

1 FEDERAL ENERGY REGULATORY COMMISSION

2 PENSACOLA HYDROELECTRIC PROJECT

3 DOCKET NO: P-1494-438

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6 SCOPING MEETING

7 TRIBAL CONSULTATION

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11 Miami Tribe of Oklahoma Council House

12 2319 Newman Road

13 Miami, OK 74354

14 Wednesday, December 13, 2017

15 9:00 a.m.

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

2 (9:15 a.m.)

3 CHIEF LANKFORD: I'm Chief Lankford of the Miami
4 tribe and on behalf of the Miami Tribe I'd like to welcome
5 all the tribal leadership and representatives and FERC and
6 the government for coming here today to participate in this
7 government to government consultation.

8 I think it would be pertinent to start first with
9 a prayer so if you would (Prayer in Native language).

10 Prayer we're thankful for this day and pray that
11 you always remember our people. We ask that you would take
12 care of the people who have gone on. Creator, we ask that
13 you give us all good hearts here today as we go about the
14 business of our tribes and our nations and as we try to
15 improve things in this area and as we do go through this
16 consultation, we ask for good hearts and we ask for
17 remembrance of all the things we'd like to talk about here
18 today so that all of these things will come forward.

19 We're thankful for all that you do for us and we
20 ask you to forgive us when we do wrong. In Jesus name we
21 pray, Amen.

22 So by way of introductions I think we'll start
23 with tribal leadership and we'll work our way around the
24 table from here around to there and then we will let FERC
25 introduce themselves, the folks from there and then I think

1 we'll just get started with your -- and any opening remarks
2 that the tribal leaders would make during their
3 introductions feel free at this time.

4 MS. CLEMENS: My name is Sherri Clemens and I am
5 the THPO for the Wyandotte Nation.

6 SECOND CHIEF HILDEBRAND: I'm Norman Hildebrand,
7 Second Chief for the Wyandotte Nation. It's good to sit
8 down at the table with FERC and hopefully we can come to a
9 conclusion because GRDA has not been accountable ever since
10 they have been in existence.

11 They have not complied with Section 106 which you
12 will find out but since they've been granted this temporary
13 variance we had a flooding episode, back this last spring
14 and that's the highest I've ever seen the water down in the
15 Wyandotte area and it stayed out of its banks for a good
16 month and a half to two months and that's just not
17 acceptable.

18 I mean it places a hardship on the residents
19 there. Some of them had to wade water to get to their homes
20 and that's just not right so it's a pleasure to be here and
21 hopefully we can come to a conclusion.

22 CHIEF COOK: Good morning I'm Chief Cook with the
23 Ottawa Tribe and I want to say ditto with what Norman said
24 here but also another consideration is not only our poor
25 tribal members and their homes being devastated and their

1 lives, you also have to look at all of our business and the
2 impact it takes on us and then it turns around and it also
3 takes that impact on the state of Oklahoma for something
4 that just us working together can fix.

5 And so we really do appreciate you being here
6 today and listening with open minds and open hearts, thank
7 you.

8 CHIEF LANKFORD: Again Chief Lankford, I think I
9 can say for all the tribal leadership and tribes that are
10 represented we're only here to do what's best for our nation
11 and our people in this area and how to help ease the burden
12 of their lives and to make sure that they are able to get to
13 the necessary things -- their jobs, healthcare, get their
14 kids to school, to day care -- all of those things you know
15 are impacted when there are flooding events.

16 So you know, we're just here to make sure our
17 peoples are taken care of it's our job.

18 SECOND CHIEF OLDS: Good morning I'm Dustin Olds,
19 the second Chief of the Miami Tribe and I would just like to
20 thank the representatives from FERC who are here today
21 representing from the other tribes and the Bureau of Indian
22 Affairs also.

23 CHIEF WALLACE: Good morning my name is Glenna
24 Wallace and I'm Chief of the Eastern Shawnee Tribe. I would
25 just like to say that I'm very appreciative of the

1 opportunity to have a voice, to listen to other voices and
2 believe that we can and should reach a mutually satisfactory
3 conclusion to a problem.

4 I would also say that we are here for the
5 long-term so it will not be just today but we will continue
6 to lift our voices and we appreciate your listening.

7 MR. DUBOIS: Good morning my name is Rick Dubois.
8 I'm the Environmental Director of the Seneca-Cayuga Nation
9 and I welcome the dialogue here this morning. The
10 Seneca-Cayuga Nation's concerns with this project go all the
11 way back to the original building of the Pensacola Dam and
12 tribal trust lands that were inundated and remain
13 permanently inundated without compensation so I appreciate
14 the dialogue on this going forward, thank you.

15 MR. EMARTHLA: My name is Micco Emarthla, I'm
16 with the Seneca-Cayuga Nation where I'm an Environmental
17 Specialist. I have specialized in water for the past 10
18 years so I have extensive work on Grand Lake.

19 MR. TARRANT: My name is William Tarrant. It's
20 nice to see everyone here in good health today. I'm the
21 THPO and Cultural Director for the Seneca-Cayuga. I'm also
22 a faith healer in a long house.

23 MR. BANDY: My name is Everett Bandy, I'm the
24 THPO with the Quapaw tribe. I'm the Director of the
25 Cultural Preservation Department and I'm the eastern

1 Oklahoma resident for NATHCO.

2 MR. MCCARTY: Hello my name is Gavin McCarty.

3 I'm the THPO assistance.

4 MS. PEWITT: Hi I'm Dolly Pewitt with the Bureau
5 of Indian Affairs.

6 MR. YATES: Good morning my name is Paul Yates,
7 I'm a Superintendent at the Miami Agency. I represent the
8 Bureau of Indian Affairs and I represent the tribes that are
9 present here today and I have -- I'm one of the line
10 officials in eastern Oklahoma.

11 The Regional Director Eddie Streeter, could not
12 be here today he's at a meeting at El-Sage with the new
13 Director of the BIA, Brian Rice. He wanted me to express to
14 the Chiefs that he wanted to be here, he couldn't be here.

15 My background is petroleum and environmental
16 engineering and I'm here to ensure that the tribe's rights
17 are protected in this process as an interior official and I
18 welcome the dialogue, so thank you.

19 MR. CLEARY: My name is Conor Cleary. I am with
20 the Department of the Interiors, Office of the Solicitor
21 which is the legal department for Interior advising all the
22 agencies within Interior. I would like to echo
23 Superintendent Yates comments.

24 We are here today now for the study of the
25 relicensing of the Pensacola Project and Interior is here to

1 better understand what the project will look like going
2 forward which will help us ascertain our abilities to
3 exercise authority under the Federal Power Act in terms of
4 conditions that would be imposed on any license that would
5 be granted to the project.

6 MS. TOOMBS: Elizabeth Toombs, my name is
7 Elizabeth Toombs, I'm the Special Projects Officer for the
8 Cherokee Nation, Tribal Historic Preservation Office.

9 MR. PAPPENFORT: Hello I'm Logan Pappenfort and I
10 am the Special Projects Manager for the Peoria Tribe and I
11 am very happy to be here.

12 MS. BUTLER: Good morning my name is Raelynn
13 Butler, I'm from the Muscogee Creek Nation. I'm the manager
14 of the Historic and Culture Preservation Department -- it's
15 GRDA to be here amongst the eight nations and I look forward
16 to learning more during the consultation.

17 MS. HAYWORTH: Rhonda Hayworth with the Ottawa
18 Tribe. I'm the THPO and Historian for the tribe and one of
19 the things that we need to consider also is the natural
20 resources that get washed away during the flooding.

21 MS. MALLOY: Hi, I'm Liz Malloy, I'm the Tribal
22 Liaison for FERC and I'm the Office of the General Counsel
23 at FERC.

24 MR. BOWLER: I'm Stephen Bowler, I'm the South
25 Branch Chief at FERC which covers the southeast and I'll

1 talk more about my role in a minute but I'm very grateful to
2 everybody who has come today so we can get off to a good
3 start.

4 I'm getting all the issues out and starting to
5 gather the information to address all the issues that need
6 to be addressed in this process.

7 MS. MCNAMARA: I'm Rachel McNamara with FERC. I
8 am the Project Coordinator for the relicensing of the
9 Pensacola Project and my specialty is in land use and
10 outdoor recreation planning.

11 MR. MAHOWALD: Good morning my name is Phil
12 Mahowald, I'm with Jacobson Law Group in St. Paul, Minnesota
13 and we're here on behalf of the Miami Tribe of Oklahoma.

14 MR. HALLORAN: Good morning everybody it's good
15 to see everybody here today and welcome to all the tribal
16 leaders and federal officials. My name is Joe Halloran and
17 I'm a Principle at the Jacobson Law Group and I have been
18 working with the Miami Tribe and other tribes opposing their
19 recent variance and amendment to the rule curve for the
20 Pensacola Dam Project and we'll be working with them through
21 this relicensing process.

22 MS. LASH: Thank you good morning everyone my
23 name is Robin Lash. I serve as General Counsel for the
24 Miami Tribe and it's been my honor to serve the tribe for
25 the past 14 years and I welcome everyone here today, thank

1 you.

2 CHIEF LANKFORD: We might add that if you are
3 going to speak you need to use the microphone so that the
4 transcriber -- because this is going on the record so we ask
5 that you do use a mic if you have a question or a comment.

6 MR. BOWLER: So we're going to start with a few
7 PowerPoint slides to explain our role and our process. Wow
8 -- and I hope that this will lead to some good questions
9 about the process because it's a very prescribed process.

10 It was worked out through a large
11 group of agency and tribal interests and a lot of effort was
12 put into it to make it work for cases like this where the
13 issues and the studies could be fairly complex and there
14 needs to be a process to work through those and make sure
15 they're done in a way that serves the process and all the
16 stakeholders.

17 Just to put my group's role and context role to
18 the folks who you have meet before. We have three groups
19 that deal with hydropower at FERC. We have the licensing
20 group -- the Division of Hydropower Licensing which has 6
21 geographic branches and again I manage the southeast.

22 We have the Division of Hydropower Administration
23 and Compliance -- those are the folks that handle the
24 compliance after the license is issued. Those are the folks
25 who worked on the amendment. We're all part of the same

1 organization but we are different staff for handling the due
2 process from here.

3 And the third division is Dam Safety and
4 Administration -- I'm sorry Dam D2SI -- what is it -- and
5 Inspection, sorry. And those folks are the folks that
6 actually come out and look at the dams and do the inspection
7 and work on the safety issues.

8 So the three divisions work together but we are
9 now in the phase when the hydropower licensing group is
10 taking over this process and I have a staff of 10 -- most of
11 them are on this project because it is so big and we also
12 have consulting support.

13 And part of it is because of the potential
14 complexity of this project and part of it is because this
15 process -- it's a fast train once it starts moving and we
16 need to be staffed up to meet these deadlines that we are
17 going to talk about later.

18 To get back to the agenda -- we're going to be
19 discussing the purpose of the project relicensing and
20 relicensing timeline. We'll talk generally about the
21 timeline at first so it is not to be too overwhelming but we
22 have a handout with details of the timeline as it is set
23 today.

24 We want to hear the issues of interest and
25 concern to the effected tribes and to all of you and discuss

1 the best way that those concerns can be addressed in the
2 process and the information to study those and address those
3 concerns can be gathered, okay Rachel.

4 So the process starts when the license is coming
5 up towards expiration 5 to 5 years before that time the
6 applicant is to file a Notice of Intent to relicense and a
7 Pre-Application Document.

8 GRDA did this and then we decided -- the
9 Commission decided that because of the potential
10 complexities of dealing with the amendment of the same time
11 as the relicensing to put the relicensing into abeyance
12 until the amendment was issued or resolved.

13 And then we had an issue with a quorum. We
14 didn't have enough Commissioners for a time to finish the
15 process so --

16 (Question off -mic).

17 MS. MOLLOY: So I'm not sure of the exact
18 question but I will -- but, but, so what I will say about
19 the amendment versus this relicensing. So the amendment
20 process is a process that's narrow in scope and so the
21 Commission looked at a narrow area in reviewing the
22 application and the proceeding for the amendment.

23 This relicense proceeding is much broader -- we
24 look at all issues that are raised, we look at all balancing
25 of everything for the whole project because it is a

1 relicense. It's not focused on one small area so the
2 difference here is that we will be looking at all the issues
3 raised relating to whether or not to issue a new license to
4 the applicant.

5 MR. BOWLER: While we are part of the same
6 organization I do want to emphasize that this is a different
7 and fresh process and actually further down in the slides we
8 will talk more about the National Historic Preservation Act
9 Process.

10 (Off mic-question)

11 MR. HALLORAN: To be clear I think the answer is
12 more simple than what you just heard which is that the
13 tribes argued that Section 106 required a historical
14 resource survey as a pre-condition to the granting of the
15 amendment which raised the rule curve which had an effect
16 and it continues to have an effect on people up dam.

17 FERC concluded that it was not going to require a
18 Section 106 for "such a short period of time". So we view
19 the amendment -- I view the amendment, to have been granted
20 in willful violation of federal law and I think it informs
21 the position of the tribes here today as to what you will
22 require be done as part of the Section 106 in relicensing.

23 Because the promise was that we would kick the
24 can down the road and we'll do a full 106 in the relicensing
25 proceedings so I put that on your radar to remind you that

1 we begged in pleadings for 18 months to compel compliance
2 with 106 and FERC refused to require that compliance and so
3 we will expect a full basin of 106 surveys as a part of this
4 process just to give you a little context.

5 MR. BOWLER: And that is built in to the process.
6 So getting back on track with the schedule -- after the
7 amendment was issued we then set a schedule to restart the
8 integrated licensing process for the relicensing.

9 And so on January 12th we will restart that
10 process by issuing the documents that commence the IOP and
11 we'll talk more about what happens in that schedule beyond
12 that in the next few slides.

13 So basically the relicensing process comes in two
14 parts and the first part is what I am most concerned about
15 today -- is getting the information and the studies
16 determined to address the issues out and the studies
17 determined to address those issues.

18 And we're here to consult with you today and
19 we're here to get some of those issues out on the table.
20 There will be more opportunity for that within the process,
21 within the scoping process and there's going to be an
22 opportunity in the pre-filing before the license application
23 comes into to define and request studies, to negotiate on
24 what those studies should be, to -- and then the applicant
25 will, based on the work that you do together on identifying

1 studies and ultimately the Commission's decision where you
2 don't come together on what studies need to be done.

3 The applicant will do those studies, gather the
4 information and prepare an application for the relicensing.
5 So this phase is get the issues out, work on the study,
6 request studies, work on coming together on studies to the
7 degree that's possible, a Commission determination on the
8 studies where things aren't resolved and also if something
9 didn't comport with the FPA Federal Power Act, we have to
10 review all of that.

11 The study determinations and the applicant will
12 do the studies and then that information will go into the
13 application.

14 The first application process is quite different in the
15 sense that we are more in the driver's seat in terms of
16 we're taking comments on the application, we're preparing
17 the environmental document, we're taking comments on the
18 environmental document and then ultimately the Commission
19 will issue a licensing decision and again that would come
20 with conditions based on the license that will come out with
21 conditions based on the information that was in the
22 application and discussed in the environmental document.

23 So again January 12th we will issue a notice
24 commencing the proceeding which will include a request for
25 scoping comments that will be asking you to define the

1 issues that need to be scoped and studied. And it will also
2 request the actual study that you propose.

3 The first set of study proposals were in the PAD,
4 pre-application document provided by the applicant but the
5 next phase will be tribes and other stakeholders -- other
6 federal and state agencies and other stakeholders.

7 Requesting studies -- the applicant will assign
8 to those requests. There will be a negotiation process and
9 ultimately a determination by the Commission.

10 CHIEF COOK: I have a question regarding the
11 negotiating process, can you explain that a little?

12 MR. BOWLER: Yes, so the applicant -- well can
13 you say who you are for the record?

14 CHIEF COOK: I'm sorry, Chief Cook with the
15 Ottawa Tribe.

16 MR. BOWLER: Thank you. That process is run by
17 the applicant but we participate in it and it will be a
18 series of meetings. It's really one meeting but you can
19 have other meetings in the process but one is required in
20 the process and we can go through those details later but
21 basically you propose studies, they package together a
22 response which is a study plan and then they get comments
23 and you have a meeting -- or more than one meeting if you
24 want to, you can work that out with them.

25 And then they do a revised study request. There

1 can be some more comments from certain stakeholders and then
2 we issue a study determination which basically goes through
3 all of the studies that the applicant has proposed in that
4 revised study plan and we either adopt them, we modify them,
5 we replace them with those studies.

6 And as one of my colleagues says, we call balls
7 and strikes at that point.

8 MS. MOLLOY: We also consider in making that
9 determination other proposals -- other requests that people
10 have made of studies, even if they are not included in the
11 applicant's final proposal if they have been proposed or if
12 we recognize that we need some information that wasn't
13 proposed we can require the applicant to do studies, you
14 know, that we find are necessary.

15 So the office director will make a decision, you
16 know, on the minimum studies that we would require.

17 CHIEF COOK: To get a straight, you know, picture
18 in my head the applicant you're talking about is GRDA?

19 MR. BOWLER: Yes.

20 CHIEF COOK: And the interested parties who might
21 some of them be?

22 MR. BOWLER: So it's going to be the tribal
23 tribes.

24 CHIEF COOK: Okay.

25 MR. BOWLER: The state and federal agencies.

1 CHIEF COOK: Okay.

2 MR. BOWLER: And any other private citizen or
3 group that wants to comment or city.

4 CHIEF COOK: Thank you very much.

5 MR. BOWLER: And we're going to go to the
6 criteria in a couple of slides for those studies. So then
7 the studies are due with everything else on March 13th so
8 that's really critical the study requests come in and that
9 they be timely and well-defined because that's going to be
10 the initial information that we're going to be working from
11 the rest of the way through.

12 So it's identifying the issues in the scoping --
13 in response to the scoping document and requesting studies
14 -- that's a critical step. And then I'm going to go through
15 the criteria and we can look at the schedule in more detail.

16 There are 7 criteria that the Commission
17 evaluates in study requests and these are -- if you want to
18 address these in the study request and basically explain how
19 your study request meets those criteria and that will help
20 us in interpreting, especially whether disputes about
21 different approaches to study something that will help us
22 determine, you know, which way to go or whether there's
23 something where we can sort of combine two approaches into
24 one or something like that.

25 So the first thing is just finding the goal of

1 the study and the objective -- clearly identifying what the
2 information that's going to be obtained from that study is.

3 And the second point is for the tribes and the
4 agencies to explain how it ties into their management goals.
5 This is -- and then if there's a request that there's not a
6 resource agency which isn't applicable here or a tribe, it
7 would be to explain public interest.

8 But in your case the tribes would be --

9 CHIEF COOK: There might be both.

10 MR. BOWLER: There might be both yes. But when
11 the tribes are speaking as the tribes it will be explained
12 there how it fits with their management goals.

13 The next thing -- the fourth one is basically a
14 question explaining why the existing information on the
15 record is not sufficient and why the information that is
16 being requested in the study request is needed -- why that
17 additional information is needed relative to whatever
18 exists.

19 Basically, what's the benefit of doing the study
20 in terms of new information? And then the next one is
21 critical -- the fifth one is the one that probably the most
22 study requests are denied or severely modified is the nexus
23 between project operation and the requirements that there
24 could be in a license.

25 So we have a certain jurisdiction -- our

1 authority goes to a certain extent. If a study is proposed
2 that would have fascinating results that could be really
3 important for some research use but it is totally outside of
4 our authority to enforce it.

5 We can't require an applicant to study something
6 if we can't exercise a requirement for them to comply with
7 something in the end.

8 So that's a critical one that would be tied to
9 something that's under our authority to enforce.

10 CHIEF LANKFORD: Is it under your authority to
11 enforce the amount of flood pool? Is that under your
12 authority to request a study be done to -- I mean I don't
13 see how you can -- I guess my question is do you license the
14 flood pool?

15 MS. MOLLOY: So what I would suggest there is an
16 issue I think on some authorities but I would certainly
17 raise the issue of flooding as a study and explain that the
18 operation of the project can -- and that would be probably
19 something I mean we'd look at.

20 So that one criteria -- just explain how you
21 believe it does -- and the one thing that Stephen hasn't
22 mentioned here is we encourage you to participate by
23 providing studies. We are still going to look at issues on
24 our own.

25 We'll be looking for studies that will address

1 things for concerns but to the extent you have ideas or what
2 you would like to see we encourage you to participate and
3 file -- you don't have to but we think it would be helpful
4 and useful to hear your views and ideas of what should be
5 studied.

6 CHIEF LANKFORD: I don't believe it's the tribe's
7 obligation to provide these studies because the tribe
8 doesn't generate any income from a flooding event. It's
9 only an expense for the tribe. The only person -- the only
10 group that benefit from flood event is the GRDA.

11 So that's what we are asking to be studied are --
12 what are the effects of flood events and water in the flood
13 pool and the only group that has a benefit from that event
14 would be GRDA and therefore I believe that they are
15 responsible to do that study not the tribes.

16 MS. MOLLOY: So all of these study requests are
17 for what we direct the applicant -- the licensee to do for
18 studies to file with their application. So what we're
19 asking in asking for study requests is what studies would
20 you like the applicant to do.

21 CHIEF LANKFORD: Okay.

22 MS. MOLLOY: And it's explaining -- and this
23 criteria isn't for this particular project it is for all
24 projects so it may not read quite the way you would see
25 questions we would ask on this particular project but this

1 is when we designed the rules for all of our relicenses --
2 all of our licenses, this is sort of a consensus that
3 agencies, tribes and various who are participating came up
4 with how to capture, you know, why someone looking for a
5 study, explaining sort of the purpose so that gives context
6 to a study.

7 There's also a couple of more things about what
8 kind of level so some people might want a study but they are
9 not clear on say, well I just wanted, you know, just a back
10 of the envelope thing and the licensee or applicant might
11 think they wanted you know, from time and memorial forward
12 but in fact they were looking for something different than
13 what was assumed.

14 So that's why we ask for -- sort of why are you
15 asking, what kind of scope are you looking for and this
16 helps us to make the overall call. But you certainly aren't
17 required to. This helps us sort of try to match with all
18 the different studies that come in and are requested to come
19 up with a plan for the applicant to fulfill.

20 SECOND CHIEF OLDS: I have a question along the
21 same lines. This is Second Chief Olds. In regard to the
22 studies and this is the first time I've been through this
23 process to so when you say something is out of your scope to
24 enforce that seems like it really narrows the number of
25 studies.

1 I mean if you have no enforcement authority over
2 something to do with maybe the Endangered Species Act, it
3 almost sounds like your saying that those studies related to
4 endangered species would be thrown out and I'm having a
5 little bit of difficulty with that.

6 Another thing is because of some studies -- the
7 limited number of studies that have been done through the
8 years for instance maybe an entity up in this area has a
9 world class organization do a study and then GRDA called
10 them a Mickey Mouse organization and that the study is
11 invalid.

12 So it seems like you need to consider who is
13 choosing who does the study because depending upon what side
14 you are on it might look to us well if GRDA gets to pick who
15 does the study how can we trust the results because -- and
16 by the same token they have the same questions.

17 So I mean does that make sense?

18 MR. BOWLER: Yes, maybe one big context point I
19 should make is that we're required under the statute to do
20 an independent analysis and when we're looking at the study
21 determination which the studies are to be carried out by
22 GRDA -- we have to make sure that the study techniques and
23 the study approaches and the methodology and the
24 qualifications of the people doing them are up to a point
25 where they will produce results that we can look at and

1 apply our analysis to.

2 And that they are transparent enough that we can
3 take them apart and look under the hood and make sure they
4 are done properly and that the assumptions are laid out and
5 that the error margins are at least estimated and that type
6 of thing.

7 So that's part of the bigger context and then as
8 Liz was pointing out I would say if it is unclear to you
9 whether something is under our jurisdiction I would lean
10 towards asking -- but what I would say is keep that lens in
11 mind for things that are real outliers from our range of
12 authority because it will save you energy and you can focus
13 on things that are closer to so --

14 SECOND CHIEF OLDS: So If I understand you right
15 there's at least some degree of adding by FERC of who the
16 organization is or the company who conducts the studies and
17 is there a process by which the licensee and effected
18 parties can at least say well, okay, you know, we can live
19 with this entity and that entity.

20 MR. BOWLER: It might be more general but that's
21 the type of thing you can consider in your study request as
22 well. That you think a study should be done by people with
23 a certain level of qualification or something like that.

24 SECOND CHIEF OLDS: Okay.

25 MR. BOWLER: And to address one more thing

1 quickly the Endangered Species Act, National Act, we're
2 required to comply with those and they're basically
3 addressed in the process and all of these points -- most of
4 these points in the process that we talk about have
5 requirements to provide the information to help us meet
6 those statutory requirements.

7 CHIEF LANKFORD: Is there a way that we could in
8 this process -- that's what this process is to get to a
9 licensure. I think that I have to say on the record that
10 the Miami Tribe fully believes that there needs to be a
11 license granted to GRDA for the operations of this lake.
12 It's a very important -- this lake is important to our area.

13 It's tourism, it's flood control downstream even
14 though it doesn't seem to help upstream, but it is flood
15 control. I mean this lake is important to this area and I
16 do believe there needs to be a license granted.

17 But in this licensing as we go through this
18 license is there not a way to vet -- to go ahead and talk
19 through these interested parties to make sure that okay, we
20 agree yes, this study needs to be done and here's who we
21 would like to see and at least work our way to get to where
22 all sides agree, because that is what this is about -- is
23 getting all sides to agree that things are done right so
24 that this license can go forward and be granted.

25 And so, you know, that needs to be part of this

1 process. It's finding the right people to do the identified
2 studies that we all agree on. I know one of their studies
3 is from a grad student and it is just not even comparable to
4 the study that the city had done by Tetra Tech. It's not
5 even the same.

6 So I think those things have to be worked through
7 as we go through this process is what needs study and who's
8 going to do it by all parties involved or it's never going
9 to work right.

10 MR. BOWLER: I said some more cryptically to
11 Chief Cook a few minutes ago that there's requirements for
12 the study meeting in the process but there's also the
13 opportunity to meet outside of those required meetings all
14 you want, and you could start now.

15 If all the GRDA and the various interests in the
16 city of tribes want to have those discussions then of
17 course, the closer you come into agreement, the easier it
18 makes our job but it also could lead to people -- everybody
19 getting a benefit in terms of meeting their interests, so
20 that would be encouraged.

21 And we will look at that and encourage that but
22 there's also an aspect of that that can be done in meetings
23 beyond the required meetings.

24 CHIEF LANKFORD: The Tetra Tech study we believe
25 is a very well done by an organization and we believe that

1 that same study can be used beyond the Spring River
2 watershed and also the Elk River watershed. That's the only
3 way that that FERC is going to know what the impacts are and
4 to once and all finally prove pack water -- that GRDA will
5 not acknowledge that a bit and it is a fact.

6 It's known by the Corp, you -- FERC itself has
7 noted backwater flooding -- it is real. It's not a mythical
8 unicorn, it's a real event that happens. You can stand in
9 this town and watch water go backwards, that is an event.
10 There's no denying that it's not a flow that-a-way it's a
11 flow this-a-way.

12 And it builds up from the back -- it builds up
13 backwards. And so until -- they're never going to agree and
14 that's why I believe this interaction needs to go from us to
15 you to them. You're going to have to be the referee in
16 this.

17 The Bureau -- when we do a land and a trust
18 application, they require that we do environmental studies
19 in all of these things and no, we're not going to get that
20 land into trust until we comply with what they say has to be
21 done.

22 And it should be no different here. You have to
23 develop a set of criteria, not leave it to the applicant,
24 not leave it to us. There should be a set of criteria that
25 you need to study, you need to know, what is the backwater

1 event? Is it real?

2 If you can't answer the question to me yes it's
3 real or no, it's not. If you can't make that statement
4 there's a problem because you haven't studied it.

5 MR. BOWLER: And the Director of the division or
6 office that is will make the study determination at the end
7 of the study negotiation process and that will be the
8 decision on making sure that what information we need is
9 going to be collected.

10 SECOND CHIEF OLDS: I just had one little quick
11 addition to that. Do you have a peer review process so that
12 after studies are done both sides can have a higher comfort
13 level with them because there's a very good peer review
14 process?

15 MR. BOWLER: I'd say two things to that -- all
16 sorts of things can be considered in designing a study in
17 terms of how the information is developed and reviewed. But
18 also I would say is that everything we do is done -- almost
19 everything, with a couple of exceptions I think Rachel
20 ctalked about is public.

21 And it's in the public record and anybody can
22 review it and criticize it, praise it and suggest
23 modifications so this is sort of an opportunity for review
24 for everybody and how the studies are designed can affect
25 that as well.

1 SECOND CHIEF OLDS: Okay.

2 CHIEF WALLACE: I have a question -- Glenna
3 Wallace, Chief of the Eastern Shawnee Tribe. Like Second
4 Chief Olds I'm new to this process and it's a little bit
5 intimidating. I'm not quite sure of the ground rules and so
6 when we talk about a request for a study my question is how
7 many people can make a request?

8 Are we limited to the 9 tribes as one request or
9 can each tribe make a request and can individuals make a
10 request?

11 MR. BOWLER: Yes.

12 CHIEF WALLACE: Yes to all of those?

13 MR. BOWLER: Yes to all of those.

14 CHIEF WALLACE: Not limited -- so the first
15 question I think was were you limited -- no.

16 MS. MOLLOY: This is Liz. There is no limit. It
17 can be jointly as many tribes as desired or individually
18 individual persons -- anyone can file a study request. You
19 know we ask that the criteria sort of be followed but then
20 we will look at them all and we have the applicant also look
21 at them all and try to come up with something that tries to
22 address those issues, but we also look at all of them.

23 But it can be individually or separate, different
24 issues, same issues.

25 CHIEF WALLACE: Alright and then two simple

1 comments following up on Chief Lankford of the Miami Tribe.
2 GRDA is very important to all of us and we're not for one
3 minute saying that they should not have a license or that we
4 wish they weren't in existence -- no.

5 This area GRDA is a very, very important entity
6 that we're proud of we just happen to have some differences
7 on certain issues. And I would say I'm a simple person.
8 GRDA to me means Grand River Dam Authority and Grand River
9 is two rivers. It's Spring River and Neosho River.

10 I'm on the side that's affected by Spring River
11 but there has never been a study. So how can we say there's
12 been a study on GRDA -- the Grand River when it has not
13 happened? So how many requests can I flood you with to say
14 we need a study on Spring River?

15 MR. BOWLER: One good one.

16 MR. EMARTHLA: Good morning, I'm Micco Emarthla
17 of the Cayuga Nation and I was following the question of
18 Second Chief down here and you basically gave a description
19 on the validity of the studies in the meantime.

20 You described a QAQC process -- quality
21 assurance, quality control process. Is there a place where
22 we can go -- is that published online anywhere where we can
23 see what steps you take and for our own leadership and our
24 own knowledge can be more at ease with the way these are
25 handled?

1 Is there a place where we can go to see where
2 that's published -- where those quality assurance plans are?
3 And is there a route that the tribes have to challenge the
4 validity of those findings?

5 MR. BOWLER: Yes, so a specific QAQC plan would
6 be -- if that was to be built into a study that would be
7 defined as part of a study.

8 MR. ENMARTHLA: No sir, I'm talking about what
9 you described.

10 MR. BOWLER: Okay.

11 MR. ENMARTHLA: You described that you, as an
12 agency, dictate and oversee what GRDA and who they use and
13 how they conduct a study because they can choose -- express
14 that we were worried about the validity of their choosing
15 their people.

16 So what I'm asking is you described a QAQC policy
17 in place by FERC for those studies and I'm asking is there a
18 place that we can go to see what the QAQC policy is?

19 MR. BOWLER: Yes so whatever -- is built into the
20 study would be in the study and be in the results and then
21 we have a public and docket system where all the --
22 everything we do goes up on the public record and you can
23 review that and you can comment on it.

24 And our environmental document will explain our
25 logic and how we interpreted the study results and you can

1 -- you'll have an opportunity to comment on the draft
2 environmental document and comment on our methodologies, the
3 methodologies that we reviewed and how we reviewed them and
4 all of that.

5 MR. ENMARTHLA: So that sounds like you're
6 describing a QAPP -- a quality assurance project plan and
7 that's what we get to comment on but there is no policy
8 prior to that that instructs GRDA to follow these rules when
9 completing the study, that's my understanding.

10 MR. BOWLER: One of the study -- actually the
11 next study criteria is the study proposal demonstrate that
12 it is using state of the art methodology. So that's build
13 into the regulations. Beyond that I wouldn't say it's as
14 specific as defining exactly what type of quality plan needs
15 to be in place.

16 We have to do an independent analysis. We need
17 to document that independent analysis. In our own
18 independent analysis we will look at the quality of the
19 studies. You have access to the studies to look at the
20 quality of the studies.

21 You have access to our record of how we interpret
22 the studies and you can comment on that. So it's not
23 necessarily a specific every time we do this quality
24 assurance protocol but there's a lot of opportunity built in
25 to evaluate and make sure that the quality information is

1 being used to make the decisions.

2 MS. MCNAMARA: I believe that you're asking what
3 FERC staff and our Director does in determining which
4 studies are being done and how those studies are being
5 conducted.

6 And what I would add to what Stephen has said in
7 terms of all of the studies in the reports and things that
8 go on the public record -- but before we do that our study
9 determination and that for this project will be issued at
10 the end of September will lay out a list of all of the
11 studies that were requested, all of the studies that GRDA
12 proposed and then for each individual study we make a
13 determination on it.

14 So we will say, you know, study one proposed by
15 GRDA we're adopting as is or study two we're modifying
16 because and then we will explain why and how we're modifying
17 it, or study three -- we're rejecting this and why we're
18 rejecting it.

19 So that document will contain the list of all of
20 the studies that need to be done and how they will be done.
21 So we will have a study plan and then it will say what's
22 going to happen for each of those studies so you will have a
23 document -- a decision document that provides that
24 information.

25 MR. BOWLER: And during the study process at the

1 end of the first year there's a study meeting which
2 everybody can participate and if a study is more than one
3 year you can discuss the result -- you get to read the study
4 report before it becomes final and comment on the study
5 report.

6 And under certain circumstances there can be
7 modifications. There's some regulatory requirements for
8 that -- it's not just because you are curious but if there
9 is a weather problem or new information that comes out of
10 the first year of studies and a modification is needed.

11 So there's participation from the tribes and
12 others in the study process which would also, I think, allow
13 you to address quality issues.

14 MR. EMARTHLA: Is there a route that tribes can
15 follow to challenge the validity of studies?

16 MR. BOWLER: Anything that we can do you can
17 challenge the validity of and anything that's in our public
18 record.

19 MR. EMARTHLA: Thank you.

20 MR. BANDY: FERC has a habit -- excuse me this is
21 Everett Bandy with the Quapaw Tribe and as I mentioned
22 previously I'm the THPO so my primary concern is Section
23 106. The Quapaw Tribe has many other concerns though but
24 just touching on that because we're talking about studies,
25 FERC has a habit of doing an EA and then issuing a decision

1 and in doing 106 it's just sort of a checklist inside the EA
2 which is not in keeping with the Section 106 -- with the
3 requirements of 33 CFR -- excuse me 33 CFR 800.

4 And it sounds like that's what you're saying
5 you're going to do here. That you are going to do a study
6 that's going to look into environmental effects, the study
7 is going to look into historical effects and you are going
8 to sort of issue a broad determination which has kind of
9 been what you have done in the past and that kind of
10 concerns me because it doesn't really give a thorough look
11 at the historical facts of the effects that this project may
12 have on historic properties.

13 And I could tell you right now it is within our
14 jurisdiction quite a bit to significant effects. So I'm
15 just kind of curious is that what you are saying you are
16 going to do? You are going to do an environmental study and
17 a history study and you are going to lump all of this into
18 an EA and that's what we're going to be commenting on?

19 MR. BOWLER: Give me one second to just think
20 about how we can have -- yeah we have a whole section on
21 this so I'm going to do the last criteria and then Rachel
22 will skip ahead to the slides on the cultural resources.

23 MR. BANDY: Okay if my question is too soon we
24 can discuss it later.

25 MR. BOWLER: We can come back to these other

1 ones. The last criteria is basically just defining the cost
2 of the study so if there is a way to do it -- if one party
3 is recommending a study that is half the cost of another
4 proposal and they get the same information obviously that
5 would -- we would favor the less expensive one.

6 If it could be shown that they have the same
7 information so that's the last criteria. That covers the 7
8 criteria. We can talk about them more later but let's go on
9 to the --

10 MS. MCNAMARA: GRDA, I'm going to walk down so I
11 can PowerPoint and discuss cultural resources and study
12 requests at the same time. So as I introduced myself
13 earlier I'm Rachel McNamara and in addition to being the
14 Project Coordinator I'm also going to be handling the
15 Section 106 compliance as part of this project.

16 I told you all earlier that my background is in
17 land use planning and that we also have an archeologist who
18 is going to be also on the project team for this so even
19 though those aren't my qualifications, we do have that staff
20 support.

21 So what I can do in terms of the existing
22 cultural resource information is provide an overview of what
23 GRDA contained in their pre-application document -- that's
24 the PAD.

25 And so I'll discuss that briefly and then I'll talk through

1 how we're going to handle Section 106 in the relicensing.

2 So GRDA's PAD contained just a brief cultural
3 history overview and then their existing measures for
4 protecting and managing historical properties and so the
5 only requirement for protection of historic properties right
6 now that they have in their license is the inadvertent
7 discovery provision that we place in all licenses.

8 They also filed -- when they filed their PAD a
9 separate document that was labeled privileged so we used the
10 privileged classification for information that contains
11 sensitive archeological site locations as well as endangered
12 species locations.

13 And so that information is not available to the
14 public but it would be distributed to interested and
15 affected tribes and entities like the SHPO or the
16 archeological survey -- things like that that need that
17 information.

18 So if there's ever an issue with a tribe having
19 access to a privileged filing -- definitely contact me and
20 let me know if you need access to something. It's also good
21 to work with GRDA directly because they provide that
22 information to you but again I'm a good point of contact for
23 privileged information.

24 So the privileged filing contained just basically
25 an assessment of what existing known resources were within

1 one mile of the project boundary. So they listed 195
2 archeological sites, 76 of which were within the project
3 boundary, 8 historic architectural properties or historic
4 districts, only one of which was in the project boundary --
5 that's Pensacola Dam and then 150 historical sites that were
6 on the Oklahoma's landmark's inventory.

7 And so those are there -- that's the extent of
8 the existing information that they provided us in the past.

9 MR. BANDY: Who are they?

10 MS. MCNAMARA: GRDA.

11 MR. BANDY: I have two questions as well. When
12 you keep saying project boundary -- there is no such term as
13 project boundary within Section 106?

14 MS. MCNAMARA: I understand.

15 MR. BANDY: There's a project -- excuse me an
16 area of effect and then there's the project area. When you
17 are saying project boundary do you mean in the area of
18 potential effect as determined in consultation with the
19 State Historic Preservation Office or do you mean the dam --
20 what are you referring to?

21 MS. MCNAMARA: So FERC for its purposes has
22 what's called a project boundary and that's the -- it's
23 essentially the area in which they need to have -- they
24 being GRDA needs to have rights to operate the project.

25 And we understand that that's not always --

1 MR. BANDY: That's one mile from the dam.

2 MS. MCNAMARA: What was that?

3 MR. BANDY: So you're saying one mile from the
4 dam?

5 MS. MCNAMARA: No, it's actually going to be a
6 one mile radius all the way around the entire reservoir
7 essentially.

8 MR. BANDY: Oh the reservoir, which is not even
9 close to the area of potential effect?

10 MS. MCNAMARA: I understand that so I'm going to
11 go to my next slide which is on area of potential effects.
12 So the Advisory Council and the Commission have worked out
13 the general description of an area of potential effects for
14 hydro projects but we often modify that and make it more
15 specific for individual projects.

16 So at this point GRDA has proposed that the area
17 of potential effects for Section 106 purposes is all lands
18 within the project boundary -- that's that area around the
19 reservoir and any lands outside of the project boundary that
20 may be affected by project related activities conducted
21 under the new license.

22 So that's where --

23 MR. BANDY: That's a great general description
24 but you actually have to have a geographically defined area
25 and then it has to be confirmed with the SHPO in

1 consultation.

2 MS. MCNAMARA: I understand that.

3 MR. BANDY: When will that occur?

4 MS. MCNAMARA: So at this point in the PAD that
5 GRDA filed they asked for input on their -- on their APE and
6 so that could be provided during scoping comments or in
7 conversations directly with GRDA but then we would make sure
8 that they were then consulting with the SHPO, with the
9 affected tribes to accurately define the project -- to
10 define the APE for purposes of Section 106.

11 MR. BANDY: So it has been sent to the SHPO?

12 MS. MCNAMARA: Well they received the PAD. I'm
13 not sure at this point GRDA has requested concurrence on the
14 AP. At this point they're just looking for input on what
15 the APE is.

16 MR. BANDY: Okay because I would -- I have yet to
17 see a map for the land that we have on Spring River that
18 will be affected and you have to start with the SHPO but
19 then tribes that have trust land that will be affected have
20 Section 101D-2 authority over that land.

21 And I have not seen such a map so I can't concur
22 with your area of potential effect until I see a map.

23 MS. MCNAMARA: And we haven't asked for
24 concurrence on the potential effects yet. We're preliminary
25 to that. That's one of the reasons why we want to have

1 discussions about that. We would like to just start
2 outlining areas that are of interest so that we can define
3 the AP in a more specific way with a map so they can be
4 provided to the SHPO so they can be provided to the tribes.

5 But at this point this is our first attempt at
6 reaching out and saying, "What exactly needs to be within
7 that APE for cultural resources and for meeting the
8 requirements in Section 106?" So we are at the very first
9 step of that.

10 (off mic talking)

11 MS. MOLLOY: So, we're at the beginning and we're
12 trying to identify what that APE would be so to the extent,
13 you know, any information that would aid us would be good
14 also aiding the applicant.

15 What we're going to be looking for now is what
16 studies need to be done to fill in any gaps of information
17 so helping us identify where studies should be done or what
18 areas we would certainly welcome.

19 MR. BANDY: I guess I hear what you're saying but
20 it's kind of like you're approaching historic preservation
21 -- the natural historic preservation's process backwards is
22 what I'm trying to say.

23 You are supposed to define this area, bring it to
24 us and we say yes that's the area then you study it. How
25 can we say you should study this area when we haven't even

1 seen a good map saying this is what you think it's going to
2 affect and then we can say we agree on it.

3 There's a four step process when you do Section
4 106 reviews and you're kind of like getting out of order.

5 MR. YATES: This is Paul Yates, Superintendent at
6 the Miami Agency representing the Bureau of Indian Affairs.
7 Our regional office realty department has worked with GRDA
8 and we have transferred some data files to them to develop
9 the maps. Do you have a representative from GRDA here today
10 or have you been briefed on the progress of that mapping
11 project?

12 Because that's one of our main concerns -- what
13 is the impact to trust from restricted property?
14 Additionally this could be taking action, it will reduce the
15 jurisdictional area of the tribes. Has there been any
16 discussion or consideration of how to mitigate or compensate
17 the tribes for the loss of jurisdictional area?

18 That in essence is the Bureau's concern at this
19 point.

20 MS. MOLLOY: So GRDA is not here today because
21 this is a meeting that was not designed to be with them.
22 And we are at the very beginning of what we call pre-filing
23 -- so, one of the things about pre-filing as we've been
24 discussing -- we don't have an application yet for a
25 proposal -- that's still in development.

1 So we are trying to gather information that the
2 applicant is actually gathering that will provide a full and
3 robust application that we can review and provide all the
4 information that we can use to assess what needs to be done
5 for all the different interests, including tribal interest
6 both cultural and flooding and any other issues.

7 So we're right at the beginning trying to seek
8 input so that we can help -- so we can help the applicant
9 and us ultimately in having enough information to make a
10 good decision. So balancing all the different things we
11 need to, so at this point we don't have everything we need
12 because it isn't quite finite yet but we are looking to make
13 sure that we kind of capture everything we need to.

14 So we're asking both the applicant who put
15 together existing information which in some cases might be a
16 lot, might be not a lot but so we can see where we need
17 information, where we need improved mapping or other things.
18 So that's why we're sort of exploring -- I'm not exactly
19 positive about where everything is because it is still sort
20 of in development.

21 I don't know if that helps but I just wanted to
22 say that's sort of where we are.

23 MR. HALLORAN: This is Joe Halloran, Miami Tribe.
24 I think there are a couple of things. The point is well
25 taken that the area of potential effect is out of order but

1 I think even in the description quoted in this slide from
2 the PAD has embedded in it a couple of inherent problems.

3 Number one is there has never been a proper
4 description of the project boundary. It's been short by --
5 since 1940 it's been acknowledged to be short by in excess
6 of 30,000 acres. So there will have to fundamentally be a
7 re-visioning of what the actual project boundary of this
8 project was all along and that will affect it.

9 And the other qualification it seems classically
10 GRDA sneaky is to qualify this by having an effect by
11 project related activities. Well they have never
12 acknowledged project related activities that are captured by
13 the license.

14 So I think project boundary, project related
15 activities in the area of potential effect all have to be
16 resolved before we can really figure out -- I think these
17 two terms need to be resolved before we can even figure out
18 a proper area of potential effect and I think that needs to
19 be done before the SHPO will know what she can even consult
20 on. So that feels to me to be out of order.

21 MS. MCNAMARA: Alright I know that there's a lot
22 of overlapping issues and that part of our process is trying
23 to address all of those issues on a timeline that gets to a
24 new license in 5 years.

25 And so there are issues -- the project boundary

1 is something that we will look at in relicensing. The flood
2 issues are things that we will look at in relicensing. The
3 effects on this to our properties are things that we will
4 look at in relicensing.

5 We have to follow our process because they are
6 the rules that FERC operates under. I understand that
7 Section 106 we are obligated to fulfill the requirements of
8 Section 106 and that that involves first defining the APE,
9 second defining the properties that are present within the
10 APE.

11 Third, defining the effects on the properties
12 within the APE; fourth defining how we are going to mitigate
13 or compensate for adverse effects on historic properties --
14 that is the process and we will hit on all of the components
15 of that process but where there are things they question --
16 for example the project boundary, the extent of project
17 effects.

18 To be able to do those studies in a timely manner
19 so that we can get to a license application that's filed
20 with complete information we are going to have to come up
21 with an APE that is sufficient early on in the process.

22 An APE that the SHPO and the tribes can concur
23 with early in the process and so that's why we are really
24 reaching out today and it's really important for us to
25 understand those lands that are of interest that we should

1 consider looking at as part of our cultural resource, you
2 know, studies and things like that because we're moving on
3 this timeline that is established by our regulations that we
4 have to, you know, keep on that schedule while fulfilling
5 the requirements of things like Section 106 and the
6 Endangered Species Act and all of the other regulations that
7 we have to kind of meet the requirements.

8 So what I will say is that I am aware of the
9 Section 106 process and the requirements to meet the Section
10 106 process and so that's why we are here and we are asking
11 what are those lands that need to be enclosed within the APE
12 so that we can do the studies of the correct areas and
13 having that information be provided to us and be provided to
14 GRDA will help us to fulfill those requirements in a timely
15 manner.

16 CHIEF LANKFORD: The cart is before the horse
17 unfortunately. Without the study -- the Tetra Tech study,
18 we can tell you over here but the Peoria's can't tell you,
19 the Buffalos can't tell you, the Eastern Shawnees can't tell
20 you because no study has been done. The cart is before the
21 horse.

22 How can you even know what the project boundary
23 is that they ask for if they don't provide such a study to
24 show the impacts of -- you have an operational area, the
25 boundary you call it, that you license them to generate

1 electricity.

2 Do you also license the boundary outside of that?

3 So when they're buffed have you licensed to 745 -- that's

4 the license and that's the pool that you license correct?

5 Is that correct?

6 MS. MOLLOY: I believe so.

7 CHIEF LANKFORD: Because where I'm going with

8 this is do you also license above 745?

9 MS. MCNAMARA: Their project boundary -- excuse
10 me, their project boundaries follow the 750 elevation.

11 CHIEF LANKFORD: 750 -- so anything above --

12 MS. MOLLOY: Above 750 we have no jurisdiction
13 right now.

14 CHIEF LANKFORD: Okay.

15 MS. MOLLOY: So the current license is up to
16 that. What we will be looking at in the new license
17 application or process is what should the boundary be for
18 the new license? It may be the same, it may change at the
19 end of the studies and information.

20 On the APE, you know, we will call it, you know,
21 initially we'll try to identify it but studies could come in
22 that would make us adjust something and gather additional
23 information if necessary or something but sort of as we're
24 going along.

25 That's where it is a little tricky is we can't

1 say for sure right now because --

2 CHIEF LANKFORD: Okay, so I need to return to her
3 statement.

4 MS. MOLLOY: I'm sorry.

5 CHIEF LANKFORD: So you said anything above 750
6 you don't --

7 MS. MCNAMARA: Currently under the current
8 license the project boundary follows the 750 elevation
9 except for it extends up for project recreation or operation
10 or something like that.

11 CHIEF LANKFORD: So anything above 750 you don't
12 --

13 MS. MCNAMARA: Under the existing license we do
14 not have jurisdiction above elevation 750.

15 CHIEF LANKFORD: Okay so is generation above 750
16 unlicensed generation?

17 MS. MCAMARA: We would need to understand what
18 the reservoir level is during project operations.

19 CHIEF LANKFORD: But you just --

20 MS. MCAMARA: I can't, I mean I don't --

21 CHIEF LANKFORD: You can't have an undefined
22 boundary. You can't allow water -- if you are going to
23 license the operation and generation of power from this
24 reservoir you have to be able -- if you are going to license
25 that you need to license the whole reservoir and the flood

1 pool.

2 And what I believe should happen is if you set a
3 boundary and anything above that boundary -- any generation
4 above that, there should be part of that money set aside for
5 damages.

6 Because if they are holding water for the purpose
7 of generation and it is out of your scope, that's a problem
8 because to be able to hold water higher and generate longer
9 causes more events -- we've seen it time after time.

10 We get a big event -- even though it didn't cause
11 any flooding and they will hold that water for generation
12 purposes and then we get a secondary event, now we get
13 flooding because the lake wasn't returned to a place that it
14 could take another event.

15 MR. BOWLER: All we can say right now is that the
16 boundary is something that is always reviewed as part of the
17 relicensing process and that if extra studies are needed to
18 address the boundary then that's something we would request
19 in your study request.

20 And I want to say that it's somewhat -- while
21 they call it the integrated licensing process is because it
22 integrates one reason is scoping and the study process.
23 Normally in NEPA you do scoping after the application comes
24 in and so we're really at an earlier stage in a way than
25 sort of the NEPA mindset for when we do scoping.

1 So the opportunity here is to apply -- do this
2 consultation, start the scoping process early and get these
3 issues out and get those studies developed to resolve -- to
4 define the information that we need to address these issues
5 so that it can be in the application and then we start a
6 whole process of commenting on the application -- preparing,
7 getting people's recommendations and conditions, preparing
8 the NEPA document -- getting comments on the NEPA document.

9 So we're putting a lot of emphasis on this front
10 part but we're not saying it's the back part too. The front
11 part is we need to define these things and then we will have
12 a whole process post-filing of dealing with measures to
13 address issues and trying -- and considering the various
14 issues that we define the studies for now.

15 SECOND CHIEF OLDS: This is Second Chief Olds
16 again and I just wonder if you can clarify because the
17 discussion made a question pop into my mind. If you license
18 them to 750 and regulate them to 750 are you saying they
19 don't generate below 750?

20 MR. BOWLER: We're not saying anything specific
21 about the operations.

22 SECOND CHIEF OLDS: Okay.

23 MR. BOWLER: Now we're saying that these are the
24 types of things that are under consideration and in the --
25 and we need the studies to provide the information to

1 address if the boundary is appropriate.

2 SECOND CHIEF OLDS: But if they generate above
3 750 is there a separate set of regulations that cover that
4 generation or is it totally unregulated or how does that
5 hold the relationship?

6 MS. MOLLOY: This is Liz Molloy. So they're not
7 unauthorized operating -- they are under the license and the
8 powerhouse is in the, you know, boundary. But what we would
9 be looking at is how their operation is now and doing
10 studies to show how it's affecting them and that may be
11 different -- and it's likely to be different from what was
12 assumed or studied on the last relicense.

13 So what we're aiming for here is to try to get
14 the best information we can -- the most complete and that
15 would be on cultural sites also that may be effected not
16 necessarily in the APE for sure, but it could be in the APE
17 or likely to be in the APE -- and the flooding, where the
18 flooding occurs and what might end.

19 Also, if anyone has any potential ideas that
20 might address some flooding that they'd like looked at, you
21 know, as part of things, you know, that maybe there's an
22 idea well could they study -- what would happen if they did
23 this, so there would be an alternative to consider.

24 So if people have -- having been in the area and
25 lived with the situation, ideas of what might be something

1 to look at, please let us know so that we can suggest -- we
2 can recommend any studies that might address that as well.

3 SECOND CHIEF OLDS: But anything -- any
4 generation they do is regulated then regardless of the lake
5 level, it's just -- I mean I'm struggling with that a little
6 bit.

7 MS. MOLLOY: Somewhat administrative, but the
8 project -- the powerhouse, the dam, they're in the boundary
9 -- they're authorized to operate the flow. But we would
10 like to, you know, make sure, you know, that we've got all
11 the part facilities part of the project in the boundary.

12 SECOND CHIEF OLDS: It just seems that if they
13 are licensed up to a certain level then kind of it just --
14 as a layman, it makes you wonder how that works above that
15 level. I would say I do appreciate you being open minded to
16 realizing that this new license may need to look somewhat
17 different in that regard.

18 MR. BOWLER: And their application could come in
19 and with a different proposal because it's relicensing
20 doesn't mean that it will necessarily be the same operations
21 that they are proposing and that would be something that the
22 studies should be designed to address is the range of
23 possibilities for operation.

24 And then their application could come in with a
25 new proposal for a new operating seam and the boundary would

1 have to be evaluated in that context. So that's why I said
2 we're early in the process but we still have a lot of work
3 to do at this stage to set ourselves up for the later part
4 of the process.

5 CHIEF LANKFORD: Chief Lankford again, I have
6 another question along a little bit different of a question.
7 If the Grand River Dam did not exist today and it was just
8 rivers and it was a new dam, a brand new dam, who would be
9 -- who would be responsible for all of these studies if this
10 dam did not exist? Would it be the Petitioner?

11 Would they be responsible to do the flood impact
12 studies and what would be impacted at levels? The reason I
13 make that statement -- more of a statement than a question
14 is that these studies were so poorly done back when they
15 were done that they didn't take into account that we don't
16 have the technology -- we didn't have the technology back
17 when this dam was installed to be able to judge what the
18 flood pool would be.

19 And the lake is an adult lake or it's actually an
20 elder adult lake now and so we have sediment impacts also.
21 There needs to be a sediment study of blockages. Below Twin
22 Bridges there's a train -- a railroad train bridge that has
23 a huge sediment problem which that impacts Spring River --
24 the Spring River watershed.

25 And so because of that blockage that's what

1 causes damage to the Wyandotte's, the Eastern Shawnees and
2 eventually all the way up to the Peoria's and the Quapaw's
3 because of that one single blockage in that.

4 And so to me this really should be looked at not
5 so much as a relicense but it should be looked at like a
6 brand new license in my opinion because the studies that
7 were done back in the day to do this weren't adequate and we
8 have so much more new technology now.

9 I think you can't just look at this to get this
10 going again even though it needs to. You know it's again
11 what Chief Wallace said. This license needs to happen -- it
12 just needs to happen in a better way, so.

13 SECOND CHIEF OLDS: Not only that the studies
14 done in the 1940's may not have been done with any thought
15 that 40 years later the road curve would be raised 10 feet
16 also. So they were under a certain assumption in 730 -
17 734-type situation and then 40 years later it's a whole
18 different world that they're operating in.

19 MS. MOLLOY: This is Liz. To your point if again
20 you know of particular things that you suspect or you think
21 or you know are bottlenecks to something or cause something
22 that should be specifically looked at or considered please
23 you know, put that in and we'll then be more aware of it.

24 Well further it will be in the record because
25 you've said it today but anything like that that comes to

1 mind that you think might, you know, perhaps solve issues or
2 something and might be part of the project or even if its
3 nearby and you're not positive -- certainly offer that.

4 MR. BANDY: This is Everett, so do you guys have
5 a good GIS person in-house -- I'm assuming as FERC you
6 would?

7 MR. BOWLER: We have the capability to basic
8 mapping that we might require to be done.

9 MR. BANDY: Okay well our GIS has a feature -- if
10 you have a decent GIS person you could easily do elevation
11 predictions and that would be a basic way where you guys
12 could walk into a room and say this is what we think at this
13 elevation will occur.

14 And then that would be a good way for us to start
15 looking at direct effects just for properties not even
16 moving into everything else and then we could also tell you
17 -- sit there and say here's the indirect effects but I think
18 you guys need to -- my opinion, just trying to make a
19 helpful suggestion is that you guys should make that map and
20 then you should approach each one of us individually and sit
21 down with our tribal leadership, our environmental
22 department and our departments and probably also approach
23 the VIA.

24 And say this -- here's what we think our direct
25 effects are going to be. Can we discuss this with you and

1 then what are the indirect effects going to be. Because I
2 can tell you right now just for our tribe, our power grounds
3 keep getting flooded more and more.

4 We have I think 26 cemeteries within a one mile
5 radius of the power grounds that are going to be affected
6 with your access to them. We also have multiple sacred
7 sites that the access will be probably lost to them if you
8 raise up the level very much at all and so I think all this
9 stuff -- I mean that's just like the tip of the iceberg.

10 That's not even talking about endangered species
11 that might be affected. I know that there's endangered
12 species that have been looked at in other studies when we've
13 done buildings. So really this is like a huge thing -- you
14 need, in my opinion I think you need to make that prediction
15 and then meet with us and then we can sit there and tell
16 you, okay now that I see the elevation level this is what's
17 going to happen and how are you going to mitigate that.

18 And I can tell you the truth I don't know how
19 you're going to mitigate that but that to me is how this
20 should occur just for historic properties. That's not even
21 delving into all the other economic effects and everything
22 else.

23 I mean loss of lives that could occur. We had a
24 bridge wash out last time and I'm just trying to give you
25 guys a point to start on. That would be what I would do if

1 I were in your shoes.

2 I would make this map and I would sit down with
3 each tribe individually and then move forward, that's my
4 suggestion.

5 MS. MCNAMARA: Alright well one thing that I do
6 -- so the ILP anticipates 2 years of study and so it could
7 be proposed and you know this is -- we're kind of premature
8 to make a decision about that but it could be proposed that
9 kind of if there were flood routing studies or reservoir
10 elevation studies -- that sort of thing, done in the first
11 year then the second year you could have the -- following
12 those studies being completed then you could have
13 discussions about you know, cultural resource surveys that
14 are based on what comes in during the kind of modeling
15 studies.

16 But, you know, this is all really preliminary
17 right now.

18 MR. BOWLER: There are different ways, this is
19 Stephen. There are different ways these things can be
20 approached but I really like that -- appreciate the
21 thinking, I think that's a great idea. I'm not sure of the
22 specific mechanism -- how we would carry it out but that's
23 what we want to do is get that kind of information -- even
24 if it is choosing some elevation that just seems like it
25 captures everything that could be affected, getting that out

1 would be -- is what we are trying to do now.

2 MR. BANDY: I'm just -- I'm not being flippant,
3 I'm being totally serious and RTIS student in their first
4 year in college could make that model. I mean I'm not
5 trying to say that -- I'm just saying like I guarantee that
6 you have someone in house that can make that map very
7 easily, it won't cost you hardly any money.

8 MR. BOWLER: Yeah I'm saying -- I'm just saying
9 in terms of the --

10 MR. BANDY: The elevations?

11 MR. BOWLER: Meeting with everybody individually
12 that -- we'll see, that's a great idea. And the map -- I
13 don't think the mapping is so much an issue as just choosing
14 -- it would be a matter of choosing just an elevation and
15 make sure we capture everything under it rather than trying
16 to do the modeling.

17 MR. BANDY: What I would say is you should start
18 with like a hundred year flood, a 500 year flood -- what's
19 going to happen if you raise it 20 feet? I mean you could
20 plug that in to the RTIS just say 20 foot higher from sea
21 level.

22 SECOND CHIEF HILDEBRAND: Norman Hildebrand,
23 Second Chief of the Wyandotte Nation. In support of the
24 Quapaw case, all of their flooding comes from the Spring
25 River. So there definitely needs to be a study done on

1 Spring River.

2 And on the sediment down in the Wyandotte area,
3 there are probably areas down there that the bottom of the
4 river or the lake is probably 10 to 15 feet higher than what
5 it originally was and it is all due to that backwater
6 effect.

7 When you have water coming down from the Neosho
8 that's flooded upriver, it's flooded farmland, it's flooded
9 pasture -- and not to mention the cities, plus Spring River,
10 the same conditions.

11 And then when it hits the lake and GRDA let's
12 down the floodgates and probably only has one open, then all
13 of that backs up and that sediment drops. And we're talking
14 as far as pollution you've got fertilizer, herbicides,
15 pesticides -- everything that settles with that sediment.

16 If they tested that sediment right now there'd be
17 so much pollution -- I mean they shut the lake down the last
18 four or five years probably two to three times because of
19 blue algae. I mean that's the recreation -- boating,
20 swimming, everything they literally shut the lake down.

21 So you know I don't know when they do these
22 studies but it just needs to be a little more thorough than
23 what's been done.

24 CHIEF LANKFORD: You know again, I think we have
25 got the cart before the horse. I think I would ask that the

1 BIA would impose -- the Bureau would impose that this study
2 has to be done before it can go -- before anything goes any
3 farther I'd just ask the guy at Tetra Tech -- not that we
4 would use Tetra Tech, but he says that study can be done in
5 about a year.

6 We still have four years left if you just impose
7 the study of that watershed over there at the Grand River
8 because we have got half and this company has already
9 provided, they're well-known, their reputable -- they can do
10 that study, it would take them about a year and I think that
11 the Bureau should impose that a study that equals -- it
12 doesn't have to be them but it should be a study that equals
13 the Tetra Tech study, be imposed on this license now.

14 MR. YATES: Thank you Chief, this is Paul Yates
15 from the Bureau of Indian Affairs, Superintendent at Miami
16 Agency. I've actually gone hand calculation flood modeling.
17 I had an old-time college professor -- that's the way it was
18 done back in the 40's.

19 But for the Bureau to actually know the impact --
20 if we were going to drill a well we'd be looking at maps.
21 Where we're going to look at a rule curve on a lake? We
22 need to be looking at maps.

23 And we need appropriate models in place -- flood
24 routing models and if we can't agree then let's defer to a
25 third party like the National Academy of Sciences. What do

1 they recommend? But I'd like this message taken back to
2 GRDA and some assurance from FERC that this will happen.

3 I'm uncomfortable with probably or likely. For
4 us to make a fact determination we have to have these things
5 in front of us and these are reasonable requests, thank you.

6 MR. BOWLER: What I can say to that is in this
7 process you will have an answer when the study determination
8 is issued and there will be a firm yes, no, modify, no,
9 maybe about the study.

10 And it could be staged in a way where certain
11 work is done just to get you the information to do the
12 second phase of the work or something like that and but it
13 will be clear what's required when that study determination
14 is issued.

15 The more detail you can provide in saying exactly
16 what you're saying today in your study requests, the easier
17 it would be for us to interpret that and respond to it in
18 the study determination.

19 MR. HALLORAN: This is Joe Halloran, Miami Tribe.
20 I think your requests are missing one another because if I
21 hear what the Superintendent requested and what the Chief
22 requested is that a study be done immediately on the Spring
23 and Elk River because you can't determine impacts on trust
24 properties, travel cultural properties, you can't -- you
25 can't fashion an area of potential affect until you've

1 studied the Spring.

2 And if you put that back on the response back is
3 that we'll do that study as part of the study process.

4 That's not what we're talking about. We can't even engage
5 in 106 in a meaningful way. We can't determine impacts and
6 travel trust property until a study is done now.

7 I think that's and I just want to clarify that I
8 don't think your question has been answered. I don't think
9 that's been answered. And the concern I have again to
10 return to the APE is you may recall that the Advisory
11 Council on Historic Preservation, weighed in on the
12 amendment process and wrote to FERC and said we have real
13 concerns about your process in compliance with Section 106
14 and asked for you to describe that process and it is
15 concerning because in the response FERC issued after the
16 amendment was issued, indicated that the applicant didn't
17 identify any historic properties within the APE.

18 Of course they didn't. No historic properties
19 were identified by the SHPO or the Arcs Survey from the
20 state of Oklahoma. Well if you'll recall the scoping review
21 at the time -- and we raised this at the consultation last
22 year was that all of these folks were looking at elevation
23 750 feet and above.

24 And we said it then and we reiterated it now that
25 conclusion means that native people who have lived in this

1 area were either too dumb to live down by the river or you
2 did your arc review after the pool was full.

3 And that isn't what we're looking for here. This
4 has to be a basin up 106 process and I'm just very concerned
5 about FERC's willingness to accept the limitations offered
6 by the applicant in the amendment process which was federal
7 action triggering 106.

8 And rather than do a study relied on the
9 applicant's information and then said we didn't hear
10 anything otherwise. This is going to have to be a full-on
11 study, it needs to be a basin up study and I think this
12 language indicates a return to GRDA's efforts to shave off
13 the relevant part of a historic preservation by little
14 slices on all the corners of this process and we need to
15 keep an eye on it.

16 CHIEF WALLACE: Chief Wallace of the Eastern
17 Shawnee Tribe again just a simple comment. My first comment
18 was studies need to be done. My second one is a simple word
19 -- time. How much time is this going to take? We can't
20 afford for this to take 3 years because in our case there's
21 probably going to be three more floods.

22 It's reached the point because of these
23 conditions that have been illuminated for you, these floods
24 are occurring more frequently, they are more intense,
25 there's more water than there had been before.

1 And in our case where we are located we maybe too
2 dumb to be by the water but that's where the government put
3 us so that's where our lands are. We didn't have much
4 choice in that.

5 And the other comment is we've stopped referring
6 to it as Grand River or spring or Neosho. We call it Santa
7 Claus because we're going to get an annual visit and there's
8 going to be a flood and that's not a pleasant visit.

9 So time and studies, those are two very important
10 words to the Eastern Shawnee Tribe.

11 MR. BANDY: I just wanted to mention real fast
12 that we also agree that the study should start from base
13 level up and that we also - [PRIVILEGED INFORMATION REDACTED].

14 I just wanted to mention that right now before I
15 forget.

16 MS. MCNAMARA: Stephen I don't know if you want
17 to talk about the overall timeline and our ability to, you
18 know, -- when actions can be taken in terms of -- I mean any
19 changes to the existing license will not happen until after
20 the current license expires or upon expiration of the
21 current license.
22

23 So they have this license through 2022 and so
24 what we're talking about right now is a new license that
25 would not take effect until 2022 or there are times when not

1 because of FERC but for other reasons the licenses are
2 delayed.

3 MR. BOWLER: The other thing I'd say is that I
4 didn't spend a lot of time preparing -- explaining the past
5 actions or decisions. I'm focused on what we've laid out to
6 present to you today which is the cultural resources actions
7 that we'll be taking in this relicensing process.

8 And the other thing I'd say is that the studies
9 you are talking about are studies that are very typical-type
10 studies in some ways and they're very complex issues in some
11 ways. But there are things that are reasonable to deal with
12 in our process and 10 months from now we will have a
13 determination on exactly what needs to be studied.

14 And we're asking you to engage in that process to
15 look out for your interest and work with us to make sure
16 that the information that comes out of those studies so that
17 all the questions that you are raising can be properly
18 discussed and the applicant can make the proposal to the
19 degree they can address them.

20 But if we don't get those good studies into that
21 determination the final study plan in 10 months, we're
22 basically guaranteeing, you know, a continuation of -- we
23 have a much lower chance of success in making some headway
24 on these long-standing issues.

25 So I really want to say even though there might

1 be legitimate complaints or concerns about the past we are
2 where we are and I really encourage everybody to bring these
3 issues to the table, bring your ideas for the study approach
4 to the table.

5 Bring your ideas for how things should be staged
6 in terms of what information is needed first before other
7 information is developed building on that information and
8 let's try to come up with a rational strong study process
9 working with GRDA.

10 So that's my pitch.

11 MR. MAHOWALD: My name is Phil Mahowald, also
12 with the Miami Tribe. And I know the focus of today's
13 discussion is about the relicensing process but some of the
14 concerns that have been raised by the tribal leadership and
15 tribal representatives are immediate and urgent.

16 And we understand that the license will -- the
17 current license will expire in 2022 but these are issues
18 that need to be addressed immediately. And under the
19 current license there's a storm adaptive management plan for
20 example.

21 Now if it turns out that the basis of that plan
22 or any other operational aspects of the project are
23 inadequate due to erroneous definition of the project
24 boundaries or failure to understand flood routing impacts on
25 the Spring River or otherwise, can't amendments or revisions

1 be made to the current license under these circumstances
2 through either the storm adaptive management plan or
3 otherwise to address these urgent immediate needs?

4 MS. MOLLOY: Yes, it's possible. For an
5 amendment it would be the licensee proposing it. If there's
6 concerns that something is not working under the amendment
7 or some things that were not anticipated you can certainly
8 -- I would encourage you to raise it under the current
9 license.

10 So what we'll focus on for this action would be
11 the future one but the current one if something isn't
12 working the way the plans were designed to, if there's some
13 issue with that I would: A -- raise it with GRDA and point
14 out that it's not working and see if they will file an
15 amendment.

16 And if not file something with FERC pointing out
17 that it's not working as anticipated.

18 MR. EMARTHLA: Is that something the Bureau would
19 file on behalf of the tribes? Why would the Bureau not
20 file?

21 MR. YATES: I'll let Conor Cleary, the Solicitor
22 respond to that and if we could have an entry point on this
23 I would certainly like to put people on notice -- put FERC
24 and GRDA on notice of what our concerns are, Mr. Cleary?

25 MR. CLEARY: I think -- this is Conor Cleary with

1 the Department of the Interior Solicitor's Office. You
2 know, a lot of what has -- in response to the Chief's
3 question, you know what our concern is is that there seems
4 to be an answer to how that process would work out that's
5 been foreshadowed by how the variance and amendment requests
6 have been addressed so far.

7 So when there were requests for a variance or for
8 an amendment, if you look at the decision that's been issued
9 by FERC, you know, there's a conclusion that was drawn in
10 the order granting that permanent amendment that, you know,
11 said that there would only be insignificant impact and that
12 most of these issues were better addressed at the
13 relicensing phase.

14 And so what we are concerned about is if we were
15 to undertake you know, filing something or going to GRDA
16 first and then pursuing some recourse with FERC in the event
17 that GRDA doesn't respond the way that we want, is the --
18 you know is the result already foreshadowed by the reasoning
19 that's included in the order that FERC is given with respect
20 to the amendment?

21 In other words are we just going to be
22 re-litigating the exact same issues or the issues that you
23 addressed, Liz, are those essentially the same things that
24 were at issue in the variance and amendment process?

25 And is seeking some recourse under the current

1 license essentially going to reach the same result?

2 MS. MOLLOY: So I can't say whether it would
3 reach the same result. I can say that if the Commission has
4 considered it, you know, and it's just the same as what was
5 raised before the Commission would say -- you know, that is
6 less likely maybe.

7 But if there's now that it's operating if there's
8 new information it might be. But I do know that most of the
9 focus is on relicensing where we're looking at this -- the
10 whole range of things again. And so I'm not sure, but if
11 there is an issue that has developed from the operation it
12 would be under the current license -- it would need to be
13 raised with the Commission under the current license.

14 MR. CLEARY: And Chief and the other
15 representatives here. You know, part of our experience at
16 the variance and amendment stages that have been filed over
17 the last couple of years is that we continue to encounter an
18 answer that is something along the lines of there's been no
19 demonstration of effect on tribal lands or there's an
20 insignificant impact on you know, upstream effects.

21 And so what we have tried to do at Interior and
22 with the BIA is to -- we've already begun that additional
23 mapping process where we have attempted to get new
24 information with which we could take to GRDA and FERC so
25 that we're not just re-litigating the same issues that have

1 been addressed before but that we have, you know, new
2 detailed information on what the impacts are.

3 And so I know that that's not necessarily the
4 most satisfactory or immediate answer to you know, your
5 question Chief, but we have already you know, obtained that
6 funding and are in the process of doing that mapping,
7 providing that information to GRDA so that we are not just
8 spinning our wheels but have new detailed information.

9 Now whether or not FERC will -- and GRDA will you
10 know, address that and include that under the current
11 license I don't know. Based on what has been detailed in
12 their orders with respect to the amendments and variances
13 I'm not encouraged.

14 But, at a minimum, that is something that we can
15 take to bring to the table at the relicensing phase so that
16 we do not continue to encounter these problems under the
17 current license.

18 MR. HALLORAN: This is Joe Halloran. I think in
19 follow-up and tag-team on that since we at the tribes led
20 the opposition to the variance and amendment and all the
21 briefing.

22 The project boundary was the issue in amendment.
23 Our point was in response to the amendment that GRDA was
24 attempting to limit the impact to the increase in the rule
25 curve during the very narrow time of the year and our point

1 was you haven't accounted for the impacts of the project as
2 it's running right now.

3 You don't know what the impacts are in the Spring
4 River, you don't know what the impacts are in the Elk and
5 you haven't acknowledged the impacts on the Neosho until you
6 properly identify the project boundary, you can't determine
7 whether the applicants claim of impact in the amendment
8 process has any bearing in fact, at all -- that was our
9 argument.

10 And FERC chose to ignore that. We wouldn't be
11 talking about project boundary if FERC had put the brakes on
12 when we asked and reassessed the project boundary. So now
13 what we have is an applicant who's gotten the amendment
14 through without addressing any of the impacts.

15 The cart is far before the horse and they will
16 live with the amended license through the relicensing period
17 and if that extends beyond 5 years they get annual renewals
18 at that same level.

19 We asked two years ago -- we made the point very
20 clear that this all starts with project boundary. It all
21 starts with the effect that happened after the 82 rule came
22 in. Everybody knew it -- everybody knew it.

23 And so the game that it was an inability to
24 determine impact on tribal trust properties -- that wasn't
25 it at all. We said you can't even evaluate impacts. You

1 don't have the data to evaluate impacts because your project
2 boundary has not been properly drawn or assessed.

3 So I appreciate you wanting to look forward but I
4 think you would be wise to reflect on how tribal leadership
5 feels now and the reason for it and is at the direct hand of
6 FERC's refusal to respond to our effort two years ago to get
7 this whole thing reset properly so that the relicensing
8 would have started at the right base, I would just offer
9 that, thanks.

10 CHIEF COOK: This is Chief Cook with the Ottawa
11 Tribe. This is kind of -- I'm kind of simple minded with
12 some of this stuff so you almost have to draw me a picture
13 sometimes. Steve a minute ago you mentioned 10 months from
14 now that you would be starting a process.

15 MR. BOWLER: The study determination -- I'm sorry
16 this is Stephen. The schedule -- the tentative schedule
17 that's laid out right now with that January 12th kick-off of
18 the process --that puts the study determinations in
19 September.

20 MS. MOLLOY: So the process is starting soon to
21 develop the study plan and that's where the proposals for
22 studies and a meeting and revised study plan and then our
23 determination of what studies.

24 So that process is starting in January to develop
25 what studies and as complete a package of studies as we can

1 develop.

2 CHIEF COOK: When does that period end?

3 MR. BOWLER: So the process of defining the
4 studies started on January 12th. You comment two months
5 after that so the --

6 CHIEF COOK: March?

7 MR. BOWLER: So January 12th we start the process
8 and then the study requests come in on March 13th and
9 there's a negotiation process and a meeting and the final
10 proposal from GRDA after some back and forth comes to us on
11 August 25th and then a month later on September 24th we
12 issue a determination that makes the call on anything that
13 GRDA and the different parties have suggested different
14 things.

15 Once that is approved -- once that determination
16 is made assuming it's not challenged, which adds another 60
17 days, it could start the studies. And the studies -- the
18 IOP is sort of standard is two years.

19 CHIEF COOK: So that study point right there that
20 you were just talking about is that when you all would study
21 the Spring River?

22 MR. BOWLER: That's when it's starting and
23 basically in October they could start -- end of September,
24 beginning of October.

25 CHIEF COOK: I guess I'm more of a proactive

1 person thinking why is that not being done now to save you
2 the time when it comes to that point? I mean you heard it,
3 we know it for a fact.

4 The City of Miami is giving you maps, the tribes
5 have given you maps.

6 MR. BOWLER: Yeah.

7 CHIEF COOK: We know it, it's a fact. Why are we
8 just dragging our feet and not being proactive and getting
9 out there and getting the studies done so we're not delaying
10 the process longer?

11 MR. BOWLER: Yeah the reason is because studies
12 have to be done right and there has to be some discussion
13 and review of the different proposals to make sure that --
14 and we have to do our analysis of the proposals in order to
15 make sure if they are going to produce the information that
16 you and we need.

17 So even though there are a lot of them out there
18 and we've looked at them, there is a need to decide -- to
19 decide what actually needs to be done specifically -- what
20 areas, what methods and that type of thing.

21 CHIEF LANKFORD: I suggest a 10 minute break.

22 People have been drinking coffee so.

23 (Whereupon a brief recess was taken to be reconvened this
24 same day.)

25 CHIEF LANKFORD: Okay so we've been doing kind of

1 a little of conversing. It's about 11:30 so I think FERC is
2 going to try to finish their PowerPoint and then I think we
3 are going to take a break for lunch if we don't get on too
4 much of stuff, but we'll take a break for lunch and we'll
5 probably do an hour for lunch and then we'll come back right
6 around 1 o'clock and get started again.

7 I know our legal has a PowerPoint that we want to
8 present and I think once we get through some of those it
9 will just be open discussion at that point if that's
10 agreeable with everyone, so we'll turn it back over to FERC
11 and let them go ahead.

12 MR. BOWLER: Thank you, thanks for the cookies as
13 well. We're going to go back a few slides and wrap up a
14 couple of thinks as Chief Lankford said before we go to
15 lunch.

16 One of these slides dealt with interventions and
17 I note that this is a post-filing and this is an important
18 thing that you don't want to miss the timeframe for because
19 it preserves certain rights and privileges in the rest of
20 the process and including importantly, filing for re-hearing
21 and then appealing a decision if the re-hearing is
22 unsatisfactory and you have grounds for appeal of that.

23 So you want to -- there'll be a notice calling
24 for interventions I believe with the notice that we put out
25 that we are ready for environmental analysis before we do

1 our environmental assessment or environmental impact
2 statement.

3 And you would have a timeframe in which to apply
4 as an intervener. And once you are an intervener then you
5 have certain responsibilities which include serving things
6 that you filed to other interveners. Is there anything else
7 you want to say on that?

8 MS. MOLLOY: So on intervention if you would like
9 to become a party -- if the tribe would like to become a
10 party, file an intervention. Interventions -- motions to
11 intervene will not be accepted prior to an application being
12 filed so if you file one now we would dismiss it because
13 this isn't that kind of a proceeding.

14 We're looking for everyone to have dialogue and
15 this is sort of pre-filing. But once the application is
16 filed until the deadline we set in the notice an
17 intervention can come in and it's considered timely and it's
18 granted automatically unless there's an opposition.

19 If there's an opposition we issue a notice. So
20 if you file a motion to intervene and no one says anything
21 and we don't it's been granted automatically. But it's only
22 once the application is filed after all the studies and it
23 has been prepared and then otherwise everything Stephen
24 said.

25 CHIEF LANKFORD: If we're an intervener then

1 later on you can't be a contestor, is that the same what
2 they are talking about?

3 MR. HALLORAN: The question I had -- thanks
4 Chief, the question I had is whether you could discuss our
5 desire to participate -- well to participate as a
6 cooperating agency and the impact that has on intervener
7 status and appellant status and whether there's a way for
8 the tribes to address that in a way that our historic
9 preservation people, our environmental people can
10 participate as cooperating agencies or task forces with FERC
11 and provide them their expertise and yet tribes would be
12 able to maintain their ability to intervene and take an
13 appeal, if you could address that.

14 MR. BOWLER: Yeah, if you're a cooperative agency
15 under NEPA, National Environmental Policy Act, you are -- in
16 our process you are part of the decisional process and you
17 actually not only provide technical advice but actually
18 participate in the act of making decisions about how the
19 environmental aspects of how the license should be
20 conditioned.

21 Because you're actually part of the decision
22 process the Commission's policy is that you can't also be an
23 intervener -- in other words you can't challenge a process
24 that you actually helped guide.

25 And so that's the policy and the only exceptions

1 that I know of are very large agencies there have been cases
2 I believe where one part of the agency -- as long as they
3 stay separated from the others could be a cooperator and the
4 other could be an intervener -- like the Department of the
5 Interior -- two different, entirely different parts of the
6 Department of the Interior.

7 MS. MOLLOY: Any ideas that a cooperator has
8 access to materials in the EA or EIS that we're preparing
9 that other parties don't. So it's FERC's policy not to
10 allow both someone in and someone at the same time to be an
11 intervener.

12 But also even if someone is an intervener they
13 can comment, provide us information, provide comments on the
14 EA or EIS -- the environmental document, it doesn't have to
15 be opposed.

16 People can intervene in support, they can
17 intervene neutrally, they can intervene in opposition and
18 still contribute and comment on the process, the studies,
19 the application, the EA or EIS and such.

20 CHIEF LANKFORD: Because we're governmental
21 entities -- Chief Lankford, would we not inherit the same as
22 the Bureau to be able to do both? I think I just heard you
23 say -- other government agencies can be both?

24 MS. MOLLOY: Bureau does not always have that
25 opportunity. I know that in one case that the Interior has

1 split one Bureau off from the others so it's a case by case
2 basis. We do have one tribe actually who has done the same
3 thing.

4 I believe they hired a contractor to represent
5 them on the environmental document and they don't -- there's
6 a wall between them so they've done it. But we don't do it
7 often. We do do it occasionally.

8 CHIEF LANKFORD: Thank you.

9 MR. BANDY: Is that FERC policy that that's based
10 on or is that a law?

11 MS. MOLLOY: FERC policy.

12 MR. BANDY: FERC policy.

13 MR. BOWLER: The other thing I would say is that
14 you don't have to be an intervener -- I think Liz referred
15 to this, but you don't have to be an intervener to comment
16 and participate in the process. And actually I'll cover
17 that in the next couple of slides.

18 MS. MCNAMARA: Stephen can I just add one more
19 thing? We conduct Section 106 in parallel but not as part
20 of the NEPA document. We will, you know, if we have adverse
21 effects which we assume given the location of the project
22 there is likely going to be a need for some sort of historic
23 properties management plan and a programmatic agreement.

24 We will do consultation for that and we don't
25 really look at intervener status as part of that

1 consultation.

2 MR. BANDY: So you will be sending us a Section
3 106 notice with a determination and we will have a separate
4 consultation and it won't be part of the EA?

5 MS. MCNAMARA: Typically we include the
6 discussion in the EA but we have sent separate ones at the
7 request of SHPO's or other tribes so we can do that that
8 way.

9 MR. BANDY: The Quapaw Tribe requests that in
10 compliance with 36 CFR 800.

11 MS. MCNAMARA: Can everyone repeat their name and
12 their request please for the record?

13 MS. TOOMBS: Elizabeth Toombs with the Cherokee
14 Nation. We would also like to request a Section 106
15 consultation.

16 MR. PAPPENFORT: My name is Logan Pappenfort,
17 Peoria Nation. We would also like to request a separate
18 consultation for Section 106.

19 MS. BUTLER: This is Raelynn with the Muscogee
20 Creek Nation and we also concur and would make the same
21 request.

22 MS. HAYWORTH: Rhonda Hayworth, Ottawa Tribe and
23 we concur also and would like to have a separate
24 consultation.

25 SECOND CHIEF HILDEBRAND: Norman Hildebrand,

1 Second Chief from Wyandotte Nation and we request a Section
2 106 consultation as well.

3 CHIEF LANKFORD: Chief Lankford of the Miami
4 Tribe, we also request a separate Section 106 consultation.

5 CHIEF WALLACE: Chief Wallace, Eastern Shawnee
6 Tribe same request.

7 MR. TARRANT: William Tarrant, THPO,
8 Seneca-Cayuga, we would also like a separate 106 process.

9 MR. CLEARY: And this is Conor Cleary with the
10 Department of the Interior in accordance with our trust
11 responsibility we would just ask that we be cc'd with the
12 trust mission on any correspondence reflecting these
13 requests.

14 MR. BOWLER: The next couple of slides are about
15 opportunities for participating in the process. First of
16 all this basic information is available on our website under
17 if you go to ferc.gov and then pull down the industry menu
18 and click hydropower you will get to our hydropower page
19 which has a lot of the resources that are in the handouts we
20 brought today.

21 The next two -- also on the next couple of
22 slides, I'll skip down to the bottom one which is e-filing.
23 We have brochures about e-filing with us. The e-filing is
24 an electronic system and the Secretary's office encouraging
25 electronic filing.

1 There's a quick file system and then you have to
2 sign up for an account for the more extensive filing which I
3 would recommend you do. If you are not comfortable or some
4 of your staff are disinclined to or not comfortable with
5 doing the e-filing, you can send things by mail.

6 And e-library -- I've referred to it a couple of
7 times as our system of keeping a public record and there's a
8 -- you can go into the library and search for any -- almost
9 any document related to this project except for the ones
10 that we've talked about that would be non-public because of
11 cultural sites or endangered species.

12 There's also some information that's limited
13 access because it's critical energy infrastructure --
14 information that we don't want anybody just to be able to
15 download. There are ways to request access of course to all
16 of that information for the project -- for your role in the
17 project.

18 But basically this is a really -- it works most
19 of the time and it works quite well in terms of you put in
20 the Docket Number and you can put in key words or a date
21 range and get the -- whatever it is documents that are in
22 the record, the application when it comes in, the
23 pre-application document that you get through here.

24 So it's -- I haven't found another government
25 agency that has a site that's this accessible and so I

1 recommend highly that you use it if you want to track down
2 the history of the project and there is a technical line
3 that you can call for help on things.

4 You can also call my staff -- me or my staff and
5 we'll try to get you through it the first time. Once you've
6 done it once it's pretty intuitive but there's a couple of
7 things you want to click on and you don't want to click on
8 so feel free to call us and either me or my staff will get
9 you going.

10 And then e-subscription is a system that you can
11 sign up for and I highly recommend it. That you will get an
12 email whenever something is filed in that docket. So it
13 will have a brief description of what was filed.

14 It won't send you the document -- it will send
15 you a link to the document. And you do have to -- you can't
16 sign-up quite specifically enough that you can eliminate
17 everything you don't want so you will have to put up with
18 somethings that deal with dam safety inspections and things
19 that might not be what you are focused on but it will give
20 you notice right away of anything that's filed that you
21 might want to be aware of -- you can click on that link and
22 open it up and read it within minutes of when it was posted
23 by our system.

24 And we have information on signing up for that as
25 well with us.

1 MS. MCNAMARA: The last thing I wanted to add
2 about e-subscription or e-filing or anything involving the
3 electronic systems for the project is the Project Number is
4 P1494-438 that's the sub-docket for the relicensing.

5 And so -- what?

6 MR. BOWLER: P-dash.

7 MS. MCNAMARA: P dash 1494-438 and that would
8 need to go on any filing that you provide, paper or
9 electronic and that would also be how you would search for
10 anything in the record related to the relicensing so that's
11 just really important information however you're using our
12 electronic systems.

13 MS. MOLLOY: One final note on e-library and the
14 project number -- you can do a search and it is sometimes
15 more helpful to do a search just using the root docket. So
16 the P-1494 and not the sub but the sub will narrow it down
17 but sometimes you'll see things that people file maybe not
18 using that sub.

19 MR. BOWLER: And as intuitive as it may be, don't
20 click hydropower. There's a radial button to boil it down
21 to hydropower but that field is not always filled in so
22 you'll miss things that are relevant. So don't click
23 hydropower, use a dash in your docket number and probably
24 the number is usually the safest.

25 MS. MCNAMARA: That's everything that I had we

1 can take questions about filing or electronic systems or
2 interveners or other things but I think substantive comments
3 or questions maybe we'll hold off until after lunch.

4 Yeah, that's fine well while I'm speaking I just
5 wanted to make a note of something. When I was talking
6 about cultural resource information earlier with regard to
7 defining the APE and studies -- I think in the study request
8 process your information about sequencing those studies is
9 important.

10 And that for cultural resources in particular it
11 is not uncommon for studies to extend beyond the license
12 being issued. For example, on other projects where there
13 may be recognizance level work done pre-filing and then
14 continuing cultural resource work done after that -- phase
15 1, phase 2 -- sometimes there's not enough time to complete
16 those studies before the license is issued.

17 And so what's really important for us is to
18 understand what the scope of those studies is and then as we
19 go through Section 106 and reach agreement on the continuing
20 studies or the final list of studies that need to be done
21 for cultural resources -- some of those may become a
22 component for the programmatic agreement or something that
23 we require as a license requirement.

24 So I just didn't want to give the impression that
25 all cultural resource studies need to occur within two years

1 because we understand that that's not particularly for a
2 project this large, may not be reasonable.

3 CHIEF COOK: Chief Cook, Ottawa Tribe. Do you
4 pick and choose those? How do you determine it is not
5 feasible to go ahead and do the study -- for the timeline?

6 MS. MCNAMARA: Two years -- well often with the
7 cultural resource studies there's a sequence of studies so
8 the first study will be just identifying what is out there
9 and then it might be, you know, okay we know that these are
10 now we need to determine whether they're eligible for a
11 listing on the National Register which gives them additional
12 protection.

13 So then there may be an assessment of eligibility
14 that comes after that first what's out there study.

15 And then following that there may be data
16 collection or other kind of more in depth archeological
17 surveys or studies done and so because it might take several
18 field seasons to get them done we might just not get to that
19 before a license is issued.

20 And so we understand that and we have ways of
21 addressing that post-licensing if that ends up being the
22 case. So it's not that we're picking and choosing which get
23 done and which don't, it's just sometimes one study will
24 lead to connect another study and we want to be able to
25 identify those going into the future.

1 CHIEF COOK: Okay so you identify this study --
2 you're not going to have time. What if it is one of the
3 very important archeological studies -- I mean how do you
4 determine the importance of the ones you're just going to
5 proceed on with rather than -- do you consult with the
6 tribes at all during that time for help?

7 MS. MCNAMARA: Absolutely. I mean for a Section
8 106 we will be consulting with the tribes and with the SHPO
9 and at each phase of the process get concurrence on what the
10 actions are going to be taken. So unlike the license --
11 unlike in NEPA we kind of get to our decision based on the
12 kind of environmental constraints.

13 In Section 106 we have requirements to get
14 concurrence at each stage and if we can't reach concurrence
15 we have there are, you know, processes to deal with what
16 happens when you don't concur or don't have concurrence.

17 And so we follow that process for Section 106
18 which is a little outside of what we do in NEPA even though
19 historically or typically in our process we include just our
20 findings within the NEPA document.

21 CHIEF COOK: Okay if you come to the conclusion
22 that you don't concur with our THPO say, what happens then?
23 Do you use move on and you dig up our bodies and our
24 artifacts or flood it or what?

25 MS. MCNAMARA: Well if we're talking about

1 something that's on tribal land and we need concurrence from
2 the THPO then we would deal with that as laid out in the
3 Section 106 process.

4 If it's not on tribal lands but on the project
5 lands that are non-tribal then we would deal with the SHPO
6 on those lands and then if there was a question we would go
7 either to the keeper of the National Register if we needed a
8 determination we would go to the Advisory Council.

9 We'd follow that process through. We -- the
10 Section 106 process is laid out in the Section 106
11 regulations are what we follow for doing a Section 106
12 consultation.

13 CHIEF COOK: Okay, thank you.

14 MS. MOORE: Hi, Kate Moore, regional archeology
15 for the Bureau of Indian Affairs. I've never been to a FERC
16 meeting but I'm a little curious. So you're saying if it's
17 tribal lands you're going to contact the THPO but if it is
18 not tribal land you're not going contact the THPO?

19 MS. MCNAMARA: We always consult with the THPO's
20 if there are THPO's that are involved in the consultation
21 process but the concurrence generally on non-tribal lands
22 and Liz -- please correct me if I'm speaking out of turn,
23 but that comes from the SHPO's if it is not on tribal lands.

24 MS. MOORE: Would you still take the THPO's into
25 consideration?

1 MS. MCNAMARA: Yes, absolutely.

2 MS. MOORE: In the land treaties?

3 MS. MCNAMARA: Yes.

4 MS. MOORE: Running off and everything else -- I
5 don't know everything.

6 MS. MCNAMARA: Yes, I'm sorry I did not want to
7 imply that we would not take into consideration the THPO's
8 under Section 106.

9 MS. MOORE: So you said that the cultural surveys
10 may not be done within the two years that you're planning on
11 so you're going to relicense it or you're going to post-pone
12 the relicense until the cultural section is done for the
13 National Historic Preservation Act?

14 MS. MCNAMARA: Typically what we try to do is --
15 so for relicensing's we use programmatic agreements as our
16 agreement document to close out Section 106 and that
17 generally contains measures that continues with the likes of
18 the license and so the goal is to be able to close out 106
19 with a programmatic agreement that contains enough -- and
20 the procedures in place to conduct the surveys that are
21 needed, to determine eligibility of all of the sites that we
22 need to determine eligibility for, to address any adverse
23 effects and mitigate for adverse effects if there are
24 adverse effects on eligible resources.

25 So there intended to cover that whole period --

1 that whole period during the term of the license the 30 to
2 50 years. So that's why we want a baseline -- we would love
3 it if all the studies were done in the relicensing
4 timeframe, -- that would be ideal.

5 But if it's not we could require those
6 post-licensing and require ongoing consultation
7 post-licensing to ensure that we are addressing those
8 adverse effects over the term of the license.

9 MS. MOORE: What happens if one of the sacred
10 sites is destroyed during the flooding that should have been
11 prior to?

12 MS. MCNAMARA: Our PA's have interim treatment of
13 historic properties. There should be a plan in place by the
14 licensee to address these sorts of things but I mean --

15 MR. BOWLER: It's just that we're trying to
16 express that there's another tool that's available for
17 working through things and that if it is appropriate there
18 can be part of the studies that are deferred to after the
19 license is issued through the programmatic agreement.

20 We're not trying to say whether that's applicable
21 in any specific element of this relicensing or not. We're
22 just making you aware that that's the way some things are
23 handled in order to make it work out to everybody's
24 satisfaction and concurrence.

25 MS. BUTLER: Hi this is Raelynn with the Creek

1 Nation. So when you actually relicense it's kind of like
2 greenlighting that project for another 30 to 50 years. If
3 your resource -- cultural resource surveys come back and
4 there are significant impacts to sites has there ever been a
5 case where you have revoked the license or restarted the
6 process again? I mean it just kind of seems like your
7 approving something before you even -- we the tribes have an
8 opportunity to fully evaluate the impacts?

9 And if you have to do work outside of two years
10 it's probably a significant site if you are doing phase 2,
11 phase 3's to determine these kinds of properties.

12 MR. BOWLER: I think that this is a case by case
13 thing and if it's not appropriate it's not going to be part
14 of the agreement and part of the license. But if it can be
15 worked out so that it satisfies Section 106 and it works to
16 meet the interests of protecting the resources covered then
17 it's a tool that's available.

18 It's not something that is trying to be -- that
19 we're trying to say is definitely going to happen it's not
20 going to be issued that way. We're just saying that it's a
21 tool that's available to work out and resolve some of these
22 issues and give them appropriate attention over time.

23 MR. MAHOWALD: Phil Mahowald for the Miami Tribe.
24 One of the concerns based on the questions that were just
25 asked -- the SHPO in the license amendment process, the

1 Oklahoma SHPO had expressed concerns about the ability of
2 GRDA or FERC to approve the license amendment because GRDA
3 did not have a historic properties management plan in place.

4 And FERC went ahead and approved the license
5 amendment without a historic properties management plan in
6 place. GRDA said we intend to do a historic properties
7 management plan just like we did in Markham Ferry.

8 And the Markham Ferry process it occurred just as
9 was described where the cultural resource surveys carried on
10 well past the license renewal date and then the HPMP -- the
11 historic properties management plan I don't think was
12 finally implemented for 10 or 12 years after the request.

13 And the point is is that these sites can be
14 destroyed at any time and we're kicking the can down the
15 road another 3 years, another 5 years, another 10 years and
16 that's simply not acceptable.

17 What we don't understand is if GRDA says it
18 understands that it needs an HPMP -- a historic properties
19 management plan, why isn't that process starting now? Why
20 hasn't GRDA already undertaken those efforts that they know
21 are required? What's taking so long?

22 Why do we have to go through this process where
23 these issues can be meaningful addressed, if at all, 3 - 5 -
24 10 years down the road? We need to start now.

25 MS. MCNAMARA: One more thing that I probably

1 should have clarified from the beginning that we can't issue
2 a license until we have completed Section 106 and that's a
3 signed agreement document if there are adverse effects on
4 historic resources.

5 So that we have to have the SHPO's signature and
6 on tribal lands we need the THPO's signature on the
7 programmatic agreement for it to be executed. So yeah, if
8 it is something that is not okay with the consulting
9 parties, then presumably we wouldn't have signatures and we
10 wouldn't be able to finalize Section 106 and we wouldn't be
11 able to issue a license, so.

12 That's really the best that we can do to
13 guarantee that we're going to be listening and trying to
14 work on an agreement document that works for folks.

15 MR. MAHOWALD: And I would only add that the
16 frustration is since none of that was required for the
17 amendment so long as there's no agreement, then the current
18 license conditions continue to apply throughout the license
19 period and year to year thereafter with no HPMP in place.

20 MR. HALLORAN: And I think -- this is Joe
21 Halloran. I think that tribal leadership will warrant
22 tracking the variance and amendment pleadings and filings
23 should know is that the SHPO indicated that an HPMP should
24 be issued as part of the amendment proceedings so we pushed
25 that issue to FERC and for whatever reason by miracle of

1 nature the SHPO reversed course and said well, as long as
2 the HPMP is completed as part of their relicensing we're
3 good with that.

4 And then after the amendment was issued the SHPO
5 reversed course again and indicated that an HPMP should have
6 been a part of the amendment proceedings. So the point is
7 that document needed to be done because of the experience in
8 Markham Ferry so that we had a basic historic management --
9 properties management plan in place during the pendency of
10 the relicensing because we know about GRDA's conduct in the
11 Markham Ferry where one of the tribes attempted to enforce
12 the HPMP during the pendency of the relicensing.

13 GRDA said it's not final so the interim measure
14 was exactly, precisely what we were getting at in the
15 amendment proceeding and FERC granted the amendment without
16 that in place.

17 So that's why we are where we are today on that
18 issues.

19 MR. BANDY: This is Everett again, you stated
20 that FERC will not issue a license -- excuse me, if Section
21 106 has not been completed and all parties are not in
22 concurrence and is that now -- and I want to be very
23 specific here though, is that for all parties that are
24 within the area of potential effect or within the project
25 boundary as was previously described by FERC?

1 MS. MOLLOY: Liz, I'm going to send that one your
2 way because I know I mean generally we don't have tribal
3 lands that are involved and on the projects that I've dealt
4 with in the south branch so I can't speak to concurring
5 parties.

6 But with the signatory we have to have the SHPO's
7 signature.

8 MR. BANDY: You are going to be affecting tribal
9 lands in your area of potential effect but you continue to
10 reiterate this term project boundaries as in your
11 pre-application document. It really needs to be changed to
12 area of potential effect be in compliance with 36 CFR 800
13 but I'm wanting to know very specifically --

14 MS. MOLLOY: Yeah's it's not project boundaries.
15 So the boundary is -- it would be the area of potential
16 effects.

17 MR. BANDY: So FERC will not -- you're stating on
18 the record in this transcription, FERC will not issue a
19 license unless everyone who is being -- everyone who is a
20 concurring party within the area of potential effect is not
21 in concurrence?

22 MS. MOLLOY: Signatory -- not concurrence.

23 MR. BANDY: Well if you are effected with the
24 Quapaw tribes trust land it will be in the area of potential
25 effect.

1 MS. MOLLOY: We will follow Section 106, we will
2 comply with Section 106 in our actions I can tell you. What
3 exactly that will be I can't tell you -- we're at the very
4 beginning of this but we will comply but it is beyond the
5 project boundary that we're looking.

6 We're looking at the area of potential effects
7 and we're working to establish what that is and what the
8 effects are, so.

9 MR. BANDY: Okay.

10 MR. HALLORAN: And this is Joe Halloran, it's my
11 understanding then as between signatory parties and
12 concurring parties that with respect to a programmatic
13 agreement that addresses impacts on tribal trust lands that
14 the United States Department of the Interior will be a
15 signatory party and that the potential impact on tribal
16 lands that are in trust or in fee will involve the tribes
17 affected as concurring parties, is that what I'm hearing --
18 invited signatories, okay.

19 MR. TARRANT: William Tarrant with the
20 Seneca-Cayuga. From the start this thing has impacted
21 tribal areas. We have lost a lot of lands, we've lost
22 ceremonial lands -- my grandmother had to help dig up one of
23 our cemeteries before the water came she said some of them
24 were skeletons some weren't skeleton's yet.

25 And when the water did come there were stories of

1 coffins popping up out of the water. So I mean it's not --
2 is it going to affect it? How much more is it going to
3 affect it? It has the name Grand Lake Cherokee -- it's over
4 the Cherokee.

5 Where they have the south side we have the north
6 side so it's over us too. Not all of our ceremonial things
7 were held in one place, they were held in several different
8 places along the lake and we've lost those.

9 We and our seal -- we have an eel plan and my
10 grandma had stories about walking up to the river and the
11 streams and just reaching out and grabbing the eel, throwing
12 him over a shoulder and somebody else was behind her to club
13 him.

14 We can't do that because the dam is there. They
15 can't migrate up to our area anymore so we've lost a food
16 source, we've lost -- I don't know if that really had much
17 to do with losing the plan but we don't have that animal
18 anymore.

19 There are tribal members that live on the edge of
20 the river or lake I guess now that they are in danger when
21 it rains. When I first started working for the tribal work
22 for the environmental department and there were testing
23 sites that we couldn't get to because they were flooded.

24 And that was back when before any of this was
25 like brought up -- before there were levels brought up to be

1 raised. So like I said it's not will it affect or possible,
2 it's how much more is it going to affect.

3 CHIEF LANKFORD: So it's a little bit hard to
4 stop on a note where we're at because these are kind of hard
5 to stop right here but I think because of lunch issues we
6 will but I think we do need to pick right back up.

7 These cultural issues and these ongoing hurt and
8 all the things that go into this license that we want you to
9 understand and consider, I think we should pick right back
10 up at 1 o'clock and start again.

11 (Whereupon a lunch recess was taken to be
12 reconvened at 1:00 p.m. this same day.)

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7 A F T E R N O O N S E S S I O N

8 CHIEF LANKFORD: I think we'll try

9 to get going

10 here in the next couple of minutes so if everybody would

11 work their way back to their seats we'll get going.

12 I think we'll go ahead and get started. I think

13 they're having a little bit of technical difficulty over

14 there with the slideshow but I think we can start back in

15 with either questions or comments where we left off and then

16 as we get to the slideshow we will show.

17 MR. HALLORAN: So this is Joe Halloran. I just

18 wanted to give a preview this afternoon we've prepared some

19 slides. They are lengthy and we've hit a lot of these

20 issues in the morning and so I very much want to disclaim

21 ownership over this afternoon presentation and these slides

22 should be considered an outline to spur further conversation

23 about impacts and studies, less lawyers, more tribal leaders

24 and staff is the way that we're hoping that the slides will

25 help advance the conversation.

1 While we're trying to get this up and running a
2 question that I had is in the slides FERC that you presented
3 on page 3 regarding cultural resources overview. There's an
4 indication halfway down the second slide on the left-hand
5 column referring to privileged filing and then indicating
6 certain sites, properties within the project boundary and I
7 think we've talked already about the challenge that we have
8 and whether that privileged filing would capture all impacts
9 since we don't really know what the project boundary is
10 right now and we can't really know that until there's been a
11 proper flood routing study on the Spring and the Elk.

12 But at least from my perspective I haven't
13 received the privileged filing. I don't know what it says
14 or what detail it has and I don't know whether other tribal
15 leaders who received the pre-application document from GRDA
16 whether you all recall having received the privileged filing
17 that's discussed in the cultural resource overview.

18 And if we haven't I'm guessing my question is
19 whether we get it?

20 MS. MCNAMARA: The answer to if you haven't
21 received it can you get it? The answer is yes. GRDA should
22 have provided that to all of the tribes that they reached
23 out to initially and then there were some additional tribes
24 that we had to refer to by BIA they should have also gotten
25 a copy.

1 If you have not received a copy and it is -- I
2 have a copy of the document with me but it's about a 30 page
3 list and the information in there that we consider
4 privileged or the locations of some of these archeological
5 sites -- if you have not received it talk to me and we will
6 make sure that you get it.

7 You should have received it in February. If you
8 did not receive it or need another copy just talk to me. My
9 first step will be to inform GRDA and to try to have them
10 send it to you directly. If that does not work then I can
11 -- I have a way I can send it out.

12 It just involves more steps because I have less
13 ability to share privileged information than our licensee
14 does. But you will get it if you need it so please, please
15 talk to me if you need it.

16 MR. HALLORAN: And I'm assuming that the
17 privileged filing and the identification of sites and
18 properties within the project boundary is something that
19 GRDA took a best guess at because I know that at the last
20 consultation on the amendment, the tribes went around one by
21 one to confirm that they hadn't been contacted by GRDA or
22 consulted with together any information that would likely
23 have been important in preparing the privileged filing.

24 So I think we'll need to first and foremost take
25 a look at that and address the issues that are raised with

1 the definition and the enumeration of these properties
2 within the limitations that GRDA likely imposed on the
3 project area and their research.

4 My guess is that most of these are identified
5 above elevation 750 and one of the things we'll be talking
6 about is the need to do a full 106 review from the basin up
7 to address the historic and cultural properties that were
8 inundated 77 years ago.

9 MS. MCNAMARA: I'll just clarify one additional
10 thing. So what was filed with the PAD is -- all we expect
11 with a PAD is existing information to be provided so I'm
12 sure that this was information that was either readily
13 available through the SHPO or the archeological survey or
14 other easily acceptable resources.

15 But that's the starting point and that's GRDA
16 saying this is the information we have right now and so the
17 goal then is to look at that and say okay well here are the
18 gaps that we need to address with studies and then we're
19 looking to you to help us identify those gaps, address how
20 we study or how we fill in those gaps and what needs to be
21 filled in.

22 MR. MAHOWALD: Okay as Joe said we have put
23 together a PowerPoint presentation. Many of the issues were
24 already very thoroughly addressed by tribal leadership and
25 staff this morning but we'll run through it and obviously

1 stop and ask questions or add additional comments as
2 necessary and needed if we bring something up that provokes
3 further discussion.

4 The title of this obviously as an initial
5 consultation -- this is not going to be a one and done
6 process. The tribes want ongoing meaningful consultation
7 throughout this entire process and I look forward to further
8 engagement with FERC staff.

9 We already covered basically the application for
10 the license renewal, expiration date, 30 year license term
11 and I understand too under the new policies and rules that
12 were announced that it's a potential range for the license
13 term, is that correct or is the 30 year term a fairly
14 standard license renewal term?

15 MS. MCNAMARA: So our range is 30 to 50 years.
16 Our new guidance is that in general relicenses will receive
17 40 year licenses, so.

18 MR. BOWLER: The two exceptions would be in cases
19 where a different license term can line up to projects that
20 should be together or in the case of very costly measures
21 the Commission will look at terms over 40 years.

22 But the default is 40 years as of the policy
23 statement that went out about a month ago.

24 MR. MAHOWALD: Okay so that 40 year policy is the
25 same -- I guess regardless of whether it's a new license or

1 a license renewal is that it?

2 MS. MOLLOY: Yes, under the statute a new license
3 -- a relicense can be issued for a period of no less than 30
4 years and no more than 50, that's in the statute. But the
5 Commission has recently issued a policy on license term
6 which says typically it will be 40.

7 MR. MAHOWALD: The question I had with respect to
8 the range is what factors FERC considers in determining a
9 range, for example, this is a now 77 year old dam that was
10 originally designed to hold water at 735 and it's been
11 holding it significantly above that for many, many years and
12 I'm wondering whether age and safety studies that FERC
13 conducts on a parallel track with the stuff we are talking
14 about, informs how much time FERC will grant in that range
15 for an aged dam versus a new one and how that works.

16 And whether the interested parties have an
17 ability to weigh in on that determination?

18 MR. BOWLER: The new policy is much more concise
19 than the old practice or policy and it basically says that
20 based on the intensity of the measures it can go up above 40
21 but it's generally not focused -- the dam safety issues are
22 handled during part 12 of the Federal Power Act and it could
23 be relevant but it's generally not the driving factor for
24 the license term and now we have this 40 year guidance
25 except for those two exceptions which would be lining up

1 licenses or because there's a lot of expense in the measures
2 that are being required and to give it a term to recoup the
3 costs.

4 I said you can comment on anything in the process
5 including the license term if you have concerns.

6 MR. MAHOWALD: Okay.

7 MR. HALLORAN: This is just kind of
8 a brief outline of the issues that we'll cover through the
9 slideshow. We're just going to do an overview of the
10 history of dam development and the operations including
11 flooding.

12 Throughout the process again, welcoming comments
13 of tribal leadership and staff, any questions that FERC may
14 have. We'll go through an overview of just some of the
15 preliminary thoughts on the studies, documents and
16 information that we think are needed -- again most of those
17 were covered very thoroughly this morning with the questions
18 from leadership and staff.

19 And then to the extent we get to a discussion at
20 the end with FERC regarding ongoing collaboration, further
21 consultation, if there's any information that we can provide
22 -- any documents that we can provide we want to just make
23 sure that we keep this process moving and not have it
24 dragging out to the extent that we can avoid it.

25 And there's a strong commitment from the tribes

1 to provide information and to assist and consult to make
2 sure their issues and concerns are adequately addressed.

3 Much of this has already been discussed but we
4 just have the basic timeline for the project when
5 construction began in 1938 the original license term with
6 renewal curve of course as was talked about earlier how that
7 was subsequently modified.

8 But the flood pool or the pool -- the power pool
9 elevations had been significantly lower at the start than
10 where they are currently maintained 734 feet and then that's
11 all been changed.

12 Construction was completed in 1940 and then the
13 authorizing statute was passed on June 11, 1940. One of the
14 points that we will continue to raise throughout this
15 process is that the Pensacola Dam was designed for both
16 hydroelectric power generation and flood control.

17 And I think there was a discussion earlier as
18 well about the recreational purposes -- so those are all
19 project purposes. And we're concerned again about the
20 effort to cap regulatory oversight at 750 feet which we
21 don't think captures all the flood control purposes but we
22 understand that that's just going to be an ongoing topic of
23 discussion.

24 We also note that there have been -- there's been
25 an ongoing dispute between GRDA and the Army Corp of

1 Engineers going back to the early 1940's. The Corp
2 initially proposed much lower crewel curve at 735 feet but
3 ultimately the 745 feet -- ten feet higher was ultimately
4 approved at the request of GRDA.

5 Right now the Corp manages storage easements and
6 generally the 750 to 750 feet range and flow at the expanse
7 about that 755 to 760 but there was recently in December new
8 legislation where those easements will be transferred to
9 GRDA by the Army Corp.

10 One of the things that we're interested in
11 getting information from FERC and/or the Bureau is under the
12 authorizing statute which allowed and approved the transfer
13 of all right title and interest of lands held in the United
14 States by individual Indians or tribes below the 750 foot
15 level.

16 What that required however was the consent of the
17 respective individual Indian owners or tribes and also the
18 approval of a map of definitive location by the Secretary of
19 Interior. And then finally the payment of such compensation
20 as the Secretary may determine.

21 And it would be helpful I think as a starting
22 point through this process to go back and find out and
23 provide to the tribes copies of those records that
24 demonstrate compliance with the initial authorizing state
25 for any federal trust lands or tribal lands that were

1 transferred to GRDA as part of that statute -- according to
2 the authorization of the statute.

3 The other thing in addition to the lands below
4 750 feet where there are any additional storage or flowage
5 easements provided on trust lands -- again above that 750
6 foot level and it would be good to build the records of the
7 tribes to have that information.

8 Any maps -- contemporary maps from when those
9 easements were obtained or provided and then any sort of
10 analysis that may have been done at that time of the
11 potential flood impacts resulting from those storage
12 easements and some flowage easements.

13 So I think one of the questions on the previous
14 slide that I really have for FERC and to some extent for
15 interiors is whether there is a repository of the records
16 demonstrating the consensus or approvals required by the
17 federal statute for the transfers and then the maps showing
18 the location of the transferred lands.

19 And I think that really gets to question one and
20 that gets to a larger request that the tribes, I think,
21 would really benefit from which is a basin up real estate
22 map demonstrating the ownership of property acquired all the
23 way up to 750 and then of course, the either fee ownership
24 acquired or the flowage easements above 750 and who that
25 ownership is in and when they were acquired because I don't

1 think I can speak for the Miami Tribe.

2 We don't have those records and that's just sort
3 of base knowledge that we need to have in order to evaluate
4 the project going forward.

5 MR. MAHOWALD: And I know we've covered it
6 briefly before but I just want to reiterate the tribal
7 consultation requirements under FERC as a federal agency
8 with its fiduciary trust responsibility to consult with the
9 tribes -- the FERC tribal consultation policy is contained
10 at 18 CFS Section 2.1CA again, consistent with that
11 consultation and then of course as was discussed earlier the
12 consultation requirements under Section 106 of the
13 Historical Properties Preservation Act.

14 Again I think we need to emphasize and
15 re-emphasize that this is not going to be a one and done
16 check the box, move on process. The tribes want meaningful
17 ongoing consultation and engagement.

18 It's also important to know that we're starting
19 this process and I think the comments from earlier today,
20 perhaps highlight for FERC staff the frustration that the
21 tribes have and continue to have for what's been 80
22 years-worth of neglect and disregard with regard to their
23 interests and very much frustration with the license
24 amendment and a license varied process where efficiencies
25 under federal law, including the lack of meaningful

1 consultation under Section 106 were disregarded for purposes
2 of the most recently license amendment.

3 So I think if we could indicate anything today
4 that we're going to start this process anew and we look
5 forward to the cooperation of FERC to ensure that all of
6 tribe's interests and concerns are adequately and completely
7 addressed.

8 Some the studies -- and this is just a
9 preliminary list obviously. We're going to be adding to
10 this -- this is just the start of the process as FERC
11 pointed out this is an ongoing process.

12 We'll have a scoping process and be able to
13 submit comments and attend public meetings and we'll get to
14 see what other parties and agencies and entities are
15 proposing for studies but this is just a very preliminary
16 list of things that have already been discussed in large
17 part this morning but where we think studies, documents and
18 information that are needed to this process.

19 Project boundary -- I don't know if there's much
20 more that I need to say about that right now. Full basin of
21 Section 106, full flooding path and routing studies for the
22 Grand Neosho, and Supreme River watersheds.

23 Again if GRDA is going to prepare any hydraulic
24 modeling we want to make sure we get that shared with Tetra
25 Tech or other third party entities that can provide a peer

1 review of whatever work they perform.

2 There are several engineering and infrastructure
3 improvement studies that need to be done to make sure that
4 the tribes can hopefully mitigate the impacts of the
5 flooding -- back water effects flooding and other adverse
6 effects on tribal lands and resources.

7 We also want to make sure there's a study of the
8 environmental impacts of the flood waters that fell -- the
9 contaminants and pollutants that are contained in them as
10 well as the deposit of those contaminants and pollutants on
11 inundated lands.

12 We also think there needs to be a socio-economic
13 impact analysis of the tribes, trust lands, how their
14 businesses, how their governmental operations, how their
15 membership are affected by the ongoing flooding that has
16 been talked about many times, is occurring with greater
17 frequency, duration and magnitude since the dam was
18 constructed and particularly since the rule curve was
19 amended in 1982.

20 MR. HALLORAN: And I think one thing with respect
21 to studies, you know it would be apparent to everyone who
22 was here this morning that you know, with respect to civil
23 engineering and infrastructure, environmental and
24 socio-economic impacts analysis that can only meaningfully
25 be done when there's full flood routing study of the Spring

1 and Elk Rivers in Tar Creek.

2 We know there are going to be civil engineering
3 needs, there are going to be environmental impacts and
4 socio-economic impacts for tribes like the Eastern Shawnee
5 who know what's been happening but that study has never been
6 done and so I think it's again that cart and horse issue
7 where before a meaningful study can be done on those matters
8 there needs to be a full flood routing study done.

9 MR. MAHOWALD: This is again just reiterating the
10 concerns and demands that we have with respect to the
11 project boundary definition. We think that the project
12 boundary needs to include all pool elevations during which
13 power is generated as well as any flood control efforts.

14 We think that falls squarely within the license.
15 We disagree with the notion that the regulation of flood
16 control and impacts of back water affect flooding are beyond
17 the jurisdiction of FERC.

18 GRDA does not stop producing electricity once the
19 pool elevation rises about 745 feet.

20 Going back a little bit to the history here -- it
21 was very evident early on and confirmed by various U.S. Army
22 Corp of Engineer reports and correspondence that immediately
23 after the dam began its operations that there was
24 recognition that there were inadequate easements obtained --
25 particularly for back water effects or effect flooding.

1 These are some of the items that we are going to
2 cover in a little bit more detail. In 1941 there was
3 correspondence where it was acknowledged that by raising the
4 power pool level up to 745 feet -- 10 feet higher than what
5 the Corp has recommended, it eliminated practically all
6 flood control storage allowance which they say it would be
7 needed for back water effects.

8 That same letter continues that there were 30,000
9 additional acres would be required to eliminate constantly
10 recurring damage suits due to overflow caused by back water
11 effect.

12 Now there's been probably a little bit more
13 testimony about the more recent flooding and the occurrence
14 of the Santa Claus floods that are no longer these 50-year,
15 100-year events but are occurring with greater frequency.

16 That same -- there was also an immediate increase
17 in the frequency of flooding after the construction of the
18 dam. This again is correspondence from 1943.

19 MR. HALLORAN: I think what the significant of
20 these historic records is that it illustrates the fact that
21 really from the beginning about the ration with the increase
22 of the pool level that everybody knew very early on that the
23 project boundary and area of effect of area of licensed
24 operations was not adequately drawn and the recommendations
25 for the acquisition of additional either fee title interest

1 or flowage easements recognized from within three years --
2 one and three years of the operation of the dam that the
3 project boundary was insufficient.

4 MR. MAHOWALD: The same letter continued that the
5 additional lands that were required were for the purpose of
6 again raising the power pool to increase the output of the
7 Pensacola power plant.

8 So those specific land and needs were tied
9 directly back to power production -- not flood control.
10 This sort of recognition continued on through the 1940's and
11 '50's where again the recognized need to acquire additional
12 flowage easements was recognized but simply never acted
13 upon.

14 And this is just one of several letters and
15 correspondences that documented that.

16 MR. HALLORAN: In the late '40's and '50's there
17 was a recognition -- there was a conversation about cost
18 related -- not whether the additional properties needed to
19 be acquired to properly address the power production at the
20 Pensacola Dam but what the cost would be.

21 And so you see a shift from acquiring fee title
22 to acquiring flowage easements and there was a cost benefit
23 analysis done to that analysis in the late '40's and early
24 '50's.

25 And then you see the conversation continues in

1 1957 -- the Acting Colonel, the District Engineer to the
2 Division Engineer talking about again the flowage easements
3 and I -- it's now famously been referred by many as the too
4 dumb to complain letters.

5 And the conclusion was that in summary in the
6 bold face that major floods inundate the whole area and the
7 owners are apparently accustomed to this condition which
8 probably explains the absence of their claims.

9 It's the opinion of the office that it would be
10 much more economically to pay damages when and if caused by
11 smaller floods than to acquire the flowage rights. So
12 there's a shift in the late '50's to a defense model of
13 paying damages rather than acquiring the proper footprint
14 that folks had understood was needed as early as 1941.

15 And I know that many Plaintiffs have brought
16 actions for damages and those damage claims have been
17 successfully litigated and yet in many instances, the
18 damages ordered to be paid have remained unpaid and tied up
19 in the courts which really shifts the responsibility for the
20 impacts to private parties to bring claims which a
21 well-funded licensee with high powered lawyers can keep
22 tied up in litigation and they have done so for quite some
23 time.

24 MR. MAHOWALD: This is the -- another one of the
25 letters where it again explaining out that the flooding

1 seems to be tolerated without complaint so no action will be
2 taken -- and so that's a cost benefit analysis that they
3 make that says such operation is proven satisfactory -- it's
4 not believed necessary to attempt to acquire additional
5 lands at this time.

6 GRDA maybe trespassing but since nobody is
7 complaining let's just keep our mouths quiet.

8 CHIEF LANKFORD: Could I step in for just a
9 moment. I can only speak for the Miami Tribe on this issue
10 but at that point in time the Miami Tribe was barely able to
11 take care of itself. The tribe's records were all in the
12 back of the Chief's car at this point in time.

13 There was no money to hire a lawyer. There was
14 no -- people were concerned with food and survival and
15 that's why these letters and that's why this entity, why we
16 are so upset today is they've been allowed -- it's pure
17 profit down there and that's why my argument is these folks
18 have made a fortune off of this dam.

19 And if we asked to provide studies that's just
20 more money away from our membership that we should be
21 putting toward our membership -- they have money, they're
22 the only entity that makes money off this water.

23 No one else does -- the only entity, and they're
24 a licensed entity. They should be the ones to foot the bill
25 for all of these studies not the tribes. We only suffer

1 from what happens from floods. It's not our place to have
2 to pay for these studies -- these studies should have been
3 done properly years ago.

4 And you can't go back and fix history -- you
5 can't do it. But what you can do is fix it going forward
6 and having these studies paid for by an entity that makes
7 money off of this water is only right.

8 CHEIF WALLACE: The Eastern Shawnee Tribe comment
9 would be the same. When I look at these dates of 1951 and
10 1957 our first building was built in the 1970's so -- and
11 we're talking about all the land that we had was 58.19
12 acres.

13 They were not occupied at all by our tribe so
14 therefore and it's exactly as he says -- we did not have a
15 building there and we weren't -- our meetings were held in
16 area churches in Miami or at the courthouse in the basement
17 or someplace else. We didn't even know there were such
18 things as filing cabinets.

19 So to say that we had records -- that's just
20 impossible and in fact the ITC that represents these tribes
21 -- the ITC didn't come into existence until the 1970's so
22 there would not have been collaboration between tribes
23 because of the existence of an organization being absent.

24 And at that particular time when we were placed
25 where we are, it was not designated flood plain either so

1 buildings were constructed and now we've been told that
2 we've been in the flood plain since 2000 and so we're having
3 to rebuild, relocate, move -- all because of situations that
4 have happened to us without our being consulted in any shape
5 or form.

6 MR. MAHOWALD: This slide again addresses the
7 1982 changes to the rule curve increasing the elevation from
8 734 feet up to 740 feet as has been discussed previously
9 leading to an increase in the frequency duration and
10 magnitude of flooding -- particularly flooding costs by back
11 water effect flooding.

12 Now all of this was recognized in the FERC order
13 approving the 1992 license amendment. FERC specifically --
14 the Commission specifically stated that since 1982 as a
15 result of operating the meet the new rule curve the
16 frequency and magnitude of flood events -- water levels
17 exceeding 745 feet increased markedly.

18 The new operations have clearly reduced the
19 project's capacity to store inflows during hydrologic year
20 and have increased the frequency of its function in flood
21 control.

22 We'll keep coming back to the project boundary
23 studies and we'll keep asking -- we do believe that there is
24 need to re-evaluate the project boundaries and we also want
25 to find out what was done historically to assess the impacts

1 of the project boundary when the various modifications were
2 made to the rule curve.

3 MR. HALLORAN: I think the changes effected by
4 the 1982 rule curve change are significant just for what
5 we've found really without tribal participation again in
6 that proceeding. But more importantly what is unclear --
7 while I think it's clear from its absence is that when the
8 rule curve changed -- when federal action was taken to event
9 rule curve changed that FERC acknowledged was increasing the
10 frequency of -- and duration of flood impacts -- that there
11 was no revisiting in 1982 of the project boundary to
12 reflect the reality of the breach of the impacts from the
13 power generation piece of the licensing.

14 And again in 1992 when FERC enters its order
15 renewing the license, again there was no revisiting and
16 resetting of the project boundaries so this historic context
17 is important because this 2017 relicensing process begins
18 the first opportunity for FERC to do a real revisit of the
19 project boundary which again requires full flood routing and
20 an assessment of impacts and the need for property in order
21 to accommodate licensed activities going forward.

22 MR. MAHOWALD: And then also for -- I guess you
23 pretty well covered that, we just need to know. We just
24 need to know what, what the impacts have been on existing
25 flowage and storage easements and the definition of the

1 project boundary.

2 As we begin this relicensing process it just
3 needs to be done. Again, subsequent to 1982 and the 1992
4 relicensing there continue to be modifications of the rule
5 curve and the impacts against and the effects on the flood
6 storage capacity and the inadequacy of the flowage and
7 storage easements was recognized yet again by the Corp in
8 1998 in a real estate adequacy study and again since then --
9 still no changes yet to the project boundary despite the
10 fact that additional flowage easements would be recommended
11 if Grand Lake were a new Corp project.

12 So we appreciate the notion that this is starting
13 anew, not just an amendment and we wholeheartedly endorse
14 that effort -- that it needs to be a ground up review of
15 every aspect of this license amendment particularly the
16 project boundary.

17 There were also again some additional federal
18 legislation under the Water Resource Development Act of 2000
19 where there had been a study that concluded that federal
20 action has been a significant cause of the back water
21 effects to the lands upstream and adjacent to the reservoir.

22 To that end the Committee provided \$300,000 to
23 initiate feasibility studies to identify feasible measures
24 to address the flooding upstream and adjacent to the
25 reservoir.

1 It's our understanding that despite that approval
2 there was never any appropriation of the funds necessary to
3 complete those studies and from the perspective of the
4 tribes, if the federal government is not going to
5 appropriate the funds to complete that analysis that ought
6 to be something that FERC and/or GRDA as the licensee should
7 be required to complete as part of this license renewal
8 process.

9 This is something that we did start gathering
10 information from and requesting information from the Corp as
11 part of the previous variance request and the license
12 amendment back in 2016 and we do think again that this is an
13 area of inquiry that FERC has yet to really address
14 meaningfully and we think that this information -- the
15 previous reports and analysis done by the Corp needs to be
16 obtained, reviewed and analyzed and addressed in this
17 license renewal process.

18 Because from all appearances it appears that the
19 Corp, FERC and GRDA have and continue to ignore the concerns
20 about back water effects, flooding impacting tribal lands --
21 particularly here in northeast Oklahoma.

22 And we've already talked about the impact of the
23 2017 amendment which holds everything in place deferring the
24 analysis that we had requested until a new license is
25 issued.

1 I'm not going to get into the weeds here of the
2 specific rule curve amendment but basically what it
3 accomplishes and it allows for an increased elevation of the
4 pool towards the end of the summer and that, of course, has
5 contributed to the severity duration and magnitude of flood
6 events that have occurred during that time -- again with the
7 higher pool elevation.

8 So FERC -- I'm sorry, GRDA had basically -- had
9 very similar rule curve amendments that had been approved as
10 part of this annual variance process but again now with 2017
11 amendment it is in place and fixed through the duration of
12 the current license.

13 And as we talked about this morning but I want to
14 make sure that we never forget that FERC approved the 2017
15 rule curve amendment without complying with Section 106 of
16 the National Historic Preservation Act and hopefully FERC
17 will engage and consult with the affected tribes as has been
18 demanded here today by tribal leadership and staff.

19 One of the topics that was just alluded to by
20 Chief Wallace is the impacts that the additional flooding
21 has had on tribes and all property owners with the
22 modification of FEMA's flood hazard area maps. They've been
23 steadily increasing and it's having significant impact
24 because where tribal facilities were previously build
25 because of the amendments to the FEMA maps are now in flood

1 zones and flood plains and wouldn't be eligible for
2 construction now -- and that goes to home owners as well.

3 We don't think it's a mere coincidence that every
4 -- basically every succession of amendments of these maps
5 has resulted in an increase in the size of the flood hazard
6 areas and we do believe that there is some correlation
7 between the back water effect flooding that to this day GRDA
8 always refers to as the alleged back water effect of
9 flooding -- that seems to be confirmed by just about
10 everybody else.

11 So we'd like to find out and have FERC analyze
12 whether it is merely coincidental that the FEMA flood
13 routing maps continue to be modified upward and analyze that
14 as part of the license renewal process.

15 This slide basically addresses again the most
16 recent comments -- throughout this process and when the dam
17 was constructed the tribes had been here for over a century
18 and we're finally being able to establish their homes and
19 communities after force-able removal and relocation to this
20 area.

21 And then with the full construction of the dam we
22 heard about facilities, cultural resources being relocated
23 yet again to accommodate the construction of the plant and
24 the flood pool behind it.

25 One of the things that concerns us greatly is

1 throughout this process from the 1930's through present it
2 appears that the federal agencies with responsibility over
3 this have neglected their fiduciary trust responsibility to
4 the tribes.

5 The tribes -- for economic reasons, have been
6 voiceless throughout this process and there was a need for
7 federal agencies to step up and address the interests of the
8 tribes. And it appears that that hasn't been done and we
9 want to make sure that that doesn't happen going forward.

10 Again to repeat the project boundary needs to be
11 redrawn. Maps need to be prepared that are accurately
12 identifying tribal lands including lands above 760 feet.

13 The -- we're still looking for maps to show which
14 tribal lands were acquired. After the authorizing statute,
15 including any subsequent flowage easements or storage
16 easements and then as part of this process we do need a full
17 and complete assessment of the impact of the project
18 operations on tribal trust property.

19 MR. HALLORAN: So that's sort of a little bit of
20 walking through the deep weeds on project boundary history
21 and I just want to make sure that we're not continuing to
22 dominant this time and turn it over to tribal leaders and
23 staff and Department of Interior if you have any further
24 thoughts or comments regarding the project boundary
25 questions that we've talked about here and earlier today.

1 MS. TOOMBS: Good afternoon, Elizabeth Toombs,
2 Cherokee Nation. Thank you so much for the presentation.
3 Just something that I observed in looking at that
4 presentation was the original build of the dam was set at
5 735 and it looks like after the rule amendment we're looking
6 at levels up to 743 feet so I just wanted to go back to
7 maybe a point that was made earlier in terms of the
8 relicensing process.

9 Will there be a thorough safety review of the dam
10 during this process?

11 MR. BOWLER: The -- there's a -- we will have a
12 -- we have a technical report that is prepared for us by the
13 Dam Safety folks -- that's part of our process internally.
14 But a dam like this has an inspection schedule and a series
15 of inspections by both the Commission staff and independent
16 consultants and it is not my area of expertise but I can get
17 you some more information on how that schedule works and
18 when the dam was last inspected and that type of thing.

19 But we do get a technical report from them,
20 that's part of the relicensing.

21 MS. TOOMBS: Okay.

22 CHIEF LANKFORD: Can we get some information
23 about the -- I would be curious is the dam built to hold --
24 I don't know what's spilling over, 761 -- what is the top of
25 the dam, anybody -- Jack?

1 So at 755 it's actually starting to go over the
2 top of the dam.

3 (Off mic comments)

4 You have to look at a flood event affecting the
5 dam also I would have to consider in safety -- that dam was
6 designed originally to run at 735. That was the original
7 intent when the dam was built -- when all the plans were
8 done and everything was going to happen to build this
9 facility -- 735 was normal operations.

10 Now we have exceeded that it sounds like by 15
11 feet almost -- is that dam built to take that stress from
12 now on? I mean the Cherokees are downstream of this. If
13 you know, those are the safety concerns -- I think what
14 we're asking about for prolonged time.

15 MS. MOLLOY: So separately from the relicense is
16 the regular dam safety and they frequently, as needed, will
17 require upgrades if they are necessary but they will look at
18 them to make sure they are still operating and in good shape
19 to handle the operation and such.

20 So they do it on a regular -- they have a regular
21 review process, I think it's every year -- every three but
22 there's various steps. But whenever there are improvements
23 on civil engineering they will frequently, you know, review
24 the dams to make sure -- all of the dams, and require that
25 licensees do improvements to them if necessary.

1 CHIEF LANKFORD: Thank you.

2 MR. BOWLER: I guess the best way to say it is it
3 is a continuing process. They don't wait for relicensing to
4 address the safety issues and there is constant maintenance
5 of emergency management plans and phone lists and studies of
6 the effect of the dam of the problem of the maximum flood
7 and that type of thing.

8 MS. MOORE: Hi, Kate Moore from the Bureau of
9 Indian Affairs regional archeologist. I guess I have a
10 little bit of a concern with the whole project boundaries
11 and timeline and all that issue. When exactly would we get
12 project boundaries set? I'm just trying to think if you end
13 up doing any type of cultural resource survey on trust land
14 or restricted land in Oklahoma, you have to go through the
15 Archeological Resource Protection Act of 1979 and I have a
16 whole list of requirements that you would have to meet.

17 You need landowner consent forms and those can
18 take anywhere from 6 months to a year to get. So the sooner
19 we have the project boundary information for my office to
20 even get started on that once a cultural resource advisor is
21 hired by your GRDA or FERC or whoever hires it the better
22 and so it's a pretty long process.

23 MS. MOLLOY: So the boundary for the new license
24 will be set when we issue the license. So at that point we
25 will have seen what -- we have looked at the studies and we

1 will be looking at the impacts and looking at what needs to
2 be in the project.

3 And at that point we will identify and we approve
4 drawings as part of the license or we require adjustments to
5 drawings if we need to. So as part of this whole process
6 where we are looking at what the impacts -- what the
7 effects, what needs to be in the project we can -- we don't
8 necessarily have the same boundary that is the current
9 licensed boundary.

10 All of this process is aiming to look at what we
11 do issue the license and what the boundary would be for that
12 new license.

13 MS. MOORE: So how am I supposed to require a
14 survey without the boundary?

15 MS. MOLLOY: The boundary is an administrative
16 identification on the cultural resources that will be
17 developed. It's not using the project boundary -- it is
18 within the boundary but also things that might occur outside
19 of the current boundary.

20 MS. MCNAMARA: And so I think this is where our
21 terminology and our use of project boundary and project area
22 and project vicinity and how that overlaps with APE as
23 defined in Section 106 becomes confusing and difficult.

24 We, as a group, along with GRDA and the SHPO need
25 to come to consensus on an APE for the project before we

1 establish a final project boundary in the license -- that's
2 clear, that's obvious to everybody that that's going to have
3 to happen to complete Section 106 consultation.

4 So at that point it is everyone's benefit to use
5 our best information, our best judgment -- whether that
6 comes after a study or before a study or what studies
7 influence it or don't influence it. It's to come to
8 consensus on what is the area that we need to study so that
9 we can start making these decisions and then as we finalize
10 a project boundary and a license order if there are
11 continuing measures post-licensing.

12 And then additional things can be required but we
13 need to look at those issues now.

14 MS. MOLLOY: And it may be that we -- under 106
15 is agreed upon APE but then something turns up that makes
16 it, you know, maybe change. I mean we will be sort of
17 looking at that throughout the process but we will try to at
18 least preliminarily identify an area and then fine tune it
19 but that is as we are going forward.

20 Because remember we don't have an application --
21 this is pre-application. We're just trying to develop all
22 the information so that our licensee can gather the
23 information that we need to have with their application so
24 that we can consider it.

25 MS. MOORE: I'm trying to make sure that the

1 tribal lands are protected culturally because you guys keep
2 bringing up SHPO but you're neglecting to bring up THPO and
3 that's my job.

4 MS. MOLLOY: So and I mentioned on a break
5 actually we're still waiting some information from the IA on
6 location of some lands -- the trust lands, so that we can
7 also be sure to get to address the matters there.

8 But right now that has not yet been filed with us
9 though I think we had asked at our last meeting -- I think
10 there was some work being done to get that to us.

11 MS. MOORE: Okay and then I had another question
12 back to the privileged filing -- you said that the studies
13 were just old ones that nothing new was done?

14 MS. MOLLOY: So when an applicant -- one of the
15 first steps in trying to ascertain what information we're
16 going to require the applicant to study is for an applicant
17 to gather existing information and it can vary.

18 In some basins there might be loads of
19 information that have just recently been done or over time
20 in some areas, there is no information so they just put
21 together what they believe is all the information.

22 Other people can -- and tribes and individuals
23 and others can have additional information that they say
24 this is also additional information, but what we're looking
25 for is where we don't have information.

1 So if there's not a lot of information presented,
2 that suggests that there's a lot of information that still
3 needs to be obtained. But what we're looking for in that
4 initial document is what's out there that we don't study the
5 same one thing over and over -- that we study the other
6 things that we might not have information.

7 So their obligation as an applicant is to put
8 forth in a document -- I'm sorry if I'm not quite answering
9 but their obligation is to put what they believe is existing
10 information to start the conversation.

11 MS. MOLLOY: There's a lot more to Section 106
12 than like they've said just checking a box. You have to
13 take into account Archeological Resource Protection Act of
14 1970 which protects cultural patrimony and that kind of
15 thing.

16 Then you also have to take into account, you
17 know, what was not eligible for the National Register may be
18 eligible now. So just because something was done during
19 this file search doesn't make it current and doesn't make it
20 up to date for eligibility.

21 MS. MOORE: We're not saying that it's current.
22 We're not saying it's up to date. What they are looking for
23 is what's out there and that starts the conversation about
24 what needs to be there and the information that needs to be
25 there is new things -- are areas that haven't been covered

1 by the information they brought forward.

2 So it's not -- this is not, this is the start of
3 sort of the conversation that they provided. It's supposed
4 to be a document that gets the conversation going for
5 studies in areas that we need to look at to tell everyone
6 -- not just us, but everyone, this is what we're offering so
7 that then everyone else can say in the rare occasion someone
8 might say yes that's everything.

9 But usually it's that doesn't address this. You
10 still need more information on this that's missing
11 completely this -- but it is the starting document.

12 MS. MOORE: So in this privileged filing will it
13 have say -- it says there's 195 sites within 76 project
14 boundaries. will it have the cultural survey for each one
15 of those so that we can review it and tell you when it's
16 been updated?

17 MR. MAHAWOLD: This is Phil Mahowald again. I
18 just have a quick question in terms of this privileged
19 filing and any other privileged filings relating to
20 archeological and cultural and historic resources -- what do
21 the THPO's need to do to get access to that information?

22 Because right now it sounds like GRDA prepared --
23 did a literature search to find out what information is
24 available. What -- how can the THPO's get involved to find
25 out how thorough GRDA has -- was in terms of its literature

1 review and if there are additional information, additional
2 studies, additional reports that the tribes may maintain --
3 how do we supplement that record?

4 MS. MCNAMARA: Okay they're kind of two different
5 things I want to touch on first. If you have existing
6 information that you think is relevant to the proceeding
7 that can be filed on the record and it should be filed on
8 the record and you can file it as privileged so that that's
9 not publically disclosed.

10 If you are not receiving privileged documents --
11 if you are a tribal representative and you are not receiving
12 privileged cultural resource documents from GRDA you should
13 be. And so if you have not received that privileged filing
14 that I just passed out and it seems like at least folks on
15 that side of the table may not have received it -- I need to
16 know that and I will have a discussion with GRDA about
17 making sure that the distribution lists for their
18 privileged documents is correct.

19 Because the tribes that are being consulted in
20 this process should be receiving privileged documents about
21 cultural resources.

22 CHIEF LANKFORD: I would like to make a statement
23 for the Miami Tribe. As far as I just pulled one of our
24 cultural people, I just pulled the Second Chief, I just
25 pulled our lawyers and as far as I know we have received no

1 privileged documents.

2 And so I guess while I have got the mic in my
3 hand -- I think all of our frustrations here today is we
4 feel like you're the licensee. It's our job to educate you
5 on what you should be asking GRDA.

6 It shouldn't be our -- we shouldn't have to
7 educate GRDA. We should be educating you. You're the
8 licensor and if we haven't made statements here today that
9 make you question -- holy mackerel -- if I was sitting in
10 your shoes and looking at all of that data up there on the
11 screen and I think you should test that data.

12 I think you should make sure those are real
13 documents and everything else -- you should test that data.
14 But if you are not questioning what's been put up on the
15 screen today, why aren't you? I don't understand.

16 I mean you are the licensor. We should be
17 educating you about all the problems that the tribes are
18 having like she's doing. These things -- just because --
19 all of these dams were built back before the tribes had a
20 voice.

21 The tribes now have a voice. It's time for this
22 agency to step up and say wow, these people were ignored.
23 We don't want the lake drained. If it is going to be at
24 that level so be it but let's have a remediation plan for
25 when it is at that level.

1 Let's have some sensors along both of these Grand
2 Rivers that could be used for a release of water to make
3 room. You can't stop every flood event but what can be done
4 is to lessen the impact and have some remediation for when
5 an impact occurs.

6 Sometimes it's not GRDA's fault but there's a
7 flood. There's just not enough room for the water to get
8 away from here, it's not their fault that the lake's
9 completely full at 755 and they're generating and they don't
10 release enough water to make room, that's their fault.

11 And those are the things that we want to put in
12 front of you to try to get into this license. It's your job
13 to put these things in there. It isn't our job to talk GRDA
14 into putting this in their deal -- it's your job to put
15 these requirements on them to license this facility.

16 MR. BOWLER: I was going to say on this specific
17 issue if they're not doing what they're supposed to do tell
18 us and we'll work that out.

19 UNIDENTIFIED SPEAKER: We are.

20 MR. BOWLER: So we're going to check on that and
21 we'll resolve that. In terms of learning something we're
22 learning a lot today and I appreciate it.

23 SECOND CHIEF OLDS: Great, thanks, well I just
24 wanted to just take Chief Lankford's comments a step
25 further. This is Second Chief Olds also. Something that

1 might illustrate in a broader sense some of the frustration
2 on and I think if the three of you were residents of Ottawa
3 County -- land owners in Ottawa County these things would be
4 illustrated on a very personal basis.

5 But on April 30th of this year the lake level at
6 the dam was 751.89. The rule curve target for that date was
7 742. So 9.89 feet above the rule curve target and yes it
8 was springtime. But you can imagine the risk at that point
9 of a major rain in eastern Kansas, southwest Missouri,
10 northeastern Oklahoma because you know how big the watershed
11 is.

12 So the risk that we're under on a day like that
13 where the lake is 10 feet above the rule curve and there's
14 no capacity to prevent any kind of flooding. And then up
15 here the residents of Ottawa County are waist deep in water
16 or worse and we're told we can't flood those folks
17 downstream -- that's a tough one when you hear that.

18 And that's exactly what we hear. And if this
19 relicensing process can address this circular shifting of
20 blame between GRDA, FERC and the Corp of Engineers to the
21 point that it goes around and around and around -- the only
22 consequence GRDA had from April 30th was profitable,
23 unregulated energy generation. That's their own
24 consequence.

25 And we understand it's a part of a 10 or 11 dam

1 system. The wisdom of that can probably be debated all day
2 long but to put yourselves in our shoes, we need this
3 circular shifting of blame to come to an end in 2022.

4 MR. HALLORAN: Is everybody ready to wade back
5 in?

6 MR. DUBOIS: I just want to go back and comment
7 on a couple of things in terms of -- I'm sorry Rick Dubois
8 of the Seneca-Cayuga Nation, with regard to evaluating the
9 project boundary and the flood pool and the APE.

10 One thing that's been touched on a little bit
11 before and I just want to expand on it a little is the issue
12 of the age of the lake and the extent of silting in of the
13 lake bottom because that has significantly decreased the
14 flood storage capacity just because the lack is a lot
15 shallower than it used to be.

16 And it seems to me that that's something that's
17 going to need to be evaluated and that's going to require a
18 thorough depth mapping of the lake.

19 The other issue I wanted to bring up is maybe
20 getting a little off topic here but it was touched on in one
21 of the previous slides and I just want to go back and
22 revisit that a little bit and that is the issue of the
23 contaminated sediments coming down.

24 And because these waters are directly downstream
25 of the tristate mining district and the Tar Creek superfund

1 site every flood event deposits sediment that is
2 contaminated with toxic heavy metals -- lead, zinc, cadmium,
3 arsenic to name a few.

4 And these deposits are accumulative over multiple
5 flood events and this presents a direct human health risk
6 through contact. It also affects plant life, bulbs,
7 domesticated crops and forage for livestock but also wild
8 plants that are of cultural significance to the tribes that
9 are collected and consumed.

10 Plants are also up-taken by bull's domestic
11 livestock and wild game that are harvested and consumed by
12 tribal people. And so there's both a direct and an indirect
13 significant human health risk with every one of these
14 flooding events and that is an issue that I think has to be
15 a very significant part of the environmental assessment
16 going forward.

17 MR. EMARTHLA: My name is Micco, I'm with
18 Seneca-Cayuga Nation as well. I'd kind of like to add to a
19 little bit of what he just stated but I'd like to ask a
20 question of you guys. Have you ever been on Grand Lake?
21 Have you ever taken a boat ride up Grand Lake?

22 MR. BOWLER: We've only been on the shores of
23 Grand Lake and in fact we considered a boat ride last time
24 but it was inappropriate for us in terms of ethics rules so
25 we have not been on the lake and that's --

1 MR. EMARTHLA: Do you guys have any compliance
2 people that ever are?

3 MR. BOWLER: Compliance folks come and look at
4 the dam regularly.

5 MR. EMARTHLA: What about the lake? Because I'm
6 looking at a piece of paper here I was given on a
7 pre-application document page 147 of the 2017 Grand River
8 Dam Authority.

9 7.8 states under aesthetic resources there is no
10 potential issues related to aesthetic resources. GRDA is
11 proposing no aesthetic resource studies. Is that correct?

12 MS. MCNAMARA: So that's what GRDA proposed in
13 their PAD, that's not from the Commission or staff.

14 MR. EMARTHLA: Right, I understand that.

15 MS. MCNAMARA: So if there are aesthetic
16 concerns, aesthetic issues things that are affected by the
17 project that are issued relating to aesthetic resources that
18 should be raised in scoping comments.

19 It's entirely appropriate for us to look at it if
20 it's an issue it just has needs to be --

21 MR. EMARTHLA: I would like to bring it up right
22 now because it is an issue. The reason I bring this up is I
23 worked for 10 years now in the entire -- what is known as
24 the north end of the lake -- the upper lake, okay.

25 So and I have had a question since my first day

1 on the job of being on the lake year-round. You have got
2 million dollar homes but yet their sewer runs directly into
3 the Grand Lake. They have stem pipes. Those are totally
4 unchecked and unregulated and you can't tell me if you own a
5 million dollar home you can't afford a septic system.

6 And yet every time we get flood waters we have to
7 live with that -- that's what's coming up in our yard.
8 We're losing our yard. If somebody came to your house and
9 took half your yard how would that make you feel?

10 We live with what -- you know the country was
11 just appalled by what the federal government's response was
12 in Houston, Puerto Rico and Florida because of hurricanes.
13 We get the remnants of those hurricanes up here and with the
14 lake level up, it's not -- what's the word I'm looking for
15 here, it's flooding.

16 It's not proposed flooding, it's not if it's
17 flooding, it's flooding. You know I was going to bring a
18 whole bunch of pictures today to show you what we're living
19 with. The country is appalled by what's happening in
20 Houston and what they have to live with and that was a
21 hurricane -- that's the first time they have been hit in a
22 while.

23 This is an annual deal. I'm not asking you to
24 understand my culture and I'm not asking you to understand
25 my ways no more than you're asking me to go to your church

1 and understand you. But understand that we are people of
2 the earth.

3 We are of earth -- that is our church. We go to
4 our church to commune with the creator not talk about it.
5 And some of the things that the creator has asked us to do
6 as caretakers of the earth are to maintain ceremonies.

[PRIVILEGED INFORMATION REDACTED]

21 My tribe consumes those at ceremony. All of that
22 toxic mine waste that's allowed to come down from the
23 superfund site plus everything else that's in the watershed,
24 the soot problem. You know they're not joking when they
25 tell you the soot is an issue because I've been right out

1 there off the GRDA plateau at Highway 10 where it turns
2 north going toward Wyandotte.

3 You can walk across that plateau anytime of the
4 year. I've been out there and I've actually blown motors
5 because the lake level dropped while I was out there
6 sampling water and I had no other way to get in except to
7 get out of my boat and try to push it in.

8 Ankle deep water, all of a sudden, and when you
9 step into the snot you sink to your chest. It's worse than
10 quicksand and I would have gone completely under and
11 disappeared if I didn't have a boat to hang on to.

12 So the sediment that's coming down has been an
13 ongoing issue. GRDA -- I'm not against GRDA but I have had
14 an issue with them because I do water quality. If you look
15 at the data that's reported by that agency the water quality
16 is not that bad on Grand Lake but my data says different.

17 And guess what? I use the same methods as their
18 biologist used. Mine are all USGS EPA approved methods.
19 Collection, sampling and testing -- I'm trained by the same
20 people and I buy my equipment from the same people that they
21 do.

22 And yet my data is 180 degrees out most of the
23 time. And we have blue green algae issues and e coli issues
24 on the lake and I reported it to GRDA. It's funny how they
25 are only able to duplicate it in areas that they consider

1 non-occupyable -- I don't know if I'm saying that word
2 correctly but it's where you have fewer people swimming.

3 And this is during primary body contact
4 recreation. The water quality on Grand Lake has gone
5 consistently down in the 10 years I've been here but it
6 never makes the 303-D list.

7 The same with Elk River that directly feeds in
8 from the eastern side on the south end of the North Lake.
9 You know you can go 5 miles to the other side of the
10 Missouri state line and you can drink that water. You get
11 on the Oklahoma side -- you know three years ago in the
12 water I caught an ameba as a direct result of that -- it
13 almost killed me, I almost lost my legs.

14 And I'm still -- I've been off basically the last
15 year trying to recover from this and it's a direct result of
16 the pollutants that are allowed to go in at the Arkansas or
17 the Missouri border with the poultry industry, totally
18 unregulated.

19 And all of this sewage is coming into our yard.
20 That's what Chief Wallace was talking about when she said
21 time is of the essence because guess what folks -- we're
22 living it. We live this every year. This is not a once in
23 a big time event like happens in Houston, this is an every
24 year deal for us.

25 And guess what -- we're sitting all, we're down

1 at the southern end of these tribes so we're collecting it
2 but guess what we're packing it up and shipping it down to
3 the Creeks and the Cherokees.

4 What we're asking is for you to step in and do
5 what's right. Put yourself in our shoes. How would you
6 feel if your family was inundated with flooding from toxic
7 water? You know, those of us here on the lake you poll
8 them. You are going to find out nobody allows their kids to
9 swim there -- very few of us eat what comes out of that lake
10 because of the water and it's degradation.

11 And it's continually allowed to degenerate yet it
12 doesn't meet the only standards that we have to compare it
13 with in the state of Oklahoma thanks to Senator Inhofe. So
14 the water quality doesn't meet OWRB -- Oklahoma Water
15 Resource Board's standards.

16 But you are asking us to be patient. Understand
17 why it's difficult to be patient because this is what's
18 coming into our yard and this is our life. It's our roads
19 that are cut-off, and that's why we get a little excited
20 when they act like they don't believe it's flooding.

21 It doesn't take -- you know my son, who tours the
22 dam with school comes back terrified because of the all the
23 leaks inside. It's going to break, it's going to bust. So
24 we have legitimate concerns about safety and it actually
25 wasn't designed to hold that much water and if it was

1 designed for flood control for who? Because it is not for
2 us -- we're the sacrificial lambs.

3 We don't want to flood them down south of the dam
4 or down below you all just have to suck it up and float
5 away, take a boat to work. That's what we're living with.
6 And you're the only ones we have as an authority to report
7 this to.

8 I deal with federal agencies every day, one the
9 EPA side. That's my familiarity when I was asking you about
10 a quality assurance plan because somewhere, somehow you have
11 to have a quality assurance plan that dictates how these
12 agencies that are applying for these licenses have to
13 construct their studies.

14 So I just ask that you keep these things in mind
15 because it's not affecting just our lives but our culture.
16 It's not past tense it's present -- it's today. My
17 ceremonial grounds, our burial grounds, are right on the
18 water's edge.

19 And it was blatant disregard that raised that
20 water level up without even considering us. You know if I
21 told you your parent's graves or your grandparent's graves
22 or your great-grandparent's graves were going to float away,
23 how would that make you feel?

24 And if I told you you just needed to be patient
25 and understand this is a process -- you'll understand our

1 frustration.

2 MR. TARRANT: He touched on just one of our
3 ceremonies and we have another ceremony too that involves --
4 William Tarrant, Seneca-Cayuga. He had touched on just one
5 ceremony that involved gathering.

[PRIVILEGED INFORMATION REDACTED]

10 So we had to end up getting water out of the
11 And like I mentioned before my grandmother had
12 stories about walking up to the creek and grabbing eels,
13 tossing them over her shoulder and somebody else would club
14 them and they lost that when she was little when the dam was
15 put in.

16 The eels couldn't migrate upstream anymore. Like
17 he was saying it impacted us then and it's impacting us now.

18 MR. BOWLER: I do have one thing to say actually
19 two things. One is that a few minutes ago we were talking
20 about whether we spent time on the lake and it's true that
21 we will look at the land and we have looked at the lake but
22 we could spend a month on the lake and we'd have a miniscule
23 fraction of the knowledge and experience that you have with
24 the lake.

25 So that's why -- even though we're not trying to

1 make you do the work for us, we do need you to share the
2 information with us and it doesn't all have to be technical
3 you know, reports. It can be some sort of documentation or
4 narrative descriptions of experiences.

5 There's a lot of different ways to provide
6 information that can be useful and effective tied to the
7 issues that are of concern to you. So it's -- I just want
8 to emphasize first of all that your knowledge of the issues
9 is a big reason why we are here today and also that it's not
10 all about computer models.

11 MR. HALLORAN: Everybody ready to wade back in?
12 I think it's an important thing to reiterate that when we're
13 talking about impacts in tribal communities and tribal
14 properties that your experience -- and I caution because
15 some of the stuff and Micco mentioned it, some of the things
16 that tribes may have to share are not matters that they will
17 typically talk publicly about.

18 And that is a real impediment to getting the real
19 important stuff from tribal leaders. And so we're going to
20 need to figure out a way where tribal folks feel like
21 they're able to communicate concerns relating to very
22 important cultural practices -- cultural norms for their
23 communities that they're not otherwise comfortable talking
24 publicly about.

25 I mean it happens in almost every federal

1 licensing matter that I've ever seen that involves a tribe.
2 They don't get a lot of -- the same thing happened in the
3 Dakota Access Pipeline that you may have been following.
4 You know they weren't getting -- Army Corp was suggesting
5 that they weren't getting response from tribal leadership
6 and they were attempting to say we fulfilled our
7 responsibility because we didn't get response.

8 They missed the fact that most of what they were
9 looking for was stuff that Dakota people wouldn't put on a
10 public record -- they're not going to talk about that. So I
11 think this is a great way of opening up the conversation of
12 how is that information going to be shared because that's
13 the real stuff. I mean you just heard it -- that's the real
14 stuff, that's all.

15 MS. MCNAMARA: While you're pausing can I just
16 mention for the purposes of this meeting it wasn't
17 publically noticed and we informed Robin before we had the
18 meeting that any privileged information that's shared
19 including discussion of TCP's or cultural practices that you
20 don't want on the public record we will redact from the
21 transcript and then file as privileged information in the
22 record as opposed to public information.

23 So we are taking concerns with that today if
24 there's information that's shared. But also going forward
25 you can file privileged information that then only

1 Commission staff and individuals and entities that you want
2 the information shared with will receive.

3 But again, we have -- if there are things that we
4 need to know about to be able to make decisions, then we
5 need to be provided with that information and we will do it
6 in the most sensitive way we can.

7 MS. MOLLOY: And I'll add one thing to that.
8 Sometimes where there is information that a tribe doesn't
9 want to share for various reasons -- to the extent that some
10 information can be shared not totally specific, but enough
11 to give us something that we can rely upon in our record.

12 So we need it in our record but we understand
13 that sometimes there's a need to not reveal too much but we
14 need some general kind of statement to the extent possible
15 but thank you, thank you for sharing, both of you.

16 MR. HALLORAN: So back to 106 -- we've completed
17 the project boundary. You know we attempted to sort of set
18 this outline up to sort of follow the natural order as we
19 saw what needed to be done and the first one is evaluating
20 project boundary.

21 And number 2 is everything follows from that.
22 And so the second step we're revisiting the Section 106
23 piece that we talked at length about this morning. It seems
24 to me that what we are arriving at is that the language used
25 in the PAD -- the pre-application document that speaks to

1 impacts in the project boundary really sort of using the
2 wrong terminology and that we will be working in advance of
3 the final determination of what the new project boundary
4 will be.

5 We'll be working together -- we being FERC and
6 tribal leadership to identify an area of potential effect,
7 an APE and that will then be the first step to inform the
8 rest of the studies.

9 I note that Section 7.9 of the pre-application
10 document at page 147 that Micco referred to earlier uses
11 language including project boundary and project related
12 effects that we've expressed concern about earlier today and
13 so I would just reiterate that that language is something
14 that is far too limiting in the obligations that need to be
15 undertaken with these studies including 106.

16 You all understand the federal undertaking and
17 federal responsibility. It was a responsibility in the
18 variance and amendment proceedings but here we are now --
19 needing to do a full and robust 106 review.

20 I think the principal point here to note is noted
21 in red and that is there has not been an assessment of the
22 impacts of the dam operations on historic properties by FERC
23 since 1992 when Section 106 provisions were amended to
24 specifically require consideration of actual or threatened
25 impacts of tribal cultural properties.

1 We're not aware of any full Historic Preservation
2 Act survey that is what we call a basin up review and in the
3 variance and amendment proceedings GRDA's effort was to
4 limit the evaluation of the impact to the increase during
5 the term of the rule curve amendment.

6 It refused to go back, despite our argument back
7 that you can't limit it when you haven't assessed the
8 impacts of the overall operation.

9 So what we're dealing with now is none -- there
10 has been no study. And we know for certainty that GRDA and
11 others have records of the pre-dam river basin archeological
12 surveys. There was pre-statehood archeology done in this
13 area. They records exist to know what's been inundated and
14 when we speak to a basin-up survey we're talking about the
15 need to evaluate historic properties, tribal cultural
16 properties, archeological resources that have been inundated
17 for 70 years.

18 And just because they're inundated doesn't mean
19 that we ignore them moving forward. That the basin up
20 survey is a complete revisit of what would have been
21 required of GRDA had the National Historic Preservation Act
22 required their compliance in 1940.

23 So I think that that's going to be an important
24 part of this consultation. I think tribes are going to want
25 to be very engaged in that research and review of the basin

1 up survey and there's going to need to be a manner of
2 addressing interpretation and understanding of the effects
3 from 1940 forward to tribal lives along the river basin as
4 it existed before the dam.

5 So with respect to section 106 I think we
6 mentioned before that the SHPO's comment in the variance and
7 amendment proceedings get to archeological -- the impact of
8 inundated resources. This is the position that was then
9 later reversed and then finally reversed again.

10 But the point being is that water doesn't protect
11 archeological sites and historic resources -- it damages and
12 destroys them. And we have no way of knowing what has
13 happened -- impacts that have occurred to historic resources
14 that have been inundated since 1940 but it's important that
15 we evaluate.

16 It is knowable what was there and it is -- tribes
17 have the ability to provide the interpretative context of
18 what is currently inundated.

19 So next steps and I would like to open this back
20 up to tribal leaders, tribal staff, federal government.
21 Some suggested next steps and we think it's essential that
22 the federal repository and this privileged filing really
23 begs the question -- we think it is essential that a federal
24 repository of records, information and data that document
25 the pre-state and pre-dam cultural recordation of the

1 project area be gathered -- that the applicant requires the
2 gathering of this information.

3 We know they have it and we know
4 these resources are available to qualified professionals and
5 that that repository be made available to the tribal
6 consulting THPO's so they have -- so you are all reading
7 from the same source of materials and tribes are not one by
8 one required to gather this information on their own from
9 GRDA or to attempt to rely on documents and records that
10 they have gathered themselves -- that a full repository with
11 limited access to tribal and federal folks would be an
12 essential first step to sort of figuring out what's out
13 there as part of the basin up 106 review.

14 MS. MCNAMARA: Can I ask a question about that
15 real quick?

16 MR. HALLORAN: Sure.

17 MS. MCNAMARA: So have the tribes contacted GRDA
18 or requested that information and it has not been provided
19 but you know that it exists, is that the situation?

20 MR. HALLORAN: The -- we're aware that GRDA has
21 obviously records of pre-dam river surveys and that they
22 were done. I don't -- I know that the Miami Tribe has not
23 made a request for those records and in the variance and
24 amendment proceedings the schedule was so compressed that
25 all we really could tell was what we didn't know, rather

1 than to wait and take the time to get what we knew we
2 needed and didn't have.

3 So my point here is that an applicant -- I think
4 the applicant should be challenged to provide all of its
5 records -- archived records as part of the pre-application
6 document so that we have a much more robust understanding
7 and we're all working on the same page as to what's in their
8 possession, what's in the state archeology possession, what
9 may be down at the University of Oklahoma, what may be in
10 the National Archives in Houston I believe, the DIA archives
11 or the Department of Interior Archives in Houston.

12 I think it's an important first step to consult
13 with the tribes and the applicant to figure out the universe
14 of records, where they can be found and to put in place a
15 short project timeline to gather these records and make them
16 available to tribes.

17 MR. BANDY: Really -- according to the National
18 Historic Preservations Act process you would be the lead
19 agency and so you would be the one that we would make that
20 request too and you can defer that to the applicant and
21 request them to do it on your behalf but we would be making
22 the request to you, not to GRDA.

23 MS. MCNAMARA: I understand. I was just trying
24 to clarify the statement that it was known that the
25 information existed but the tribes did not have access to

1 it. So I was just trying to understand how we knew that.

2 MR. HALLORAN: And then we have talked about the
3 -- engaged the tribes as -- and cooperating agencies in the
4 106 process and I think that the essential first step in
5 that engagement has been discussed earlier today is to get
6 to an understanding of the APE as an essential first step to
7 moving forward in the 106 process.

8 And then to help I think -- FERC can provide the
9 assistance of helping to coordinate and identify the
10 responsible government officials and points of contact for
11 the 106 process and the tribal representatives who will be
12 working with them in the 106 compliance process.

13 And then finally we return to the HPMP and this
14 is really offered as a result of lessons learned from the
15 Markham Ferry experience and I'm not sure that it's
16 permitted but I'll ask it anyway and that is to direct the
17 development of an HPMP with tribes that will be effective
18 upon approval by the tribes during the pendency of the
19 licensing proceeding and really two reasons for suggesting
20 that. One is the experience in Markham Ferry where GRDA
21 refused to comply with the HPMP during the licensing
22 process.

23 And, secondly, the reality that tribes asked for
24 this step to be taken in the amendment process for a reason.
25 And the matter was deferred and the reason that we needed an

1 HPMP in the amendment proceeding because then it would be
2 effective in the relicensing proceeding.

3 And so the vulnerability of tribes to protect
4 historic properties is a direct result of FERC's refusal to
5 require the adoption of an HPMP as just a piece of 106
6 compliance in the amendment proceeding and we would ask that
7 FERC think creatively with the tribes about how to address
8 the vulnerability that the amendment decision created by not
9 requiring completion of an HPMP before the relicensing
10 process so that these folks have an ability to take
11 enforcement action -- or to attempt to take a cooperative
12 or enforcement action during the pendency of the licensing
13 proceeding which we well know could be much longer than 5
14 years.

15 MS. MCNAMARA: I'm going to respond to the last
16 point now because we have no ability to enforce an HPMP or
17 any other agreement that hasn't been approved by the
18 Commission. And so unless one was filed by the licensee and
19 approved by the Commission, we would not be able to enforce
20 it.

21 So now that doesn't preclude tribes or agencies
22 or anyone else from seeking an agreement with GRDA it's just
23 not something that the Commission can enforce.

24 MR. HALLORAN: It's just an enormously
25 frustrating reaction since the point in time when FERC did

1 have the leverage and authority to require that and it was
2 requested by tribes, FERC refused to impose it and now tells
3 us that you can't absent a FERC order.

4 FERC was teed up to have an order that required
5 exactly what we're requesting now and decided not to so
6 tribes are left vulnerable for maybe up to a dozen years in
7 the interim of the licensing proceeding. So I understand
8 that may be the legal response but it isn't satisfying.

9 MR. BANDY: How is it that you can't make a
10 permanent condition? The United States Army Corp is able to
11 do similar things and they follow Appendix C. They don't
12 even try to follow Section 106 and they still at least do
13 similar things.

14 If we ask for a permit condition to be added for
15 them to survey borough soil sites, they do that. So I don't
16 see how you guys don't have permit conditions -- that
17 doesn't seem --

18 MS. MCNAMARA: I mean under the existing license
19 the only requirements for GRDA and for cultural resources is
20 an inadvertent discovery so if they find something during
21 routine --

22 MR. BANDY: But I'm saying what's the legal basis
23 for that? Why are you guys saying that -- I think it sounds
24 like something that's internal policy that's not actually
25 vetted by law?

1 MS. MCNAMARA: We can only enforce what's in the
2 license and it's not in the current license and it hasn't
3 come in -- I mean we would -- we're looking at this new
4 license, this 2022 license and so anything that's existing
5 and happening under the ongoing license unfortunately is
6 under the -- well it's under compliance and they would be
7 the ones who would look at that if there were complaints
8 about things, those can certainly be raised with the
9 Division of Hydropower Administration and Compliance but
10 that's separate from what we're doing with relicensing.

11 And I apologize that I know that's an
12 unsatisfying answer.

13 MR. MAHOWALD: We're going to move on to the next
14 study -- we're going to move on to the next study request
15 which would be the full flood routing analysis that would be
16 based on the work that was done by Tetra Tech on behalf of
17 the city of Miami here in the immediate vicinity in the
18 Neosho River.

19 The same as was said earlier today needs to be
20 done with regard to the Spring and Elk Rivers and any other
21 areas in the watershed that are impacted by back water
22 effect flooding.

23 In addition to that GRDA has indicated that it
24 will construct a hydraulic model and as we said earlier any
25 information or any studies for models that GRDA produces,

1 should be provided to Tetra Tech so that it can peer review
2 any work that GRDA or its consultants provide throughout
3 this process.

4 And then again one of the other issues with
5 respect to that and that was discussed earlier is a
6 meaningful dialogue and taking into consideration other
7 inputs, other suggestions and recommendations when it comes
8 to study criteria.

9 We don't want to be left in a situation where a
10 graduate students report is treated the same as a Tetra Tech
11 report, there needs to be study criteria and guidelines to
12 insure that it's full and complete and adequate.

13 The next thing -- with respect to, we do have a
14 question, you know, as we go through that process and
15 perhaps you can explain it to the extent GRDA or FERC ends
16 up disagreeing with what parties suggest be included in
17 particular studies, what is that process?

18 And it's kind of a two-part question and the
19 second one being with respect to the Secretary of Interior,
20 if and when it's established that federal trust lands are
21 impacted by the operation of the plant -- I'm sorry the dam,
22 and under Section 4E of the Federal Power Act, it is going
23 to be required to consult with the Secretary and the
24 Secretary of Interior will have the power to impose
25 conditions as the Secretary shall deem necessary for the

1 adequate protection and utilization of such reservation.

2 So in particular with respect to the dispute
3 resolution process -- question number 2 is what is the role
4 of the Secretary of the Interior and the Bureau of Indian
5 Affairs in the study dispute process?

6 MS. MOLLOY: To the extent they are reservation
7 lands as defined by the Federal Power Act and we're looking
8 still for information on the location of any such lands.
9 The Secretary of the Interior has the ability to issue
10 conditions for the license and the dispute resolution
11 process there is on the study plan.

12 So we have an informal dispute resolution process
13 -- that's where we have the applicant propose their studies.
14 Then everyone else who believes that they have not fully
15 come up with a study plan that would meet everyone's needs
16 comes up with their studies. The licensee applicant will
17 revise their study plan.

18 We have a meeting or the applicant has a meeting
19 that we tend to participate in where various aspects of the
20 studies are discussed and tried to work out. The idea is
21 that you know, if we can get agreement on what the studies
22 should entail and stuff that works out best for everyone.

23 But at least it's discussed and aired why
24 different things are warranted. The dispute resolution
25 process with regard to certain agencies that have mandatory

1 conditioning authority is another step where they can test
2 the determination that will be issued when the office
3 director issues an order requiring a certain minimum amount
4 of studies and sets forth what those studies are as
5 explained earlier -- why we're not adopting, why he's not
6 adopting or he is adopting or he's modifying -- the reasons
7 of all of the study requests.

8 And if a mandatory conditioning agency doesn't
9 agree with that they can contest it and it will be referred
10 to a three-party, a three member panel.

11 MR. BOWLER: It's a very -- it's a quick
12 turnaround process because obviously everybody is waiting to
13 resolve the issues. The three panelists there's a staff
14 person who hasn't been involved -- a FERC staff person who
15 hasn't been involved in the project who chairs the group and
16 then there's a representative of the disputing entity and
17 then there's third party independent person recruited from a
18 list that FERC keeps of people in various resource areas who
19 have signed up to be panelists.

20 And basically the panel reviews the record on
21 that dispute or those disputed study items, they can hold a
22 meeting. They usually do a technical meeting. In general
23 some of the things get resolved in the process and then some
24 of the things the panel makes a recommendation back to the
25 FERC whether the study plan should be revised based on the

1 issues the research agency has raised.

2 It all goes back to the 7 criteria referred to
3 earlier and the director revisits the decision based on the
4 report from the panel. So it's a loop that allows review for
5 mandatory conditioning agencies on the study determination
6 if there are specific concerns.

7 MR. MAHOWALD: Okay as a follow-up question to
8 that -- say for example that neither GRDA nor FERC agrees to
9 do a flood routing study for the Spring River and its
10 tributaries -- could the Department of Interior impose a
11 mandatory condition on the license to conduct that flood
12 routing study for the Spring River and its tributaries under
13 4E?

14 MS. MOLLOY: We'd still need additional
15 information before we could answer. I mean we're still
16 awaiting information about land held in trust but depending
17 on where and that information but it is, you know --

18 MR. BOWLER: It's going to depend on the
19 specifics of what information came before that raised the
20 possibility and we can't judge that at this point.

21 MS. MOLLOY: The conditions are subject to the
22 license.

23 MR. MAHOWALD: Okay we understand that.

24 MS. MOLLOY: Any 4E conditions that would be
25 imposed would be on the new license so not until the new

1 license went into effect.

2 MR. MAHOWALD: Okay and again it's subject to the
3 studies that have been requested identifying the project
4 boundaries and the location of federal trust lands and yep,
5 got that. Similar to that, assuming again that it is
6 established that the project does impact and occupy federal
7 trust lands, if FERC were to decline to follow through on
8 its Section 106 requirements similar to what was done with
9 the amendment process, is that a mandatory condition that
10 the Secretary of Interior could require be done as part of
11 any licensing?

12 MS. MCNAMARA: We are required to complete
13 Section 106 for this project. We are going to fulfill our
14 Section 106 requirement.

15 MR. MAHOWALD: Thank you.

16 CHIEF LANKFORD: I would kind of like to hear
17 from the Bureau.

18 MR. CLEARY: This is Conor Cleary from the
19 Department of the Interior. The question -- one thing that
20 I keep coming back to as I'm looking at the explanation for
21 this ILP study criteria is something that I want to sort of
22 flag to make sure that it doesn't become an excuse not to
23 adequately study the issues that have been presented.

24 And it sort of presents like a chicken or the egg
25 question but you know, I know the issue of the nexus was

1 flagged and from the very beginning of today's discussion
2 and so of course that requirement necessitates -- identifies
3 a threshold requirement in these outlines.

4 And there has to be a clear explanation between
5 the project and its potential effect on the applicable
6 resource. A reasonable connection between project
7 construction or operation and potential effects on the
8 resource in question is a threshold requirement.

9 And then there's a hypothetical given in this
10 explanation and you know it says that there could be for
11 example, information that might be of value to the agency
12 but the connection to project operation could be difficult
13 to draw.

14 So what I'm worried about is if we -- if the
15 Department of Interior for example or the tribes present you
16 know, a request for study and they you know, attempt to
17 address these 7 criteria is there a chance that it would be
18 denied for failure to identify the proper nexus because
19 there is some missing information that of course we need to
20 study in the first place?

21 And I think that that's what Joe was getting at
22 earlier is when we was talking about the bypass issue is
23 what I'm concerned about is whether or not there will be
24 adequate study and if it goes to this dispute resolution
25 process which we can be involved in is there going to be an

1 impediment to adequate study because there's information
2 missing that would be critical to showing the nexus that
3 needs to be studied in the first place, does that make
4 sense?

5 MS. MOLLOY: So my best advice on this is if you
6 think there's a connection and you think the study would
7 uncover, you know, or demonstrate a connection or that there
8 is a possibility of a cause that would be what we'd be
9 looking for there.

10 I mean you might not know precisely but if you
11 think there is something that would give us information
12 about sort of why or how it might be tied in. When we're
13 doing these studies we don't know all of the answers you
14 know, when we're having the applicant do the studies but
15 we're trying to flush out information.

16 And what we want to see that it is related or
17 likely related or tied to the project as opposed to randomly
18 coincidentally somewhere but not at all related to the
19 project. So if it is not exact the best information that
20 anyone has to try to tie it and explain it so we understand
21 what you're, you know, what you think is the connection, is
22 that fair?

23 MR. BOWLER: Yeah, I think that if it seems like
24 there is a possibility that something is an issue and it is
25 something that if it panned out in a certain way it would be

1 -- it could be addressed in a license we would -- we could
2 approve the study but maybe manage some of the uncertainty
3 by saying the first phase of the study would identify you
4 know, sort of hone in on whether -- and get more detail on
5 the issue before they spent the investment on the second
6 phase of the study to do the detailed work, so that type of
7 thing.

8 It's not meant to exclude things that are totally
9 firm. It's basically meant to when occasionally there's a
10 research agency who might see the opportunity to get
11 information that's helpful to other parts of their program
12 that aren't really part of the hydropower relicensing
13 effort.

14 MR. CLEARY: Additional observation or question I
15 mean the hypotheticals that have been posed, for example, a
16 flood routing study inability or incomplete compliance with
17 Section 106 requirements and whether or not DOI can require
18 that as an affirmative you know, condition of a license -- I
19 don't want the -- there's been several references today to
20 of course providing the exact locations of where trust lands
21 are located.

22 And of course we are going to provide that
23 information to you and that involves going through probate
24 processes and allotments to make sure that all of those have
25 been identified.

1 So I don't want -- I know that that is something
2 that FERC needs in order to potentially answer hypotheticals
3 but I don't want the fact that that information hasn't been
4 submitted yet to be a reason not to explore the answer to
5 the question assuming that that information is provided
6 which it will be then if that information shows that there
7 are tribal trust lands that would be potentially impacted by
8 the project -- would that then, I mean does that then, you
9 know, allow the kind of flood routing study or examination
10 for example of the Spring River -- things that have not
11 been explored yet?

12 MR. BOWLER: Is your question if there was --

13 MR. CLEARY: Well what I'm trying to do is
14 piggyback off of what was asked. I mean the question was
15 could DOI require certain kinds of studies and the answer
16 was well we're awaiting, you know, information on the
17 location of the trust land. So I just kind of want to put
18 that aside assuming that information shows that there are
19 trust lands in existence that would be impacted -- would
20 that, and I guess I'm asking for an answer to the question.

21 MS. MCNAMARA: Well okay let's take trust land
22 off the table. If there were not trust lands but there were
23 private individuals who felt like they were being affected
24 by the project and they raised a study request.

25 Assuming they demonstrated adequate nexus and we

1 felt that information was needed as part of the licensing
2 process then that could be something that we would require.
3 Now, if it comes about that there is 4E authority then
4 during the study determination process that would change
5 BIA's role from just an interested party to mandatory
6 conditioning agency who could then dispute the study.

7 However, you know, you are still able to comment
8 on the studies regardless of that decision. Then once we
9 get to licensing if there was 4E authority that's when we
10 could see requirements place on GRDA by the mandatory
11 conditioning agency in this case if there were 4E BIA that
12 required additional things.

13 But that would be contingent on trust lands being
14 occupied by the project.

15 MR. CLEARY: Okay the last question I have is in
16 terms of I mean the definition in the Federal Power Act that
17 of course allows DOI to have a role -- is the definition of
18 the reservation which is defined in the Federal Power Act as
19 tribal lands embraced within Indian reservations.

20 So one issue or challenge that we've had in terms
21 of mapping all of the potential lands that could be affected
22 is what exactly is meant by tribal lands embraced within
23 Indian reservations?

24 So we're trying I think to define the full
25 universe of what we traditionally think of as perhaps Indian

1 country which would include of course, tribal lands but also
2 individual trust allotments that continue -- I mean they are
3 in -- they are held in trust by the United States federal
4 government for the benefit of individual Indian land owners.

5 So in your experience are those types of lands
6 that are individually held in trust for individuals are
7 those encompassed within the definition of a reservation of
8 the Federal Power Act?

9 MS. MOLLOY: I would have to double check but I
10 believe so. Within an outer boundary they have I think -- I
11 can check for you.

12 MR. CLEARY: So it's not confined simply to
13 tribal you know, trust tracks that are held by the federal
14 government for the benefit of a particular Indian tribe?

15 MS. MOLLOY: I believe we have a case where we
16 discuss allotment lands within a boundary.

17 MR. CLEARY: And then that is just trust
18 allotments, is that the FERC's position?

19 MS. MOLLOY: I believe so.

20 MR. CLEARY: Okay because of course in Oklahoma
21 we have a unique situation with the five civilized tribes
22 where their lands are allotted in fee and of course they
23 have -- they are subject to restrictions on alienation.

24 So does that fall within the definition of
25 reservation under the Federal Power Act?

1 MS. MOLLOY: I don't know if we have cases on
2 that I'll have to look but I think it's trust held by the
3 United States lands is where we've run across it before.

4 MR. CLEARY: But at a minimum if there were lands
5 held in trust by the federal government for the benefit of
6 one of the five tribes would that fall under the definition
7 of reservation and federal lands as defined by the Power
8 Act?

9 MS. MOLLOY: Sounds like it would but it would
10 help to see the specifics.

11 MR. CLEARY: Okay and I just raise all of that
12 because there are -- in terms of trying to map everything
13 that is, you know, within the project boundary and what
14 would potentially be in a new project boundary or within an
15 affected area, we have a universe of land.

16 We have a full universe which would include lands
17 that are held subject to restrictions by the Cherokee Nation
18 Tribal Trust lands for the Cherokee Nation, individual trust
19 allotments of the tribes who are represented here today and
20 of course their tribal trust lands as well, so it's a large
21 amount of land to map.

22 And so the concern that I have had today is just
23 simply yes that information, of course, needs to be provided
24 I just don't want it to be a reason why for example we
25 couldn't satisfy or somebody else couldn't satisfy the study

1 criteria that are necessary to study all the things that
2 have been addressed today.

3 MS. MOLLOY: Yeah, we're going to look at the
4 study requests and if it helps inform the decision on the
5 relicense. One thing to the extent that there is a lot of
6 work being done if you've gotten through like a section or
7 something -- you know, feel free to file information that
8 you have and say you are still looking at further
9 information.

10 You know, there's no -- I don't think we would
11 require you to wait until everything was final. If you
12 happened to have cleared up some part you can go ahead and
13 file something with some notes that you will file more.

14 MR. YATES: Paul Yates, Superintendent, Miami
15 Agency. Liz, we will get you that information. And what we
16 will send you is trust, tribal trust and individual
17 restricted fee. And in Indian country we treat it both the
18 same -- we're the trustee for both types of parcels and so
19 just to inform your process that's how it is viewed in
20 Indian country.

21 And additionally, these tribes have
22 jurisdictional boundaries and like I said earlier this is a
23 taking action so it is reducing their abilities to operate
24 within those established boundaries so I want you to give
25 that some consideration moving forward also, we'll get that

1 information to you.

2 MS. MOLLOY: Thanks.

3 CHIEF LANKFORD: Just one more time today. This
4 can all be fixed by a flood impact study. It answers all
5 the questions. All you have to do is show where it is going
6 to flood and we can tell you, we can tell you today. All
7 you have to do is give us a map of where it is going to
8 flood and we can tell you whether tribal lands are impacted.
9 It's easy.

10 This isn't rocket science. We just need one
11 study and I believe the applicant ought to have to pay for
12 that study.
13 They're the only ones again that have an income stream from
14 this water.

15 MS. MCNAMARA: I just want to repeat because I
16 think we mentioned this earlier -- the studies that we
17 acquire as part of our study determination are conducted by
18 the licensee. They are paid for, they may be conducted by
19 their contractors or whomever they hire to do the studies
20 but they are the licensee's responsibility.

21 So that doesn't preclude anyone from doing
22 separate studies but those are the ones we need for FERC
23 licensing.

24 CHIEF LANKFORD: Can I ask the question has there
25 been enough data presented today that you believe there

1 should be a flood impact study done on the Spring River?

2 MS. MCNAMARA: I cannot.

3 CHIEF LANKFORD: You can't go there? I mean
4 seriously that's the question. If somebody -- if one of you
5 three just says there's been enough information presented
6 today that we believe there should be a flood impact study
7 done on the Spring River basin we can quit talking about
8 this and move on down the road. Because until you do that
9 --

10 MR. BOWLER: Well here's the thing. We can't --
11 you wouldn't want us to you know, make a determination here
12 on something that you advocated for and the other parties
13 didn't before we've reviewed it fully.

14 I understand that there's a lot of information
15 we've heard today, it's really valuable information and
16 we'll -- it's in the record, we'll have an opportunity with
17 scoping to get more information and we'll use that to make
18 the decision as well as what's worked out in the negotiation
19 process of the study planning process.

20 So it would be, I think, destructive to the
21 process for us to jump in now and start explaining things
22 that should be dealt with over this whole process working
23 together for 10 months.

24 CHIEF LANKFORD: Blame me for trying.

25 MR. BOWLER: Not at all.

1 MR. HALLORAN: So I just want to -- this is Joe
2 Halloran and I just wanted to step back to Mr. Cleary's
3 question and it relates to mine which is -- and I think
4 earlier Mr. Mahowald's question which related to whether the
5 mandatory conditioning agency could impose a licensing
6 obligation to do something that hasn't been in its view,
7 properly done.

8 I'd like to back up and ask you to address the
9 notice of formal study dispute process and whether for
10 example, you've indicated GRDA will select its graduate
11 student to conduct a flood routing model and the Department
12 --

13 MS. MOLLOY: I'm sorry we didn't actually say
14 that but so just to clarify.

15 MR. HALLORAN: So you've indicated that GRDA will
16 select its contractor and we suspect that it will be a
17 graduate student to perform the flood routing model. And
18 let's assume that the Department of Interior has
19 demonstrated that it is a mandatory conditioning agency --
20 what is their ability to, for example, dispute the
21 qualifications and appropriateness of having needing Hunt or
22 a graduate student -- someone that they do not feel will
23 adequately conduct the study.

24 What process will they have to dispute the study
25 on that basis?

1 MR. BOWLER: So the general question of the
2 quality of the studies that are done -- we addressed that
3 earlier that there's a -- one of the criteria that the study
4 proposal, the study plan demonstrate that it's using state
5 of the art scientifically standard approaches and that we
6 will review that, that will be part of the public record and
7 an opportunity for all of the interested parties to review
8 and comment on and it's a -- in order for us to do our
9 independent analysis we have to know that the data are
10 adequate and solid for us to do that review.

11 So we're not going to approve something that we
12 think is shoddy because it is going to put us in the hole
13 when we get to our environmental document.

14 MR. HALLORAN: I'm just wondering if you can -- I
15 literally don't know if you could explain for me -- the
16 question was, I probably didn't say it very clearly. What
17 is Interior's role as a mandatory conditioning agency? What
18 can they do and what is the notice of formal study dispute
19 process?

20 How does it work? What do they do and what are
21 the results and are those results appealable if the
22 mandatory conditioning agency is dissatisfied with the
23 resolution?

24 MS. MOLLOY: So when we -- as we described earlier
25 the office director will issue a study plan determination

1 and if Interior found issue with it and wanted to contest
2 some of the findings they could file a notice of dispute and
3 that would be the three person panel that would be convened.

4 A staff person from FERC that had not been
5 involved with the project, staff person from Interior and a
6 third from a list that's maintained of people that are
7 willing to serve on the panel and that are not part of FERC
8 I don't think -- they're independent.

9 And that would convene a three person panel that
10 might have a technical conference and would end up providing
11 a report to the office director who would then issue a
12 finding on that -- on their findings, that's an order.

13 MR. BOWLER: And that would be the case for
14 mandatory conditioning agencies, we haven't concluded that
15 that's the case here, but if -- .

16 SECOND CHIEF OLDS: Second Chief Olds here again.
17 I think that's what I was getting at this morning when I
18 mentioned GRDA questions the validity of studies that people
19 up here pay for. I know of at least one tribe here who
20 believes that Minhut has too much loyalty to GRDA because of
21 their long relationship.

22 And yeah, they're a company that is going to --
23 they're going to pass all the tests as far as their
24 certifications but in our eyes that just isn't going to be
25 the way that this should be done, maybe a neutral third

1 party that none of us have any experience with but that's
2 what I was getting at this morning.

3 It gives us a little heartburn. While it's great
4 that the licensee has to pay for the studies the thought
5 that they have the free will to choose whoever they want --
6 if it's a contractor that they have a long-term,
7 long-standing relationship with whose data we have seen to
8 be different than data produced by other people.

9 That there needs to be a way where everyone can
10 be satisfied with the contractor who does the work.

11 MR. BOWLER: We are the third party neutral, okay
12 and we have engineers tearing through the records of these
13 models and we will make an independent analysis and that's
14 our role.

15 SECOND CHIEF OLDS: Okay very good. And then
16 that three person panel -- there has to be an end to some of
17 these, at some point you have to move on so their decision
18 would be final?

19 MR. BOWLER: With the exception of after the
20 license was issued you could file for re-hearing if you
21 thought that affected the outcome.

22 SECOND CHIEF OLDS: Okay.

23 MS. MOLLOY: So you were saying that this three
24 person panel -- so when they make their findings they submit
25 it to the office director of the Office of Energy Projects

1 and he issues a new letter either changing the study --
2 modifying the study or not modifying the study and either
3 effect explaining his reasoning for adopting or not the
4 panel.

5 SECOND CHIEF OLDS: Can FERC approve or decline
6 the hiring of certain contractors?

7 MR. BOWLER: We're going to -- everybody knows
8 that we are going to take the model apart and look at it
9 very carefully and we do this regularly. We look at mass
10 balance models, we look at flood models, hydrologic models
11 and then so we're not necessarily going to specifically --
12 we might require that professional standard methods and that
13 type of thing -- it's not our practice usually to identify
14 either positively or negatively specific contractors, but we
15 are going to require that the information be available to us
16 and the public to evaluate the model and if there's funny
17 business we'll find it.

18 And certainly if we don't find it everybody else
19 has a chance to look at it and they'll find it, we usually
20 do.

21 SECOND CHIEF OLDS: Sure and if anything we just
22 wanted to convey that we would have concerns when it came to
23 that but I very much appreciate your answer, yes.

24 MR. BOWLER: Rachel just reminded me that we have
25 in house hydraulic -- hydrologic and hydraulic engineers

1 working on this and we also have brought in some consulting
2 support not only for the extra expertise but also because
3 this process, it's a lot for us to do in a short time when
4 we get to doing the determination so the extra capacity will
5 really help us with that.

6 MR. MAHOWALD: Just one follow-up question
7 relating to that discussion and it goes back to your slide 9
8 which discusses the study criteria in item number 7 the
9 cost. And I think it's been stated here, at least from our
10 perspective, that it's a flood routing study for example, of
11 the Spring River would be required.

12 In assessing that under cost criteria exactly how
13 does FERC make that assessment? Whose cost is it taking
14 into consideration for example the revenues generated by
15 electrical production and power production for GRDA?

16 And the concern I guess is what if we think that
17 study is critical and it comes back saying well that's just
18 not cost effective. What are the criteria for that and how
19 is it assessed?

20 MR. BOWLER: One way that this is and probably
21 the most typical way this is relevant is where you have
22 competing studies that give very similar -- answer very
23 similar questions when one study costs a lot more than the
24 other.

25 So that would be a very -- the most typical way

1 this criteria would be used to spring to say if two people
2 can do something to get the same information for a very
3 different cost we would favor the lower cost way to get the
4 same information.

5 I guess there's you know, some point at which
6 something becomes outrageously expensive compared to the
7 information that's provided but the other factors will come
8 into play in that evaluation and that access issue and it
9 would sort of probably be a combination of the criteria
10 that you have to look at in a case like that.

11 These are not meant to be -- these are meant to
12 be -- what's that -- to help inform the decision they're not
13 -- any one of them an absolute stand alone and there's not a
14 perfect formula for any of them.

15 MS. MOLLOY: One other reason on the cost is that
16 it sometimes helps and someone who is asking for a study has
17 that sort of identified how much they think it is going to
18 cost because that gives a sense of how much level of detail
19 or what they were looking for.

20 So combined -- all of those factors combined help
21 us understand what the depth of the information is that
22 someone is looking for. If someone is looking for something
23 and it sounds like it's a lot and they say well this should
24 cost \$500.00 you know we know we're not reading it right or
25 something.

1 We have to ask how can you do all of this for
2 \$500 is that -- do we understand what your request is. So
3 it is all kind of in combination of how all the pieces fit
4 so that we understand sort of what the level and type of
5 study is when we're looking at the whole thing. It's
6 another piece of information.

7 CHIEF LANKFORD: I'd like to make a request you
8 saw me walking around, I actually went and called the city
9 before I made this request. I do believe the Tetra Tech
10 study has been made available to FERC. I would ask that you
11 would have your people tear into that study if they haven't
12 already and I would like to hear if we could as this goes
13 along and your people are reviewing -- if they would review
14 that study we would love to hear what FERC's review of that
15 study is.

16 That would tell us how you are going to treat
17 other studies and so I'd like to get a little on the front
18 end of that because we believe this is a great study done by
19 reputable people that covers one side of a river -- one of
20 the rivers not the other, but I would love to hear your
21 people's opinion now rather than 4 years from now.

22 MR. BOWLER: There are multiple points in the
23 process coming up where we can -- where we participate,
24 either commenting on studies -- proposed study plan or the
25 study requests and ultimately the director's determination.

1 So you know, those will be places where we would
2 reflect that -- our independent analysis of that study and
3 the context of the others.

4 MR. HALLORAN: Would now be a good time to
5 perhaps take a quick break and let people stretch their legs
6 a little bit?

7 (Whereupon a brief recess was taken to be
8 reconvened this same day.)

9 MR. HALLORAN: So that was -- we just finished
10 the review of the flood routing and study dispute process so
11 the next study that we'd like explored and I think it will
12 be important to tribes is essential infrastructure
13 improvements.

14 There are and I would like tribal leadership and
15 staff to share their experiences there. Once we have a
16 flood routing map that includes the Spring and Elk Rivers
17 and we have a full indication of the flooding impact
18 throughout the project area then I think it will allow FERC
19 and the tribes to identify the impact on essential
20 infrastructure -- access to hospitals, access to clinics,
21 access to tribal centers, access of employees to work which
22 crosses over a little bit with the socio-economic impact
23 study.

24 But the real thing I didn't get to talk to
25 anybody who lives in Miami or in Ottawa County. They'll

1 tell you that one of the biggest pains is the impact that
2 the flooding has on infrastructure.

3 And so I think that's going to be an essential
4 consultation piece, an essential study piece that a civil
5 engineer or infrastructure expert can consult with each of
6 the tribes transportation, emergency response and
7 infrastructure experts when you are able to overlay flood
8 impacts on maps of roads and bridges and other things to get
9 an idea of the improvements that will be necessary if we are
10 to continue to accommodate the kind of flooding that's
11 occurred since the '82 rule curve changed.

12 So if tribal leaders or staff have some input on
13 that I think some experience on those impacts would be
14 helpful to flush this one out a little bit.

15 CHIEF LANKFORD: If I could, Chief Lankford. One
16 thing that I think might in the relicensing or the new
17 license if there could be some electronic monitoring all
18 along the Spring, the Neosho and Elk Rivers that might be --
19 if we could do some modeling.

20 If we had electronic monitoring, if we could use
21 that possibly in the license -- the new license to curtail
22 water releases. As I've said before everybody likes the
23 lake, everybody wants to have enough water in the lake for
24 it to operate and because we've raised the level in the lake
25 for operations -- for pleasure operations actually, nobody

1 wants to run their boat on the rocks or get hung up or any
2 of these things.

3 Nor do I want them to have to deal with that.
4 But unfortunately by raising the water levels and not
5 monitoring the flows as they are coming down properly and
6 having a defined release rate somewhere in that license.
7 You know if we know there's so many -- I don't know -- I'm
8 not a scientist, cubic yards or feet of water -- I'm not
9 sure what the description is of that.

10 But if we could monitor that and have some models
11 you know and we're not probably going to get it right
12 because every event is a little bit different but if we've
13 got the electronic monitoring in place we can start to model
14 from the new data that we get.

15 So if we know "X" amount of water coming down in
16 the Neosho and Spring at the same time caused an event --
17 that modeling can be used in the future for a release. You
18 know I don't think we have -- there are too many variables
19 on release -- what causes a release, who's in charge of the
20 release, you know that's that circular thing that we try to
21 nail down.

22 Who's in charge when it's going to flood and we
23 always get these three fingers pointing at each other, you
24 know, it's not us. And so if we could get to a more
25 scientific release for a release of water, I think we could

1 get to a point where everybody is a little more happy
2 because at least we know what's going to happen if an event
3 happens.

4 You can't control Mother Nature. There's just no
5 way to do it but being able to mitigate some of the impact
6 by knowing okay, if this much water is coming here's what's
7 going to happen. And by not having those electronic
8 monitors all down all of those rivers so we can monitor what
9 happens in each event, we're never going to get the data.

10 So if that could be something that would be added
11 I think it would be great.

12 SECOND CHIEF OLDS: I just wanted to piggyback on
13 Chief Langford's question. Are there some examples around
14 the country of hydroelectric projects that do have mandatory
15 pre-releases as conditions based on the amount of water
16 that's coming in?

17 I mean I'm asking from a totally ignorant
18 standpoint here, I don't know much about it but is that even
19 something that's feasible that you've done in other cases on
20 other projects?

21 MR. BOWLER: There are various operational plans
22 that can be written into licenses and then some plans are
23 more based on sort of human intelligence and weather
24 monitoring and sometimes it's more formal, sometimes it's
25 less formal but the dam safety folks -- and we can, and

1 other parties, can work together to establish things in
2 cases where it is appropriate.

3 SECOND CHIEF OLDS: So just in a general sense,
4 it's within just the realm of possibility that a new license
5 could include some kind of pre-releasing conditions?

6 MR. BOWLER: There are other projects where
7 related type approaches have been employed.

8 SECOND CHIEF OLDS: Okay great, that's exactly
9 what I asked too.

10 CHIEF LANKFORD: Is there a best practice? Do
11 you know is there anything -- are there best practice out
12 there? Has this been -- we're kind of hoping for some
13 answers. I don't know that's the reason I'm asking the
14 question are there best practices on those type of things
15 that you have already seen?

16 MR. BOWLER: I would defer to our dam safety
17 folks that's their thing and they're the best in the world
18 so.

19 CHIEF LANKFORD: That might just be somebody and
20 answered that question would be nice.

21 MR. BOWLER: They're the best in the world and
22 they would be working with the Corp and the other agencies
23 at the U.S. Dam Safety community together.

24 MS. MOLLOY: Well and different river basins, you
25 know there's different sort of configurations of projects or

1 different things that they are trying to work for and
2 everything but we do have projects where there's that
3 certain level above the reservoir for example that you know
4 they have to make sure to have a certain amount out from the
5 reservoir and so we have different things -- different
6 conditions.

7 There not probably one way. It all sort of
8 depends on everything but this is certainly something that's
9 well within what we can look at and see.

10 CHIEF LANKFORD: I might also add I would like to
11 get this in the record that I somehow believe that the Corp
12 has a conflict in this on the release because I believe
13 there should be a little bit of a study done on how much --
14 what is the effect when the lake gets to a level and there
15 has to be a release, how much can be released before it
16 affects the vertigous navigational channel?

17 And so sometimes we get flooded because they
18 don't want to over impact that channel and the barge traffic
19 can't move. You know, I think considerations need to be
20 taken in the license -- that take those things into
21 consideration.

22 So if we let them hold it here and they don't do
23 enough release and then there's an event now they can't
24 release so somebody has to be flooded, we can't mess this
25 channel up -- can we also have that system be a part --

1 looked at in this license of that effect?

2 Because if the Corp -- somebody's -- they're
3 going to mess something up so is it going to be the flooding
4 on us or is it going to be the channel that is releasing a
5 huge amount of water which then flowed into that
6 navigational channel? Those are some of the questions that
7 we would like to hear the answer to.

8 Is there a better way to manage a release so that
9 it doesn't mess up the channel, doesn't flood us -- those
10 are the answers we're looking for.

11 MS. MCNAMARA: Just quickly -- I just wanted to
12 let you all know that our staff right now is working on
13 getting a good handle on what the existing operations are --
14 whose controlling flows under what levels.

15 And I think that's something that we're looking
16 at and that we need to have an understanding of and that we
17 need to provide to the public as part of the licensing and
18 so that's something that we are looking at.

19 MR. BOWLER: I'll leave it at that.

20 MR. HALLORAN: Any other infrastructure
21 anecdotal? I listed to the griping every time I'm in Miami
22 -- I'm kind of surprised there's a --

23 CHIEF LANKFORD: And also because of the flood --
24 if you live in Miami and the last event we had you know,
25 it's kind of will have to wait for a road to open.

1 Fortunately I don't remember where every single road to get
2 around town gets blocked because certain events -- things
3 tend to happen.

4 As this road floods then it moves down and this
5 road floods and this road then becomes open again and you
6 know, I get mad at the city because they park dump trucks on
7 something and block it and you can't get through that way
8 even though there's only 4 inches there, you're not allowed
9 to drive through that.

10 So roads become blocked and then unblocked and
11 then they back up and they re-block. You know it's kind of
12 a -- I took -- we had an event at our casino I had to work
13 on -- I'm an IT guy, I had to do some IT work.

14 When I left the casino it took me four tries to
15 get home because different roads were blocked. And the road
16 that I knew was going to be blocked was actually opened.
17 You know, so it's different events cause different things so
18 it's all and those are the kinds of things that I think
19 information from the city on what happens and if we just
20 raised the Veterans -- the bridge feeding Veterans a few
21 feet, that the EGN would eliminate that major thoroughfare
22 from being blocked.

23 But there are only three ways to get across town.
24 It's Steve Owens, it's Veterans and over by the college and
25 the college always gets clobbered because it is right on the

1 creek so it's always out. So you really only have -- well
2 there's one more -- what's the street that runs by the
3 college, the bridge you guys -- Central.

4 That's the other one but it always gets -- as
5 back water backs up it gets clobbered. So there's a lot of
6 different events that take out all of the infrastructure of
7 this town and on the flashflood part that comes first it
8 takes out 10 Mushroom Road -- 69A -- that becomes impassable
9 for a time which then flows down and blocks the other
10 streets and usually that will open back up.

11 But all of those different events cause people
12 not to be able to get to the clinic, not to be able to get
13 across town -- they don't know where to go because it's
14 always a different event. There's always a different
15 problem that causes a road to be impassable.

16 And like I said the backup flooding then usually
17 wrecks them all at the most northern end of town so some of
18 those things could be looked at in the study.

19 MR. BOWLER: As far as things that can be done
20 right away to Chief Cook's question earlier what can be done
21 right away. Starting to document -- we probably have
22 already documented some of it but documenting some of that
23 so that can inform the study determination process could be
24 valuable.

25 Even a small amount of qualitative data is more

1 than no data.

2 CHIEF COOK: Chief Cook -- I know the city could
3 probably provide a lot of those pictures because I know at
4 least the last one and the one before they had a drone that
5 went through and did a lot of picture taken for some. I'm
6 sure the City of Miami could supply you with a lot of those
7 kinds of pictures and label what streets and areas it was.

8 I know in '95 -- no, '94 we had a flood. I was
9 in Wichita for our first grandson's birth. My husband was
10 trying to get there and it was all Kansas -- coming down
11 from Kansas, Kansas was flooded.

12 He had to go clear to Oklahoma City and up 35 to
13 even get to Wichita for the birth of his first grandson and
14 of course '51 the flood I was born that year but I remember
15 all of our elders talking about that one.

16 And then the one where the stables were an island
17 remember? I don't know what year that was, '07 -- you
18 couldn't get anywhere in this town. So it's, you know, and
19 like Doug was saying -- Chief Langford, it affects all of
20 the city -- it affects our elders getting to their doctor's
21 appointments, any type of emergency system in this town, our
22 business all where we can't get people to them to buy their
23 smokes or their gas or whatever, you know.

24 So I think the city's pictures with the drones
25 would be a prime example of what we see every time we have a

1 flood event, thank you.

2 CHIEF LANDFORD: I hate to keep picking on GRDA
3 but they are the major benefactor. The state shouldn't have
4 to pay to fix that road or bridge -- the city shouldn't have
5 to pay to fix that road or bridge. It should be -- they're
6 the major benefactor of the rule curve change because
7 they're the only ones again that make money from the water.

8 And so to me it is on them in this license and if
9 we could identify things can be done to help mitigate the
10 lack of ability to get around our towns in a flooding issue,
11 you know, it should fall to them to help because they're the
12 ones.

13 I'm sure when the bridges and things were put in
14 they were built at 735 not 750. So those things, you know,
15 they asked for that and when you ask for something usually
16 you get consequences of asking for that and that should be
17 the fixing of these thoroughfares so that people are not
18 trapped.

19 You know I can lose access to my home. Sometimes
20 I have to try to get home because I can get cut-off by farm
21 field flooding on one road, I can get cut-off by the bridge
22 being closed and then there's one more bridge that one of
23 the three ways and back water flooding does take out two of
24 them.

25 The flash flood event will eventually leave and

1 the farm field clear and run on down and mess up something
2 else but eventually a road will clear up but it's a 15 mile
3 jaunt to try to figure out a way to get home sometimes, so.

4 MR. HALLORAN: So I think what we're talking
5 about is an evaluation of the needs to address the reality
6 created by the rule curve increase in the elevated pool
7 because to this point the costs of that decision have been
8 all externalized successfully -- externalized to federal
9 grants, externalized to state costs, externalized to tribal
10 investments and there needs to be a comprehensive -- our
11 suggestion is there needs to be a comprehensive review of
12 the consistently impacted infrastructure -- essential
13 infrastructure in this area and a determination of costs
14 related with creating the improvements necessary to
15 withstand the water that's become a reality now that the
16 license has been amended.

17 All right well -- so the next study in the
18 interest of time the next -- yeah, you got it? I'm a
19 lawyer, not a physicist or a computer tech. So the next
20 study is -- that the tribes have interest in is a NEPA
21 review.

22 We note that in the 1992 license amendment an EA
23 was conducted and it is the request in the view of the
24 tribes that a full EIS should be conducted for a number of
25 reasons including all of those that you've heard here today.

1 But I think that this is a good starting point.
2 You've heard some of the concerns that ought to be
3 considered in determining the level of NEPA compliance that
4 will be conducted.

5 And specifically we think that one of the things
6 that is going to have impact on lots of different resources
7 and you've heard statements from the Seneca Nation today is
8 the impact that we would really like to request to be
9 reviewed is the impact of the -- the impact of the flood
10 waters created as a result of back water effect that carry
11 with them contaminants in the form of heavy metals,
12 fertilizers, other chemicals that are then carried into
13 areas that are being occupied without permission and in
14 tribal trust lands it would be a trespass.

15 And when the waters recede whether those and in
16 what quantities those contaminants are being left behind on
17 the occupied property. So while GRDA can't be held
18 responsible for the fact that poisons are coming down Tar
19 Creek or coming down the Spring River -- when those
20 contaminants are being lifted as a result of flood waters
21 and carried on to lands that they wouldn't otherwise have
22 reached and they're being deposited in those lands, they're
23 impacting those lands.

24 They're impacting the plant life. They're
25 impacting the wild life and they're impacting the

1 agricultural products and of course, all of the cultural and
2 just socio -- the social connection to all of those
3 resources and that that is an essential piece that needs to
4 be considered in evaluating the level of NEPA review and
5 compliance that will be required as part of the relicensing
6 process.

7 Does anybody have any other input on that issue?
8 So wrapping up on NEPA if there aren't any further comments
9 that sort of is the arc of studies and interests that we
10 were able to identify that I think would be essential for
11 tribal interests.

12 So I think we're at a point where we can recap if
13 I've missed issues that tribal leaders or the Department of
14 Interior think need to be addressed from a study perspective
15 or other testimony please take this opportunity to bring
16 that to the table.

17 Having heard none do I have a Motion to adjourn?

18 MS. BUTLER: I this is Raelynn Butler from the
19 Creek Nation. I had a question about the HPNP. You
20 mentioned that FERC doesn't have the authority to require an
21 HPNP is that correct?

22 MS. MCNAMARA: The only thing I was saying is
23 that we cannot enforce an HPNP until it is required in a
24 license and so currently GRDA is not required to have an
25 HPNP under their existing license. So at this point we have

1 nothing to enforce.

2 Going forward I mean I think we fully anticipate
3 that there will be some sort of HPNP put in place whether
4 it's developed before the license is achieved or after but
5 that would be a condition placed on a new license.

6 But again, we don't even have the proposal yet so
7 we have to get through that process to get to the license.

8 MS. BUTLER: But that will be something that will
9 be in consultation with tribes?

10 MS. MCNAMARA: Correct.

11 MS. BUTLER: Okay, they will be separate from the
12 PA for the license?

13 MS. MCNAMARA: So the PA is our agreement with
14 the SHPO and the tribes that we are going to enforce the
15 HPNP essentially. The HPNP is the document that tells GRDA
16 how to manage their historic properties.

17 The PA is the agreement document in charge that
18 we make sure that they comply with it.

19 MS. BUTLER: Also I would like to request the 30
20 page privileged document. We don't have a copy at the Creek
21 Nation.

22 CHIEF LANKFORD: So Miami would also like to
23 request an electronic version please.

24 CHIEF COOK: The Ottawa Tribe would also like to
25 request one of those please.

1 MR. HILDEBRAND: As would the Wyandotte Nation.

2 MS. MOORE: The Eastern Oklahoma Regional Office
3 of the Bureau of Indian Affairs would like a copy as well.

4 MR. PAPPENFORT: The Peoria Tribe would also like
5 a copy.

6 MS. TOOMBS: The Cherokee Nation is also
7 requesting the privileged information.

8 MR. TARRANT: Seneca-Cayuga would also like a
9 copy.

10 MR. BOWLER: While we have a pause I just wanted
11 to say we should have said at the beginning that we've
12 spoken all day, that we don't speak for any of the
13 individual Commissioners or the Commission as a whole in our
14 comments today.

15 MS. MOORE: Sorry as the BIA -- the Quapaw THPA
16 has already left so we would like to request a copy be sent
17 to the Quapaw Tribe as well.

18 MS. MCNAMARA: I'm going to ensure that everyone
19 who is here today and all of the affected tribes that we had
20 listed in our consultation that haven't otherwise told me
21 that they don't wish to be involved, they will all receive
22 copies.

23 If you haven't had an email or a phone call from
24 me I may need your contact information so I would like to
25 try to get that before I leave today so that I can follow-up

1 and make sure that you get everything.

2 But if you have gotten an email from me I know
3 how to get in touch with you so you don't need to worry
4 about that.

5 CHIEF LANKFORD: I think if there's no other
6 comments -- Paul do you have something or are you just
7 holding the mic?

8 MR. YATES: Paul Yates, Superintendent Miami
9 Agency, I'm just holding the mic. But Chief, thank you for
10 putting this on and Mr. Halloran for coordinating this.
11 It's been very informative and speaking with the solicitor
12 here we are going to establish a dialogue with Liz Molloy
13 and try to address some of these issues on a low level and
14 keep the tribes involved and informed as we move forward.

15 CHIEF LANKFORD: Any other tribe have any other
16 comments? If not we'll let FERC have a final say and then
17 we will adjourn I believe.

18 MR. BOWLER: As the coordinator I'll leave it to
19 Rachel to say what's coming next.

20 MS. MCNAMARA: Alright well anyone who wants to
21 join us tonight we'll be having an information session for
22 the public at the Coleman Theatre starting at 6:30 and it'll
23 essentially be a repeat of most of our presentation that we
24 gave today.

25 We also gave similar meetings in Langley and

1 Grove in November. After today -- as we mentioned January
2 12th is when we will issue our scoping document and we will
3 be out here the week of February 5th for scoping meetings.

4 There will be one evening meeting in Miami so the
5 details of that will be provided in the scoping document
6 that's issued on the 12th. There will also be two daytime
7 meetings and one other evening meeting so all of the details
8 for those will be in the scoping document.

9 And the scoping comments and study requests are
10 all due by March 13th and if anyone has questions or
11 concerns or needs help with filing or anything like that I
12 am your point of contact. I have business cards I'm happy
13 to pass them out and you can get in touch with me at any
14 time. I'm available and we'll try to get you an answer as
15 quickly as possible.

16 MR. BOWLER: Otherwise thank you again for
17 hosting and providing an opportunity for us to learn a lot
18 today.

19 MS. MOLLOY: Last I'd like to also thank you and
20 if you can't reach Rachel I have cards too, you can always
21 call me. I can track them down pretty easily and we look
22 forward to working with you.

23 MR. BOWLER: Thank you to Rob as well with a lot
24 of logistical work, thank you.

25 CHIEF LANKFORD: Thank you all.

1 (Whereupon the meeting was adjourned at 4:22

2 p.m.)

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1 CERTIFICATE OF OFFICIAL REPORTER

2

3 This is to certify that the attached proceeding
4 before the FEDERAL ENERGY REGULATORY COMMISSION in the
5 Matter of:

6 Name of Proceeding: PENSACOLA HYDROELECTRIC
7 PROJECT

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17 Docket No.: P-1494-438

18 Place: Mimai, OK

19 Date: Wednesday, December 13, 2017

20 were held as herein appears, and that this is the original
21 transcript thereof for the file of the Federal Energy
22 Regulatory Commission, and is a full correct transcription
23 of the proceedings.

24 Gaynell Catherine

25 Official Reporter