied, and  
20 trying to get them included. We had more than enough time  
21 to respond to the ones that were provided.

22 The rub came from us is that when we finally felt  
23 that the only way we were going to get something studied was  
24 to propose the study itself and bear the cost of the study  
25 itself, that would have fallen out of the four month  
26

1 criteria. But because of the cost of the study itself, we  
2 simply dropped the issue.

3 So our experience of can you respond in a four-  
4 month period of time to what is provided by an applicant?  
5 Yeah. And can you try to influence some other studies that  
6 you want? Yes.

7 But if "no" stays through that process, and  
8 you're left now with writing your own study and funding your  
9 own study, then that would have fallen out of the four  
10 months. That seems to be, I think what I hear, an exception  
11 rather than the ongoing rule.

12 MS. WEST: Okay. In the interest of time, I want  
13 to turn to the audience here, and then to the folks on the  
14 phone. They're bringing you a microphone.

15 MR. O'KEEFE: Tom O'Keefe, American Whitewater,  
16 and I just wanted to respond to Ann's question there, and  
17 just sort of sidestep the question for a moment of whether  
18 the four months is enough time, but just focus on how to use  
19 that time most efficiently.

20 Two thoughts that I had is one, you know,  
21 Commission staff participation. It's already been  
22 mentioned, and really encouraging collaboration between the  
23 parties and, you know, more than just, you know, one  
24 meeting, and more active encouragement from Commission staff  
25 on that point.

26

1           The other thing that's also been previously  
2 mentioned is just clear guidance and rationale, which allows  
3 us to use that time most efficiently, because what I've  
4 found in practice is we spin our wheels a little bit, just  
5 trying to, you know, figure out this mystical process of the  
6 study plan determination, and you know, some more clearance  
7 guidance on that point would be really helpful.

8           I know it's made a big difference in our  
9 settlement discussions, having that, a policy statement on  
10 settlements and when things start going off in left field,  
11 you know, we're able to refer to that. It was very helpful  
12 in having something like that, as has previously been  
13 mentioned in the study plan development and the  
14 determination to be really helpful. Thanks.

15           MS. WEST: And just adding what I'm hearing from  
16 Chris and from Tom, you're saying FERC's participation is to  
17 also help focus on the specific most difficult topics -- the  
18 time frame?

19           MR. O'KEEFE: Absolutely. That's been my  
20 experience.

21           MS. WEST: Anybody else in this audience?

22           (No response.)

23           MS. WEST: Okay, folks on the phone, rather than  
24 beep beep, why don't you just chime in with your name and  
25 organization, and we'll try and take it that way. Anybody  
26



1 want to add a thought or two?

2 MR. DACH: Yes. This is Bob Dach with Indian  
3 Affairs. I just wanted to note --

4 MS. WEST: Hold on. Bob Dach with Bureau of  
5 Indiana Affairs. Go ahead, Bob.

6 MR. DACH: I wanted to note two things. First, I  
7 thought what Ann was bringing up was the 90-day time period  
8 to resolve study disputes, which happens after this four-  
9 month period to actually develop the studies. So I didn't  
10 really hear if that had been -- if that was being used  
11 effectively, that 90-day time period to resolve any study  
12 disputes.

13 On another issue prior to that, most of the times  
14 I haven't seen agencies come with completely developed study  
15 plans to the table. So the fact that the Forest Service  
16 does that I think is impressive, but I haven't really seen  
17 that in most, at least of the licensings that I've  
18 participated in.

19 I think that's a great idea if you can do that,  
20 and I encourage our folks to do that. But I don't see it  
21 that often. Something that may help that process, where you  
22 need more time to fully develop your study plans is FERC  
23 does send out a notice to all of the licensees at some point  
24 in advance of their licensing process, and I can't remember  
25 when it was.

26

1           It was like five -- a year before they have to  
2       start or something, they get an update that says "Hey, don't  
3       forget you have to license." It could be at that time where  
4       the license applicants or the licensees who become the  
5       applicants at least get ahold of those other folks who might  
6       be interested, and say hey, we got this process. It's going  
7       to start in a year. It's a good time to start working on  
8       your studies.

9           But I do sort of as a summary want to say that  
10      I'm not that optimistic or that excited about making the  
11      licensing process any longer than it already is either. In  
12      every case that I've been involved with, if we've had two  
13      years to work on something, it will take us two and a half  
14      years. If we have six months to work on something, it will  
15      take us 12 months.

16           I think that we will work within the time frames  
17      provided. We just have to apply the appropriate resources  
18      to it.

19           MS. WEST: Just a note. I'm hearing from  
20      applicants and agencies some want flexibility and a bigger  
21      time frame, and applicants and agencies who don't. So I'm  
22      hearing an array. Any other -- go ahead, David.

23           MR. DEEN: There may be reason for shifting the  
24      time frame within the presumed five and a half years for  
25      individual activities.

26

1 MS. WEST: So that's maybe a third way to  
2 approach this.

3 MR. DEEN: Right, and again, I don't want to see  
4 ILP lionized to the point where it can't be flexible,  
5 particularly if the parties agree.

6 MS. WEST: Okay. Anybody else on the phone?

7 MS. MANJI: This is Annie Manji with California  
8 Fish and Game, going to how to make that, these compressed  
9 time periods more efficient, and I heard Barbara and I can  
10 relate to that idea, that the agency personnel can be sort  
11 of intermittent in their participation, and I hear your  
12 frustration.

13 One of the things we've been hoping for or  
14 advocating for is for the investment in technologies, such  
15 as the one we're using today, so that I didn't have to fly  
16 to Washington, D.C. but I can still participate, because  
17 travel becomes a big issue when you're dealing with a large  
18 region.

19 So if the applicants can help us participate  
20 without having to be there, that's very helpful, and then  
21 also facilitating meetings, where information that is  
22 brought forward is documented, so that you don't feel like  
23 you're going to endless meetings, same thing, and nothing is  
24 coming out of it. That tends to discourage agency  
25 participation if we feel like our comments didn't go  
26

1 anywhere.

2 Not that you always have to agree with us, but we  
3 are always right. I should point that out.

4 (Laughter.)

5 MS. MANJI: But at our comments or our concerns  
6 somehow get documented in meeting notes somehow, and  
7 facilitators tend to help with that. So that we can say  
8 "Hey yeah, we've been saying that for the past two years.  
9 See, we were right." Just so those things could help  
10 increase the efficiency of these very narrow time frames.  
11 Thank you.

12 MS. WEST: Thanks, Annie. Anybody else on the  
13 phone?

14 (No response.)

15 MS. WEST: All right. Why don't we take a break?  
16 I think it's time for either lunch or breakfast, depending  
17 on where you reside. How about realistically, by the time  
18 we get through, we need 45 minutes probably, or can we do it  
19 in a half an hour? Let's try 1:35 this time, and see if we  
20 can restart then. So that's roughly just 30 minutes from  
21 now, and then we'll translate on all the other time zones.

22 So thanks folks. We'll take a 30 minute break.

23 MS. MANJI: Just a question. Should we hang up  
24 on the phone and call back in?

25 VOICE: It's your option in terms of doing that.

26

1 I think it might functionally be better just go hang on, but  
2 you can call in --

3 MS. MANJI: I can do that. Thank you.

4 MS. WEST: Great.

5 (Whereupon, at 1:02 p.m., a luncheon recess was  
6 taken.)

7 MS. WEST: In the interest of covering  
8 everything, we need to, in the next hour and a quarter.  
9 Even though we're not all here, I'm going to reconvene us,  
10 thank you. I'm going to modify. We've got three segments  
11 yet to go and an hour and a quarter.

12 So I'm going to go through this next, the post-  
13 filing coordination from now until 2:15. We'll see if this  
14 works. The good process ideas from 2:15 to 2:45, and then  
15 we'll wrap up 2:45 to 3:00, and this is all east coast time.

16 So I'm going to hope, continue with the quality  
17 exchange that we're having, but we need to be a little bit  
18 more efficient in the conversation. So teeing up  
19 efficiency, I'll go right into the slides, and again if  
20 there are new people on the phone, the format is I'll review  
21 the slides. We'll have a panel discussion, go to the  
22 audience here and then folks on the phone.

23 So next up. Post-filing is this topic, issues  
24 and challenges. Actually, we were just teeing up this  
25 process before. The regulatory steps post-filing, and how  
26

1       they're linked and how they affect schedules is not always  
2       clear and understood. Improved coordination of regulatory  
3       processes has not been as successful as intended.

4               Some ESA and 401 agencies suggest that FERC  
5       environmental documents are not developed in a way that  
6       suits their needs. State and federal resource agencies have  
7       staffing constraints that make timely processing  
8       challenging. We certainly discussed that one.

9               It is clear when and how stakeholders may comment  
10      and stay involved in the post-filing process. Suggestions.  
11      Have FERC and the agencies discuss environmental information  
12      and analysis needed in the NEPA document to support other  
13      agencies' requirements, ESA, 401, 4E, etcetera, up front.  
14      Meaning pre the post-filing process, so then when the NEPA  
15      document comes out, it might better meet all those agencies'  
16      needs.

17              Improve timing and coordination between state and  
18      federal agencies and FERC on their licensing needs. Begin  
19      coordination among FERC and the agencies as early as  
20      possible, to identify key goals and deliverables. Increase  
21      coordination pre-filing.

22              More solutions. Establish a coordinated  
23      interagency time line, not only for the pre-filing but also  
24      for the post-filing process. Seek support for resource  
25      agency staffing. Sounds like especially in the Northwest,  
26

1 from what I was hearing, but I'm sure it's universal.  
2 Provide more robust communications tool to keep stakeholders  
3 aware of the process and milestones post-filing.

4 So that was a quick round-up to save more time  
5 for discussion. Panelists, thoughts, reactions on the post-  
6 filing process? Okay, David, Michael and Matt.

7 MR. DEEN: This is a repeat of something said --  
8 David Deen, Connecticut River Watershed Council. In the  
9 post-filing suggestions, improve timing and coordination  
10 between state and federal agencies and FERC, the NGO world  
11 should be part of that process, so that we're not in a  
12 position of asking something of either the state, in the 401  
13 process, or FERC, something that can't happen, won't happen  
14 and we're not wasting people's time. That was something  
15 that I had mentioned earlier also.

16 Communication tools. I haven't seen it done in a  
17 FERC process, but establish what I believe is called a  
18 Listserv, so that there's mailing address of participants,  
19 players in the process, that if you send it to one, you send  
20 it to all.

21 In terms of large documents, one of the things we  
22 use in a process I'm involved with is an FTP server, where  
23 you can put documents, so that if you want to download them,  
24 and they are of particular interest to you. I am not  
25 particularly interested in Section 106 documents, historic  
26

1       preservation, which normally is part of this.

2               But anything to do with fisheries, I'll want a  
3       copy of that document, and I may have misplaced the hard  
4       copy that was given to me. An FTP server allows me to go  
5       and get that. A suggestion might be that FERC set up a site  
6       server for licenses going through the ILP, and if not FERC,  
7       then look around for a volunteer state agency that might  
8       host such a site.

9               I highly recommend having FERC and the state  
10       agencies discuss environmental information and analysis  
11       needed, which is again something else that I had brought up  
12       earlier, that they've got to work together so that we, as  
13       the NGO advocacy organization, know to whom to speak.

14              MS. WEST:   Okay, thanks.

15              MR. IYALL:   Mike Iyall, Cowitz Indian Tribe.  
16       Yeah, I have a couple of suggestions. One was already  
17       mentioned before, and that would be to allow the  
18       stakeholders, with agreement, to adjust the schedules.

19              So if the stakeholders say hey, we need more time  
20       on this one area, then FERC should be, you know, should have  
21       a process to where, within 30 days, we can get our extension  
22       or whatever.

23              Another piece is to help get around the  
24       contraction of agency staff, because it's huge out where I  
25       am. All the boomers have retired and nobody's replaced

26



1       them. We discussed this a little at lunch. If there's  
2       clearly an area that calls for mitigation, maybe we just  
3       need to progress to the mitigation step, rather than debate  
4       whether or not it would be called for. Let's -- and we  
5       could even put the mitigation planning even ahead of notice.

6               If you have issues that you know of, you need to  
7       mitigate for, why not begin mitigation planning with the  
8       assumption you'll get the license. Thank you.

9               MS. WEST: That's a pre-filing comment, right?

10              MR. IYALL: Yes.

11              MS. WEST: So I think Matt.

12              MR. RICE: Matt Rice, American Rivers, and I kind  
13       of had a pre-filing comment as well. One thing, but I think  
14       that it, you know, most certainly applies to some of the  
15       issues and challenges identified here, and also some of the  
16       -- and it's consistent with some of the suggested solutions.

17              You know, one thing we haven't talked about is  
18       actual implementation of the studies. For example, and I  
19       think what I suggested before, to have a FERC, FERC staff  
20       participate kind of more robustly in the process, one that's  
21       an advocate for building a record, for building the record  
22       could help with this. For example, work on a project where  
23       a study has been completed, and the results were essentially  
24       "I don't know."

25              Now in a month, two months, they're going to be -

26

1       - we're going to get the PLP. So that obviously presents  
2       problems later on, and it's hard not to anticipate delay.  
3       So I just kind of really want to emphasize --

4               MS. WEST: And do you have a solution for that?

5               MR. RICE: Well no. Like I said, maybe, you  
6       know, more participation, more kind of you know obviously I  
7       think more coordination is definitely the answer. Just I  
8       think at times, some of these kind of need to be held to the  
9       fire, I guess.

10              MS. WEST: I think Barbara and then Julie.

11              MS. GREENE: I thought some of the solutions that  
12       were suggested were really very good. The idea of  
13       establishing a coordinated interagency time line in theory  
14       could really be helpful, so that all the agencies and  
15       working in concert with FERC, understand one thing, that  
16       certain things are going to happen.

17              It also speaks again to the coordination within  
18       the agencies, and being able to plan appropriately, both  
19       with staffing and identifying the needs that the agency see  
20       at least up front and as they go through the process.

21              I also think it's important that the agencies  
22       with conditioning authority are clear throughout the process  
23       about issues they see coming up, and throughout. So for  
24       example in our process, when we were in negotiations last  
25       year, there was a fair amount of discussion during the  
26

1 negotiations about what would be needed in Section 7 and  
2 401.

3 So that as we went through things, we would try  
4 to make sure that we had things on the record that were  
5 going to be needed for those processes, and we clarified  
6 what the time lines were. Now we'll see if all that works  
7 out. Of course, the 401 is always a challenge in the  
8 process time line.

9 But just being cognizant of those issues as you  
10 go through, and what the agencies are going to need post-  
11 filing to finish their regulatory part of the process, I  
12 think, is really important.

13 MS. WEST: Okay. Julie.

14 MS. TUPPER: Julie Tupper, Forest Service. I  
15 think what we see, at least as the Forest Service is a  
16 mandatory conditioning agency, is that this is a time where  
17 we also need to have a little bit of leeway in time frames.  
18 We hope that when the license application comes out that  
19 we've all agreed on what the proposed management conditions  
20 will be, the PM&Es.

21 But in many cases, because of the crunch when  
22 that license application comes out, we haven't reached  
23 agreement. What happens then is if FERC too quickly, i.e.  
24 immediately follows their time line and however many days  
25 this is, issues the REA, that triggers the Forest Service  
26

1 filing our preliminary 4E conditions, which then triggers  
2 the action of the Energy Policy Act, and it gets us into  
3 more of a litigation-type process.

4 In a couple of cases, we've seen FERC actually  
5 delay the REA. This comes to FERC having staff involved,  
6 because sometimes if we had a few more weeks, sometimes it  
7 doesn't matter.

8 But I think the FERC staff would have a good  
9 handle on that, we could actually probably find some good  
10 compromises. We're close. It's a real big push time after  
11 the FLA comes out, because we basically have to start filing  
12 our preliminary 4Es.

13 So we're looking at the FLA and seeing no, we  
14 don't agree with that or we, the studies didn't point to  
15 that. We need to have some time to talk. So I think one of  
16 the -- it seems that FERC feels that maybe they really  
17 don't, but they have at least given us a little slack in a  
18 couple of cases, and have sort of held off on filing the  
19 REA.

20 Because we've said if you give us a couple more  
21 weeks, we think we can get to some place where we could have  
22 agreement, we can file the preliminary 4Es that everybody,  
23 the agencies at least in California we usually have a pretty  
24 good agency caucus, so that the State Water Board, the  
25 fisheries agencies and the Forest Service are all on the  
26

1 same page.

2 The NGOs are there with us, advising what they'd  
3 like, and we can file our preliminary 4Es. We can get the  
4 10Js in, and they agree. Then the rest of it's smooth  
5 sailing.

6 If we don't agree, at least from the Forest  
7 Service point of view and the other mandatory agencies,  
8 because of the Energy Policy Act, it then becomes more  
9 contentious and we would like to avoid -- we'd like to see  
10 that as a last resort, instead of right now it seems to be  
11 what happens, is we always end up in the Energy Policy Act  
12 doing more negotiations that we wish we could have done  
13 prior to that.

14 But I think some of that was, as we look back,  
15 has to do with not having quite enough time to reach  
16 consensus on what the real conditions in the license should  
17 be.

18 MS. WEST: So I'm hearing flexibility on when the  
19 REA notice comes out, and I heard FERC staff involvement so  
20 they'd know that it was feasible. But I guess, did I also  
21 hear that you might reach out, the agencies could contact  
22 FERC and say "Look, I think we can do this in a few weeks.  
23 Could you give us the time?"

24 MS. TUPPER: We have -- we and the utilities, the  
25 licensees, have written letters to FERC saying could you  
26

1       please delay the REA. But I think some of that's because we  
2       felt like there hasn't been good FERC staff involvement, so  
3       they're not aware of what's going on.

4               MS. WEST: So that's just another solution,  
5       right, is to send those letters.

6               MS. TUPPER: Yes.

7               MS. WEST: Okay. Frank, and then Chris.

8               MR. SIMMS: All right. Frank Simms, American  
9       Electric Power. One thing we've tried to do in our license  
10      applications is on the 401 in particular is to try to run  
11      everything with the 401 agencies, and their requirements  
12      parallel with FERC relative to studies and so on.

13              But I think there does have to be some way that  
14      the FERC and the state agencies understand where they are in  
15      process and how they're working together. I know we're not  
16      supposed to be particular, but I'm going to use an example  
17      of a project where we're in the midst of the 401  
18      certification process with the state.

19              Just before we get to sitting down with the state  
20      and to their public meetings and so on, the FERC, and I'm  
21      glad they were so responsive, came out with the draft  
22      environmental assessment, which then puts us into conflict  
23      or sitting in the middle of a conflict between the two  
24      agencies, relative to who's going to do what? Which way are  
25      we going to go?

26

1                   Because as a business, when we see these things  
2                   come out, we're trying to set ourselves up for the next two  
3                   years, three years, five years, to say okay, based on our  
4                   best guess of what's going to be required of us, we're going  
5                   to have to set up budgets, staffing, planning operations and  
6                   so on.

7                   The other aspect even goes beyond that, is there  
8                   are states whose 401 certification does not run concurrent  
9                   with the FERC license, and actually stops midpoint. Then  
10                  it's a question of certainty. Where do you go from there?  
11                  I could see it's going to be fun legal discussion, but I'm  
12                  just saying for the applicant, we're sitting there saying  
13                  "Okay, what happens after 15 years or 20 years or 10 years,  
14                  whenever the one stops and the other continues on?"

15                 MS. WEST: So what's your solution?

16                 MR. SIMMS: I have no solution. My thing is to  
17                 keep, to coordinate it together to best understand, and keep  
18                 things going together. But I do have a solution on those,  
19                 something that was suggested about so how does everybody  
20                 follow this process, and really it would simplify things if  
21                 the FERC were to separate out licensing proceedings into  
22                 their own website.

23                 That website basically would do nothing more than  
24                 be reflective of schedule, even have little reminders  
25                 "you're at this point on the schedule. Here's what happens  
26

1       next." Then whatever correspondence is going back and forth  
2       or whatever orders are out there, are specific just to that  
3       one website. So it's kind of a one-stop shop so everybody  
4       knows what's going on.

5               MS. WEST: Don't you have that with where they  
6       house it by project now?

7               MR. SIMMS: Docket is interesting, but it's not  
8       necessarily clear. It's much better than what we've had  
9       before, but I think even though you have the sub numbers,  
10      not everybody understands all the sub numbers and everything  
11      else.

12              I think when we -- when you get into this  
13      process, this goes beyond us in this room. I don't care  
14      whether you're a local government, I don't care if you're an  
15      agency, the FERC or an applicant, you have a certain  
16      expertise how to handle some of these things.

17              But you also have the general public, and the  
18      general public wants to know what's going on too. This is a  
19      very public proceeding. That's the way it's intended to be  
20      and the way it should be. I think anybody that's out there  
21      with I don't care what kind of computer they have, should  
22      have the ability to very simply go to the site and say "This  
23      is project." Not project number. This is the name of the  
24      project or however they hunt it down, and be able to see  
25      what's going on, so they can be a participant in the  
26



1 process, especially when you have all the public meetings  
2 that we have.

3 MS. WEST: So one more question, and then I know  
4 Dave you had a specific answer on that one, and then I'll go  
5 to Chris. Doesn't the applicant often put a website  
6 together like that?

7 MR. SIMMS: Yes, they do. At least we did, okay.  
8 But still not all do that.

9 VOICE: Not all do that.

10 MR. SIMMS: And this is a -- this is a process  
11 that's under the purview of the FERC.

12 MS. MILES: Let me just ask -- Ann Miles, FERC.  
13 Are your participants e-Subscribing? I mean we are  
14 constantly asking them to e-Subscribe, and then they should  
15 be getting everything, both that we issue and that anyone  
16 files.

17 MR. SIMMS: You know, even if you say e-  
18 Subscribe, and I understand what you're saying Ann, you and  
19 I understand that. Most of the people in this room  
20 understand that. But we have people at our projects that if  
21 we tell them to e-file, they just look at you. What we're  
22 trying to say is I guess I've always learned what's the old  
23 KISS method? Keep it simple.

24 MS. MILES: Yes. I do understand what you're  
25 saying. A lot of -- FERC has put a lot of time and effort  
26

1       into its electronic system, and what I'd like to see is a  
2       way we can explain and have people participate in it. Maybe  
3       there's something we could do to make people who aren't as  
4       savvy explain it in a better way.

5               I mean one of the things that we've done with  
6       small hydro, and we'll see how that's working, is to put up  
7       a website that explains it in plain English. Anyway, I hear  
8       what you're saying. I think there may be other options for  
9       doing it than having FERC develop something when they've  
10      kind of got something.

11             I know what feedback I'll get. You've got to be  
12      kidding. We've got this. But I think there may be other  
13      ways to look at making things more available to people if  
14      that's not working.

15             MR. SIMMS: And I think where we're at here Ann  
16      is, you know, it's the identification of how do we improve  
17      the process, and the process was an improvement in the  
18      beginning. But it's based on, you know, what am I hearing  
19      from people that are involved, because we're in three or  
20      four license processes right now.

21             You know, this is what I'm hearing from them is  
22      the simplification.

23             MS. WEST: Okay. Dan, was your comment specific?

24             MR. LISSNER: Sure, and very briefly I concur  
25      completely with Frank's comments. Dan Lissner, Free Flow

26

1 Power, with Frank's comments about the challenges of  
2 planning and resource allocation when you're entering the  
3 phase of the process that's focused on the interaction  
4 between the FERC and agencies.

5 We have a lot of uncertainty about that as well.  
6 But the element, the trend that we see and very much  
7 encourage the FERC to continue to do is this approach to  
8 entering into cooperating agency agreements with agencies or  
9 states. We see that as a very positive development. We're  
10 encouraged to see agencies approaching the FERC and willing  
11 to do this.

12 Colorado's setting a great example of trying to  
13 define the terms of engagement at the beginning. Whatever  
14 the terms are, if it's more clear, it's easier and more  
15 manageable for us to allocate our resources and expectations  
16 appropriately.

17 MS. WEST: So let me just test. You're talking  
18 about coordinating agency, not formal cooperating agency  
19 status?

20 MR. LISSNER: It depends upon the specific  
21 engagement. The extent to which that relationship can be  
22 formalized, the more formal the better. A memorandum of  
23 understanding has been helpful at working towards the issue  
24 between FERC and MMS regarding the offshore issue. The  
25 Coast Guard, I believe, is a cooperating agency with the  
26

1 FERC process. I know there's progress towards the Corps of  
2 Engineers.

3 We're particularly focused on how are states  
4 going to incorporate their 401 processes, or any of their  
5 state regulatory processes, with the work that we have  
6 already done pre-filing through the FERC process. The more  
7 that terms of engagement can be defined before we have gone  
8 all the way down the FERC process, and then find out later  
9 if that was acceptable towards the Section 10 permit  
10 application, or if that was acceptable towards the Section  
11 106 process.

12 If we can plan it ahead, we can adjust our  
13 behavior appropriately.

14 MS. WEST: Okay, and I -- after panelists speak,  
15 I've got some ideas from some stakeholders I'd like to  
16 suggest. But go ahead Chris, and then Julie.

17 MR. SHUTES: Chris Shutes, California  
18 Sportfishing Protection Alliance. The applicants and their  
19 consultants in California have done a very good job of  
20 creating websites and making them available, accessible. We  
21 don't always agree with how they organize them, but that's  
22 mostly a question of just getting through any website.

23 So I think for us, that hasn't been as big a  
24 problem as it seems to have been for other folks. On  
25 occasion, entities have decided not to create websites, and  
26

1       that's clearly a problem.

2               As far as the cooperating agency issue goes, one  
3       of the things that we at the HRC in particular has pursued  
4       over a long period of time, is trying to figure out a way  
5       where state agencies in particular can create non-decisional  
6       staff or separated staff or something, so that they can at  
7       once cooperate on NEPA documents, but still have the right  
8       to intervene in licensing proceedings.

9               If they can't do that, then the likelihood that  
10       they're going to actually enter into formal cooperation and  
11       participate is just not going to happen. It's not  
12       reasonable to expect a state agency to give up that part of  
13       its regulatory opportunity. So work on that, I think, could  
14       be very helpful in improving NEPA, and creating NEPA  
15       documents that serve multiple needs.

16              MS. WEST: Another stakeholder raised -- that was  
17       my first point from another stakeholder. Good.

18              MR. SHUTES: Finally, and I'll try not to steal  
19       anyone else's thunder --

20              MS. WEST: That's okay.

21              MR. SHUTES: As far as the REA notice is  
22       concerned, we think it's really important that it not be  
23       issued until all studies are complete. Even more, that  
24       essential studies have some time or sufficient time for  
25       review. I'll go back to my models issue again. We've had  
26

1 models that have been created really at the last minute, and  
2 no sooner do they hit the street than an REA notice is  
3 forthcoming.

4 Those are often critical when you're down to  
5 negotiation or just analysis. Those are often really  
6 critical parts of the bigger puzzle that are needed in order  
7 to inform NEPA, and in order to inform conditions for the  
8 different -- and recommendations for the different agencies.

9 MS. WEST: Julie and Larry.

10 MS. TUPPER: Two points, and Chris hit on both of  
11 them, I think. But briefly, I work nationwide for the  
12 Forest Service, and Chris is right. In California, most of  
13 the utilities are large enough or the water agencies that  
14 they create their own websites.

15 The problem is many of the intermediate forums,  
16 where people need to engage, isn't something that anybody  
17 would file at FERC, so it doesn't end up on the FERC  
18 website, those intermediate documents.

19 But the public, I think in California, at least  
20 on the larger projects, has been -- they understand that  
21 they can go -- they can even go to the utilities' website  
22 and they usually have a link that says "Go over here if you  
23 want to know about Project X." That's helpful, but I think  
24 we run into, especially from the Forest Service, we have  
25 some small projects that there's very few people involved.

26

1           We've put links, sort of made our own little  
2   linky websites with our limited -- it would be helpful if  
3   the FERC staff could work with some of these other  
4   utilities, I think, to at least help them get a public  
5   website that has the intermediate things that really don't  
6   need to fill up the FERC docket.

7           That would really help with public involvement,  
8   especially in small projects where it has a very limited  
9   exposure. Those people have -- it's tough to communicate to  
10  them, and they come in at the last minute, and then we have  
11  to sort of back up lots of times.

12          If my attorney was here, he'd bash me over the  
13  head. But I think Chris brought up a very important point  
14  about the difference between cooperation and intervention,  
15  especially in terms of NEPA. From the Forest Service  
16  perspective, we primarily do not cooperate, because we feel  
17  that it limits our intervention capability later. I'm not  
18  the attorney, but I know that's our advice.

19          But I know in many cases, since we use FERC's  
20  NEPA for some of our own decisions, it is helpful, and in  
21  some cases we feel that maybe this is just because the FERC  
22  staff isn't as closely involved in some issues. There's a  
23  misunderstanding over some rule or regulation that we're  
24  trying to bring forward in our mandatory 4E conditions, and  
25  that the NEPA is incorrectly portraying the Forest Service  
26

1 rule or regulation, and it seems like we go round and round  
2 in circles.

3 So it would be helpful during the NEPA phase.  
4 Right now, we realize we're a member of the public. We  
5 provide comments in DEIS. But it seems like it's so arms-  
6 length that we spend more time trying to communicate than we  
7 need to. That's one thing that would be nice to find a  
8 solution.

9 MS. WEST: So are you suggesting in pre-filing  
10 there could be additional consultation to clarify your rules  
11 and regs and what you need in the NEPA document?

12 MS. TUPPER: It could be. That could help them.  
13 It's not just what we need in the NEPA reg. There's many  
14 cases of misunderstandings on roads and it's usually not  
15 stream flow. It's usually our odd things, like visual  
16 requirements, forest plan standards and guidelines and how  
17 that affects an interpretation of roads and agreements, and  
18 all sorts of things like that that get misrepresented.

19 We spend -- and I don't think it's an intentional  
20 misrepresentation. I think it's a misunderstanding. So we  
21 end up spending lots of time trying to clarify or correct  
22 what's in the record. I think if we could avoid that, it  
23 would make the process go a lot smoother.

24 MS. WEST: Okay. Larry?

25 MR. THOMPSON: Yes. A few comments about  
26



1 improving post-filing coordination. Larry Thompson,  
2 National Marine Fisheries Service. It's obvious that  
3 improving post-filing coordination requires improving the  
4 pre-filing process, and we've been over that a lot. But  
5 just to emphasize it again with regard to ESA consultation,  
6 which comes post-filing.

7 I mention 5.9(a) regulation not carrying through  
8 in the ILP. It's there early, but there's no ability to  
9 dispute if a information request under 5.9(a) isn't  
10 fulfilled.

11 Chris Shutes early made a great comment about  
12 consistency with scoping. We are seeing that FERC study  
13 plan determinations will be inconsistent with their earlier  
14 scoping decision. So a scoping decision will be made, for  
15 example, on geographic scoping, and say that the scoping  
16 extends for ESA species 50 miles downstream, or say 30 miles  
17 downstream.

18 Then in a FERC study plan determination, we'll  
19 find that FERC determines that all studies two miles  
20 downstream of the project dam have no nexus to the resource.  
21 So that inconsistency needs repair. Then to get to a NEPA  
22 document, where that NEPA document, where components of the  
23 NEPA document can or cannot suffice as a biological  
24 assessment.

25 I mean it's clear that the action area has to be  
26

1       adequately established, and that goes back to scoping. One  
2       has to assess the effects of interrelated and actions that  
3       are interrelated and interdependent with the FERC project,  
4       such as diversions for municipal use or irrigation,  
5       consumptive water uses.

6               If those interrelated and interdependent actions  
7       and their effects are not assessed, we get to the ESA  
8       consultation stage, we have a requirement to assess those,  
9       and the information isn't there. That extends also to  
10      indirect effects and cumulative effects. That's good,  
11      thanks.

12             MS. WEST: All right, thank you. Anybody in the  
13      audience here who would like to comment on post-filing?

14             (No response.)

15             MR. RAMIREZ: Hi. This is Rick Ramirez with the  
16      California Department of Water Resources. Even though we're  
17      part of our natural resources agency, we actually are a  
18      licensee, so my comments, I guess, are more from the  
19      licensee perspective, and it relates to the discussion about  
20      separated staff among agencies, in order to preserve some of  
21      their authorities or ability to weigh in or exercise their  
22      authorities without having to compromise that through the  
23      collaborative phase.

24             I certainly understand that, and it is something  
25      we have experienced. At the same time, it also has a danger

26

1       perhaps. If that separated staff provides input later in  
2       the process, being much different perhaps than what the non-  
3       separated staff may have provided during the collaborative  
4       phases.

5               It sets up the potential for a real disconnect  
6       for those participants, not just the licensee but other  
7       stakeholders who have collaborated and produced documents,  
8       to see them perhaps treated a bit differently during that  
9       final stage, when the agencies are exercising their  
10      authority.

11             I guess my solution is perhaps those agencies  
12      that have that ability or authority, provide a little more  
13      connectivity between the collaborative discussions that  
14      their staff provides, versus their actual orders that are  
15      then implemented post-filing.

16             MS. WEST: So thank you. You raised both an  
17      issue and a solution. So that's good for the issue. Well,  
18      folks on the phone, post-filing, and I know we have some  
19      states represented. So I'm particularly interested in  
20      hearing from you on this.

21             MS. WYNN: This is Brenda Wynn. I'm with the  
22      Virginia Department of Environmental Quality, and I work in  
23      the Virginia Water Protection Permit Program, which is our  
24      401 cert program. I just wanted to make a few quick  
25      comments.

26

1           I'm very interested in helping resolve some of  
2     the timing issues between application for a FERC license and  
3     application for the state 401 permit, particularly in states  
4     where like Virginia, we have our own state laws regarding  
5     401 actions. I'm new, relatively new to the whole FERC  
6     process, but I'm finding that we've had several experiences  
7     already where our -- the applicants are submitting permit  
8     applications at a point where it's difficult and challenging  
9     for us to actually make a decision, a case decision within  
10    what is typically the federally mandated one year time line.

11           So I noticed, I heard some panel -- somebody on  
12    the panel mention that there was some development of a  
13    coordinated agency time line group possibly, and I just  
14    wanted to ask that we be notified if that actually develops,  
15    or if you're looking for people to participate.

16           And I noted also, I believe it was Frank Simms,  
17    who I've had the pleasure to work with recently on the other  
18    side of his troubled project that he noted, and I would  
19    agree that there needs to be a much broader effort to  
20    include the public or get the public up to speed on what's  
21    happening with projects that are applying for FERC  
22    licensing, because there is often this, it seems like a very  
23    huge lapse in involvement with the public stakeholders.

24           By the time we get to the 401 permit process, I  
25    would have thought that some of these issues would have been  
26

1       pretty fully vetted, and we're finding that may not be  
2       always the case. You can't drag people to a meeting, I  
3       understand that. But I think that any effort, such as doing  
4       some more education on the FERC's e-File and e-Library  
5       system, supporting applicant web pages that they develop or,  
6       you know, doing all of these things, the Listserv, the  
7       website, the FTP site, even Wiki sites are now becoming  
8       popular. Anything to get word out earlier would be very,  
9       very helpful.

10               I think that was all I had. I do like the idea,  
11       and I was poking around online, looking for potential  
12       solutions to deal with the timing disconnect between our  
13       particular state 401 process and the FERC licensing process.  
14       It's promising that someone mentioned these contracts or  
15       agreements with how to lay out the process ahead of time. I  
16       think that sounds like an interesting thing for us to look  
17       into.

18               MS. WEST: Thank you. Okay Matt, and then I need  
19       to move to the next section.

20               MR. RICE: Matt Rice, American Rivers. Yeah,  
21       regarding the public participation that's been brought up  
22       several times today, one suggestion could be possibly  
23       funding the Office of Public Participation. Section 825 of  
24       the Q-1B1 of the Federal Power Act. To my understanding  
25       it's not funded now, but that could be a role that it could  
26

1 play.

2 MS. WEST: Thanks.

3 MR. DEEN: Just one quick fact from my reality,  
4 and why I was calling for FERC to take some additional  
5 responsibility on communications. I'm involved with eight  
6 FERC licensing or relicensing. Only one is larger than a  
7 megawatt, and that one's 1.1 megawatts. Those owners  
8 applicants will not put up a coordinate website, so that you  
9 can track where you are.

10 You know, even in your motel room, they give you  
11 a chart that says "you are here and here's the fire exit."  
12 We don't know where we are sometimes.

13 (Laughter.)

14 MS. WEST: You can do better than fire exits.  
15 Let's go to the next section, if I can get back to this.  
16 Can we get the slides on?

17 MR. KANZ: Hey Anna?

18 MS. WEST: Yeah. Oh, is that Russ?

19 MR. KANZ: It is.

20 MS. WEST: Hi.

21 MR. KANZ: Can I weigh in here?

22 MS. WEST: Sure. I'm sorry. Russ Kanz, can you  
23 introduce yourself again for the reporter?

24 MR. KANZ: Sure. It's Russ Kanz with the State  
25 Water Resource Control Board in California. I want to take  
26

1 step back and talk a little bit about FERC staff, and I  
2 didn't get a chance to do this earlier, and in some ways, I  
3 work for a board. So throughout the relicensing process,  
4 you know, we can't be predecisional about decisions.

5 I think FERC staff are in that same role. One of  
6 the things that I had brought at some of the earlier  
7 meetings, and this really almost goes back to the study plan  
8 determination process, it would be really good for FERC  
9 staff to say throughout the process "Hey, I think that's  
10 something I can recommend to the Commission."

11 It's the same thing we at the State Water Board  
12 do as staff. You know, we can't tell you what our board's  
13 actions will be in the end, but we can say "Hey, that's  
14 something I can recommend to the board." On the other hand,  
15 if you say "Hey, that's something I'm not going to recommend  
16 to the board," people should really listen to that.

17 You know, FERC staff can be more direct about  
18 that, as we try to be. I think that's going to be really  
19 helpful.

20 Another thing, and this may be a little bit ahead  
21 of what you're going to get into, but the ex parte rules at  
22 FERC are a real roadblock, and you know, it's a big deal  
23 here because we have the California Environmental Quality  
24 Act, which is like NEPA, and it's difficult to integrate  
25 those processes.

26

1                   We have been talking to FERC about ways to do  
2                   that, but the ex parte rules, I think this is the only  
3                   federal agency that has ex parte rules that start at the  
4                   time the application is filed. I'm still a little confused  
5                   why those rules are there, and what that does to help the  
6                   agency.

7                   But I just think it's a real roadblock, and it  
8                   would help if those weren't in place, I think, for everyone.

9                   MS. WEST: Okay, thanks. All right. Now we're  
10                  going to next section, and I do have -- okay quickly,  
11                  because I think we need to adjourn at three o'clock here,  
12                  twelve o'clock Pacific, just in the interest of people's  
13                  schedules. So I'll go through.

14                 Let's see. Oh, still on suggested solutions on  
15                 process, is that right? Encourage applicants to cast a wide  
16                 -- oh, let me back up. Yeah, okay, sorry. So this is sort  
17                 of the grab bag of process ideas. I will try and go through  
18                 it quickly. Issues and challenges. Those who are new to  
19                 the ILP may not understand it, their role and how to  
20                 participate.

21                 Coordination with FERC and the agencies and  
22                 stakeholders can be unclear. Time frames are limiting.  
23                 We've talked a lot about that. Sometimes decision-makers  
24                 are not familiar with a project area. Not all stakeholders  
25                 are involved early. Not all applicants appreciate the value  
26



1 of collaboration prior to the NOI. Scheduling meetings so  
2 all can participate can be challenging.

3 Solutions. Timely updates and good process for  
4 sharing information is important for efficient use of  
5 resources, and there's a list of some of the suggestions. I  
6 won't read through them all. Encourage applicants to cast a  
7 wide net to involve stakeholders early and throughout the  
8 pre-NOI process and post-NOI.

9 Again, there's a list of communications tools,  
10 and I think early in this session, Annie Manji mentioned the  
11 webinars and teleconferences as one of those tools.

12 FERC guidance. Provide a clear understanding of  
13 expectations of all participants early in the process.  
14 Everybody, you know, if you know what's coming up, you'll  
15 understand the different regulatory requirements and what  
16 everybody's role is, what the process looks like. That  
17 really helps.

18 Opportunities for guidance. The FERC website  
19 trainings and scoping meetings. People thought those were  
20 good forums for getting people informed on the process. We  
21 talked about FERC website already, but this was an idea of  
22 considering adjusting the website by project name rather  
23 than license number, because not everybody knows how to find  
24 the license number.

25 Early meetings and collaboration. I don't know  
26

1       that you need me to repeat all these, but I think they're  
2       largely there, have been said today already. But resource-  
3       based work groups has been recommendations across many of  
4       you, and identifying stakeholders' interests up front and  
5       clarifying your interests throughout. I think companion to  
6       that is the regulatory requirements.

7               Now we're onto discussion. Back to the  
8       panelists, and I have a few more ideas to inject in here as  
9       well. Julie?

10              MS. TUPPER: One thing I want to commend FERC on,  
11       because this one, adjust the FERC website so that you can  
12       search by project name as well as license number. I believe  
13       that works now. I've had several people say that if you go  
14       into a search on the library and type in the project name  
15       because you don't know the number, it actually comes up with  
16       something.

17              That's a relatively recent -- you used to be able  
18       to have to -- well, prior to this, you had to have a pretty  
19       good idea of what the name of the project was. You had to  
20       be close and it would find it. Now you can be relatively  
21       general and it will find it. So whoever designed your  
22       website, they did a better job of providing the ability to  
23       search for projects. So I think that's actually been  
24       helpful.

25              MS. WEST: Thanks. Any other process  
26

1 suggestions. David.

2 MR. DEEN: David Deen, Connecticut River  
3 Watershed Council. Exactly, because most people in the  
4 general public don't know to put "P dash whatever" in front  
5 of the number, and FERC just continues to come back and say  
6 "There's no such project." So being able to search by name  
7 is a vast improvement.

8 MS. WEST: Any other comments? I've got a few  
9 other ideas I want to test out, but I don't want to  
10 shortchange anyone.

11 MS. TUPPER: I was going to save this until last,  
12 by my Forest Service FERC coordinators have a really -- you  
13 can take this as tongue in cheek, but there should never --  
14 you should never require an official comment period. They  
15 should all end either by December 10th, or they should start  
16 after February 1st.

17 We think that your FERC staff perhaps has a  
18 perverse sense of humor, because I cannot tell you how many  
19 of our official comments are due on Christmas or  
20 Thanksgiving. So we think the staff should really look at  
21 the time frames of when things are required, and sort of  
22 figure it out.

23 MR. DERR: This is David Derr. Including us  
24 writing EISs over Christmas?

25 MS. TUPPER: We'll give you the same --  
26

1 (Laughter.)

2 MS. WEST: Any other comments on this section?

3 Larry, go ahead. Mike, and then or Larry.

4 MR. THOMPSON: Larry Thompson, NMFS. Last week a  
5 gentleman contacted me, knowing nothing about the FERC  
6 process whatsoever. I sent him a quick email, told him to  
7 ut the P dash in there. I told him where to put it, gave  
8 him ferc.gov's website. He's now e-Filed comments. He's  
9 getting e-Notification. I just gave him the FERC support  
10 email and phone numbers and he called up and got -- they  
11 walked him through the process.

12 So I think it's pretty good. I will say though,  
13 it is nice to also have a licensee or applicant website that  
14 is -- especially the large projects. But just a shout out  
15 to FERC, I think that is working. I think the electronic  
16 tools are good.

17 MR. IYALL: I just wanted to thank you guys for  
18 inviting me. I'm going to go catch a plane. Thank you.

19 MS. WEST: Thanks for being here. Barbara.

20 MS. GREENE: Barbara Greene, Seattle City Light.  
21 I wanted to speak just for a minute about the FERC staff.  
22 We used both the decisional staff and non-decisional staff  
23 and found it to be extremely helpful, both in terms of  
24 process questions as we went through it, and then in the  
25 end, in negotiating a fairly complicated set of agreements  
26

1       that were attached together, that would address both a  
2       relicensing project and a decommissioning project, I thought  
3       the non-decisional staff being made available was really  
4       important, because it really helped give us perspective on  
5       how the Commission might react to how we were putting the  
6       settlement provisions together, as well as how to structure  
7       some of the complimentary settlements that needed to go  
8       along with these, with the package.

9               They provided good advice on what settlement  
10       provisions might not be within the Commissions' purview. So  
11       when I think back to the conversation we had prior to the  
12       non-decisional staff involvement, and the direction we were  
13       going in, I realized in retrospect just how important it was  
14       to actually being able to submit a series of documents,  
15       settlement agreements that the Commission can actually act  
16       on, without having to tinker with them because they weren't  
17       put together consistent with FERC policy.

18              MS. WEST: Thank you. Frank.

19              MR. SIMMS: Okay. I've been with this ILP  
20       process from the very beginning. It's worked great for us.  
21       I'm going to be honest about it. Staff's been great. One  
22       of the things that helped us quite a bit is when a license  
23       order is ready to come out that it comes out.

24              In other words, if it's supposed to take two  
25       years through the process and the license order comes out at  
26

1       18 months, you would not believe how much that helps us,  
2       because then it gets us prepared for our operational  
3       changes, our staff changes and our budgeting for the next  
4       year.

5               Because we have that certainty as to where we're  
6       going to go with it. So when a license comes out like that,  
7       I think that's great and the ILP, I think, has helped that  
8       occur.

9               One other comment, I know I've talked a lot, but  
10       it has to do with something we've talked about a little bit  
11       again, is when you have a project, and I don't care if it's  
12       a developer or a company like ours that has small projects,  
13       for example, or Class of '93 projects.

14               When you have a project that it's pretty clear-  
15       cut there's not a lot of issues with it. The information's  
16       there, everybody can agree look, there doesn't need to be a  
17       lot of effort put into this particular licensing or  
18       relicensing, either way.

19               That you go through a process, let's say of your  
20       notice of intent with your pre-application document, and  
21       that pre-application document you say make it into your,  
22       essentially your application, and say this is our  
23       application, and let the FERC make a decision as to the  
24       adequacy of that, and potentially cut some processes down  
25       from five years to seven years, to the three years of a  
26

1 preliminary application or whatever.

2 Because one thing we have to look at is, you  
3 know, we're a renewable resource, and the inclination right  
4 now is to get this renewable resource and to be able to grow  
5 it, and to grow it at existing projects and at existing  
6 facilities. If we could set up processes that allowed that,  
7 even for these smaller projects, I think it's to everybody's  
8 benefit.

9 MS. WEST: Thank you. So anybody from the  
10 audience or the whole group, and then I have some additional  
11 ideas to test out on you.

12 MS. HART: This is Joan Hart from the National  
13 Park Service. One of the comments that I often hear from  
14 the Park Service staff that get involved in these projects,  
15 as well as the public, is at the very initial stages, when  
16 the first notices come out or included in the PAD would be  
17 to have a Google Earth link to the location of the project,  
18 as being a way to solve a lot of people's problems, to  
19 figure out just where the project is and to make it easy, so  
20 that everybody doesn't have to go through looking it up  
21 where it is, but have that link readily available.

22 MS. WEST: Thanks. Go ahead.

23 MR. McCARTY: Hi. I'm Mike McCarty with the law  
24 firm Brickfield, Burchette, Ritts and Stone. I just wanted  
25 to address an issue that came up earlier. I think the  
26

1 gentleman here, Mr. Lissner from the independent power  
2 producer, and it's also that's come up in the Commission's  
3 workshops on facilitating small hydro development, and that  
4 is the sort of disconnect between the ILP and the  
5 preliminary permit provisions of the Federal Power Act.

6 The fact that you can't get through enough of the  
7 ILP to file your license application within the term limit  
8 of a preliminary permit, which I guess is three years.

9 MS. WEST: Could you clarify why you can't get  
10 through it in that three-year time frame?

11 MR. McCARTY: Well, I mean, I think it's just  
12 accepted that the study process, if you've got a significant  
13 original license application that's going on, frequently you  
14 cannot get through all the studies, especially if there's a  
15 second year of studies, and through a draft application or a  
16 preliminary licensing document, a PLP, and then get to the  
17 final application stage within the term of your permit.  
18 It's just often not feasible.

19 I think that the Commission could address that in  
20 the relatively rare case of original licensings, which are  
21 becoming more common with, you know, the hydrokinetic  
22 technologies and the ocean technologies, is to provide,  
23 through your regulations in Section 4.30-something, I can't  
24 remember where it is, but where you say when you will and  
25 will not accept permit applications and development  
26



1 applications.

2 You could provide that within your existing  
3 authorities, that if there is a preliminary permittee who  
4 timely files a PAD and an NOI and is still actively involved  
5 in the licensing process, that the Commission will not  
6 accept a competing permit or development application during  
7 that process, up until the time that they would otherwise  
8 accept competing applications anyway. So --

9 MS. WEST: Okay. Anybody on the phone who wants  
10 to add thoughts on this section, good process ideas?

11 (No response.)

12 MS. WEST: All right. Let me test some out that  
13 I've received from an anonymous stakeholder. Here you go,  
14 so get ready and listen. So one idea is "Develop specific  
15 protocols to govern post-licensing adaptive management  
16 plans. Post-licensing adaptive management is becoming more  
17 and more frequent and resolves many issues related to pre-  
18 licensing data collection.

19 "Most issues regard certainty to both licensees  
20 and stakeholders. Better-defined adaptive management  
21 process and parameters may help to stimulate and streamline  
22 settlement agreements." So any thoughts and reactions to  
23 that folks? Larry.

24 MR. THOMPSON: I think incorporating adaptive  
25 management -- Larry Thompson, National Marine Fisheries  
26

1       Service -- is a great idea. I mean --

2               MS. WEST: And this is suggesting there might be  
3       specific protocols or more up front guidance?

4               MR. THOMPSON: I think so. I think it's out  
5       there. There are some good documents on adaptive  
6       management. I think there is, you know, Julie brought it up  
7       early and others did too about uncertainty. There's  
8       uncertainty in what we do. Matt brought up the  
9       implementation of studies. Studies don't always return the  
10      information they're intended to return.

11              So it's information we're really after, not  
12      execution of a study. That study may or may not give you  
13      that information. Adaptive management is a way say okay,  
14      let's take a look at this. What did we do right, what can  
15      we do better, adjust, readjust, try again.

16              So even in the study phase, I think it's  
17      important, but also in the post-licensing. I think also  
18      these are, you know, 20, 30, 50 year licenses, and a lot  
19      happens in that time frame. We're going to see, for  
20      example, the effects of global warming on those time scales,  
21      and I don't think -- you know, a point we probably missed  
22      here, I don't see adequate temporal scoping in some of the  
23      FERC documents, taking that into account.

24              So I agree with adaptive management. I think  
25      it's a positive thing, yes.

26

1 MS. WEST: Chris.

2 MR. SHUTES: Chris Shutes, California  
3 Sportfishing Protection Alliance. Whether it's included in  
4 the guidance document or not, the issues we've had with  
5 adaptive management are there have to be specific time  
6 lines. There have to be clear decision points, and the  
7 realm of possible options has to be laid out.

8 And we've gotten into trouble when we haven't had  
9 those things. Whether that's laid out in a particular  
10 settlement document or a license, or in a -- whether we have  
11 a global sort of policy on that from FERC, those things need  
12 to be incorporated, and I think there's -- procedurally,  
13 there's arguments to be made for either.

14 But I don't think FERC should be issuing licenses  
15 that don't include some of those important elements.

16 MS. WEST: Okay. Any other comments? Let's go  
17 to the next one. Let's see. "Agencies to develop licensing  
18 regulations governing implementation of mandatory  
19 authorities."

20 MR. KANZ: Hey Anna?

21 MS. WEST: Yeah.

22 MR. KANZ: Sorry. This is Russ Kanz again. Can  
23 I weigh in on that issue?

24 MS. WEST: Sorry, the adaptive management?

25 MR. KANZ: The adaptive, yes.

26

1 MS. WEST: Sure. Go ahead.

2 MR. KANZ: Sure. This is an interesting issue  
3 and it's an important issue for us here at the Water Board  
4 in California, and I think FERC has sort of made some  
5 determinations on this lately, or expressed their interest  
6 in this.

7 But my concern is deferred decision-making, and  
8 there have been some licenses that have had a lot of post-  
9 license plans which are really deferred decision-making, and  
10 I agree with Larry, that none of these new licenses and none  
11 of our 401 certs are going to be locked in stone. They're  
12 all going to have reopeners. They're going to have a way  
13 to, at some level, adaptively manage over time.

14 But I think it's really important to make that  
15 distinction, that it's, you know, don't defer some hard  
16 decisions or important decisions post-license, just because  
17 they're hard to make, you know, during the relicensing  
18 process. From an environmental review point, it's difficult  
19 to deal with that level of uncertainty.

20 MS. WEST: Thanks. Okay. Next up, "Agencies to  
21 develop licensing regulations governing implementation of  
22 mandatory authorities. This should help clarify  
23 expectations and improve consistencies between agencies and  
24 projects." That's a question to agencies. Is that clear?  
25 What do you think of that idea?

26

1                   MR. THOMPSON: Would you read that again? I  
2 missed, yeah.

3                   MS. WEST: Agencies to develop licensing  
4 regulations governing implementation of mandatory  
5 authorities. So maybe I didn't get to fully speak to this  
6 person, but I think that's saying clarifying what your  
7 mandatory authorities are and how you implement them, so  
8 people understand up front what your responsibilities are  
9 and how you go about it.

10                  Would that kind of clarification from the  
11 agencies be helpful and improve consistency within your  
12 agency? Russ?

13                  MR. JOHNSON: I think there's two things to that.  
14 I think that in the locale where any of the project sits,  
15 that both FERC and the applicant needs to be aware of what  
16 the state and local laws and requirements and codes are.

17                  Because in cases in the shoreline management plan  
18 in particular, we see the intrusion of decisions that we  
19 think violate the federal supremacy law, that in fact the  
20 right to regulate the zoning within a project boundary, if  
21 it affects the right for the local government or the state  
22 to regulate the zoning right above the project, we believe  
23 that the state or the local government has the priority, and  
24 not the FERC.

25                  So if that's part of the question that's being  
26

1       raised, the way we have been particularly concerned in the  
2       last two relicensing, particularly the shoreline management  
3       plan, that we have upzoning, which is not within the  
4       prerogative of the project to do.

5               MS. WEST: Any other comments?

6               MR. JOHNSON: If that is what the question was  
7       trying to get at, then I guess we're in concurrence with the  
8       issue of the fact of any project sits within a state and  
9       local boundary set of laws and requirements and codes. It  
10      needs to reflect that in the decision-making process.

11              We do not believe that they drive us. We believe  
12      that they follow us and had agreed to in the placement of  
13      the project to always implement by state laws.

14              MS. WEST: I think this was raised for a  
15      different reason, but I think what you're saying is if you  
16      put what you thought all the laws or regulations by the  
17      different agencies were up front and understood that, you  
18      would have uncovered that dispute, I think. Forest Service  
19      and NOAA, any comments on this recommendation?

20              MR. THOMPSON: Larry Thompson, National Marine  
21      Fisheries Service. It seems like the questioner could look  
22      at examples, in that I know when the Forest Service puts out  
23      its mandatory conditions, they have an accompanying  
24      rationale document. Similarly when NMFS puts forward its  
25      Section 18 fishway prescription, we do them in such a way  
26

1       that we're prepared to defend them if we have to in a trial-  
2       type hearing.

3               So we put the rationale alongside why we're  
4       putting forward the prescription. So I think there's a --  
5       rather than an overarching document or a summary of how we  
6       implement our mandatory conditioning authority, you could  
7       start by just looking at some of the examples and filings  
8       around the country, to see how that's been done.

9               MS. WEST: Okay Julie, and then I have Barbara  
10       and David.

11              MS. TUPPER: I'm not sure where you got that  
12       question from, but I know in California, in a couple of  
13       other states in the west, where hydroelectric projects are  
14       located on National Forest System land, by Forest Service  
15       policy the FERC NEPA and the FERC commissioner is the  
16       decision-maker, and we do not make a separate decision.

17              I know some members of our public have been  
18       confused, because we will go rebuild the campground or do a  
19       project, and they ask us where is your decision document,  
20       and we point to the FERC document, because by regulation and  
21       policy, the FERC commissioner made that and it was  
22       disclosed.

23              There is confusion, and we've actually been  
24       talking locally, because we've had some issues lately, since  
25       we seem to be implementing more licenses, to make it clear  
26

1 to the public how the decision process happens, because in  
2 many cases you do a relicensing and it's ten years before  
3 they rebuild the campground, or they do something in an area  
4 and maybe the local people weren't even really involved in  
5 the license at the time.

6 Then they're suddenly saying "Well, why is this  
7 happening here at my favorite site? You just changed where  
8 I go fishing or you changed something," and we point back  
9 and say it was ordered by the license.

10 We don't disagree with that person if that's one  
11 of their issues, because we're trying to work with our  
12 national forest and the forest supervisors to, when an  
13 action occurs as part of a FERC license, many times 10, 15  
14 years down the road, that that decision was made and that's  
15 just sort of how it works.

16 But to do a better job, I think of disclosure and  
17 communication, work with our utilities lately to hold public  
18 meetings, instead of just going out and doing something.  
19 Hold public meetings, even though it's not required.

20 MS. WEST: Okay Barbara and David, and then I'm  
21 going to ask. Okay, David.

22 MR. DEEN: David Deen, Connecticut River  
23 Watershed Council. I hear the question a little  
24 differently, as opposed to justifying actions after what I'm  
25 hearing in that suggestion, is that, and maybe this is an  
26



1 NGO perspective or a public perspective.

2 Again, tell us up front what your areas of  
3 responsibility are in terms of impacting conditions within  
4 the license, so that I, as a participant, understand that  
5 it's project lands and the use of project lands, I talk to  
6 you. If it's in fact a resource, a trust resource fish or  
7 whatever, I talk to you. So that --

8 MS. WEST: Yes. That's more what the suggestion  
9 is.

10 MR. DEEN: So I just hear it differently from  
11 sort of the less experienced public getting involved with  
12 the process, knowing to whom to speak.

13 MS. WEST: Okay. Let me just, I'm looking at  
14 time. One more thing to raise, and then I'll go into the  
15 last segment, which should be brief.

16 MR. DACH: Anna, before you go on to that, can I  
17 -- sorry, this is Bob Dach.

18 MS. WEST: Sure Bob.

19 MR. DACH: I just wanted to weigh in a little bit  
20 on that. From the sounds of it, and I think I agree with  
21 it, it's more along the lines of if you look at FERC and the  
22 Commission and all the different parties that are regularly  
23 engaged in licensings, the only one that -- the only group  
24 that really has a set of guidelines out there by regulation  
25 is the Commission.

26

1           But as we've identified here for most of the  
2           conversations today, there are other big decisions made by  
3           other mandatory parties, not only on FERC stuff but on ESA  
4           stuff. I would offer that most folks have no idea how those  
5           decisions are going to be made.

6           I would also offer that those decisions are made  
7           differently, depending upon where you're at in the country  
8           and which agency you're working with. So it seems to me as  
9           far as a more efficient process, those other decision-making  
10          processes need to be much better defined than they are  
11          currently.

12          MS. WEST: Thanks. Thanks, Bob. Last one, not  
13          mentioned before. "More flexibility by FERC in allowing  
14          off-site restoration measures without increasing the project  
15          boundary." Folks reactions to that one? Barbara?

16          MS. GREENE: It's a great idea.

17          MS. WEST: David.

18          MR. DEEN: We established a mitigation and  
19          enhancement fund that went to the entire watershed, well  
20          beyond the project boundary. FERC in fact did not recognize  
21          it, in terms of a license condition. It was part of our  
22          settlement agreement. It was, everybody, you know, and we  
23          carried it in. This was not an ILP license, but it's an  
24          actual situation.

25          So I think it's a good idea that FERC, you know,  
26

1       sort of broaden and realize that improving the watershed is  
2       not just a function of the footprint of the project on the  
3       land.

4               MS. WEST:   So you're saying better to be able to  
5       have broader PM&E measures, but you don't necessarily have  
6       to therefore expand the project boundary?

7               MR. DEEN:   Correct.

8               MS. GREENE:   Yeah, I'm sorry.   That's exactly  
9       what I was thinking, David.   Thank you.   When you think  
10      about what you're really trying to do, which is to improve  
11      the resource, sometimes the footprint is really not the best  
12      place to do that.   So certainly our settlement agreements  
13      have a lot of offsite mitigation, because that was the best  
14      way that all the resource agencies and all the participants  
15      saw to actually do something.   The best thing for the  
16      resource could be accomplished in a broader area than  
17      spending a lot more money in a smaller area.

18              So it's just taking a more holistic approach to  
19      it, you know.   How you do that in regulation may be far more  
20      difficult.   But in reality what we're going to get, I  
21      believe, is a far better product.

22              MS. WEST:   Chris.

23              MR. SHUTES:   I want to focus for a second on the  
24      -- not on the offsite part, but on the FERC boundary part,  
25      and I think there's been confusion about when and under what  
26

1       circumstances an offsite mitigation would be included as  
2       part of a FERC boundary, or whether the Commission feels  
3       that it needs to include it as part of a FERC boundary.  
4       There's been a lot of speculation about that in various  
5       processes.

6               I think it would be a good idea for the  
7       Commission in some way to try to have a global clarification  
8       of that. It's one, an issue. Maybe it already exists and I  
9       don't know about it, and if so, I apologize for my  
10      ignorance.

11             But it is one area, I think, that comes up with  
12      some frequency, and a little more clarity about the function  
13      and the understanding of FERC project boundaries and how  
14      they might relate to offsite mitigations in particular would  
15      be a productive thing for the Commission to set out.

16             MR. KATZ: John Katz with FERC. Just in that  
17      regard, I recommend folks look at the FERC policy statement  
18      on settlements, which does have some discussion of that  
19      topic.

20             MS. WEST: Julie, were you saying something on  
21      this or no?

22             MS. TUPPER: I was agreeing. We, I think,  
23      particularly in the Northwest, less so in California, we've  
24      used offsite mitigation as the appropriate solution, because  
25      we're limited in what we can do onsite, and I don't think  
26

1       there's a feeling that we have to have these mitigations in  
2       the project boundary.

3               But we feel that by FERC ignoring them, they  
4       become disassociated from the project, and by FERC saying  
5       "Yes, this is something that is mitigation for this project"  
6       and including it not necessarily in a boundary, but just  
7       acknowledging it, that it's a part of the project, it ties  
8       the project together in a little neater package.

9               MS. GREENE: The boundary, project boundary is  
10       the tougher issue, you know. How far are you going to  
11       extend the project boundary, which then puts a lot more  
12       responsibility on the licensee.

13              MS. WEST: Okay. Any other comments on this  
14       point, folks in the audience or folks on the phone?

15              MR. DACH: This is Bob Dach on the phone.

16              MS. WEST: Go ahead, yes.

17              MR. DACH: Okay. The big issue in my mind on the  
18       project boundary is you can get offsite mitigation, but  
19       under the FERC regs, it's a one-time action, without  
20       increasing the project boundary. What we're after is a  
21       mitigation effort that will offset project effects, so they  
22       need to go for the term of the license.

23              So when you put those two things together, you  
24       end up running into this concern that by showing a  
25       responsibility over a stream restoration project for the  
26

1 term of the license, runs the risk of FERC potentially  
2 drawing a project boundary around the entire stream segment,  
3 which could be huge. So and that's what we're trying to get  
4 away from.

5 The problem is is right now it limits, we're  
6 limited in our ability to find good, reasonable solutions,  
7 that the licensees can get credit for. When I say that,  
8 they spend the money under their license, so it can be  
9 considered in their license term issue, without increasing  
10 the project boundary so much that it makes it an unrealistic  
11 proposition.

12 MS. WEST: Thank you. If folks don't mind, I'm  
13 going to suggest we adjourn at 3:15, to see if we can just  
14 roll through this and see if we can read it. I'm going to  
15 go into the next section, and some of the things -- if I can  
16 get slides there -- we've already covered, so I'll be real  
17 quick.

18 We talked about the challenges. This is overall  
19 challenges in the ILP. Participation, the seasonal factor  
20 for studies we've mentioned, concerns about who is allowed  
21 to file informal study disputes, that those are limited.  
22 The process moves quickly and requires resources, i.e.,  
23 time, effort, money to be engaged.

24 For large, complex projects, time frames can be  
25 challenging. We just heard this one before about original  
26

1 projects and hydrokinetic projects. It may be challenging  
2 in the time frames.

3 Suggested solutions. Prepare project-specific  
4 information and materials to help inform participants, so  
5 they know what the process is about. We heard this  
6 suggestion before on neutral facilitation, to keep meeting  
7 summaries, reporting issues and concerns, track actions,  
8 etcetera. Keeping participants aware of deadlines is  
9 helpful. Build and maintain relationships throughout the  
10 process, and understanding that this process puts clear  
11 deadlines and formal steps in between the collaborative  
12 steps. I think that's particularly important and  
13 challenging.

14 Allow more stakeholders to be involved in the  
15 dispute resolution process, or an opportunity to submit  
16 comments and information. Encourage collaboration we've  
17 heard. Begin early. If an applicant intends to develop a  
18 settlement agreement with stakeholders, communicate this up  
19 front, so everybody's prepared.

20 I think sometimes people use the word "settlement  
21 agreement" and they might just mean collaboratively  
22 developing PM&E measures. So in either case, communicate  
23 that up front. Offer guidance on what to include to justify  
24 using the TLP process rather than the ILP so it's less  
25 onerous, for those who would like to not use the ILP. Help  
26

1       them know what they should do.

2               Educate small and new hydro developers, so they  
3       better understand the ILP process. I think this is related  
4       to there are many one-time licensees, and it's all new and  
5       daunting to them. Okay. Back to discussion, and this is  
6       sort of the parting shot of any other comments, a free for  
7       all of those comments or anything else you'd like to make in  
8       parting comments on the process.

9               MS. GREENE: Oh, I think the ILP is both a  
10       strength and a weakness. Its strength is, at least from a  
11       licensee's point of view, it has certainty, it has  
12       deadlines. You know when you need to get things done. You  
13       can plan for them, and in the best case scenario, that's  
14       what you do. You sit back and you look at that, whatever  
15       period of time for us, it was eight years, and you figure  
16       out how you're going to get through it.

17               The weakness, of course, is even if you have your  
18       A team, like we did, there's some crunch times that are  
19       really, really tough. I'm not sure there's anything you can  
20       do about that except work hard and get through it. I mean  
21       really, the longer the process goes on, the more you spend,  
22       and for a licensee, having some certainty about the future,  
23       particularly about if it's going to require significant  
24       investments over the course of the next 20, 30, 50 years,  
25       you want to know that as soon as you can, and your decision-

26



1 makers that run the organization are going to want to know  
2 that as soon as you can.

3 I think the study criteria actually helped a lot,  
4 and again on the nexus issue, I think it's just very  
5 difficult for some participants to separate their interests  
6 and what they want, and what they believe they wanted out of  
7 that project, long before the relicensing started, to  
8 separate that from what the facts are actually showing them.  
9 I think that's human nature.

10 But I thought the process was a good one, and you  
11 know, with some tweaks that I think we've heard some really  
12 good suggestions here today, that's the process I would  
13 recommend for an organization that needs to be able to plan  
14 into the future. I would only hope that some of the other  
15 parties involved in it could do a little bit better planning  
16 up front.

17 MS. WEST: Thanks. Russ.

18 MR. JOHNSON: I think we second that. We think  
19 the ILP process, given the wide variety of circumstances and  
20 uniqueness that it addresses throughout the United States,  
21 is a very good process, and most of the recommendations are  
22 our ability to respond to it, not the ability to change or  
23 want to change the process itself.

24 If you start changing this process, well we will  
25 take it and make it longer and longer and longer, which will  
26

1 address exactly the weaknesses that we have today in  
2 responding to it. Which is why at least we brought forth  
3 the suggestions of trying to help some of the resource  
4 agencies, try to help some of the local governments, perhaps  
5 even, as Mr. Simms brought up, the licensee themselves, with  
6 either money or staffing, to help them get through and meet  
7 the deadlines.

8 But as far as the ILP itself, we have very little  
9 criticism, in the fact that it is simply a structure in  
10 which a wide variety of projects needs to fall. As I said,  
11 our struggle with it is simply a resource, predominantly on  
12 our side.

13 The other parts of it that have helped by being  
14 suggested by everyone, the up front idea of putting the flow  
15 of the project online, putting the vocabulary online,  
16 because we do have a misunderstanding at times of what a  
17 nexus is and your language, our language is not necessarily  
18 identical.

19 So with the suggestions that are here, I think  
20 you have a very good process. I wouldn't want to see you  
21 tinker with it too much, so the point where it becomes now  
22 we have to go and evaluate a different process. The things  
23 that I've tried to bring to you were simply made under the  
24 guise of can we making an existing process better. That's  
25 the way we feel about the ILP.

26

1 MS. WEST: Thanks, Russ. Chris.

2 MR. SHUTES: Chris Shutes, California  
3 Sportfishing Protection Alliance and Hydropower Reform  
4 Coalition. I have a couple of small, specific points and a  
5 general thought or two.

6 One of the things that's on the PowerPoint here  
7 regards the limitations on who can participate in study  
8 disputes, and I think in a guidance document, one thing that  
9 might be productive for the Commission to consider is, is  
10 there an appropriate role for 10J agencies in support of 401  
11 agencies in formal study dispute.

12 I have seen situations where that was allowed in  
13 the past, and I think it would be helpful and might provide  
14 some encouragement to some of the 10J agencies, if there was  
15 a policy on that, particularly if it permitted that.

16 The initial and updated study reports haven't  
17 been discussed today, and one of the problems we've had in  
18 general in the ILP is that studies don't come in at an even  
19 rate. We have them coming in piece by piece over different  
20 periods of times, and the function initially imagined for  
21 the ISR and the USR, if I have those acronyms correct, are  
22 it hasn't really worked out the way it was planned.

23 I think that that's an ongoing question that the  
24 Commission ought to consider, in terms of how you can have  
25 check-ins, but how you can also have those as useful and  
26

1 useable in the process as possible. Overall, the front-  
2 loading of the ILP is both its weakness and its strength.  
3 If you start out from the beginning -- well, the merits of  
4 front-loading I won't go into. I think a lot of folks have  
5 discussed those today.

6 If you don't make the decisions up front, it  
7 tends to trickle down throughout the process and lead to  
8 problems throughout, and increases the likelihood of a  
9 contested outcome or a delayed outcome. So a lot of the  
10 focus that the Hydropower Reform Coalition has had has been  
11 on making those good decisions up front, having an expansive  
12 view of NEPA, and accommodating the needs for other  
13 processes such as ESA and 401 within the study process, so  
14 that we can truly integrate the integrated licensing  
15 process.

16 Overall finally, we support that there's been a  
17 lot of good process statements that have been made today,  
18 about general good process, goals, mechanics, and we  
19 certainly support those. I think that a lot of progress has  
20 been made in making that part of the process and making the  
21 process work well.

22 MS. WEST: Thanks. Frank.

23 MR. SIMMS: We were one of the -- Frank Simms,  
24 American Electric Power. I remember coming in here a few  
25 years ago, because we were asked to be one of the first  
26

1 companies to go through the ILP, and if somebody were to ask  
2 me right now was it worth it, was it good, would we do it  
3 again, the answer to all of that is yes, because we're still  
4 here and we're still using it on the other projects, and we  
5 think it's worked very well.

6 I think the comments we heard today, they're all  
7 good comments. But what I'm getting out of this is that  
8 maybe it's really not the ILP that has the major problems,  
9 but maybe it's some of these other things, such as you know,  
10 the 401 and the 4E issues and these types of things.

11 It's that post-license application type thing, or  
12 pre-license, in getting everything to work together.  
13 Because in any process you're going to have similar  
14 problems, you're going to have similar issues. First,  
15 you've got the collaboration. Everybody's got to work  
16 together, start in the beginning, let's work it together.

17 Two is you need the communication. If you don't  
18 have the proper communication all the way through, I don't  
19 care what kind of process you put in front of us, it's not  
20 going to work.

21 But the third thing, and I think is the thing  
22 that needs the most work, is the clarity. As more and more  
23 I heard again about how the agencies all work together, or  
24 in some cases don't work together, how we could bring that  
25 all together is going to make the process a lot better on  
26

1 everybody.

2 MS. WEST: Integrating the integrated licensing  
3 process.

4 MR. SIMMS: Integrating it together, right.

5 MS. WEST: David.

6 MR. DEEN: Yes. One of my notes is to integrate  
7 the integrated licensing process, and that's a help for  
8 river advocates, so we know who we're talking with or should  
9 be talking with. Consistency between projects relative to  
10 process management. Having been at a couple of these  
11 meetings, I have heard different stories in terms of how  
12 FERC has dealt with similar situations, in other words, and  
13 so a consistency, I think, would help.

14 I am not necessarily advocating for a lengthening  
15 of the process, but I am advocating for allowing a consensus  
16 decision to move deadlines, both within the process in the  
17 5.5 years, and if it can avoid litigation and other  
18 extending actions beyond the licensing process, that  
19 flexibility for an end date somehow.

20 I don't know what that standard is, Chris has  
21 talked about you have to have some definitions and whatever.  
22 I haven't thought all the way through that. But I do  
23 believe that there's a reason, in the interest of saving  
24 time overall, from start to complete license, for extending  
25 or potentially extending the process.

26

1 I understand from the business point of view,  
2 business hates blinking yellow lights. They want a green  
3 light or they want a red light. It really does help the  
4 licensees to get some clarity.

5 Lastly, my favorite issue. We need to adjust  
6 critical energy infrastructure information rules relative to  
7 the licensing process. I have been denied -- one of my key  
8 issues. I sometimes wear two hats going into a process.  
9 Both the Connecticut River Watershed Council and Trout  
10 Unlimited. So my issues are fisheries and passage.

11 I now have a long-standing request in under CEII  
12 to FERC for drawings of fish passage structures on a license  
13 that we are considering or that FERC is considering right  
14 now. We have to rethink that process, and my suggestion is  
15 once parties are identified, that in fact the same  
16 courtesies be extended to them as to the agencies that have  
17 powers in terms of license conditions.

18 That is you guys get copies of this stuff. We  
19 don't. Once we're in, I think it would be helpful and move  
20 the process along if we got copies. Thank you.

21 MS. WEST: Okay. So Dan, Larry, Matt, Julie have  
22 not commented. Any parting comments?

23 MR. LISSNER: Sure.

24 MS. WEST: Go ahead.

25 MR. LISSNER: Let me just make a quick point.

26

1 I'm glad that this conversation has focused not just on what  
2 FERC can do for us to make this project work better, but the  
3 role that we as developers, as resource agencies, as  
4 stakeholders and individuals play in this process.

5 Many of the things we've talked about specific to  
6 the ILP. Many of the suggestions we've talked about are  
7 not. They're kindergarten skills. It's communicate, be  
8 diligent, don't procrastinate, play nicely with others, and  
9 all of these lessons, I think it's valuable for us to take  
10 them back and to incorporate them in our practices what they  
11 are, and to acknowledge FERC, and thank you FERC and thank  
12 you Anna for organizing this conference.

13 There are not a lot of entities I've encountered  
14 that have been as willing to engage with their constituents,  
15 not just on doing our work, but on how we can improve the  
16 process to make it better for us. So this is valuable and I  
17 appreciate the opportunity to be here and discuss it today.

18 MS. WEST: Thanks. Julie.

19 MS. TUPPER: Julie Tupper, Forest Service. I  
20 think the ILP was a good attempt to try and rein in some of  
21 the long and over-long relicensings that we worked on. I  
22 had the pleasure to work on a couple of those, and after 28  
23 years, I was told when I was finishing them up they got  
24 done, and I don't disagree that that's a really bad idea.

25 But I think the ILP, it provides structure, but  
26



1       in some cases I think that structure has become a stumbling  
2       block. I agree with a few folks here that, not that we need  
3       a ten-year structure, but I think there's times when we need  
4       to have some flexibility, and the regulations tend to be  
5       very strict, that no, you have 30 days to do this and if it  
6       takes 45, sorry, you're done, because that actually, in a  
7       licensing proceeding, which tends to be contentious, that  
8       just adds to the contentiousness, and that's not helpful.

9               The other part that nobody's brought up here and  
10       Chris sort of did, is at least from my coordinators in the  
11       National Forest, we have FERC coordinators who are full-time  
12       because it's a full time job, and a lot of what they do is  
13       provide correspondence.

14              During the ILP, there is a correspondence  
15       overload. Part of the problem we see during relicensing is  
16       that the licensee will say "Okay, I have to go prepare this  
17       document to send to FERC. We can't meet for the next 45  
18       days. We'll come back." It could be at a critical point  
19       when maybe we need to talk.

20              Then on the other hand, the Forest Service and  
21       some of the other agencies have the same problem. It's like  
22       sorry, we can't meet with you. It's going to take us two or  
23       three weeks to write our response to what you just spent 45  
24       days writing. In fact, we're on, right now in some  
25       processes. We're just all on hiatus, because we're all  
26

1 busily writing things.

2 The documentation is good, but I think we need to  
3 really rethink how the time frames and the kinds of things  
4 we need documented. The study reports when they come out,  
5 they don't come out all at the same time, so we end up  
6 having to write responses to study reports and the licensee  
7 writes back about that.

8 We end up -- I'm from the Forest Service, we just  
9 joke that you're keeping us in business cutting trees down,  
10 you know, publishing paper. So I think, I guess our  
11 suggestion would be somehow that we could look at how to  
12 restructure, within the statutory regulations already part  
13 of the ILP, to add a little flexibility and to see where we  
14 have stumbling blocks, because I think there are some that  
15 actually add to some issues that don't need to be issues.

16 I think part of it has to do with people feeling  
17 the shortness of time, and that just raise people's blood  
18 pressure to the point that we have, you know, we get into  
19 problems that didn't need to be problems, but they feel  
20 pressured.

21 The process, you know, this is a complicated  
22 process. You hand this to a member of the public and they  
23 go "Oh my goodness," and then you're trying to explain it to  
24 them. I see the need for it because some of the other  
25 processes perhaps didn't put enough pressure or constraints  
26

1       on folks. But I think we sort of lost a little flexibility  
2       when we went to the ILP that it would be nice to get back,  
3       to perhaps make the process more beneficial to all parties  
4       involved.

5               MS. WEST: Okay, thanks. Matt.

6               MR. RICE: Yes, I've got a few things to close  
7       here, I suppose, on top of FERC providing clear, written  
8       guidance to clarify its interpretation of study plan  
9       criteria, specifically 5 and 7 that we talked about earlier.

10              You know, I think that -- well, it is an  
11      efficient process even with the strict time lines, and  
12      that's good. I think it also, and this may be the exception  
13      rather than the rule, it's a process that can be used by the  
14      applicant to really determine the outcome.

15              For that reason, I think that it's critically  
16      important that FERC actively participates from the  
17      beginning, as far as from the study plans through the study  
18      implementation, to developing PM&E measures prior to filing.  
19      It's -- I think that that would be very helpful.

20              You know, we are talking about 30 to 50 year  
21      licenses, and I understand -- you know, I understand the  
22      interest in keeping it tight and not going over five years,  
23      and a lot of folks are interested in that. But you know, I  
24      think -- another thing I think, I think that a second study  
25      season should be absolutely standard in the process. We  
26

1       need good data to make decisions.

2                   MS. WEST:   Okay, thanks.   Larry.

3                   MR. THOMPSON:   Larry, National Marine Fisheries  
4       Service.   I agree with what was said here about time.   I  
5       think at times we're trying to save months and it's costing  
6       us years or maybe tens of years.   So I really think we  
7       should rethink that.   I'll go back to something I said  
8       earlier, that we're now creating work-arounds to get around  
9       the ILP shortcomings, and we're seeing parallel processes  
10      really going on.

11                   That just doubles your work, because you still  
12      have to meet the ILP filing deadlines, at the same time  
13      you're trying to work in meetings where you're really doing  
14      things that are outside the ILP.   To give you a quick  
15      example, we're going to get a PAD on a project.   The  
16      meetings are already progressing to the stage that they're -  
17      - decisions are being made on study plans and going final  
18      with study plans.   We do not yet have an NOI or a PAD.

19                   That's a pretty extreme work-around of the ILP.  
20      I think so the positive thing there, let's look at those  
21      areas where that's happening, because I think those are the  
22      areas that need improvement.

23                   I want to second something Matt said about multi-  
24      year studies.   I didn't bring that up earlier, that I deal  
25      with anadromous fishes, and they're complicated and there  
26

1       are ocean cycles. There are years of drought, different  
2       water year types, warm summers, etcetera, and then there are  
3       just unforeseen circumstances you cannot plan for.

4               So I really think we need to start looking at  
5       multi-year studies up front, not agreeing only to do one  
6       year, but agree to do a multi-year study with the adaptive  
7       management in the middle, to readjust, and I think that's  
8       it.

9               MS. WEST: All right. We're over my time. Any  
10      other parting shots from the audience here and then I'll go  
11      to the folks on the phone.

12              MR. LEAHEY: Jeff Leahey with the National  
13      Hydropower Association. NHA obviously still strongly  
14      supports the ILP, but if there are improvements that need to  
15      be made, we'd love to continue to work with FERC and the  
16      other stakeholders on what those improvements could be and  
17      hope that we can come up with some innovative strategies,  
18      some of which I think are here, as opposed to possibly  
19      falling into the box of just thinking that additional time  
20      or additional process is what's needed.

21              I think we heard that there are some things that  
22      could be done that don't necessarily require that.  
23      Secondly, I'd just like to take it up to the 30,000 foot  
24      level and say, and follow up on what Frank said.

25              You know, hydro is a renewable resource. We  
26

1       talked a lot about how the existing infrastructure is being  
2       relicensed, but we're also seeing now new development and we  
3       want to see new development more forward hopefully, and  
4       trying to find a way that we could do that in the ILP, which  
5       I think is possible, and perhaps even see some more  
6       efficiencies in process.

7               When you look to the wind industry or the natural  
8       gas industry and they're able to get projects in in two  
9       years or three years, and hydro is competing against those  
10      technologies. Whether you be a new developer or a utility  
11      who's trying to make decisions about what technology you  
12      want to pursue.

13             MR. THAPALIYA: Hi. This is Rupak Thapaliya with  
14      the Hydropower Reform Coalition. I just wanted to briefly  
15      mention, go back to the points regarding the public being  
16      able to find information about any particular project,  
17      especially people that do not have the technical knowledge.  
18      They don't know the project number and they don't have the  
19      ability to navigate through the FERC e-Library.

20             I just wanted to mention that the Hydropower  
21      Reform Coalition does have a website where you can search  
22      for a project by the project number or the project name, or  
23      even on a map, a Google-based map, with which you can not  
24      only see where the project is, but what other projects there  
25      are on the waterway or in the state.

26

1                   But and it also contains information about, you  
2                   know, the resource issues related to the project, other  
3                   information like the capacity and who the licensee is and,  
4                   you know, when the expiration date and all of that. It also  
5                   will take you to the FERC docket directly.

6                   Obviously, not all of that is complete. We're  
7                   still developing our database. So if there's anyone who  
8                   would like to help us, FERC or developers, help us build  
9                   that database, we would be happy to work with you, and  
10                  hopefully help the public get that information that we want  
11                  the public to get.

12                 MS. WEST: Another collaborative opportunity. So  
13                 anybody on the phone. I'm going to try and forward the  
14                 slides at the same time, so we can just make sure.

15                 MR. KANZ: This is Russ. This is Russ.

16                 MS. WEST: Oh, sorry. Was that Russ?

17                 MR. KANZ: Yeah, it's Russ.

18                 MS. WEST: Hi Russ, go ahead.

19                 MR. KANZ: Again, Russ Kanz with the State Water  
20                 Board in California. A couple of things is I really  
21                 appreciate Julie's comments about the time frame. I guess I  
22                 mentioned that before. I just think that up front they're  
23                 too condensed.

24                 The other thing is I really would like to see  
25                 FERC actively and FERC staff actively involved from the very  
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1       beginning, being very clear about what they think is  
2       necessary for the Commission to make a decision, and also, I  
3       mean from the perspective of a 401 agency, when we say we  
4       need a study, people should take that very seriously.

5               You know, we in California have authorities that  
6       are beyond the Federal Power Act that we can use, but we  
7       don't like to use those. We'd like to work within the FERC  
8       process. So you know, it would be great if FERC staff had  
9       the disagreement, to call us up and talk to us about that.  
10      That just doesn't seem to happen.

11             The other thing is FERC staff really should be  
12      watching the studies being completed as all the agency, NGO,  
13      tribal reps do. You know, if a study's going south or if  
14      we're providing comments that a study isn't being completed  
15      correctly, you know, FERC staff should deal with that  
16      actively, you know. Talk to people about that and try to  
17      resolve that.

18             It still feels like we're dealing with the old  
19      process, where FERC staff sort of sit back and wait for the  
20      application to get filed, and then deal with it. It still  
21      feels like all of us at the front end are doing the heavy  
22      lifting. So I just think that would be a huge improvement  
23      to the process.

24             MS. WEST: Thanks. Anybody else on the phone?

25             MR. DACH: This is Bob Dach. Is it my turn?

26



1 MS. WEST: Yep.

2 MR. DACH: I hate to be the naysayer on FERC  
3 involvement, and keep in mind that I love Ann Miles and John  
4 Katz dearly, but I'm not convinced that we want FERC staff  
5 at every meeting all the time throughout the process.

6 There was some good logic that went into the ILP  
7 regs, and they were the results of a lot of issues that were  
8 raised over the years on the ALP and the TLP. So for folks  
9 that are just working with the ILP regs now, it would  
10 probably be good to have some conversations as to why things  
11 were done the way they were done. Not today of course, but  
12 at some point in the future.

13 But I just, want to just put my last two cents  
14 in, that they seem to be working as they were designed. The  
15 issues that are being raised I think are issues that we, for  
16 the most part anticipated. But we felt that the trade-offs  
17 were fair.

18 So all in all, I think, you know, some clean-up  
19 on the regs might be worthwhile, but I'd second. I'd hate  
20 to throw the baby out with the bath water on this.

21 MS. WEST: Thanks, Bob. Anybody else on the  
22 phone?

23 (No response.)

24 MS. WEST: Right. So just some final slides up  
25 there, just to remind you that this going to be compiled

26

1       into an updated guide book. There's the guide book already  
2       up there, and based on all of these efforts we'll be putting  
3       a draft together with your great suggestions so far, and to  
4       remind you that this is up on the docket. We gave you the  
5       URL. You have this in the slides, and I wanted to thank you  
6       all.

7               So one other detail. I think there's a comment  
8       period. That comment period is extended until December 3rd.  
9       So if you didn't get all your thoughts in now, you still  
10      have an opportunity to provide written thoughts by December  
11      3rd. I don't know if you want to say anything, David or  
12      Ann, but I'd just like to thank everybody for a great  
13      effort.

14             You obviously took this all quite seriously, came  
15      forward with some really great ideas, and I appreciate those  
16      of you who traveled across the country, and also those of  
17      you who hung out on the phone for a long time. Any other  
18      comments, David or Ann?

19             MR. TURNER: I couldn't have said it better,  
20      other than thanks very much. We welcome your comments. I  
21      guess two things I walk away from is probably we need better  
22      communication, I think some greater clarity in some of our  
23      decisions or our positions. So we need to look at some of  
24      the options you've given us in terms of how we accomplish  
25      that.

26

1                   MS. MILES: And I would just ditto both Anna and  
2 David's comments. We really appreciate everyone giving us  
3 their feedback, and we certainly will look very carefully on  
4 what you all have said, and we will be doing the guidance, a  
5 guidance document. We certainly have some areas that I  
6 think people have asked for some clarification on, and then  
7 if there are other things that need to be followed up, you  
8 certainly will hear about it. Thank you very much.

9                   MS. WEST: Thanks. Thanks folks on the phone.

10                   (Whereupon, at 3:29 p.m., the meeting was  
11 adjourned.)

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