

PUBLIC & TRIBAL FORUMS
ON
HYDROPOWER LICENSING REGULATIONS

November 21, 2002

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BE IT REMEMBERED THAT, pursuant to the Washington Rules of Civil Procedure, the Public and Tribal Forum on Hydropower Licensing Regulations was taken before Tia B. Reidt, a Certified Shorthand Reporter, and a Notary Public for the State of Washington, on November 21, 2002, commencing at the hour of 9:08 a.m., the proceedings being reported at The Sheraton Inn, 1320 Broadway Plaza, Tacoma, Washington.

Tacoma, Washington

November 21, 2002

9:08 a.m.

MR. MILES: Good morning. On behalf of the Federal Energy Regulatory Commission and the Department of Commerce, Agriculture, and Interior, welcome. We want to thank you for coming to this meeting today.

Based on the meetings we have had in the past, we think this will be a very positive session. The one that we had yesterday, for example, was very interactive and very engaging and we learned a lot from the discussions that were held.

What we're going to do is do a round of introductions. If you could state your name and the spelling and who you represent, that would be very much appreciated for the court reporter.

What we're also going to do at the beginning is, when you make a statement, if you can repeat your name. Then after a while we'll be able to identify people without having people identify themselves. We are doing a transcript, so we want to make sure that the transcript reflects the individual who is actually speaking and not a statement from "The public."

My name is Richard Miles. I work at the Federal Energy Regulatory Commission within a unit that

is dedicated to dispute resolution. I've been asked today if I would help facilitate and moderate this forum.

With me today is John Blair from the Office of Energy Projects, and out in the hall is Ken Hogan, who is also going to be helping to facilitate this process.

Why don't we start with introductions.

Tim?

MR. WELCH: Tim Welch, with the Federal Energy Regulatory Commission staff and the Office of Energy Projects. I'm going to be speaking in a few minutes about why we're here and how we got here.

MR. DACH: I'm Bob Dach with the Fish and Wildlife Service. I'm going to do the Interagency Hydropower Committee proposal today.

MS. SMITH: Gloria Smith, Department of Interior, Solicitor's Office.

MR. QUINN: Scott Quinn, Karuk Tribe, California.

MR. ABRAHAM: Randy Abraham, Spokane Tribe.

MR. CLARY: Don Clary representing the Shoshone Paiute.

MR. MEISINGER: John Meisinger, Chief Executive Office, Shoshone Paiute Tribe.

MR. DAVIE: Bruce Davie, Northwest
Indian Fishery Commission.

MS. MILES: Ann Miles, FERC.

MR. EICHSTAEDT: My name is Rich
Eichstaedt. I'm a staff attorney with the Nez Perce Tribe.
Actually joining you shortly will be our vice chair, Anthony
Johnson.

MR. OSTERMAN: Deane Osterman, Kalispel
Tribe.

MR. MATT: Robert Matt, Coeur d'Alene
Tribe.

MR. HEINITH: Bob Heinith with the
Columbia River Intertribal Fish Commission, Portland.

MR. MERKLE: Carl Merkle with the
Confederated Tribes of the Umatilla Indian Reservation.

MS. JANOPAUL: Mona Janopaul, that's
J-A-N-O-P-A-U-L, Forest Service, Washington, D.C.

MR. GRIFFIN: Kerry Griffin, K-E-R-R-Y,
G-R-I-F-F-I-N, with the National Marine Fisheries Service.

MR. CARRINGTON: I'm Greg Carrington
with Chelan PUD, and I'm representing the National Review
Group.

MR. LOVINGER: I'm Jeff Lovinger. I'm
an attorney with Nelson & Associates.

MR. LOMAN: Jeffery Loman,

J-E-F-F-E-R-Y, L-O-M-A-N. I'm with the Bureau of Indian Affairs in Washington, D.C. .

MR. BIRK: Roger Birk, B-I-R-K. I'm with the Forest Service in Alaska.

MR. BURNHAM: I'm Bernie Burnham, Bureau of Indian Affairs, Northwest Regional office in Portland.

MR. LINDERMAN: Chuck Linderman, Edison Electric Institute, State of Washington, L-I-N-D-E-R-M-A-N.

MS. BACON: Suzanne Bacon with Chelan PUD.

MR. (Inaudible): Jo (Inaudible) with the Chelan PUD.

MR. (Inaudible): Roger (Inaudible) with Chelan PUD, P-U-D.

MR. CURRIT: Steve Currit, Chelan PUD.

MR. ROBINSON: Mark Robinson from the Office of Energy Projects at FERC.

I would also like to announce Mary Morton, who has a case of laryngitis. She's with Norm Burnell's office (phonetic) as a Commissioner (inaudible) FERC who has taken a specific interest in this hydro licensing rule making. We're very happy to have Mary with us today. When the microphone gets to her, just pass her by.

MS. ANDERSON: Emily Anderson, Long View

Associates.

MR. SIMS: John Sims, Quinault Indian
Nation, S-I-M-s.

MS. PATTISON: Malka, M-A-L-K-A,
Pattison, P-A-T-T-I-S-O-N. I need to reintroduce myself to
some of you. I recently moved from BIA to the Office of
Secretary Policy Analysis in Washington, D.C., with the
Department of the Interior.

MR. WALSH: Stan Walsh, W-A-L-S-H,
Skagit System Cooperative.

MR. MUNRO: Andrew Munro, M-U-N-R-O,
Chelan PUD.

MR. COLLEN: Jim Collen, Seattle City
Light, manager of the boundary project.

MS. BOTZHEIM: Tracy Botzheim, Seattle
City Light, B-O-T-Z-H-E-I-M.

MS. PURDY: Jill Purdy, University of
Washington, that's P-U-R-D-Y.

MR. BLAIR: John Blair, Federal Energy
Regulatory Commission, B-L-A-I-R.

MR. HOGAN: Ken Hogan, Federal Energy
Regulatory Commission, H-O-G-A-N.

MR. MILES: Thank you. What we would
like to do next is to make a slide presentation -- a
PowerPoint presentation. I will start it off, and then

after about three or four slides, I'll turn it over to Tim, who will get into many details about why we're here and what this process is trying to achieve.

As you know, we are here conducting a public and tribal forum in Tacoma, Washington. This is the first of two we are going to be holding. The first is today, and tomorrow we'll have the second with the public.

This process is sponsored by four federal agencies. As many of you know, under the Federal Power Act, the Federal Energy Regulatory Commission is responsible for licensing non-federal hydropower projects.

Along with that, the Departments of Agriculture, Commerce and Interior are responsible for providing conditions and prescriptions for licenses that are issued for non-federal hydropower projects. The joined regulatory duties that each of those institutes have -- we felt it appropriate to do a co-sponsorship, which is what we're doing today. This is not a sponsorship solely by the FERC, but a co-sponsorship process.

To give you a chronology of the events:

On September 12th, 2002, we issued a notice on public and tribal forums, and then we held forums in Milwaukee, Wisconsin; Atlanta, Georgia; Washington, D.C.; Bedford, New Hampshire; yesterday and the day before yesterday in Sacramento, California; and today and tomorrow here in

Tacoma.

I have to note that while comments are due December 6th, 2002 -- those are written comments to be filed formally with the Commission -- we've been asked by John Clements to see if you can't get those in early. He would really like to see those come in before December 6th, but you need to file them before December 6th.

In December of 2002, there are going to be stakeholder drafting sessions. In February of 2003, there's going to be a notice of a proposed rule making that will be issued by the Federal Energy Regulatory Commission. In March and April we're going to repeat the technical conferences that we've been holding prior to this date.

On the back of the blue book -- if you don't have a copy of the blue book, let us know and we'll get you a copy -- there is a one-page chronology of events. We'll get into a discussion on that later. Following the technical conferences, there will be a stakeholder drafting session in April, and the Commission hopes to issue a final rule in July of 2003.

Tim will get into a discussion as to why we are here. Following that, we will have a presentation on the Interagency Hydropower Committee proposal, and what a process should look like.

I should note that -- and you may hear

this more than once this morning -- this is only one proposal. We're not here to vote on a proposal. We're here to hear comments from all of the different participants on the proposals that have been circulated as well as any other suggested proposals by other entities.

We're not here to pick one or two or one or three. We're here to ultimately develop a record so that an informed decision can be made by all of the different participants as to what a good proposed process should look like.

The National Review Group will be making a proposal, and that will be done by Greg Carrington.

What we did yesterday -- we changed the format a little bit. After each of the two presentations we allowed the audience to ask questions, clarifying questions. In the other forums, we've had the proposals presented in a time permitted before lunch and then have an opportunity for clarifying questions, but yesterday sessions the participants wanted the opportunity to ask questions after each presentation was made, and that worked rather well.

Then we're going to give an opportunity for tribal representatives to make presentations. All of you -- if you haven't signed up, please do so. There is a little box that we ask you to check off if you want to

make a presentation. For those that did check off the box -- after the morning break, we'll begin the presentations by the speakers who have indicated that they wanted to make a statement.

Then we will break for lunch.

Following lunch, what we would like to achieve is a very interactive, engaged conversation among all of the participants here today.

What we've done in the last two sessions is, we have asked the audience to think about what topics they would like to talk about with each other and with us. Once we list all of the topics that you would like to talk about, we try to -- if there's a reasonable number, then we try to figure out which ones we should address first in the event that we run out of time and can't address all of them.

That's the proposed agenda for today.

Are there any thoughts or comments or questions about that proposed agenda? If not, then I'll turn it over to Tim.

MR. WELCH: Thanks very much, Rick.

As I said earlier, I'm Tim Welch from the Office of Energy Projects at FERC.

I'm here today to talk to you not only about why we're here, but how the heck we got here. I'm going to give you a little bit of background information

-- a little bit of history of the journey that has brought us to Tacoma today.

Many of you may or may not know this, but back in 1991, the Commission received about 157 re-license applications all in a very short period of time, and they became known as the Class of '93 because all of those licenses expired in 1993.

Unfortunately, the Commission was unable to issue licenses within that two-year period before the expiration date, for a myriad of reasons, none of which I'm going to go into now, but a lot of which may surface in our discussion in the afternoon.

A lot of those products are pending before the Commission even today. That raised a lot of questions with a lot of people not only at FERC but in the industry, the resource agencies, and the tribes as well.

People were kind of scratching their heads and saying, "Well, why does this process -- the traditional licensing process, why does it take so long?" As many agents do -- one of the first things that FERC did was, "Well, how can we fix this? Maybe there's some administrative reforms we can very quickly put into place to see if we can improve the efficiency of the traditional hydro licensing process."

One of the first administrative reform

efforts at FERC was to form what was called the Interagency Task Force, the ITF. What that was was a consortium of federal agencies that are involved in the Federal Power Act, Departments of the Interior, Commerce, USDA Forest Service, and also the Environmental Protection Agency.

We got together with some of our sister federal agencies to form this task force, and we looked at various aspects of the licensing process. We looked at how the Commission issued its notices, how we interact under the Endangered Species Act, how we do NEPA documents, how the other licenses -- the ALP, how that works and how we can guide people through that.

The ITF produced a series of several reports on these various aspects of the licensing process, and we put in some very quick reforms that, at the very least, improved the efficiency of the communications between the agencies so that we could get the work product out in a more efficient manner. And I'll say more about that later.

Now, at the very same time, there was also a parallel process that was begun by the NRG, the National Review Group, and that was sponsored by the Electric Power Research Institute. That was a consortium of industry representatives from the hydroelectric industry and some conservation environmental organizations and also some federal agencies as well.

They had a parallel process where they also had some administrative efficiencies. They also produced a series of reports that sort of ended up being like best practices to -- in order to guide future applicants through the traditional licensing process.

In December of 2001, Chairman Pat Wood from FERC conditioned what was called the "Hydroelectric Licensing Status Workshop." That was to more thoroughly examine many of those projects that I told you about that had been pending at the Commission for five years or more.

The Commission kind of wanted to sort of dissect each of those projects one by one and identify some of the reasons why they had been pending for so long.

One of the things that came out of that was -- a lot of those projects had not received a 401 water quality certificate, so we decided to sponsor some regional workshops with the state agencies that are charged under the Clean Water Act with issuing water quality certificates. So we held a series of workshops around the country, in the Northeast and Southeast. We had one in this area, in Seattle, and one in California as well.

I'm going to talk to you a little bit, in the next slide, about some of the things that we heard from some of the state agencies as well.

Now, the resource agencies, they also

undertook some administrative reform efforts within their own agencies, and most notably, Commerce and Interior developed a process very similar to the Forest Services' existing 4(e) appeals process.

They developed a process called the MCRP, the Mandatory Condition Review Process. What that does is, it subjects the agencies' mandatory license conditions that are filed under the Federal Power Act. It subjects conditions to a more thorough public review process, so the agencies also came through with some independent efforts as well.

As I said earlier, most of these administrative reforms -- they did a lot, in that they helped break down communication barriers between the federal agencies and opened more avenues for the public to give some public input.

I would like to say a little bit about, as I said earlier, about our regional state workshops. What did we hear from the states? Well, the number one thing we heard is our second bullet here. (Indicating.)

The water quality certifying agencies felt that if they had more complete license applications, they could get their water quality certificates done in a much more efficient manner. The reason for that is that these agencies typically use the federal hydro relicense

applications as their applications for water quality certificates.

Many of the states felt that a lot of these applications came to FERC and they didn't have enough complete information. They were missing some key study information and information about the project. So then we asked them: "Okay. What about our process could we put in place that would help insure that the Commission received more complete license applications?" They identified a series of bullets down here. (Indicating.)

They felt that the early identification of issues from NEPA scoping would help tremendously, in other words, having NEPA scoping early in process before the application is filed rather than immediately after the application is filed, as it is currently done in the traditional licensing process.

They also felt that study disputes needed to be resolved early rather than after the license application. We all know that many times there are disputes about what studies need to be done and how those need to be conducted between tribes and states and federal agencies and applicants.

Early establishment of licensing schedule: They felt that FERC in the very beginning should sort of draw a road map, if you will, of how the whole

process will work from the very beginning so everyone has a very clear understanding about what their role in the process is.

Finally, they felt that the Notice of Intent, which is the first -- which is sort of the kickoff notice -- to begin the traditional licensing process, they felt that the Initial Consultation Package, the ICP, should be filed simultaneously.

While the administrative reform efforts went a long way in improving the licensing process, our thinking is maybe it wasn't quite enough. Therefore, we're embarking on a new journey called Regulatory Reform; actually taking the current regulations, dissecting them, looking at them, and finding out how we can improve them through an actual rule making.

We're looking at improvements to the current regulations that are needed to reduce the time and costs of licensing -- and this is key -- while continuing to provide environmental protection and fulfill state, federal, statutory, and Indian trust responsibilities.

I will say that this effort is consistent with the national energy policy which does call for a more efficient hydroelectric licenses process.

We kicked the whole thing off back on September 12th, when we issued a nationwide notice that

provided opportunities for discussions through these public and tribal forums that you'll hear today.

This is the last of our public and tribal forums, today and tomorrow, as Rick explained. We've been throughout the country getting input from tribes and people in the public about some of the proposals and basically about what people think about the traditional licensing process.

The September 12th notice also set up a mechanism to allow people to file written comments and recommendations on the need and structure for a new licensing process.

Now, the notice also includes two proposals that had been filed with FERC at the time. One was from the Interagency Hydropower Committee, and you're going to hear a little bit more about that proposal from Bob Dach in a few minutes.

The Interagency Hydropower Committee was a successor to the ITF, the son of ITF, as I call it, and it is also a consortium of the federal agencies, Commerce, Interior, Agriculture, and FERC. The staff from those agencies have come up with a proposal that we're asking people to comment on.

Now, the National Review Group that I mentioned earlier also continued their work, and they came

up with a proposal as well. You're going to be hearing from Greg Carrington about that in a few minutes.

A couple more things about those proposals: Those are the proposals that we had at the time of the notice. Now, since that time, we have received a number of other proposals. We received one from the National Hydropower Association, from some staff members of Pacific Gas and Electric, and two days ago we also received one from the State of California. All of those will be on the FERC record, and I would encourage you to go in and look at some of those other proposals.

As Rick mentioned earlier, we're not going to pick one of those proposals. What we hope to do is to sort of -- we want to create the best of the best. We want to pull different pieces from all of those proposals and create a super-proposal that we think will be satisfactory to everyone.

Now, the notice also included some specific questions that we wanted to ask. Those questions can be found on Page C-7 of your programs. Basically those questions were sort of designed to guide your comments in the types of information that will be very helpful to FERC and the federal agencies during this rule-making process.

On Page C-8, I will direct you specifically to question No. 8 subtitled "Tribal Roles and

Responsibilities." One of our questions is, "How best can a new licensing process accommodate the authorities, roles, and concerns of Indian tribes?"

What are our goals for today's forum?

Although you'll hear me blab for a while -- and Greg and Bob will be up here talking -- the most important part today is that we want to listen to your ideas. We want to get your input on how you feel Indian tribes should best fit into a new licensing process.

We want to hear about the traditional licensing process as it stands; what works and what doesn't? That's the type of information -- we would like you to identify current problems that you're having with the current regulations and then ask you to take a step further in identifying any possible solutions that you've thought about that we can implement in our rule making to help address some of those problems.

This afternoon, during the discussion period, we would like to even take it a step further and translate some of those solutions into some concepts that we can put in the notice of proposed rule making. Those are things that we would like to do today.

Some of the suggested discussion topics, and this is not a comprehensive list (indicating) -- we can basically talk about anything you would like to talk

about today. This is just a guideline to sort of help you formulate some of your comments. These are based on the nine questions in the notice and some of the things we're looking for.

Integrated licensing process: You're going to hear two proposals today. We would like your thoughts on those two proposals. One is from the IHC and one is from the NRG.

A lot of the people -- and this has probably been one of our most discussed topics throughout the public and tribal forums: Study Development. Talk about a mechanism for how you decide what studies the applicant should conduct.

Most importantly -- the next bullet -- a dispute resolution process to help untangle any disputes so the process can keep moving forward.

We would like to hear about settlements. Many of you in this room are involved in settlements. How can a new process best accommodate settlements?

Time periods: The IHC proposal is very specific on time periods from one box to another. We want to hear about -- you know, are we on Pluto on those time periods, or are we right on? Let us know a little bit about those time periods.

Also, we want to know about coordinating

state and federal and FERC processes. As you well know, under the Federal Power Act, there's a lot of parallel processes that are going on at the same time. How can we mesh those together in the relicensing process so they're all working together?

Finally, relationships to existing processes -- most notably, the licensing process and the ALP were asking the questions, "Should a new process -- should we just do away with both of those processes? Should there be a third process? Should we just do away with one of them?" We want to know a little bit more about that as well.

So just to wrap things up, what we're looking for in today's discussion, especially for a new process, is three things: Number one, we would like to come up with a new licensing process that is easy to understand that everybody is very clear on what your role is, what you need to do, how you participate, and apologies to all of the lawyers in the room, but you don't need a lawyer to get you through the process.

Number two, we want a process that makes everybody's job much easier, whether you're a tribal member, whether you're in state government, a federal resource agency, or FERC. We want a process where we're all working together in parallel and not in sequence. We

never want a situation where one agency is waiting for another to come up with our work product.

Number three, the most important, we want a process that's a level playing field where everybody has a good opportunity to participate in the process.

If you keep those three things in mind when you're commenting on our notice, I think we will go a long way in developing a new licensing process so we can truly stand up and say "This is in the public's interest."

MR. MILES: Thank you, Tim. At this time, we're going to have Bob Dach from the Department of the Interior, Fish and Wildlife Service make a presentation on the Interagency Hydropower proposal. Following Bob's presentation, we'll have an opportunity for clarifying questions.

Let me make this statement, as I've done in all other forums: Some of your questions or some of your comments may be based on past experiences or current processes that are ongoing. As with past forums, we would ask you not to discuss those ongoing cases and try to be generic in your questions or in your statements.

We're not here to address a problem or an issue that is currently pending before the Commission or currently ongoing in one of the processes that is occurring within the Northwest. Okay? Bob?

MR. DACH: Thank you. I apologize for the cough. After doing this for a couple of days, I thought it would go away, but it hasn't gone away. I also thought I would get better at this, and I haven't gotten better at this yet either.

I'm with the Fish and Wildlife Service.

I was one of the members on the Interagency Hydropower Committee that put together this proposal that you're going to see now.

There was maybe 12 or 15 of us that attended regularly from all of the federal agencies, so you're going to see sort of the emphasis on federal agencies.

One of things I do want to make clear, though, is that we did acknowledge and identify the fact that the tribes have specific mandatory authorities as well, 4(e), 401, and stuff like that. We put the tribes on the same playing field that the resource agencies are on. So as I move through here, if there's a resource agency specific topic, that also applies to the tribes. It's clear inside of that blue book. We intended to make that part of it clear.

Some folks have brought that up in previous meetings, so I want to start out by saying that we're aware of the Tribe's authority, and we kept it on the

same platform as the resource agencies. Now, whether or not that's sufficient or whether we have to do something different, that's what we're on the road show to find out, but we started at that point.

This is the -- what I'm going to go over is the IHC, very quickly, and what our objectives are. I'm going to get into the proposal a little bit. I have an overhead and some PowerPoint slides. I will probably not use the PowerPoint since we only have one screen, and then I'll just get into some of the benefits that we thought we would get out of the proposal.

As Tim said, the IHC -- we're federal, an agency with the Department of Ag, FERC, and Commerce. We did have EPA there, CEQ also helped, and we did get advice from the Council on Historic Preservation, so there were a number of folks.

The other thing I want to point out is that there are a number of folks that have a lot of experience with hydropower and hydropower licenses. We sort of have been, I think, unfortunate in leaving people with the impression that a bunch of folks in Washington, D.C., knew nothing about anything when we put this together, but I don't think that's the case. Coming from the Northwest, I know there's a few people here in the audience that might take me on over that.

Our objectives were to improve coordination, limit duplication, and reduce conflicts. The way that we tried to do that is to not have any duplication or in our efforts, to sort of put a program together first where we scoped out the project and identified the issues. We agreed to work on studies we were going to do. We conducted them, and then we moved throughout the rest of the process. Of course our overall goals were to reduce the time and cost, but to sort of maintain the environmental safeguards.

We thought -- you know, the resource agencies thought, as well as FERC did, that there was some room for improvement in reducing the time and costs because we were doing some things that were not necessary and complicated, so we put this together. From our perspective right now, it does these things, and it does still maintain our ability to get in good environmental safeguards.

I'm going to go over the proposal. In these four steps -- in the blue book there on Page-- it's Attachment A, Page 14 -- C-26. On C-26 there is this flow chart, and I'm going to put it up here, and you can follow along because when I put it up, you're not going to be able to see it. I'm going to put that up and go through it. Basically I'll just hit the highlights of it, and when I'm done, if you want some more clarification on

one of the particular steps, just go ahead and ask me.

While you're finding that, we're going to turn this overhead on. Here is the flowchart that I just told you about. Again, what we did is, we tried to eliminate duplication in the steps, so we moved the NEPA scoping process up-front to help scope the issues for the projects. We wanted that done first before we moved forward just to get everybody on the same page.

We also have the Commission actually initiating the formal proceedings right in the very beginning, so they're part of the team as the process moves forward.

Our Box 0 up here is where we start. It's three and a half years before the Notice of Intent. The idea was to send out an instruction manual, if you will, to the licensees. A licensee has a license that is going to expire. Three years before their NOI is due, we send out this letter that has all of the information in it that's going to be helpful for them to move their way through the licensing process that will include, you know, requests for stakeholders, you know, and put this information together.

The idea is to get all of the available information together and into this Pre-Scoping Document that's due the five -- five and a half years in advance.

There will be instructions on who to contact and the resource agency and who you get ahold of at FERC. Again, the idea is to get all of what's out there together.

Then this Box 1 here then is the compilation of all of that information material inside what we call the "Pre-Scoping Document."

The theme that we tried to carry throughout the process was to have the forms that are submitted in the same format so it feeds right into Scoping Document 1, which feeds right into Exhibit E and the Draft License Application, which feeds right into the NEPA -- the Commission's NEPA document.

After the Pre-Scoping Document is filed, then the Commission notices it, everybody comments on it. We go through a pretty calm NEPA scoping process where the Commission and the licensee has scoping meetings, and we all go out there and we scope the issues.

The license applicant puts out the preliminary plan of study. We comment on that to the point where we work all the way through this process to where we have a final study plan about eight and a half months after we start -- after this NOI period. In eight and a half months we have to go through, scope the issues, get the study plan together, and come to an agreement on the studies themselves.

Once we have that agreement, then that is sort of the road map for completing the process. The license's applicant would then do those studies. The information would go into the NEPA document and would form everybody's decision.

If we run into a conflict on one of the study proposals, what we have done is set up a dispute resolution process that would apply to those folks that have mandatory authorities because we recognize a special need. Again, that would be the resource agencies and the tribes.

We didn't include the states, although we contemplated it. We really didn't have a state representative when we were doing this, but we thought it's potential that we could just include them as well.

Again, we did have the tribes up there. If, for example, you made a study request and it was denied for some reason, it could go through this dispute resolution process.

Now, the one thing about the dispute resolution process and study request is that we wanted it to be very objective. We wanted it to be a quick thing where some experts could sit down and see if it made sense.

To make it very clear, we're going to put sideboards on everything. We came up with a list of criteria that all study requests would have to meet. The

criteria are in your book, there's six of them, and there's such things as, you know, Project Nexus (phonetic), Resource Goals and Objectives, Accepted Technologies, stuff like that.

If the study request is made and it meets those criteria, then the idea would be that you would be confident that you would take the dispute resolution and you would say to this three-member panel that we have designed that, you know, "Here it is. We've checked off all of the boxes. This should be required."

The three-member panel has one person from the requesting agency or tribe, it has one person from the Commission, and it had this neutral third person. Those people are what we are considering to be more technical experts, not the people that have been involved on the day-to-day licensing activities, but people who can actually look at the request, compare it to those criteria, and determine whether or not it satisfies those criteria.

If it does, then the panel would make a record of finding, file it with the Commission, and say "This meets all of our criteria. You should do it."

If it doesn't, then you do -- they file it with the Commission and say "It doesn't meet the criteria. It shouldn't be required." The Commission uses that information to then form their final decision.

Once that decision is made by the

Commission, it comes out in their Scoping Document No. 2. In Scoping Document No. 2, there will be a final study plan that has gone through dispute resolution, if necessary, it will be scheduled, and then we move forward.

The issue at that point is considered to be resolved for purposes of moving forward with this process. We have that it takes 60 days. Any of these disputes that come up, we want them to be resolved relatively quickly so we can continue on in the process and get the information that we need.

Now, we anticipate two years of studies. It's not to say it couldn't be more or couldn't be less, but for planning purposes, we said two years. The idea is that once you scope the issue and you get a study plan that you agree to, that's how long the study period is going to be.

After the first year of studies, we have formally put a box in there where all of the state locals will sit down and will discuss whether or not everything is going as planned and continue with the second-year studies. If it's not, we have the option for dispute resolution again.

After the second year of studies, we do the same thing. We sit down with everybody and say, "Okay. Well, did we get all of the information we thought we

needed? Is it sufficient for us to fulfill our roles underneath the Federal Power Act?" If the answer is yes, then the applicant uses that information. They put together a draft information file.

There's an anticipation that there are going to be other meetings throughout this process that people are going to get together and talk, you know, in the collaborative forum for the whole, but we do have specific junctures and time where people need to do specific things.

Once the applications is filed, again, the process is pretty similar to what we have right now. There's request for interventions. It's the request for intervention state, by the way -- which I think is Box 17 or 18 -- 18 maybe -- where the ex parte thing kicks in.

I know some folks have been curious about how this whole formal proceeding works. The formal proceeding starts here at the beginning. The ex parte, once we have interventions, kicks in here after all of the studies have been done.

FERC requests, you know, their recommendations and terms and conditions from the agencies -- they put out their draft application -- I'm sorry -- their request for these conditions. At that point there's a decision as to which of these tracks they want to go through, either Track A or Track B.

Track A is for all of those projects that will have a draft NEPA document. Track B is for those projects that will not have a draft NEPA document.

We anticipate that the large majority will go through Track A, but there are those projects that don't have environmental impacts -- they don't have significant environmental impacts that don't need a draft NEPA document. We have it out there as an option for those little projects because it doesn't make sense to require things that aren't necessary.

For the draft NEPA projects down here -- you -- here you see the steps we have. You put the draft out. You get comments back on it. We go through our comment period, if you will, the mandatory conditions review process on our stuff.

We're working out with the Forest Service such that Forest, Ag, and Commerce can put all of their stuff on the table at the same time. That was the objective. Then the final NEPA document comes out with the license.

On the bottom one, if you just get a draft NEPA document, we're still going to go through our review process because we still need to get public input on what we're doing with respect to our terms and conditions. Once we get our finals, FERC would address any issues in

the licensing order. That's the way we have it set up.

I can answer some questions here after

I tell you why this is a great thing.

MR. MILES: At this time we'll begin

our questions --

MR. DACH: Wait a minute. Let me tell

everybody why this is great first.

These are our anticipated benefits.

(Indicating.) There was one NEPA. It's done first. It's going to hopefully reduce a lot of the duplication effort that we put into the project. It's because it's done first and because we scope the issues before we do the studies that we're hoping that resolves a lot of controversy early on.

These other ones are kind of, I don't know, maybe warm and fuzzy: early identification involving stakeholders, early identification and resolution of disputes. The set time frames is one I keep -- I kind of brush over when I give the presentation. There are set time frames in the IHC proposal, and the idea is that, you know, once this thing starts moving, it keeps moving. What we try to do is anticipate where it was going to bog down, for instance, on determining what the studies were and make it such that we resolve those disputes right away and the process keeps moving.

So the idea behind this proposal is, once you're on that track, you sort of -- you know how it's going to work.

Then we have our concurrent filings with Ag, Commerce, and Interior. The whole process itself, we hope that it does provide us that adequate information that we can all agree on, that we can use to either go into settlement discussions or to develop our terms and conditions or whatever. Those are the benefits, anyway.

Now, we'll go to questions.

MR. MILES: Are there any questions?

MR. DACH: Are there any questions?

MR SIMS: John Sims, Quinault Indian Nation.

On this sheet, the flowchart that you just talked us through --

MR. DACH: Yes.

MR. SIMS: -- I'm not clear. Are all of these times added from start to finish?

MR. DACH: Yes.

MR. SIMS: Three plus five and a half plus all of these days and everything?

MR. DACH: Yes.

MR. SIMS: Which adds up to some 13 years?

MR. DACH: No.

MR. SIMS: I did my math wrong then.

MR. DACH: Yeah. If you see the five and a five and a half years in the first box there -- there were some hard and fasts that we had. We had the two-year filing of the application, and we had the between five and five and a half years for a Notice of Intent. Those were our hard and fasts. Then we divided up that time period in order to make sure that we got it done in time.

The way that you see the actual time frames -- you know, we only had so much time to do things, so we broke it up as best we could, trying to anticipate where we were going to need more or less time based on the available we had in order to get it done in time.

MR. SIMS: Thank you.

MR. DACH: Yes?

MR. MEISINGER: My name is John Meisinger from the Shoshone Paiute.

You made a statement earlier that the tribes and the resource agencies were on equal footing. Did you have them, the tribes, involved in the inception of the IHC?

MR. DACH: I don't know if I understood the question.

MR. MILES: He asked if the tribes were involved --

MR. DACH: BIA was there.

MR. MEISINGER: BIA was there?

MR. DACH: Yeah. The tribes themselves -- the individual tribes were not there, neither were the states.

What our thought process was at the time was, "Let's sort of get a collective thinking going amongst the resource agencies. We know that the tribes have the same authorities, so let's put them in with us." Before we get into this process, we need to take it out to the tribes and figure out how it needs to change in order to enable the specific tribes to participate.

We're not at the end of a process. We haven't made any final decisions. What we have is sort of this proposal that gets us to where we need to go. We know that it's going to need some modification in order to address issues. Through this process, hopefully, the tribes, you know, across the country can help us do.

Nobody has any interest in putting something together that's not going to work for the tribes. You know, we've very been open for how to make this process work, you know, for you guys.

MR. HEINITH: Bob Heinith, Intertribal

Fish Commission, H-E-I-N-I-T-H.

Bob, how would the 401 certificate process work into this?

MR. DACH: The 401 itself, you know, is sort of the state tribal authority on 401. We didn't really address this process because we -- again, we understood that it was out there. We weren't entirely sure how to do it. We didn't want to try to speak for those tribes that had that authority or for the states. So what we've done is, we've put this out and said, "Show us how this could work for your process as well."

We know there is that hole in it, and we don't intend to move forward maintaining that hole. We need to now understand how we can best work 401 into it. We think we can, but we're not entirely sure how. We're really not entirely sure of the time frames or where it would fit in.

We frankly have a few of them like that. ESA is another one that we didn't fit in, but we wanted to.

MR. EICHSTAEDT: My name is Rick E-I-C-H-S-T-A-E-D-T.

My question is -- did the IHC consider steps in this process that would allow some flexibility in the time frame? Particularly I'm thinking about studies

that require more than two years of being out in the field and dealing with applications that may be, you know, substantial in length and require more than 90 days to review.

MR. DACH: Yes and no. With respect to the studies, the schedule on the studies all come back to how the issues were scoped and how the study plan was developed with respect to those issues. That study plan will have with it a schedule that everybody can agree to for conducting those studies.

Now, with respect to time for, say, producing a licensing application or the time for those other sorts of process steps, we have not discussed if there would be a time extension there, how it would be extended, whether or not we would extend it. We haven't done any of that.

MR. HEINITH: Bob Heinith, again.

Bob, on your dispute resolution panel, what if you have an agency and a tribe that both had issues with study design like those studies and those types of things? How would that be resolved?

MR. DACH: We sort of went back and forth with a few scenarios under the dispute resolution process. What would happen if there were ten studies in dispute, for example. Would we have ten different panels?

What if there were three folks that all had the same dispute on one study?

We haven't written anything in concrete, and the idea was that there would be a lead agency or group that everybody else worked with that lead agency on this three-member panel. Again, we haven't structured it such that we know we need complete details of that process.

The main thing to focus on with the dispute resolution process was the fact that we would have very objective criteria that all of the studies would be weighted against, and this three-member panel would assumingly have some expertise in the matter and they would be able to weigh those studies against the criteria. When you get into more depth than that, we have to collectively work our way through that thinking still.

MR. HEINITH: What if the panel couldn't come up with a decision amongst themselves? FERC would make the final decision?

MR. DACH: No. The panel would come up with a decision. I mean, that's why we said there's three. It doesn't have to be unanimous. It would be-- if two go one way, then that is the decision. Those are the findings of the panel. Yeah, we didn't give the panel the option of not deciding.

MS. JANOPPAUL: Do you want to state

that FERC makes the ultimate decision?

MR. DACH: Yeah, if I didn't make that clear.

Mona just brought up that FERC would make the ultimate decision. The panel would make a set of findings that would then be given to the Commission to support their final decision.

They could decide whatever the heck they want, but what we anticipate is that the Commission is going to understand that we had an independent review of the study and they said that it needs to be done.

We think that it's probably unlikely that the Commission is not going to do that, but they would have that authority if they wanted to.

MR. CLARY: Don Clary, C-L-A-R-Y, representing the Shoshone Paiute.

I'm just curious. The status of whether or not a project is on or off a reservation, does that have any bearing of the categorization of the tribe or the resource agency?

MR. DACH: I'm not entirely sure how to answer that. Whether or not you were to be prescribing under 4(e), for example, or whether or not you would be doing something under 4(e), I don't think it actually has to be on a reservation. I can't remember that for sure.

It all comes down to whether or not you need a study in order to exercise your authorities under either 4(e) or 4(1). So if you need to have information to exercise your authorities, then the dispute resolution would apply.

We had talked a little bit more on that, for instance, studies for 10(j) or studies for other things that weren't mandatorily required. We don't know that dispute resolutions process would not be used for that, although I don't think we've come to a collective understanding of how it would be used.

MR. MATT: This is Robert Matt with the Coeur d'Alene Tribe.

Did the group at all discuss the relationship between the studies and study designs and the conflicts and its relationship to the baseline conditions used in evaluating the project's impact?

MR. DACH: No. We didn't discuss the issue -- only that those -- we identified the fact that those sorts of issues would be discussed during the scoping process and development of the study plan. We didn't put down any specific criteria for baseline and that sort of thing.

MR. MATT: It seems like baseline pre-dam/post-dam kinds of resource issues are very

significant sources of disagreement, at least in the processes I've been involved with to date, under the current relicensing process. Getting earlier agreement on FERC's position as it relates to that, particularly in the protection of trust and treaty resources that are a pre-dam protective right, would be valuable. It seems like a topic that should be discussed more as a group.

MR. DACH: Actually, I think we should put that on our list for the discussions in the afternoon because we have heard similar feedback in some of the other meetings. It would be good to get a little more input on that.

MR. DAVIES: Bruce Davies with Northwest Indian Fishery Commission.

Have you at all thought about where -- I know you mentioned it before -- where are you going to fit in your ESA consultations on this chart?

MR. DACH: Not collectively. I would say -- for instance, us and them -- I know that the Fish and Wildlife suffers. I don't know about NMFS, but what we have looked at and tried to determine if we could. That was our first lecture. Can we make this work? We have some ideas. We think we could make it work, but we have not worked with the group to decide how ESA would fit in.

MR. DAVIES: I would think that that

would have a significant impact on quite a bit of the activities that occur during the process.

MR. DACH: Particularly in time lines.

MR. DAVIES: And also the settlement discussions. If you have a -- if you put together a settlement agreement involving litigation that then will pass on through the ESA, you're back at ground zero again. It would seem like you would want to do that early on.

MR. DACH: Yeah. That's a good point.

I don't --

MR. DAVIES: You could put all the sideboards early on for what is acceptable and what isn't.

MR. DACH: Well, certainly our thought is, we wanted to do ESA concurrently with everything else to the extent that we can. Again, we haven't really started drawing it out in the time line yet.

Any other questions?

MR. LOVINGER: Jeff Lovinger, Nelson and Associates.

Is that something that the agencies anticipate will be done as part of this rule-making process?

MR. DACH: It depends on a large part on the kind of responses we get through the Federal Registry Notice and the input that we've been getting through these meetings.

I would say that what we recognize is that any of the processes that a licensee would have to go through in order to get a license should be done concurrently under one sort of grand process. The idea is certainly to get there. Whether or not we can get there or how we could do it, I don't know that we know that yet.

MR. MILES: Any other questions? Yes, back here.

MR. HALLER: Greg Haller, H-A-L-L-E-R, with the Nez Perce Tribe.

I'm curious how you envision incorporating economic studies into the new process. That's been kind of a critical issue that's kind of been put off involved in relicensing that I think --

MR. DACH: We put it off. We hadn't discussed it. We hadn't discussed -- when we looked at this, we developed it from more of a process perspective: What needed to happen and where in order to get all of these things done on time such that we were assured that we got our information and that we needed to exercise our authority and FERC has the information they needed in order to produce a license.

When we put the proposal out, it is very much a framework. We felt that that was appropriate because we didn't want to get too far ahead of everybody

else in that we wanted one process that was going to work for everybody else.

Those issues and baseline issues, we would -- I mean, the idea is to get it all in there and to get input from, you know, all of the stakeholders, tribes, us, everybody, on exactly how that needs to work. We haven't really gone to the specifics of discussing how economics would be addressed.

MR. QUINN: Scott Quinn with the Karuk Tribe.

Am I correct when I see this? It says here that there are 60 days to make study proposals to the applicant?

MR. DACH: Yes. I'm not looking at it, but I think, yes.

MR. QUINN: This seems really short.

MR. DACH: There should be more than one opportunity for study proposals. There's an opportunity after the preliminary Pre-Scoping Document is filed. After the Pre-Scoping Document is filed, then we have an opportunity to make study proposals.

After we do the scoping, meaning to scope the projects and do all that, we have another opportunity to provide more detailed and concrete study proposals, so the idea is that it is in that eight and a

half month period.

What you see in the boxes are sort of, you know, the formal times, the anticipation. In the background there's work going on. By the time that final study plan comes out, it was our thought that that eight-and-a-half-month time period is enough to work as collaboratively as you're probably going to work to try to determine what the final study plan will look like.

MR. QUINN: Yeah. That was my other question or comment. You know, there needs to be a mechanism for the applicant and the stakeholder to work together on the development of the study plans, not for the stakeholder to just, you know, submit a proposal to the applicant and then have the applicant either deny it or, you know -- whatever.

MR. DACH: Yeah. We've gotten that comment a few times. It's not that we haven't -- you know, we haven't made the background noise clear enough. We haven't let people know that there's an expectation that this is akin to the collaborative process in the ALP where folks are sitting down and discussing their issues and talking this through.

The time frame in the boxes that we have in there are more to ensure that the process keeps moving forward. You can be doing all of this other stuff,

but the idea is -- we didn't want to be doing all of this other stuff with no deadline, if you will, for when it had to be completed.

So you have some time periods when you can check in, and you have a very discrete time period where everything has to be done. How the stuff is done up until that point is not quite as clearly defined in that flowchart as it probably could be, certainly at least the expectations.

MR. QUINN: Because one of the problems that we usually have is that a federal agency will come to the tribe and they will have this proposal or plan to do work, and, you know, they didn't consult with us in the beginning, and so, you know, maybe they didn't take into consideration a lot of our tribal trust concerns. Then, you know, we're back to square one then. And they have to reinvest all of these different monies back to developing or redeveloping these studies. That is a problem that we have.

MR. DACH: I want to write that down.

I think that's a good discussion topic for later on, if you don't mind?

MR. EICHSTAEDT: Rick Eichstaedt, Nez Perce Tribe.

In your study request criteria, Letter D is, "...Whether the methodology...is consistent with

generally accepted practice in the scientific community."

Do you talk about at all innovative studies? I know in especially in the Pacific Northwest, there's a lot of cutting edge, you know, fisheries technologies going on. The Nez Perce Tribe has built a hatchery that a lot of people said couldn't be done. Do you think about that at all?

MR. DACH: When we put that criteria in there, specifically what we were trying to address is the concept -- whether or not it actually happens, but the concept that somebody could do some kind of study that nobody can agree to just to put some information on the table and then send something that everybody would look at and say, "You can't do a study like that."

That was the idea behind that kind of criteria. It wasn't necessarily to exclude cutting edge things, but it would probably be worthwhile for us to clarify that.

MR. MATT: Robert Matt with the Coeur d'Alene Tribe again.

In step one of your diagram there, where the applicant is to distribute their Pre-Scoping Document at the five- and five-and-a-half-year mark, pre-expiration.

MR. DACH: Uh-huh.

MR. MATT: One of the concepts that was discussed in your draft was the need for the applicant to discuss the contents of that document with the resource agencies and tribes prior to releasing it to the general public. I'm curious whether or not that's being maintained.

The process we've been involved in, a significant source of dispute is a disagreement between the agencies and tribes with the applicants and how the impacts of the project are characterized to stakeholders who may be referring to those documents as a resource for their-- guiding their input in decision-making. It would be valuable to maybe consider a pre-review of the Pre-Scoping Document or require some form of consultation in the area.

MR. DACH: The way that we had structured the proposal was that, you know, the three years before that Box 0 thing there, was -- it's not a mandatory thing. It would be, you know, a recommended thing, an encouraged thing. If the applicant doesn't want to do it, they don't do it.

The idea was that, through that three-year process, you would use all of that available information that was floating out there and you would touch base with all of your stakeholders and try to get it down in the Pre-Scoping Documents.

If, for example, they didn't do any of

that, and they went to the Pre-Scoping Document, of course FERC would take that and notice it, and everybody would comment on it and say, "We never saw this before it came out, and we have all these disagreements." The very next thing that would happen is that we sit down in a scoping meeting and talk about it. That is sort of how we had envisioned it, right or wrong, to work.

MR. MATT: My thought is just-- there's a big push for credibility in a science here, and peer review prior to releasing information of an educational nature to the stakeholders involved would be valuable, and you might want to consider a little firmer guidance on how -- the extent of that consultation in that pre-document preparation.

MR. DACH: Yeah. We've actually heard that a few times. That is a good point.

Okay. If there aren't any more questions -- you know, we're going to get into all of the issues behind this proposal, the NRG proposal, and anybody else's proposal on, you know, what sort of needs to happen in order to make these things work, later on in the afternoon. If nobody has any more clarifying questions, I think I'll turn it over to Greg, and he can do NRG.

Thanks. Oh, one more. Bob?

MR. HEINITH: Yeah, just one. You're

basically suggesting one process -- one relicensing process, Bob?

MR. DACH: Yeah. You mean in place of everything else?

MR. HEINITH: Other than your two-tiered for NEPA?

MR. DACH: Yes. Yes. Yes. Yes. Yes, in this particular process. Setting aside whether or not there's an alternative or traditional before they go away, no, we didn't address that. In this particular process, it's just a one-step thing. All of the NEPA --

MR. HEINITH: So you're not suggesting a traditional or that ALB go away. They might still be out there as alternatives?

MR. DACH: We're --

MR. HEINITH: This would be another --

MR. DACH: We're quiet on the issue.

We had no --

MR. HEINITH: Oh.

MR. DACH: We didn't say one way or the other.

MR. HEINITH: Okay.

MR. MATT: One last question. Sorry.

Robert Matt, Coeur d'Alene Tribe again.

I was curious if -- is it proposed in

this that the process outlined here would supersede the mandatory conditioning review process that's in place under Interior?

MR. DACH: No. It would work -- let me answer that in two ways. One, we think that the NCRP will work with that process so we could go through our NCRP process. It will fit right into that Track A or Track B or to -- you know, after we get our -- after FERC requests their terms and conditions, we think it will fit right in there, though we have not taken further discussion on how that review process works off the table.

If there's a better way to do the review of our mandatory conditions, then by all means, we would be open for comment on that. Thanks.

MR. MILES: While Greg makes his way to the front of the room, I think a couple of individuals joined us since we did the first round of introductions. For those individuals, please identify yourselves for the record. State your name and who you represent.

MR. BERG: I'm Mel Berg with the Bureau of Land Management, Washington, D.C., Hydropower coordinator.

MR. MILES: Okay. Has anybody else joined us since we did the round of introductions?

MR. HALLER: Greg Haller with the Nez Perce Tribe, water resources division.

MR. MILES: Okay. Thank you.

MR. JOHNSON: Anthony Johnson, vice chairman of the Nez Perce Tribal executive committee.

MR. CARRINGTON: Good morning. My name is Greg Carrington. I work with Chelan PUD. I'm here today to tell you a little bit about the National Review Group and what we're all about and the proposal that you have contained in your folder. It starts on Page C-27 if you want to take a look at that.

The NRG, which is the National Review Group, consists of a task force of licensees and public interest groups. Our mission was to improve the licensing process. We've been working together as a group since 1998. It wasn't until 2000 that we got together and tried to put together a proposal that we submitted to the FERC just recently. What you see for our proposal is contained right in here, as I mentioned before.

We also wanted the proposal to go beyond the voluntary. We had some guidelines that we published between 1998 and 2000. What we wanted to do is, we wanted some administrative reforms to occur so that people would be able to go out there and do things a little bit differently. Again, our goal was to improve the relicensing process.

NRG participants -- there were four

nongovernment organizations, as you see up here.

By the way, my presentation, I have prepared and it's out on the table. Did everybody get a copy of that? If you didn't get a copy, there's some available out there for you.

There were twelve industry participants that were on the National Review Group, and the facilitator was Kearns & West. NRG advisers -- we basically had the Department of Interior, the Department of Commerce, the Department of Agriculture, FERC, and the EPA in the room with us, not to draft the proposed rule making, but to be there for advisers. It was kind of like a -- Julia Keil make the comment, "It's kind of like getting warmer, getting warmer, getting colder, colder, colder," you know, that type of thing. They weren't there to do the drafting. They were there as advisers.

The NRG provided a forum for open and honest conversations regarding what licensees and agencies and NGLs are going through in relicensing process. We don't think of this proposal as pending. We think of it as the beginning to stimulate conversation. That's why we're here today. We want to hear what you all think about the proposal. We want to make changes to it. We want to put the best of the best, as Tim said, together and improve the relicensing process.

It's not a complete package. We focused on federal agencies, FERC and their relationship primarily, and the NEPA process. It's not intended to change anybody's statutory authority. We did not address any changes to mandatory conditions. We didn't feel that was appropriate, given the group that we had together.

I see NRG's focus as being threefold.

First of all, we want to address study requests, and we want to address the implementation of those studies. When we were together, there were non-government organizations in the room saying that licensees weren't doing what was necessary. There were licensees in the room saying that the resource agencies kept on coming back and wanting more and more because study results weren't giving them the results that they expected. What we did is, we developed a study protocol, and that's going to be highlighted a little later.

The other thing we wanted to talk about is multiple processes. Think about the traditional process the way it is right now. Licensees go through a three-stage consultation process, then they go through a FERC NEPA review, and sometimes the resource agencies like U.S. Forest Service goes through another NEPA review.

One of the main concerns that came up from this group, "Can't we get everybody together and work together and get one document out there that everybody can

agree on?" Sometimes yes and sometimes no.

The last thing we want to focus on was cooperation between the agencies and FERC. In particular, we want the agencies and FERC to get together on their Environmental Review Document, the NEPA document.

Why should the agencies, FERC, and all stakeholders get together and cooperate? Well, our vision was as follows: We wanted everyone to be engaged in the process. We wanted issues to be identified early in the process so they could be addressed. We didn't want to do the same thing two or three times. We wanted more certainty for everybody. We wanted everybody to be assured of what the schedule was. What were your roles and responsibilities? What was going to be required by the licensee? We wanted to set up a system so that we could get that assurity.

Licensees want to know what they are going to be required to do in this next license term. Agencies want to make sure the resources are protected. That was our overall goal.

You can go on to the key elements in your proposal on the next page. In your proposal that you have in here, there are 12 steps that we have highlighted in there. I'm going to go through the 12 steps very quickly, and then what we'll do is, we'll answer any

questions that you may have.

The first one is early consultation.

We wanted licensees to let everybody know that they're going through the relicensing process, get a notice out there early. Identifying stakeholders was the key.

We wanted the licensee, in Step No. 2 and 3, to issue a Notice of Intent and an Initial Consultation Document right at the very beginning of the process. We expanded the Initial Consultation Document because right now it could consist of two or three pages, and we didn't think that that was adequate. As a matter of fact, what we felt was appropriate was almost a draft license application.

We didn't expect the licensee to go out there and do a whole range of studies and incorporate that into the package, but there is a lot of existing information, and what we wanted the licensee to do is go out there, take all of the existing information that they're aware of, put it into a package and summarize it for the nongovernment agencies, for the tribes, and for the resource agency. We thought it was a pretty simple step to go through. If there were baseline studies that they knew that they were going to be conducting, put that in there as well. If we start out early identifying the issues, identifying studies -- that was the goal.

One other thing I wanted to mention on the previous slide is -- one thing we also put in there is that any competitors for the project -- we wanted them to identify themselves early as well so that the stakeholders could be aware of what was going to go on. Four and a half years before the existing project expired we wanted all competitors to be identified.

The four-step was the development of the "Memorandum of Understanding" and a "Memorandum of Agreement." Basically we thought that these documents could be the same for most projects throughout the U.S. .

Again, we wanted to know what the schedule was. We wanted to know what everybody's roles and responsibilities were and if other people were going to help coordinate the NEPA document. We wanted to know who the people were that were going to be drafting the NEPA -- if, for example, the Fish and Wildlife was going to do the fish section, we wanted that to be identified early to identify the schedule and so forth. Again, up here we have established the procedures, the developing of the record, dispute resolution processes, and the decision making as well.

After we got done with that, FERC and the agencies would develop what we call "Scoping Document No. 1." That's not on this slide.

The licensee, based on the Scoping Document, would develop the overall study plans and goals associated with those study plans. We put in there a dispute resolution process.

Again, we did the same thing that the agencies did. As a matter of fact, as you know, a lot of the agencies were involved in the NRG proposal. We have an advisory panel that was established. We have an advisory opinion that is put out by FERC and the agencies so that the licensees know what studies they have to do, and then they would go back and refine those study plans.

If there's a dispute beyond that, let's say the agency and the panels still don't agree, we have the ability to go to the secretary level of each of the agencies and to the tribes. As I mentioned, after getting all of the input, the licensee would go out there and revise the study plans and reissue those.

The next five steps that we have in the process, the licensee would develop after conducting about two years of study. And yes, we understand that some studies require a longer period of time. We thought that during the pre-consultation process, those types of studies would be identified and the licensee could start earlier, if necessary.

Most of the stuff, at least on our

products, we were able to get through within the first two years. There were a couple, however, that took three to five years, and we recognized that up-front.

In some cases, licensees may be required, after the license is issued, to continue studying it so they can determine what's necessary in the future as well.

The licensee about two years before the existing license expires would file a license application. FERC would issue a Ready for Environmental Decision Document, and then the agencies and FERC would issue a Joint Draft Environmental Assessment including a preliminary Terms and Conditions from those resource agencies as well and get comments on those, revise those documents, and then finally issue a Final Environmental Assessment and a license order. Those are the twelve steps.

The key time lines -- we feel that this fits within the existing statutory requirements. It does allow currently two years' worth of studies.

One of the things that we wanted to have happen here regarding the process is, we want, in the end, common sense to prevail. I mean, it sounds simple, but that's not always the case when you go through the relicensing process. Common sense doesn't prevail in the end, and that's what the overall goal is.

We felt that there's too much time and money being spent on study design and on process and not enough time and money being spent on the resources. Anything that we could do to make the process simpler, to go out there and put more money into the resources, that's what our goal was. With that, I would like to open it up to questions. Any questions?

MR. MERKLE: Carl Merkle, M-E-R-K-L-E, with the Confederated Umatilla Tribes.

In your suggested dispute resolution by panel, the panel would include FERC and disputing agencies plus neutrals. Do you envision any tribal role in that dispute resolution?

MR. CARRINGTON: Absolutely. If the tribes were one of the disputing agencies, they would be involved very similar to agencies.

MR. MERKLE: Okay.

MR. HEINITH: Bob Heinith, Inter Tribal Fish Commission.

Greg, are you looking at this as a one process sort of thing? The same question I asked Bob: Is this the one size fits all process for relicensing?

MR. CARRINGTON: I don't think there is a one size fits all, for all projects, to be honest. I think that there's got to be modifications, for example, on

the dispute resolution clause that we had in there. We did our best to come up with a system that would handle study disputes and terms and conditions, but if the groups felt they had a better process that they wanted to use, we have an option of using those.

I think that everything has to be reasonably flexible, I guess you could say. The time lines -- I think we need to adhere to those time lines to the best of our ability. We don't know whether it's going to replace the traditional. We don't know if it's going to replace the alternative licensing process. That's what all of these meetings are about right now.

MR. HEINITH: So how would you determine which pathway you go with for any particular relicensing?

MR. CARRINGTON: I think that it would need to be identified at the beginning of the relicensing process. Are the licensees going traditional? Are they going to use the alternative licensing process, or are they going to use this new process that FERC is developing right now?

MR. HEINITH: Basically agreement of all of the parties up-front?

MR. CARRINGTON: Yes. Yes. Or a majority of stakeholders.

Any other questions?

MR. QUINN: Scott Quinn, Karuk Tribe.

I just wanted to say that I thought including in the application the continuation of different studies and monitoring, is it really a good idea? I thought you said it would happen under circumstances. Are they outlined in your proposal?

MR. CARRINGTON: No, they're not. I think it would vary from project to project. Like, for example, I know for our projects we're going to have a fish study that would continue beyond the existing license. It would depend on the circumstance. I would say for the two projects that I'm involved in, 95 percent of the issues were addressed at the studies and were completed within that two-year period. There are other studies that do need to continue throughout the relicensing.

Well, like, for example, on the Chelan River, we're putting water in there for the first time in 75 years. We don't even know what resources are going to develop, so we set up a system to go out there and to monitor it for the next five to ten years to determine what adjustments need to be made during that time period.

MR. EICHSTAEDT: Rick Eichstaedt, Nez Perce Tribe.

I was a little confused with MOUs and

MOAs. Would the MOU include everybody, all 50 states and 360-some tribes?

MR. CARRINGTON: Basically the MOU and the MOAs are a way of us making sure that everybody is on the same page as to what's going to be done, what the schedule is going to be, what everybody's roles and responsibilities are. A lot of times people go through the relicensing process, and it's not until the very end that we realize, "Jeez, the mandatory conditioning agencies have more power than I do," or "Jeez, I didn't know it was going to -- I was going to have this role." We felt that it was very important right from the very beginning to establish what everybody's roles and responsibilities were.

Yes, some people have mandatory conditions, and, yes, the licensee has to be very concerned about what costs are going to be for the projects. Let's get that out in the beginning as opposed to the end when people get surprised.

MR. EICHSTAEDT: Just a follow-up -- what if one or two agencies or entities don't sign the MOA. Is it anticipated that this would kick it out of this process into some other process or --

MR. CARRINGTON: No. I don't think that it would do that at all. Primarily the agencies that wouldn't sign would be the agencies that wouldn't be the

cooperators in the NEPA document. Those agencies would participate in the same manner that they do today. They provide comments on study plans and do basically the same things.

Other questions? No? Great. I'll be around at the break if there's any questions you have as well.

MR. MILES: Thank you, Greg. At this time, we're going to begin our morning break. Before we do, I have a list of the speakers who are signed up to make a presentation. If any of those speakers have some time constraints and need to go early, let me know so I can put you at the head of the list. Otherwise, it will just be on a random basis. Let's take a 15-minute break. Let's get back at about -- let's make it five till 11:00.

Okay? Thank you.

(Pause in the proceedings.)

MR. MILES: Thank you. If you, during the day, have some more questions regarding the proposals that you've heard and would like to get more clarification, please raise those questions. That wasn't the only opportunity that you'll have to ask those types of questions.

Before we begin with our speakers, a couple of reminders: When you make a comment or an

observation or ask a question, if you're at the table, if you could sort of pull the mikes to you. That might make it a little bit easier for the court reporter and for the audience to hear what you're saying. That way, we won't get so intrusive walking around handing around the mike.

Also, if all of you are -- from time to time we'll use acronyms. For the court reporter and for the future readers of the transcript -- I think NEPA and things like NEPA is okay, but, for example, if you use the word "REA," some people may think that's the Rural Electric Association or Organization or something, but we all know it means Ready for Environmental Analysis. So if you can, if you use an acronym, define that acronym.

We have three speakers. Why don't we have our first speaker, Mr. Johnson from the Nez Perce Tribe. You have your choice. You can make your presentations from there, or if you want to come up to the podium and make it from there -- it's your choice. Which do you prefer?

MR. JOHNSON: It actually sounds like you're pushing me in that direction.

MR. MILES: I don't want to. I want to be gentle.

Oh, one other comment: If you do have prepared remarks or prepared statements that you want

incorporated into the record today, give them to me and I will identify them for the record and hand them to the court reporter so they can be copied into the record.

Okay? Thank you.

MR. JOHNSON: Okay. Can you hear me?

Okay. Actually, these aren't our written remarks, it's more so on paper because I'm feeling a little congested here, so I needed some help to get me through this.

Good morning. My name is Anthony Johnson. I am currently the Vice-Chairman of the Nez Perce Tribal Executive Committee. I'm here today to present comments on behalf of the Nez Perce Tribe for consideration by the Federal Energy Regulatory Commission in its review of the licensing process for hydropower facilities across the nation. In addition to these comments today, the Nez Perce Tribe will be providing detailed written comments.

The Nez Perce Tribe has been an active participant in the licensing process occurring across the Columbia River Basin for almost ten years. The Nez Perce Tribe has participated in the relicensing process for Idaho Power Company's Hells Canyon complex of three dams. Based on these experiences, we believe there is considerable room for improvement in the licensing process.

First, FERC needs to develop a clear tribal consultation process. In our experience,

communication between Tribes and FERC has occurred only through the formal filing of documents. I'm not aware of any instance where representatives of FERC have met with leaders of the Nez Perce Tribe to discuss the impacts of the licensing process on tribal resources.

Further, FERC has not articulated how it considers and incorporates its trust responsibility to protect and enhance tribal resources including fishery and culture resources that are impacted by dams. The courts have been clear that the trust responsibility extends across Federal Government and that tribal issues must be considered in federal decision-making.

Second, the tribe believes that changes to the licensing process should include measures to ensure early agreement on studies between the parties and include method for resolution of study disputes.

We agree with the IHC proposal regarding resolution of study design issues. Study disputes can fester throughout the licensing process and often result in litigation and delays in licensing. We believe changes should be made that require the early exchange of information between the parties on what studies to perform, the design of those studies, review of raw data, sharing of study drafts, and adequate time to review and comment on final studies. This means more than 90 days to review a

draft license.

Third, tribal resources are often limited. The licensing process should be designed to maximize the effectiveness of tribal input. In addition to addressing the previous points I have raised, FERC can assist tribes by facilitating technical discussions between tribal staff, resources and regulatory agency staff, and representatives of the applicant on issues impacting tribal resources such as fisheries, wildlife, cultural plants, and cultural resources.

Further, FERC and other federal agencies should help tribes to identify available resources allowing meaningful participation by tribes in the process. This means providing technical staff at resource meetings and have staff provide a detailed review of studies and mitigation measures. One role FERC could serve is assisting tribes with negotiating funding agreements with license applicants for participation in the licensing process.

Lastly, any changes to the licensing process should be phased into new proceedings and not impact current licensing efforts unless all parties agree. While it is hoped that any change would make the process more user-friendly, it is unfair to everyone to change the rules of the road midway in the process.

Thank you for the opportunity to

participate in this discussion. Our written comments will provide specific comments to the IHC and NRG proposals.

If you have any questions, please do not hesitate to contact me or my staff.

Thank you very much.

MR. MILES: Thank you, Mr. Johnson.

At this time I'm going to identify a two-page document from the Nez Perce Tribal Executive Committee, dated November 21, 2002, Comments of Anthony Johnson, Vice-Chairman for the Nez Perce Tribe. Can you copy that into the record?

(Whereupon, the comments of Anthony Johnson of the Nez Perce Tribe were marked for identification.)

MR. MILES: Our next speaker is John Meisinger from the Shoshone Paiute Tribe; is that correct?

MR. MEISINGER: That's correct.

MR. MILES: Thank you, sir.

MR. MEISINGER: My name is John Meisinger. I'm Chief Executive Officer for the Duck Valley Shoshone Paiute Tribes of Nevada and Idaho.

I'm representing our Tribal chairman Terry Gibson who sends his regards. He had a conflict.

The Duck Valley Tribes are federally recognized. The government was organized under the Indian

Reorganization Act of 1934. The Duck Valley reservation straddles the Nevada and Idaho borders and has a population of around 2,500 members and consists of about 246,000 acres. It's roughly twenty miles square.

The impact of the hydroelectric projects on Duck Valley have been substantial. The Duck Valley reservation has been impacted by a number of non-federal hydropower projects of the type that are the subject of this inquiry. For example, Idaho Power is currently engaged in reviewing the licenses of several of its hydroelectric projects. These include the C.J. Strike, the Malad, and the Hells Canyon projects. Duck Valley is currently participating in these FERC proceedings. These projects have had a substantial impact on our reservation. They have dramatically impacted the Tribe's current subsistence, cultural resources, environmental, and fisheries.

Unfortunately, these impacts have not been recognized within the FERC licensing process. All too often and with little notice, the Tribe was provided with limited periods to respond to massive filings, and is given no resources by the applicant or FERC to do so.

We believe that our good-faith comments to the applicant are often dealt with in an adversarial manner, and we feel that the process provides little or no recourse to readdress slights.

As we do not believe the current process operates to adequately address the valid concern of the tribes involved in the hydroelectric licensing process, we are naturally concerned with any reform that purports to shorten or expedite the process, as we tend to believe that such changes are designed to benefit the applicant at the expense of the tribes and other stakeholders.

Nevertheless, we provide the following comments in the spirit of cooperation with the hope that incorporation of some of our comments may improve the process overall.

With regards to these proposals, we believe that great emphasis should be placed upon crafting a process that all parties will believe is open and fair. Efforts should be made to eliminate the perception that the process is weighted in favor of the applicant, that it is adversarial, and that the contributions of stakeholders are discounted.

The Interagency Hydropower Committee proposal that has been presented prompts us to make the following observations:

Concerning notice of expiration, Section 3-1 of the proposal suggests that three years prior to the NOI, the Commission staff should notify the licensee of its pending license expiration and would provide a list of basic

information needs and resource agencies and tribal contacts. While a proposal encourages the licensees to contact tribes, it does not provide for separate notification. Such advanced notice would be appropriate to tribes as well as applicants.

With regard to pre-scoping, Section 3-2 of the proposal provides for the circulation of a Pre-Scoping Document to the tribes and others. This provision also provides that the applicant would be encouraged to work with stakeholders in the Pre-Scoping Document before it is issued. However, this section does not propose any specific type of interaction between the applicant and the stakeholder during this period, nor does it provide stakeholders with any recourse or input if they believe the applicant is not being properly receptive to the stakeholders' concerns. Consideration should be given to ways to assure communication during this phase of the process so that tribes can be assured that their efforts are being recognized and their concerns are being fulfilled.

With reference to the Scoping Document, we are concerned with the portion of Section 3-3 that indicates that 30 days is an adequate period in which to expect stakeholders to file comments on the scoping documents. Tribes have limited resources in these efforts and this may simply be not an adequate amount of time for

us to address this purpose.

I would like to, as an aside, just emphasize that fact. At least for the Shoshone Paiute, we do have limited resources. When you get a document that takes a full shelf, we just don't have the people available to digest them and really respond to them and make sense of them, so that's a serious matter we're working through.

The Tribe also disagrees that the study dispute resolution process outlined in Section 4 should be limited to those two issues outlined in Section 4-2. In addition, these two issues, whether a particular study be required or whether a specific methodology is necessary, other issues may be particularly relevant and should be considered in this process. For example, such a limitation would preclude the consideration of many cultural resources issues. Further consideration of this restriction must be undertaken before the proposal could be adopted.

The National Review Group proposal prompts these remarks: We question whether it is unrealistic to expect all Cooperating Agencies to execute a general Memorandum of Understanding and Agreement at the beginning of the process as suggested by NRG. We can visualize significant problems and delays associated with negotiation of such agreements.

Similarly, the tribes believe there may

be substantial problems associated with the proposal that an informational NEPA document be issued. Again, because of the significance to the process of such a document, there could be substantial problems in achieving agreement on the content of this document.

Unless the proposal incorporates a source funding for tribal participation, the Tribe objects to the provision of 4.3 that states that the Cooperating Agencies must be responsible for collecting and compiling information, for substantive drafting, and proposing alternatives and findings. Again, we're talking about limited resources at the tribal level.

For the same reason, the Tribe rejects the limitation the proposal would place upon a Cooperating Agency's rights to seek a rehearing or judicial review as expressed in Section 4.6 of the proposal. Tribes have finite resources and should not be required to waive rights in situations where they, because of these limitations, may not have the ability to fully participate.

The House of Representatives is -- the national energy legislation -- Section 401 of HR 4 is passed by the House, the House Provision, and Section 301 of HR-4 is passed by the Senate.

Because of the unique relationship between the United States and Indian tribes, the United

States Department of the Interior is the lead federal agency responsible for ensuring that Indian tribes' reservations and resources are not adversely affected by government or private activity. However, the federal tribal trust relationship is not exclusive to Interior. In fact, the trust relationship spans the whole of the United States Government. Thus, not only does FERC have the authority to issue or reissue a license for hydroelectric project, but as an arm of the United States Government, it is also bound by the federal trust relationship.

With respect to the current situation, the Federal Power Act, Section 16 U.S.C. and Section 797(e) authorizes FERC to issue or reissue a license to private parties or corporations or any state or municipality for the operation of a hydroelectric project within any federal reservation after first determining that:

The license will not interfere, or is inconsistent with the purpose for which that reservation was created or acquired, and the second is that the license contains conditions that the respective Secretary, under whose supervision such reservation falls, shall deem necessary for the adequate protection and utilization of such reservations.

The Federal Power Act defines a federal reservation to include tribal lands embraced within Indian

reservations. The Secretary of Interior has the authority to establish the statutory baseline conditions for projects within an Indian reservation. For projects not within an Indian reservation, but which affects tribal resources, operations of applicable federal law provides an avenue for Indian tribes to participate in the license approval process. Specifically, FERC recognizes the right of Indian tribes to intervene in the FERC licensing proceedings that involve off-reservation projects that affect tribal resources.

Both the House and Senate provisions would restructure the federal approval process for the licensing of hydroelectric projects on federal reservations including those that affect Indian reservations by allowing the applicant and/or other parties to the licensing proceeding to submit alternative conditions to the Secretary that provides adequate protection and utilization of the reservation and which costs less to implement or results in improved operations of the project as compared to the condition originally set by the Secretary.

The House provision would provide both the applicant and third parties to the licensing proceeding with the ability to propose alternative conditions that meet the conditions set forth above. The Secretary would be required to review the proposed alternative conditions based

on substantial evidence that the proposed conditions provide no less protection for the reservation than provided by the conditions deemed necessary for the Secretary and which costs less or results in improved operation of the project. The House provision would further direct, within a year of the enactment of the provision, the Secretary to establish a process to resolve conflicting alternate conditions.

By contrast, the Senate provision would provide only the applicant with the authority to propose alternative conditions that the Secretary would be mandated to accept. Unlike the House provision, which requires the alternative condition, would provide the same level of protection to the reservation the Secretary deemed necessary. The Senate provision would require the Secretary to accept an alternative condition that provides for the adequate protection and utilization of the reservation.

The Senate provision would lower the standard for protecting the reservation because only the applicant would have the ability to determine what is adequate without having to adhere to the conditions the Secretary deemed necessary to protect the reservation.

Both the House and Senate provision would change significantly the federal approval process for the licensing of hydroelectric projects by allowing private persons and corporations to establish conditions necessary to

obtain federal licenses, essentially assuming the roles of both applicant and regulator.

The Federal Government has trust responsibility to protect Indian tribes and their resources. The proposed restructuring of the federal approval process for licensing of hydroelectric projects ignores the long-standing government-to-government relationship between the United States and Indian tribes and does not take into consideration their protection of tribal resources.

In particular, Duck Valley has a vested interest in any governmental or private activity on and near the reservation as they have considerable natural resources that they must protect for their members.

Our recommendation is that, because the House and Senate provisions would significantly change federal law and result in significant impacts on the Indian tribes' ability to meaningfully participate in licensing proceedings, we oppose the provision and respectfully request it be stricken during their conference of HR-4.

Alternatively, we would support an approach that would require the affected federal agencies to consult with tribes and states on an equal basis regarding alternative conditions to be recommended to the Secretary, FERC, and congress.

We conclude by saying that we urge FERC

and other federal departments and agencies to take our concerns seriously. We look forward to working with FERC and the Department of the Interior to address our concerns.

If you have any concerns or any questions, please pass them along.

MR. MILES: Thank you, sir. I have a copy, and I'll ask the court reporter to include the document, "The Written Statement of the Duck Valley Shoshone Paiute Tribes of Nevada and Idaho Before the Federal Energy Regulatory Commission, FERC, Concerning Hydroelectric License Regulations Under the Federal Power Act," dated November 21, 2002. It's a six-page document.

Our next speaker is Mr. Jeffery --
is it Loman or Leeman?

MR. LOMAN: Loman.

MR. MILES: Mr. Loman.

MR. LOMAN: I'm Jeffery Loman. I represent the Bureau of Indian Affairs. I'm Chief of natural resources at the office of trust responsibilities in Washington, D.C. .

I thought it was appropriate to get up, and I just have a few comments to make. The Interior, as you know, will provided written comments that will include our input for the Bureau of Indian Affairs. Since the Bureau of Indian Affairs is the primary agency responsible

for discharging the trust responsibilities to Indian tribes who have or may have hydropower projects on their reservations, I thought it was appropriate for me to get up and share with you a little bit about my experiences with hydropower licensing on Indian reservations.

I've only worked for the Bureau of Indian Affairs since 1997, so I haven't been at it a long time, but I can tell you that since I have been working for the Bureau of Indian Affairs, initially in our environmental services division, I've been busy. And I've been busy in Indian country. I've been to at least a dozen hydropower projects that are located on reservations, some big projects, some small projects.

I encourage you, if you haven't been to projects that are on reservations, to visit them. There's kind of common thread with hydropower projects on reservations, especially the larger projects.

There was a need to provide energy in that area, and there was a river there. Before the hydropower project, there was a group of Indian people that had lived there since the time at memorial.

You're well aware of the history of the settlement of the United States of America and how tribes became sovereign, but wards of the United States. Their reservations almost always contain trust land, land that is

held in trust by the United States, and we are the owner of that land, and the tribe and their people are the beneficiary.

The tribes are our beneficiary, and I encourage you, when you look at -- and this goal is all about deciding on a super-process that will be successful -- look at each aspect of that process and put yourself in the role -- and it would be appropriate if you worked for the United States Government to do this -- put yourself in the role of the trustee, the trustee to the beneficiary.

The trustees have to be a lot of things. They should be smart, knowledgeable, honest, et cetera, et cetera. All qualities that if your parents raised you right, you probably would have. The cardinal duty to the beneficiary is that of loyalty. So in each and every second of the process, you should ask yourselves, "Is the process that I'm establishing -- does it constitute loyalty to the beneficiary when that hydropower licensing or relicensing is impacting a reservation?"

At the Bureau of Indian Affairs, we have a program that's in my division that does a lot of things when hydropower projects are on reservations. When the project comes up for licensing, we have to engage a group of consultants, usually contractors, with usually a regional person. We have a person in each region where

there are hydropower projects on the reservation who is a safety of dams coordinator. That person uses consultants to develop 4(e) conditions that we then turn over to the Commission.

It's a lengthy process, as you know.

You're trying to shorten it. It's expensive. There are four such projects with 4(e) conditions that are in place on reservations today. We're working on more than a dozen of these projects right now.

Let me tell you a little bit about what we have to work on all of this with, and I would remind you that the projects where 4(e) conditions are in place today, we have the responsibility to make sure that the hydropower operator is obeying those conditions, so we have to monitor it. If they're not obeying the conditions, we have to do something about it. Some of the conditions require extensive implementation responsibilities by Interior, and it's that program that has to accomplish that.

It is done with a staff nationwide of environmental and natural and resources professionals who, like these tribes, are beneficiaries that are here today working on a number of other things because they're Superfund sites on the reservation.

There's a wide range, a whole gamut of environmental and natural resources issues going on, but the

BIA has nationwide about the same amount of environmental professionals and natural resource professionals that you would find on a medium-sized military installation, not very much.

In the FERC relicensing context, our program has \$701,000. That's the level of funding that we've received for a number of years to do that job with. Just to give you an example of what \$701,000 will get you, we have one license article and one hydropower project that requires an Environmental Impact Statement in order to implement it. It's just a development of the management plan, so that \$701,000 pays for about half of that Environmental Impact Statement. We're doing that right now.

So where do we get the money from? We get the money because we have this job we have to do. We're trustees now. We're beneficiaries. We can't just ignore it, and the law takes a dim view of that. We get that money from other programs that are already deficient: water programs, irrigation programs, safety of dam programs. The safety of dams programs -- the BIA has 117 dams, I think. About 40 of them are not in a real good position with respect to their safety condition and maintenance condition.

In essence, our former assistant secretary stood up before congress and said, "Our dams are

falling apart." They are. They're falling apart. So we're using those kinds of dollars to try to discharge the United States trust responsibility in the context of licensing on reservations.

Very encouraged by this initiative, which I think is probably a precedent setting for FERC and my other federal colleagues, to separately, like we're doing today, consult with tribes and start to see FERC in their role as representatives of the United States in the context of being a trustee for Indian beneficiaries. I'm elated by this effort because we need your help in a big way.

The projects that I've been at on Indian reservations, there's some things that I would just like to tell you about that I've seen at every one of them. There's always photographs of the project as it was being built. In those photographs there's always some Indian people carrying rock or shoveling something or doing work. I think those photos probably got there because it provided jobs for Indian people, and trying to display a good thing. Then there's usually some tribal leaders photographed there when the dam was dedicated and they're standing there in full headdress. Those pictures are there because it was supposed to be a good thing for the tribe.

Every one of those projects -- when I talk to my beneficiary about the impacts, they're very, very

significant. In many cases, that project took away their grocery store. They were dependent on fisheries, treaty protected fisheries, a trust resource. They were dependant on that to eat, and that went away with the dam.

They lost other things as a result of losing those natural resources like fish. Indian communities conduct fishing activities as a community, and there are specific portions of their language that are completely exclusive to fishing activities. When fishing went away -- and it wasn't a pretty sight during those years either for the tribe -- many of them dwindled in population, and when those activities went away, that language went away.

It's important to know when we're talking about cultural resources like language associated with a community activity, it's directly connected to the loss of the trust resource, that trust asset. In many cases it's fish, and it's very prevalent in this area of the country we're sitting in today and to the tribes that are here.

My beneficiary at these projects have told me about the extensive loss that these projects have caused to them as a community, as a group of people who were provided that reservation and were promised that they would be able to utilize it to do the things that they no

longer are able to do, and the loss is significant.

Another aspect of it is a lot of these projects were built to provide inexpensive domestic power sources to industry that caused significant pollution on the reservation. Indian tribes -- you will find if you look at where they're located in relation to where pollution has come to be located -- they're usually downriver, or if they're upriver of the project, the project flooded them. It's not -- they were the low income group in the area and nobody cared about them or what happened to them or what was theirs. Some significant environmental injustices took place at a lot of these hydropower projects.

Indian tribes are all different.

There's 554 federally recognized tribes. The representatives that you see here today have, in some cases, sophisticated environmental problems, but they work on more than just the hydropower aspect that's on their reservation. I think, looking around the room, almost every one of these tribal representatives has Superfund sites on their reservation. They're all impacted by other sources of pollution. They're all impacted by trespass and theft of their natural resources.

They're here because they have a place of great importance on protecting their resources like all Indian tribes do, but they have the way-for-all to get here

to this table.

There are tribes that would like to be here, but they have nothing. There are Indian tribes that don't take a penny of money and never will from the Federal Government or any government agency. They have a tribal government, but they have no professional natural resource or environmental people to send to a meeting like this, and we are a trustee for those beneficiaries too.

It's much easier, I can tell you from where I stand, to work on these projects with a tribe that has a seasoned and professional environmental and natural resources staff, but all tribes aren't -- they don't have that capability. They're out there, and they always will be impacted when these hydropower projects on their reservations go through relicensing.

We have four projects where licenses are in place pursuant to 4(e) conditions that were put in place to protect Indian trust resources. We're working on a dozen right now, and just because of the schedule at which these projects were licensed, there are many, many more.

So we've got a lot more work to do, and the Bureau of Indian Affairs needs and welcomes the help that we can get from the Federal Energy Regulatory Commission wholeheartedly. Thank you.

MR. MILES: Thank you, Mr. Loman.

Would anyone else like to make a presentation? Yes, please.

MR. MERKLE: I did not sign up, but I would just like to make a few comments.

MR. MILES: Sure. Please.

MR. MERKLE: Hello. My name is Carl Merkle. I'm a staff member of the Department of Natural Resources in the Confederated Tribe of the Umatilla Indian reservation located outside of Pendleton, Oregon.

We were not able to have one of our policy representatives here today. I think that's just another indication of how thinly stretched the tribes are, but I just wanted to offer a few comments here, just some notes that I've made in listening here and participating. I just want to remark that the Confederated Umatilla Tribe, like many of the other tribal representatives here, are participants in a number of relicensing proceedings, a number of dam relicensing activities, but in addition to that, I should also note that the Umatilla Tribe is also an active participant in the power generation arena.

We are currently in the process of developing a 600 megawatt gas turbine facility near Hermiston, Oregon, so we're a participant in a variety of activities in the energy arena from hopefully production in the near future to protection of the natural and cultural

resources that have been affected by existing energy facilities.

At the risk of being overly repetitious, I want to mention a few things that other speakers have noted as well. The Federal Energy Regulatory Commission is obligated by treaty. Specifically, there is a treaty between the United States and the Umatilla Tribe, the treaty of 1955.

FERC is obligated by that treaty and its trust responsibility to consult with the Umatilla Tribe and other tribes on a government-to-government basis, and also to help safeguard tribal trust resources like fish, wildlife, water, cultural resources, et cetera.

I've heard many of times, when one of our policy representatives, in reference to the federally owned dams on the Columbia Snake system, dams owned and operated by the Army Corps of Engineers, the Bureau of Reclamation -- we know those policy representatives have stated that if the trust responsibility had been fulfilled and adhered to by the Federal Government, we would not have Endangered Species Act listings. We would not have seen the drastic curtailment of fishing that the tribes have had to endure beginning with voluntary cutbacks back as early as the 1960's.

Similarly, I think if FERC had

thoroughly adhered to its trust responsibility and its obligations to the tribes, we would not have seen the great loss of fish and other resources that has resulted from the operations of FERC licensed dams.

The Umatilla Tribe appreciate the opportunity to participate in the process, and they look forward to working with FERC and the other federal agencies to better ensure that this trust responsibility is fulfilled in the future.

As has been stated many times here already, the tribal resources are limited. We support the efforts to eliminate unnecessary processes. The tribe, as well as many other participants, are burdened by unnecessary processes. It is a constant struggle for us to keep up with filings, with other procedures going on related to FERC licensed dams.

I just received, a couple of days ago from a member of our board, some materials that he had been sent by an industrial project, a FERC licensed project, something in the nature of 12 CDs worth of material. So far I've been afraid to ask for hard copies of that material. I'm not sure if the foundation in my office could support it if it were to arrive.

That's just one example of some of the hurdles that tribes have to endure. As well as, you know,

our appreciation for the federal agencies in looking at this issue, we also appreciate both the conservation groups as well as industry groups looking at ways to improve the process.

I know Chelan PUD has been very active in this role, but I couldn't help noticing this morning that, you know, as an instance of the difficulties that the tribes have to deal with, and the shortcomings that they have, and the material resources, the staff have to deal with this. You know, we need to have five to six representatives from Chelan PUD here at the tribal meeting, and I'm glad they're interested in that.

I would like to be able to stay here tomorrow for the meeting with non-tribal folks, but I'm unable to do that. I have to go home and attend to other brush fires. That's just one example of the difficulties that we face.

Specifically in terms of some of the two proposals that have been discussed so far, the Umatilla Tribe believes that valid, efficient, scientific, and other studies are critical to any successful relicensing process.

We're encouraged by the Interagency Hydropower Committees to focus on resolving study disputes. Those disputes have been problematic in a number of relicensing processes that we've been engaged with so far.

Those disagreements on studies can lead to further problems down the road. Conversely, agreement on studies can help resolve larger issues as well. As to the topic of settlement and settlement agreements, it's also a desired outcome of any relicensing process that hopefully settlement can occur. It also should be remembered that the tribe must be a part of any settlement agreement.

That's really all I have to offer at this point. Thank you. I want to close by noting that the Umatilla Tribe supports and would like to reemphasize the comments offered by Donald Samson, the executive director of the Columbia River Intertribal Fish Commission to the FERC Commission. He made those comments in testimony on November 5th, and I also anticipate that the Umatilla Tribe will submit some additional written comments independently. Thank you.

MR. MILES: Thank you. Any other presentations?

Jeff, please join us.

MR. HEINITH: Good morning. I'm Bob Heinith. I'm with the Columbia River Intertribal Fish Commission. As Mr. Merkle just said, our director-- executive director Donald Samson made testimony on November 5th in D.C. at the FERC hearing there. I just wanted to go ahead and highlight some of the points that Mr. Samson made

for the group here, and I also have copies of that testimony to pass out for folks as well.

Our Commission founding and member tribes include the Nez Perce, Umatilla, Yakima, and Warm Springs Tribe. We're enjoying our 25th year anniversary this year in service to those four member tribes in terms of protection of their trust and treaty resources with respect to the Columbia fisheries.

First, we would recommend that the FERC makes a much more concerted effort to improve working relationships in Indian country. We challenge FERC to build and improve relationships through program outreach and education. Use efforts should encompass all aspects of the agency's commission. The agency efforts should be external and internal with respect to the tribes, and we would offer our help, as we can, with our commission on behalf of our member tribes with FERC in those respects.

Second, as said by many others, resources in Indian country are extremely limited. We look to FERC as well as the Department of Interior to work with our member tribes and all tribes in terms of creating more perhaps funding and other resources to work with tribes throughout all aspects of relicensing.

Third, when it comes to managing natural resources, we all work in an environment of shared and

overlapping regulatory jurisdictions. Our success in fishery building depends on coordination with Canada and several states and many federal agencies. FERC has to be more than an umpire calling balls and strikes in relicensing. FERC has an affirmative duty to Pacific salmon under statutes such as the Pacific Northwest Power Act and needs to work with tribes and other jurisdictions to fulfill these duties.

We have some specific comments on the two proposals that were presented this morning. I'll quickly go through some of those points.

First, combining certain common elements of the proposals with the existing original rules to us makes good sense. For example, both proposals call for merging the Initial Consultation Document and NEPA scoping process. This should help eliminate unnecessary processes and identification of the issues surrounding each relicensing.

The focus of the IHC proposal on resolution study designs is appropriate to us. It's our experience that disagreement on appropriate study design is likely to lead to unresolved issues and litigation.

Conversely, agreements on study designs are likely to facilitate settlement of issues even if such studies take several years for completion.

In the context of the Salmon life

cycle, survival studies that rely on adult return information may require four or more years for completion and analysis. The tribe's fishery management efforts are held accountable for such study requirements in other arenas, so no lesser standards are appropriate for the relicensing commitments that may be up to 50 years in length.

FERC relicensing proceedings should be transparent so that all parties are on an even playing field, particularly with regard to procedural understandings that are exempt from ex parte communication limitations. We support elements of both of the existing proposals that foster transparency.

Existing proceedings should not be modified by new rules unless all parties agree to the modification of those proceedings. Settlement of relicensing issues among all parties is the most desirable outcome. If the tribes have issues that are not settled, FERC must assure that these issues are reasonably addressed in consultation so that tribes are not left out of settlement agreements, particularly regarding issues that involve comanagement of resources in the United States as a trust interest.

For a variety of reasons, the NRG proposal's approach to Memoranda of Agreement on Cooperating

Agency processes may not work for tribes, and the IHC proposal would be preferable. In our experience, Memoranda Agreements between federal regulatory agencies can lead to exclusion of tribes from important decisions. This has been our experience with the federal caucus established by a Memorandum Agreement to implement the Endangered Species Act with regard to the federal Columbia River dams. The federal MOA parties become so focused on discussions among themselves that timely disclosure of information and consultation with the tribes has often been stifled. As a result, we are now under litigation in that arena.

The NRG proposals under its limitations on appeal rights for Cooperating Agencies will work a hardship on tribes who wish to be involved in the NEPA process, but we do not have the resources to complete dispute resolution procedures. For tribes with limited resources, a process that resolves disputes at the senior policy level, presumably in Washington, D.C., may disenfranchise tribal interest.

Although the dispute resolution provisions of the NRG proposal are focused on disputes between FERC and the resource agencies, in our experience, disputes are more likely to arise between resource agencies and the applicant. We would encourage FERC to explore means to ensure that the applicant abides by dispute resolutions

in a timely fashion.

We would also encourage FERC to incorporate watershed based impact study analysis and planning into the proceedings to facilitate coordination of regulatory jurisdiction. In this regard, the Clean Water Act 401 certification should include tribal water quality standards where applicable, and tribal water rights should be considered in this context, and tribal culture resources including the protection of fish and wildlife resources should be considered in terms that are meaningful for tribal well-being.

The 50-year license terms are too long given technological breakthroughs -- which may include other power resources coming on-line and other technologies -- and the irreversible impacts in treaty and trust resource. Terms should be part of settlements with a reasonable cap that allows for capital investment to be recaptured. On the part of the applicant, FERC should streamline and make uniform project decommissioning and removal of rules.

That basically summarizes the points we've made so far. We will be submitting much more detailed and excessive comments for the December 6th deadline. Again, I have copies of the testimony I'm passing around for folks. Thank you.

MR. MILES: Thank you.

Any other presentations? Any questions or comments? Yes, sir.

MR. SIMS: Not a presentation, but a question. John Sims, Quinault Indian Nation.

All of these comments -- unfortunately, I don't write at the speed of speech. Is there going to be some record available and distributed to conferees of this meeting today?

MR. MILES: There is a transcript that is being prepared.

MR. SIMS: Okay.

MR. MILES: And it will be part of the record. Is that going to be accessible by Web, or is it going to go on the Web page? Does anybody know?

MR. WELCH: Both.

MR. MILES: Both. You'll be able to access it over the Commission's Web page and you can go FERRIS. You should be able to retrieve it off of there.

MR. SIMS: Thank you.

MS. (Unidentified): When will that be posted?

MR. MILES: Ten days, I believe. I've been told ten days. I don't know what the contract supplies for. Yes, Gloria?

MS. SMITH: Well, it should definitely

be ready by December 10th because there is going to be a meeting in Washington on December 10th to talk about the comments, so by that time FERC will have had a chance to at least compile them.

MR. MILES: Okay. If you run into a glitch, give one of us a call. Okay? Any other questions or comments? Yes?

MS. JANOPAUL: Mona Janopaul, Forest Service.

One of our discussion topics -- and it has been a very active topic at most of the other regional forums -- has been the question that was raised this morning by Tim and Bob, and that is the question of: At the end of the day, what is your recommendation about how many licensing processes are available? Should it just be the new one? Should we retain one or both of the existing ones?

The other question that has come up, and I think is particularly apt for maybe today in these public forums has been the question of: Would this new process that we're developing or proposing here apply not only to a new licensing for an existing project that is a relicensing situation, but also the question of, would this process be appropriate, or should it be different if it's an original license that is a proposed project, an

unconstructed project.

Although I'm not aware of proposed projects on tribal lands, there are many proposed projects up in our Alaska region. Since the energy crisis a couple of years ago, many proposed projects on the three west coast states and in the Northern Rockies and on other federal lands, and we have heard from our tribal partners that these proposed projects would have significant impacts on them. I don't know if anybody wants to address that in verbal comments or their written comments, but that is a question that we are considering in this rule making.

I've heard a couple of statements this morning that, to me, also go to this question, but I may not have heard them correctly. I think I heard a statement about "Don't change rules in the midst of this process." I don't know whether that applied to some way of handling a new licensing process and phasing in or out the old ones, or if it applied to something else. I also heard about balancing and a licensing process. Again, my question is: Should a process be different for an existing project versus a proposed project?

Those are things that have come up in other public forums that I think are particularly appropriate for this area where there's a lot of proposed projects on federal lands. Thank you.

MR. MILES: What we did yesterday that proved to be very effective was to ask the audience, the participants, to, over lunch, think about what topics they would like to discuss after the lunch for this afternoon. We've identified some topics, potential topics, for this afternoon's discussion. When we returned from lunch yesterday, we had a session where we identified those topics, depending on the number of the topics, then figured out which ones we should give priority to.

We can begin the process now or you can think of it over lunch. Then after lunch we can begin that phase. Any preference? Do what we did yesterday, after lunch we can begin the list of topics? Is this okay with everybody? I assume, since everybody is getting ready to leave and go to lunch. Okay. It is 12:00. Why don't we get back at 1:15. Thank you.

(Pause in the proceedings.)

MR. MILES: Okay. Before we begin today's -- this afternoon's session, are there any comments or questions that any of the participants have? Anything you want to say before we begin?

Bob just reminded me. Bob's presentation of the slide show -- there are handouts now. They're outside of the room. If you need a copy of that handout in order to engage in a conversation this afternoon,

let us know and we'll bring them in and give you a copy of the handout.

Okay. What we did yesterday and was a very, I thought, productive session, we went through an exercise where we asked the participants, you, to think about the types of topics that you would like to engage in a conversation with us and with each other. As you can see, we've already started defining some of the potential topics.

It doesn't mean we have to, but we want to first identify the ones you would like to discuss. We have up there: Baseline, what role does the baseline issue have in a new process; collaborative study design, how do you integrate economic studies into a process; the number of licensing process, one, two, three, hybrid, traditional, alternative; would a new process be applicable to new license proposals or for new unconstricted projects?

Okay. Those are the ones we have up there right now. Any other topics? Yes. Rick, is it?

MR. EICHSTAEDT: Yes. I think one of the things that we've heard from a lot of the tribes was the issue of FERC in consultation. That's probably worth putting up there.

MR. MILES: Tribal consultation with FERC. Is that a good way to paraphrase it?

MR. EICHSTAEDT: Yes.

MR. MILES: Any other topics? Yes, in the back?

MR. MERKLE: This morning -- and it might be worthwhile to explore -- I guess I would call it resolving conflict between ascertaining the trust responsibility with respect to those resources that are endangered species. From a trustee perspective -- and the slide was up with a little fish on the ladder, but this is an example -- with respect to the fish passage, as a trustee, I want to ensure that there's a performance standard. I've got a beneficiary to worry about in a trust resource.

When I do that, when I establish that performance standard, unless it's a hundred percent from an ESA enforcement perspective, anything less than a hundred percent would constitute a taking, so there's a conflict between protecting the resource from the trustee's perspective and the ESA enforcement perspective. However you want to write that --

MR. MILES: There's another way to rephrase the statement: Making sure that the federal agencies and the state agencies meet their statutory obligations? Is that what we're talking about, I mean, a more general topic?

MR. MERKLE: How about establishing a priority for meeting statutory obligations.

MR. MILES: What else?

MR. HEINITH: I mean, there are additional responsibilities beyond just those statutes?

MR. MILES: Okay. Let's go back to you. Let's go back to the more narrow question, which I think you raised, and that is ensuring ESA -- meeting ESA requirements and trust requirements. Is that a fair way to say it?

MR. MERKLE: Yeah. Resolving conflicts between ESA enforcement and upholding your trust responsibility to protect resources.

MR. MILES: Okay. Good. Did you want to add anything to that? No. Any other topics? Yes, in the back.

MR. MEISINGER: I would like to get some clarification, if I could, on -- I really don't quite know how to phrase it, but you have the traditional archaeologists that look at the various sites and that type of thing. Their opinions many times differ with the tribal aspects or the tribal look at the -- I guess maybe it would be a tribal archaeologist and it seems to be a traditional archaeologist that seem to come up with two different results.

MR. MILES: Resolving culture disputes?

MR. MEISINGER: Right.

MR. MILES: Is that a good way to describe it?

MR. MEISINGER: I think that's a good way to put it, yeah.

MR. MILES: Any others? Yes.

MR. HEINITH: Addressing tribal water quality standards and tribal water rights in the context of relicensing.

MR. MILES: Okay. Yes, Bob?

MR. HEINITH: One more addressing resources. The tribes need to adequately participate in the relicensing process.

MR. MILES: I think it's -- financing needed resources?

MR. HEINITH: Correcting resources-- resources in general that the tribes need, whether it be financial or technical resources the tribes need in order to adequately participate in the relicensing or licensing process.

MR. MILES: All right. Actually it could be -- not just finance, but it could be somewhat detailed from an agency.

MR. HEINITH: Yes.

MR. CLARY: Actually it could be timing as well.

MR. MILES: I'm sorry?

MR. CLARY: Adequate timing to respond.

MS. JANOPAUL: Time periods.

MR. MILES: Time periods?

MS. JANOPAUL: Time periods. That's one of our standard discussion issues: time periods.

MR. MILES: Time periods indicating-- each time period for each chunk of work and the time periods between those chunks? So time periods.

MR. HEINITH: Bob Heinith again. Also to incorporate the term -- the overall term of the license.

MR. MILES: All right. Term of the license.

MR. MATT: Robert with the Coeur d'Alene Tribe.

With respect to the study request criteria, and also it kind of dabbles over, I think, into actual development of PM&Es, this issue of demonstration of cost consideration and practicality, particularly when it comes from a resource advocacy perspective, is one that I think could use a little more clarity in what exactly that means and how judgment is passed on that.

Is it too expensive to implement a mitigation measure that is necessary to protect our resources? I'm not certain of the role of that in this process, but it seems to be a criteria in the study design that would warrant some discussion.

MS. JANOPAUL: I've got a question. Is that the same as integrating economic studies over here, or is different?

MR. MATT: I'm actually not certain. I think I would like clarification on what the group's intent was in putting that in there. I'm thinking in terms of fish ladders, extirpated species, particularly ones that are trust resources, and putting those back where they belong.

MR. MILES: You used an acronym, "PME"?

MR. MATT: Protection Mitigation and Enhancement Measures. Sorry.

MR. MILES: We put down cost and practicality of implementing mitigation?

MR. MATT: I think -- I'm not particularly concerned about the cost.

MR. MILES: Okay.

MR. MATT: I guess what I'm saying is a discussion on what exactly that means.

MR. MILES: Yes, but that's the topic?

MR. MATT: Yes.

MR. MILES: It doesn't mean you support
it --

MR. MATT: Yeah.

MR. MILES: Just discuss it.

MR. DACH: Bob Dach with Fish --
Was that specifically referencing the
criteria in the dispute resolution process?

MR. MATT: Well, it seems a concern of
my tribe is the amount of deference that's given to the
cost and practicality concerns as opposed to the needs and
resources.

MR. DACH: So you mean of everything,
this study, the resulting mitigation, whatever it might be?

MR. MATT: Yeah. I guess I would be
thinking primarily in that being a line of defense for not
pursuing an appropriate action for trust resources.

MR. MILES: Any other topics? How
about settlement as one of the decision topics?

Do we want a process that encourages
settlement -- makes it easier? How do we want to engage
that sort of concept? Is that a topic?

MR. CLARY: I think that's certainly
something that we would be interested in.

MS. JANOPAUL: This is Mona Janopaul
with IHC cadre.

When we brought up that settlement topic, we were wondering if the IHC proposal, which is pretty aggressive with regards to time periods, would facilitate or not facilitate settlements, so we also related that to time periods.

Then there's the question: Well, while many parties have talked about licensing being more efficient and less lengthy, at the same time they wanted consideration or opportunity to create time periods for settlements, so that's input that we were specifically looking for.

Do the time periods help facilitate settlement by putting pressure on, or do they get in the way of settlement? If we were to start providing specific windows of time to sit down and settle, what kind of criteria?

We've had complaints from some parties that other parties are drawing out licensing with overtures or bad settlement, whereas others wanted to move forward. So perhaps just like dispute resolution, we've discussed about setting up criteria for consensus or somehow allowing time for settlements to develop.

MR. MILES: Okay. Let me raise one other one, and I think it's an important one. I think we talked about it to some extent this morning, and some of

the clarifying questions raised the subject as well as some of the speakers' presentations, and that is the No. 8 subject matter that was listed in the blue book, "tribal roles and responsibilities." Can a new licensing process accommodate the authorities, roles, and concerns of Indian tribes? Do you think that's up there already, or do you think we ought to put that up there? Any thoughts?

MR. CLARY: Could you repeat that?

MR. MILES: It's one of the suggested discussion topics that we listed in the blue book, and the question is, "How best can a new licensing process accommodate the authorities, roles, and concerns of Indian tribes?" It's on Page C-8. Is that something you would like to talk about?

MR. WELCH: Tim Welch from FERC.

I think a lot of these items go to that, Rick.

MR. MILES: Okay. That's fine. I just want to make sure we captured that.

MR. CLARY: Well, maybe in the summary at the end of the day we'll come to that.

MR. MILES: Good point. All the way in the back.

MR. LOMAN: Is it appropriate to delineate in this process any measure that will address the

situation, because it does exist, when tribes are both applicants and beneficiaries? There are always beneficiaries, but sometimes there's also the applicant or co-applicant.

MR. MILES: Okay. One more?

MR. MERKLE: Carl Merkle, Umatilla.

I guess just addressing the issue of project decommissioning and removal rules, whether they're currently adequate, whether they can be revised or streamlined, made more effective.

MR. MILES: Okay. We have 14 topics.

That doesn't mean we can't add to them later. Do you want to begin walking through them now? Is this okay with everyone? Okay. We have 14, and we have two hours -- probably longer than that -- two hours and 40 minutes. Okay? Do you want to just take them in the order they were listed? Is that okay with everybody? Okay.

All right. Let's start with the first one. Baseline -- definition. The person who raised that this morning raised an interesting question: How do you address baseline? What is a baseline? Anybody want to start the conversation? Any thoughts? Bob?

MR. MATT: Yeah. This is Robert Matt with the Coeur d'Alene Tribe.

I raised that issue primarily as a

concern because a source of conflict that we see in the Northwest here, that kind of transcends across these laws, is the difference between a tribal perspective on baseline and, say, a company or a federal law advocate's concept to baseline.

An example would be a compliance with ESA as opposed to maintenance of trust and treaty departments. What constitutes recovery and what doesn't?

In the realm of the relicensing under FERC's jurisdiction, it seems to be the debate over -- does mitigation begin at date of license issuance forward in terms of the new license, or does it address past impacts that have been a large part -- from our opinion, have gone unmitigated for, in some cases, a hundred years or more.

In just trying to reach some kind of a consensus or general agreement, the word we get in Indian country is "FERC won't allow that because that was an impact that happened before this license." I would just like -- I guess I would like -- my thought in putting that up there was just to try to get a better understanding of what FERC's actual mechanism for determining what the starting point for the mitigation package is.

MR. MILES: Okay.

MR. MATT: And a Trust and Treaty Right isn't something that has a previous license, this license

kind of discernment, and it seems to be a significant source of dispute.

MR. MILES: One of the things that was brought up yesterday dealt with definitions, should we have a glossary of terms so people are speaking from the same page, so to speak? One term may mean something to one person and it may mean something else to somebody else. Maybe we ought to have a glossary -- a definition instead of definitions?

MR. MATT: This is Robert Matt with Coeur d'Alene Tribe.

I wouldn't suggest on advocating for a legal definition of the term "baseline." Oftentimes those tend to become exclusionary. Either you're in it or you're not in it, and if you're not in it, then it's not relevant.

I'm thinking more in terms of how that relates to this overall obligation of FERC to protect the trust and treaty interest of the tribe and the ability to utilize resources and see those resources perpetuate to a degree that's necessary for them to exercise their rights to the extent desired by membership of each individual tribe, not just recover an endangered species or keep a species from blinking out. That's more of the perspective I'm advocating.

MR. MILES: FERC's definition, legal

versus trust obligations, to explore that?

MR. MATT: I don't really have any earthshaking --

MR. MILES: Okay.

MR. MATT: -- guidance on how to determine that.

MR. MILES: Any other comments or questions or statements on that? Let's move to the second.

MR. DACH: This is Bob Dach with the Fish and Wildlife Service.

Are you thinking that there's -- I'm trying to sort of put into perspective where you're coming from with respect to -- is it something in a process step that we could include? Is it -- do we want to do something differently or specific in order to address that issue, or is it more of just an understanding of, you know, there can be more -- the baseline is not -- it's a condition of what happened a thousand years ago or that sort of thing?

I'm just trying to kind of put into perspective how we could address that.

MR. MATT: This is Robert Matt with the Coeur d'Alene Tribe again.

I think the best way to do that is to look at it from the needs of the resource in question and

get rid of the time -- the assignment of a license date.

It's really irrelevant whether a license was issued in 1970 or 2003. It's the impact of the resource that should be considered. Without time constraints, it should be -- the relicensing process should advocate for addressing the impacts of the project's operation or an existence may be having on that resource and getting rid of that debate, I guess, over pre- or post-license baselines.

MR. HALLER: Greg Haller, Nez Perce Tribe.

Sort of along those lines, I think maybe the way of thinking about identifying resource impacts would be -- instead of using a date specific, like we've been doing, consider a more wholistic ecosystem approach in terms of what are the major impacts on, say, the species in question. It may extend beyond the project boundaries, but you're kind of compartmentalizing the issue within the project boundary, but the impact could start above the project boundary, and it could extend below.

In some sense I see the baseline issue expanding into more the resource and needs as opposed to, "Well, here's your boundary. The dam is in place. That's what we're starting from." A lot of times, the impact is caused from something that is going on upriver or not --

or not going on upriver. Just sort of a thought.

MR. MILES: Yes, Jeffery in the back?

MR. LOMAN: Yes. As I understand it, one of the primary goals of changing this process is to shorten the length of time by which it takes to go through the licensing process.

There's a number of incidents where the applicant's view or the state's view and the tribe's view and the trustee's view of what constitutes fulfilling the trust responsibilities with respect to specific resources varies. The state and the applicant in many of these instances think that the United States has a responsibility to give to the tribe an angling ability, to quote them in some of their documents in the past in the relicensing process.

The tribe, of course, and the trustee has a much different view. The reservation wasn't established so that people could angle. Angling ability means taking a fishing pole to some people and throwing a line in the water, passing the day fishing. That's an angling ability. It's to have a resource that can meet the needs of that tribal community in a real way, in a way that will feed them. By establishing -- it's really a policy, but it's some clear guidance up-front that the United States has for the applicant. I think it is a way to cut down on

the amount of time it takes. That's about it.

MR. MILES: Yes?

MS. SMITH: Gloria Smith from Interior.

Just in response to one of the goals of reducing the time and cost of obtaining a license, another way to look at it and another consideration that the IHC had was also to eliminate the likelihood of annual licenses, which I think everybody in here is interested in here as well.

MS. JANOPAUL: Mona Janopaul, Forest Service.

Back to some of the comments on the baseline. I was hearing issues concerning determining project impacts upstream/downstream. One of the discussions that has come up at other regional forums, and I think it's particularly applicable to this region, is the subject of multi-project rivers and river sheds.

It's difficult sometimes to assess the impact of one project, particularly given the timings of licensing, so I don't know if anybody has any verbal comments now on -- from a tribal perspective -- how that might be approached or might wish to address that in written comments. Comments on that would be particularly welcome.

That is something we struggle with and both -- again, from the picture of assessing project's

actual impacts and determining that versus other projects on the river and then how to deal with that and appropriate for protection, mitigation, or enhancement measures when licensings come up at different times, and how that translates into an efficiency process.

Although we are interested in efficiency in the licensing process, I want us to also say that we are interested in a better licensing product, better licenses where people feel there is a partnership in the license between the licensee and our agencies.

MR. MILES: Thank you. Any other comments? Rick?

MR. EICHSTAEDT: Rick Eichstaedt, Nez Perce Tribe.

Just in response to that comment, I think that's, especially in a state river, a giant issue. We have licenses that, you know, are for most recent licenses upstream, and it moves downstream. In trying to look at things like fish passage, you know, it doesn't make sense if, you know, by the time you get to the most downstream dam, everything else is already licensed. Or water quality, how do you deal with water quality if there's all of these varying dates of expiration of licenses.

I know one of the things the Nez Perce Tribe particularly is going to include in its written

comments of recommendation is that, you know, the term of license should be looked at so that everything within the basin is expiring and being relicensed at, you know -- in a way that makes sense, not just some random day.

MR. MILES: Okay.

MR. WALSH: Stan Walsh, Skagit System Cooperative.

A general comment on baseline -- I think it's a source of frustration for many people in that an original license really is a commitment of treaty resources to hydropower. A relicense is really a recommitment of tribal resources to hydropower, so to say the project is in place and that's what it is, I think really is a little frustrating. I think there should be some recognition in this if indeed there is any discussion of the baseline. A new relicense is a recommitment of treaty resources.

MR. MILES: Okay. Donald?

MR. CLARY: Don Clary from Shoshone Paiute.

I just want to say that what Richard was saying earlier was correct, and we agree that there is an issue with the problem that you're not facing all of the licensing coming up at one time.

You have problems with upstream

licensing having already been granted, and it seems inappropriate when oftentimes you have multiple dams who are using the same studies and in many instances justify these multiple locations, so it would seem to be that these issues should be addressed in a way that would allow us to mitigate some of the problems, and we're having none of these foreclosed by these previously granted licenses.

MR. MILES: Okay.

MR. MERKLE: This is Karl Merkle, Umatilla.

It sounds like you're talking about better coordination and potentially attempting to look at accumulative effects from a host of FERC licensed dams, and I wonder if the multi-agency group has looked at coordinating and assessing the effects on resource of FERC licensed dams with the, you know, existing and possible future analysis of federal projects.

I mean, the reclamation and core of dams have had a great deal of impact. FERC dams have had a great deal of impact. I'm not sure to what degree, you know, if there is a separate process looking at these in a vacuum and whether or not that could be coordinated. You've got a very elaborate federal plan now for how federal facilities will, quote, rescue fish. I'm not sure how the FERC relicensing process will fit into that.

MR. MILES: Okay. Shall we move on?

Bob?

MR. HEINITH: Bob Heinith, Intertribal Fish Commission.

I wonder if any of the groups looked at the possibility having a provision or reopener in an existing license. If, down the road, say, a license that's in the same watershed comes up, could you go back and revisit the condition of the license already granted and take into account accumulative effects?

MR. WELCH: Tim Welch with FERC. We didn't look at that specifically within that IHC process. However, I can tell you that that is something that the Commission has done in other relicensings in the past.

Being aware of the many issues that you raised about -- well, now we have lots of licenses coming up at different times, but in the future, you know, in the next round, I think the Commission has been much more cognizant of having the expiration dates be much more together and coming up at similar times. The Commission also has put in some of the reopeners that you have talked about to address these issues when other projects come up for their license.

MR. MILES: Okay. Moving on to the next topic.

MR. DACH: I would kind of like to give just a little bit more on that, a little more clarification. This is Bob Dach with Fish and Wildlife.

In order to pull that off -- because I mean, you could line up all of the licensing -- I'm trying to organize it in my mind, so it's sort of a-- what you're talking about is the actual analysis, but based on what, right? Once you do the basin-wide analysis, you can sort of see how each piece of the puzzle -- each project sort of fits into the basin-wide analysis.

The question would be when and how was that basin-wide analysis done? Is that kind of where you're going? So it doesn't necessarily -- what I'm trying to figure out is, is it necessary to do all of the projects at once, or is it necessary to get a basin-wide analysis that then can sort of be like the umbrella for each of the projects as they come up?

I don't know what the answer is. I'm just trying to see if -- I think you can understand -- I mean, I understand the issue for sure. I'm trying to understand what would be the way to do it. I'm concerned that -- let's say we do the Columbia River basin at once and we have rec projects and core projects and FERC license projects all at the same time. That effort would be monumental. I'm not saying that's -- I don't know if

that's a good idea or a bad idea. What I'm trying to do is just figure out how we can do something to capture the effects of the FERC projects as they come up in light of all of those other things that are going on. I don't know. It may be impossible.

MS. DIANE: Diane (inaudible.)

Are there provisions made for the other environmental issues and critical issues like the fish when the water was so low? There is no dam on the river, but they couldn't get more than a thousand feet up the river. Is there anything like that for the dams?

MR. MILES: We're not dealing with any particular project at this conference. How does that relate? You're asking how does that specific issue relate to (speaking simultaneously) --

MS. DIANE: (Speaking simultaneously)-- are concerned about putting a power facility in for their tribe and then having some species that they rely on-- they're having our time line there and -- have everybody join together and deal with it?

MR. MILES: Well, what we hope to do is develop a new process where that will be addressed. Okay? Yes, Greg?

MR. HALLER: Yes. Greg Haller, Nez Perce Tribe.

In regards to what you were saying, I think the basin-wide assessment is probably a good approach especially when you have existing goals, whether they be from tribe or federal agencies in place. If you have goals, say, for fish passage and they meet water quality standards on up the Snake River, then there's a good starting point right there.

MR. MILES: Rick?

MR. EICHSTAEDT: Relating to that, I mean, there's a total disconnect between the FERC licensing process and the existing -- I mean, we get -- in particularly the Columbia River basin, we have the process under the Northwest Power Planning Act, the Park Planning Council, which is doing some basin plans. There's TMDLs, there's other information. There's no apparent coordination, and I think some of these can serve as a tool for this larger basin-lining effort.

MR. DACH: So the idea is then to not necessarily have these procedures and the Commission lead the charge, but certainly to coordinate its efforts with everybody else. Is that --

MR. EICHSTAEDT: It has a lot to do with scoping.

MR. DACH: Okay.

MR. MILES: Gloria?

MS. SMITH: The core BPA and the Bureau of Reclamation have gotten together and initiated Section 7 consultations at one time. If that's something you think they could work in this effort and have FERC involved in as well, you could let us know in your comments.

MR. MILES: Okay. Moving on to No. 2: Collaboration of study design.

Would somebody like to begin the discussion? How do you go about getting people to work together in a collegial and constructive and positive framework to come up with a study design that will address everybody's interest? Is that what we're talking about? Any thoughts on how that might be addressed in the new licensing process?

MR. MEISINGER: I think you ought to put collaboration -- who are the parties to the collaboration?

MR. MILES: Any thoughts?

MR. MEISINGER: First of all, from my perspective, one of the parties has to be the tribes.

MR. MILES: Okay. Any other thoughts? Okay. Let's move on to the next one: Separating economic studies. Let me see if I can remember who raised that.

MR. HALLER: That was me. Actually I had another thought on No. 2.

MR. MILES: Okay.

MR. HALLER: I don't know how you would structure it, but it seems like if you've got all of the agencies and tribes on one side of the table saying "We want this study," and applicant saying "That's great, but we're not going to do it," it seems like then you're almost to a point where you might want to have some kind of rule where a majority rules kind of thing in there. If you have all of these people saying that one thing, that should count.

MR. DACH: We've seen that in the past, and we've seen it coming. What we had tried to do in the IHC proposal, again, is to not to make it a majority rule, but to add some objectivity to it. The objectivity would be the development of these criteria for a specific study design or a study request.

Again, the idea being that if you fulfill the criteria, whether there's one party or forty parties, you know, with those authorities, then you could take that dispute resolution and get the decision.

The reason, I guess, I perked my ears up is, I'm uncomfortable, if you will, about sort of a majority rules thing if we can't base it on some solid record or some science or something that would support the request itself.

MR. HALLER: Wouldn't you assume the resource agency people would, you know, know best?

MR. DACH: Well, speaking from the IHC or the Fish and Wildlife Service?

I think that when you put together a study plan or a study request, if you know what your objectives are, you can put a study request together to meet those objectives, and I would think that that would go a long way towards giving the credibility to the study request that it would need.

MR. HALLER: But you've still run into the problem of, you know, the applicant saying, "Great, but we're not going to do that." The way the process is set up now, if someone wanted to file an additional study request or additional request, that doesn't line up during that phase of the study conceptualization.

MR. BLAIR: John Blair.

It came up earlier this morning about -- if your study is turned down, does your tribe desire some sort of appeal process, or will the tribe abide by, as you say, the majority rules? How do you react to that? Or do you want the last say? Where is the cutoff point, I guess, is the question.

MR. HALLER: Well, of course we want the last say.

MR. MILES: Mona, did you -- yeah,

Mona?

MS. JANOPAUL: Mona Janopaul, Forest Service.

On this topic this morning, one of the speakers discussed binding dispute resolution. I believe it was with regards to either study design or conducting studies. I was just curious, was that binding upon agencies or the licensee? As I understand the current FERC dispute resolution process that's available under the regs, it is not a binding process either on the licensee or the party proposing the study, but more of a recommendation or a finding by the FERC technical staff.

In this new process, it is -- the idea has been forwarded that we should have a binding dispute resolution process in the interest of certainty and moving forward. But I'm wondering, is that some diminishment of agency or tribal authority that people don't want to give up or a licensee coalition?

MR. MILES: Robert?

MR. MATT: Robert Matt with the Coeur d'Alene Tribe.

We would be particularly concerned about arbitration being a mechanism for making decisions on trust and treaty resources. Our abilities to harvest these

resources are protected by United States Constitution and an agreement between United States Government and each individual tribe, however they may be laid out. An arbitration panel is not a mechanism, in my mind, for resolving disputes that are getting down to that level of detail.

I'm not an attorney, but I know our attorneys won't allow us to get into a situation of that, that could constitute as of a waiver of our sovereignty and our sovereign rights as tribal people.

I'm not sure how effective arbitration could be in resolving issues relating to trust and treaty rights and other issues that may be an avenue that each individual would have to assess their role and ability there in terms of submitting that, but I'm not sure if the BIA even has that ability to defer to arbitration.

MR. MILES: Okay.

MR. MATT: But the practicality of that might not be realistic.

MR. MILES: Any other comments? Yes, Bob?

MR. HEINITH: Bob Heinith, Intertribal Fish Commission.

Yeah, I think on this point, and particularly with respect to economic studies, there has to

be deference to tribes. There's issues of environmental justice on this issue that haven't been addressed in the relicensing process. The records -- several of the proceedings that we've been involved in have brought it up in a lot of detail, and it really hasn't gone anywhere.

It's a real key issue for all of the tribes.

MR. MILES: Yes, sir?

MR. MEISINGER: This is John Meisinger from Shoshone Paiute.

I think Robert has hit on a crucial issue, that we seem to be getting bombarded on from all sides, is the sovereignty issue. If you submit to some of these things, I would hagger to guess that I couldn't sell it to the Shoshone Paiute tribal council that we give up our sovereignty to a third party.

MR. MILES: Bob?

MR. DACH: So when you provide written comments, it would be helpful to see exactly how you would -- how you would put that into perspective. I mean, what -- how would you have the -- like, if you will, the tribal criteria for a study design. I mean, when would the tribe see a study having to be conducted, you know, under what conditions? If it's a trust resource issue, for example, if there was some specificity you could add behind that.

I guess what I'm looking to do is be able to see clearly whether the tribes see this as something that they might have, and if they -- if you could articulate that, it would certainly help me when it came time to see how in this process we gave the emphasis on those particular studies that the tribes thought we needed to give.

So just a suggestion, when you're putting your comments in, if you could help us out with that, I think it would be good.

MR. MILES: Carl?

MR. MERKLE: I guess this is a question or an attempt at clarification. Can you point out how such disputes, study disputes, for example, are resolved now? You know, how are they dealt with now, and how are you proposing to deal with them in the two proposals now under consideration, and is there -- do you have in mind successful -- what you think would be an appropriate way to go about it?

MR. Welch: Well, Carl, I think one of the -- you'll see this with one or both of the integrated licensing processes that have been proposed. I mean, under the current traditional process, the regulations, the Commission staff isn't typically involved in sort of the pre-filing process when -- then you have the studies that are

decided amongst the resource agencies, the tribes, and the applicant.

So as it goes now, if a study dispute arises, FERC staff is typically unaware of it unless people use the existing dispute resolution process, which they don't. It usually goes unresolved until the application is filed with the Commission, and then it's time after the application is filed to ask for additional information and additional studies.

So FERC asked for additional studies and then at that time all of those parties that had been in dispute now come into FERC to ask for their additional studies and then FERC decides whether, "Okay. Yes, you're right. You should have done that study," which has happened a lot in the class of 1993 that I mentioned this morning. You know, there's another -- maybe a two- or three-year period of studies.

What these integrated processes -- both the NRG, I believe, and the IAC is -- well, why wait until the end? Let's get that up-front. Get FERC involved. Get some sort of a dispute resolution mechanism in place so that there's at least an opportunity or a chance to get this resolved so everyone can move along.

I mean, I don't know the answer to the perfect dispute resolution process that maintains everyone's

authority. There's a number of proposals out there. If anybody has any other ideas, we're an open book on that.

MR. MERKLE: How are the two proposals similar or how are they different on this specific question of dispute resolution?

MR. CARRINGTON: This is Greg Carrington.

For NRG, it's the same. You would go to basically a dispute resolution panel, and the panel would make an independent decision.

From a licensee's perspective, if the agencies thought a study needed to be done and FERC thought a study needed to be done and the independent person that was hired as a result of this panel thought the study should be done, then, in my opinion, the study should be done.

There are some cases that I've been involved with where FERC agreed with the licensee. In those cases, I think the licensee should go before the panel and try to reach resolution in those cases.

MR. DACH: What it comes down to, to me, is the subjectivity about it. When you have three different people -- when you have absolutely no foundation to base the decision on, then everybody comes to this sort of independent conclusion about what should happen.

Specifically with respect to sort of the majority rules approach -- I've been involved in cases where the tribes, for example, would want a study that nobody else wanted. It may very well be a study that they absolutely have to have to fulfill to get -- you know, to fulfill their trust resources or do something that they think they need to have. But if they can't convince everyone else of that in the majority rules concept, they kind of lose out.

What I'm trying to contemplate is, if the tribes do make that request, and they do want to go to dispute, that there is guidance on how that decision is made. It's not just left up to somebody to independently decide what they think. It's left up to people to review that request versus a -- again, for lack of a better phrase, a set of criteria that the tribes thought were genuine to their needs.

I'm just trying to make it as-- to take the subjectivity out of it and put some objectivity into it so we can make these decisions based on some hard-and-fast criteria, if you will.

MR. CLARY: I just wanted to ask-- the two approaches, are they proposing binding arbitration or nonbinding at this point?

MR. DACH: There's not really -- it's

not really arbitration. It's a more -- it's a non- --

MR. CLARY: The dispute resolution, would it be binding, is what I'm asking.

MR. DACH: No.

MR. CARRINGTON: No. It was a recommendation. It was an advisory opinion, with FERC being the ultimate decision-maker.

MR. DACH: Yeah. I think the only difference between -- the biggest difference between the two proposals was that we introduce criteria. I think that was about the only difference. It's still the three-member panel.

MR. CARRINGTON: And I think the only other thing is that if it continued to have a dispute, that it could elevate it to the secretary level and you didn't have it --

MR. DACH: Yeah. You can elevate past there, and we force our panel to make a decision.

MR. WELCH: Well, the panel would make a decision from the NRG proposal, but there still could be the agencies disagreeing, and you could elevate it.

MS. JANOPPAUL: I would like to chime in here. Right now, the situation in the traditional licensing process is, FERC makes the decision after the application is filed on additional information and study requests. It's

FERC's decision. At least with the IHC proposal, it is still FERC's decision, but it's early enough to satisfy states and other parties who wanted to see a more complete or at least an understanding that that would be -- the application coming in would be the application. There wouldn't be a discontinuing process of additional information requests. Would you get more information? Would you not after the application was filed?

Again, efficiency, certainty -- I don't see that either FERC or the agencies are giving up their authorities under the proposal, but if you think differently, we certainly want to hear it.

MR. MILES: Stan.

MR. WALSH: Stan Walsh, Skagit System Cooperative.

How did you settle on a three-member panel? And again, could you review who would be on that panel? Could any interested party give input to that?

MR. DACH: Yeah. I don't know exactly how we settled on the three. I think we figured there was -- what we had done is -- we had defined the issue, dispute, so by the time it actually gets to dispute resolution, the dispute would be over the final study plan, which the Commission, in essence, has adopted because they've made their decision on the final study plan.

If there was a study not included, then dispute would be between the group that wanted the study -- the group that had the mandatory authorities and they needed this information to make their decisions, and the Commission, so there would be one person representing that group, and there would be one person representing the Commission, and then there would be a neutral third to ensure that that panel actually made a decision.

As Greg pointed out, ours wouldn't get -- the way it's set up right now, it wouldn't get appealed. That three-member group would have a finding and then they would say to the Commission, "We've looked at the request based on the criteria, and this is what we find."

MR. GRIFFIN: This is Kerry Griffin with the National Marine Fishery Service.

One of the important things, also, is that the idea behind the process -- the two proposals that NRG and IHC came up with is that there's a lot of early coordination and meeting with all the stakeholders. Ideally, we won't have to go through a dispute resolution process, period. Hopefully -- that's the idea. But if and when we do, it would be nice to get the whole study questions settled early.

The other thing is, you know, neither of those proposals -- as we've said several times, we're not

going to choose one of those proposals, so we encourage all of you people to please, you know, propose your own dispute resolution process.

If you have more ideas of what a panel should look like or anything, please let us know.

MS. JANOPAUL: How they should seek information or gather information? Should they meet in public? Whom should they meet with? All of those things are open to comment and invited.

MR. MILES: That was good information on the first two topics, but we took 50 minutes for the first two. We're going to have to be a little more selective as to how much time we want to spend with some of the topics up here. We don't have 25 minutes for each topic. Okay?

Let's go to No. 3: Integrating economic studies. Greg?

MR. HALLER: Greg Haller, Nez Perce Tribe.

I think that there should be a very clear process for doing cost benefit analysis from the get-go of the license application through the NEPA process so that we can evaluate the PM&Es, frankly, in such a way that the applicant and the decision-makers understand best, and that's in dollar signs.

I'm not suggesting that we value treaty trust resources and try to do that, but just the opposite. I'm trying to suggest that we, you know, have a clear understanding of the benefits, not just the cost associated with a particular PM&E.

MR. MILES: That's information that will allow you to make a more informed --

MR. HALLER: To make a better decision.

MR. MILES: Okay.

MR. HALLER: And there's excessive methodologies out there to do that.

MR. MILES: Any other comments or questions?

Okay. Number of licenses processes. We have, today, traditional and the alternative, and we have hybrids.

We've heard two proposals today. The State of California presented one two days ago. The National Hydropower Association, as Tim indicated, has a proposal, and then the PG&E. We all know that the PG&E has a proposal.

Okay. So what are your thoughts? One process or should we have one process with built-in flexibility? Should we have two processes, one that's more collaborative, one that's more evaluated? Any thoughts on

that? Mona, you want to -- Mona raised the question. You raised the question, so what are your thoughts? Yes, Bob?

MR. HEINITH: Bob Heinith, Intertribal Fish Commission.

I think at least as far as archives in our Commission, and it's probably true all across Indian country because of extremely limited resources, I think the tribes are looking at one process. It's very clear and the steps are very clear all the way through it, and people know what the expectations are so that their tribes can plan.

Having a multitude of processes is absolutely going to be a nightmare for us having to deal with traditional and ALP, what the decisions are and whether it's going to be a traditional or an ALP, and that's become a whole process within itself.

MR. MILES: Donald?

MR. CLARY: I would agree with that, and then I would also say that if there were to be multiple process, I think we would be interested in making sure that the tribe had a voice in selecting the process that was to be used.

MR. MILES: Rick?

MR. EICHSTAEDT: Rich Eichstaedt, Nez Perce Tribe.

I guess I would -- I have a lot of
uncomfort with the NRG proposal for the MOAs and MOUs and
can see the process getting bogged down in negotiating these
things. I guess if there's any element of that incorporated
into a rule making, perhaps there can be some sort of
alternative or default that would occur that would recognize
all responsibilities.

MR. MILES: Right. Any other comments?

MR. CARRINGTON: Just one comment.

From the licensee's perspective, one concern that some
licensees had when they had really small hydro projects
-- I know that's not really the case out here in the
Northwest so much, but there are some 70 kilowatt projects
-- if it ever turned out there was a one size fits all, I
think that there would need to be an exception to the rule
for those little projects that have minimal impacts on the
environment. There are some little projects that have big
impacts on the environment and they probably shouldn't be
excluded, but those other smaller projects, I think there
needs to be a consideration for those.

MR. MILES: Comments? Okay. Let's go
on to the next topic. Should the new process that the
Commission adopts be applicable to license proceedings or to
proposals for any projects or construction projects? Any
thoughts on that?

MS. JANOPAUL: Mona Janopaul.

Just to frame the question, as I understood it, that arose at other public forums was some people questioned whether these proposals would work for an original license situation, and I heard some talk this morning about appropriate balancing of tribal interests versus power interests or a level playing field, open fare. Should there be different criteria in a relicensing versus an original licensing situation? Those were some of the question that came up in other forum.

Again, I don't know if anybody wants to address those now, but that will be something we'll be grappling with. Do we need a different process? We do have two tracks in the IHC proposal, and the NRG proposal has some different tracks. I don't know if this has risen a tribal interest, but I know that our tribal partners for the Forest Service have talked to us about proposed projects on forest lands and what they thought were the impacts, so it is something we're going to have to deal with.

MR. OSTERMAN: Deane Osterman, Kalispel Tribe.

Speaking to, you know, a new license for an unconstructed project, I would hope that the procedures that would be in the process would be much more onerous than they are for a re-license.

MS. JANOPAUL: Different standards?

MR. OSTERMAN: Different standards, definitely.

MS. JANOPAUL: Okay.

MR. OSTERMAN: I think there are alternatives out there now to explore, and certainly in the future there will be many more energy alternatives to explore on the other side of hydro.

MR. DACH: Again, I would just like to offer that when you do your written -- sort of help us understand what those standards would be when you're looking at a new project. You know, if you asked six people what a more rigid standard would be, I think it would be defined differently.

MR. MILES: Any other questions? Tribal consultation with FERC, how can it be achieved? Who would like to begin the conversation? Rick?

MR. EICHSTAEDT: Rick Eichstaedt, Nez Perce Tribe.

I think one place to start is, you know, the executive order issued in the last administration, which is still in place, requires agencies to set up a consultation process, and FERC has not done that.

I'm not aware of any Indian policy or any consultation process that FERC might have in place. I

think that might be a good place to start and articulate that along the process. There are certain check-in points where FERC comes and talks to tribes and says, you know, "Here's what's coming up. You know, here's maybe how the tribes can get involved, and what are your concerns?"

MR. MILES: So those blocks that were solved in the proposals -- certain blocks being designated versus consulting directly with the tribe?

MR. EICHSTAEDT: Correct. In some of the relicensing that I've been involved with, some of the other federal agencies who do have these consultation guidelines have, you know, periodically either, you know, on a state level or on a, you know, high level council too, you know, at the executive level with the agency, you know, have discussed what the impacts of the project on tribal resources are and what are the concerns of the tribe. I think a similar process in FERC would be beneficial.

MR. MILES: Carl, did you have something?

MR. MERKLE: Yes. I think this is probably a very difficult issue. I would say consultation probably means different things to each individual tribe, and I know, for example, that it's a subject that my bosses have raised repeatedly in dealings with other federal agencies describing consultation, trying to define what it

means and what some of its characteristics are.

I anticipate in our written comments that we will provide some more detail and hopefully that will be helpful. I'm not sure, but, you know -- for example, I would note that I think that -- they're not here, but I think even if they were here today, the senior policy representatives of the Umatilla Tribe would say this is not consultation.

Just as a point of clarification, frequently -- I mean, if a phrase can be used to describe it, one that has come up has been collaborative decision-making. It's not simply an agency providing the tribes with information and a subsequent decision and then seeking their after-the-fact approval. It's more a joint effort.

MR. MILES: Well, what would be consultation then? If we were to meet with --

MR. EICHSTAEDT: Certainly it would begin with discussing a date and an agenda in advance and seeking out a date that was mutually agreeable to both the agency and the tribe. I'm not merely saying that this is (speaking simultaneously) --

MR. MILES: (Speaking simultaneously)-- we have achieved that. We have achieved that. Okay?

MR. EICHSTAEDT: So that's certainly a

start.

MR. MILES: So we've got a date that's acceptable to the tribes. Then what?

MR. EICHSTAEDT: Right. I don't know. Anytime you all want to try this as well.

Certainly providing a tribe with all of the information that is going to be discussed at the meeting. We have had some unpleasant instances of meetings. You know, we may have been successful in getting to a mutually agreed upon date, and then we arrive at the meetings and we are -- you know, tribal leaders are presented with a great pile of information and asked to review it at the meeting and give immediate feedback without an opportunity to talk with our technical staff and have it thoroughly evaluated, et cetera, et cetera. That fails the test as well.

MR. MILES: Let's talk about --

MR. EICHSTAEDT: This is a lot of what consultation hasn't been in specific instances, but it is-- it's tough to describe.

MR. MILES: Okay.

MR. MEISINGER: This is John Meisinger from Shoshone Paiute.

The tribal leaders down there have initiated a process they called "Wings and Roots." They have a third-party arbitrator and mediator, I would guess.

It's used now with the (inaudible) Air Force Base, the DLM,BOR, and the Forestry Service. It's much like this. It's all recorded. It's all very formal.

As you suggested, there's an agenda beforehand and a time afterwards to consider what was being consulted over. It's been quite successful in resolving some serious problems. It's been a -- it's been a good procedure.

That's one of the things that we've found that works. I think the key to the success of that is the regularity of it. I think we had four a month Wings and Roots meetings with the various agencies. But we had them every month, so that there's continuity going on and it's -- there's been some things resolved that I won't bother you with now, but some things that have been resolved that are quite touchy.

MR. CLARY: Just a quick follow-up. As I believe, in that process part of the problem is oftentimes -- you may have a meeting that you don't get any kind of feedback on a particular number of days where people indicate that they understand what was communicated by the tribe and that somehow it's going to be assimilated in some way and actions are going to be taken. I guess that's what I would say in regards to what they're doing here. If you're contemplating that, there ought to be something in

the nature of feedback that's built in this process.

MR. MILES: One of the things we heard in Sacramento yesterday was that within the blocks, there was opportunity for scoping -- a scoping session, and that the tribes wanted to be a part of that with the state and federal agencies.

It was asked if we were, today, at a scoping session with the state and federal agencies and the tribes present, would that fall within your definition for purposes of scoping consultation? Think about it. In other words, you know, everybody would be at the table. All of the governments would be here. Is that -- Rick?

MR. EICHSTAEDT: I think that's a good illustration. Each tribe probably defines consultation a little bit differently. In Nez Perce, that would not be government-to-government consultation because that's a bunch of governments.

We've heard a lot about the trustee relationship, and really consultation should be between FERC and the tribes so that there can be the frank exchange of information. Sometimes that might be information that a tribe might not be comfortable sharing in front of state or nongovernmental --

MR. MILES: Okay.

MR. EICHSTAEDT: -- you know, cultural

use of a river in that particular area.

The one other thought I wanted to raise on what Carl mentioned was that some of the -- one element of consultation of whatever -- if this is included in this rule-making process, and ensuring that the right decision-maker for FERC is at the meeting, you know, not somebody who has to report up three or four, you know, levels before you get to somebody that can actually make a decision on an issue. If it's a technical issue, send a person who is going to make the decision on that technical issue. If it's a policy issue, send policymakers that are going to make that decision.

You know, tribes, you know, almost always, you know, send people to these meetings and often, in my experience, in some of the consultation processes, you don't always get the right federal folks at the meetings.

MR. MILES: Tim, you have something?

MR. Welch: Yeah. I just wanted to flesh out this idea of a tribal -- a scoping meeting with the tribes. You're right. We do it hear different things from different tribes about, you know, who should be at that -- if we did do a separate scoping meeting and tribe -- like who should be there.

Some of the tribes in California thought that it should be all of the federal agencies that are

involved in the federal -- in the licensing process. Maybe I'm hearing a consensus that it should just be FERC and the tribe at a scoping meeting. Am I getting that right?

MR. MILES: Well, wait a minute.

Somebody say "yes" because the court reporter is not going to have nodding of the heads.

MR. CLARY: Well, I just have one other question. Any thought been given to having a tribal liaison involved in the process? Maybe have FERC specify (speaking simultaneously.)

MR. Welch: (Speaking simultaneously)
it's funny that you mention that. Every tribal forum that we've had, someone has suggested that.

MR. MILES: Robert?

MR. MATT: This is Robert Matt with the Coeur d'Alene Tribe.

This quest for tribal consultation, it's about putting tribes at a decision-making table on issues affecting each tribe. I would just urge FERC not to create a checklist like many of the other federal agencies have done where completion of tribal consultation is being able to put an "X" in a box on a to-do list. To be frank, that can be very offensive to tribes and cause disengagement, which is contrary to, I think, the intent of communicating with tribes.

When you're making decisions, the first thing, I guess, FERC needs to recognize that they don't have the authority to make decisions on trust and treaty resources. Each individual tribe makes those decisions themselves. FERC should strive for consistency with those decisions that the tribes make individually. It not up to FERC to decide if my right to harvest salmon is a trust or treaty right. It would be more productive if there would be a recognition of these rights as presented by each tribe, and it's going to vary by issue. Creating a box and X amount of meetings means nothing if the decisions that come out aren't reflective of the true intent of the tribe's interests and needs and the upholding of our rights.

In terms of getting all of the federal decision-makers in the room at the same time for a consultation, we might have a little different perspective. The Coeur d'Alene, efficiency is something that we do prefer. If we're talking one topic and there may be six or seven federal agencies involved there, six or seven consultation time commitments isn't something very efficient and productive either because generally we end up being the ones to travel, such as today.

You know, these reservations -- or these types of discussions probably -- consultation would involve, from our perspective, you coming out to our reservation and

seeing these issues on the ground and getting an understanding as opposed to flying to Tacoma on our dollar to share, which obviously we're willing to do, but to take it to the next level, it seems like it needs to become a more personal relationship.

The tribal liaison may be that person as long as that person is equipped with an ability to make commitments and see them fulfilled for the tribe. Lots of times they're just technical staff or staffers that have to go back and run through a gauntlet of administrative approval and then come back to tell the tribes that they can't make a commitment to something or that the tribes need to reconsider.

I would just urge you to engage in consultation with the intent of including us in decisions and being consistent with our policies and our rights as opposed to interpreting whether or not you need to limit what you do in the licensing effort.

MR. MILES: Okay. Bob?

MR. DACH: Just to see if I understand it correctly -- I don't think that you're proposing that every meeting between -- every meeting during a licensing effort where the tribes were involved -- you're not expecting that that would be a government-to-government consultation, right? You guys would participate in the

licensing and there are certain junctures during that licensing where it's necessary to have that sort of consultation.

To know specifically when those points were would be helpful, for instance, if there are hard-and-fast times where we need to have a consultation here or we need to have a consultation here. Like, say, for instance, before this study plan is done, we want a consultation, or before the NEPA documents, we want a consultation. I don't know what it would be, but whatever it is.

Or on the converse, to recognize that when the tribes request a consultation, that they can expect that it will be followed through on the part of the parties. If you're all engaged and you get to the point where you say, "This just isn't working. We need to sit down with our folks, and you guys need to come," then you would have the ability to request that consultation, and we would expect them to show up for it.

Is my understanding clear on that, sort of? That's what you're thinking?

MR. MILES: Can I move on to the next one, No. 7? Trust responsibility involving the Endangered Species Act resources and resolving conflicts.

The gentleman who raised that, Jeffery,

is not here. Any comments or questions? Anybody? None?

Yes?

MR. MATT: This is Robert Matt with the
Coeur d'Alene Tribe again.

This kind of gets at that earlier issue
where we were discussing -- at least my spin on it would be
doing what's necessary to comply with the ESA as opposed to
perpetuating a trust resource, museum species management
versus ensuring the ability of tribes to harvest resources.
I guess I'm just taking a resource or use perspective here
for my tribe. An example would be bull trout or salmon.
Let's just use salmon. It's a pretty popular thing. Doing
what's necessary under the conditions of a license to avoid
a different opinion under ESA differs greatly from what's
necessary to perpetuate a trust resource.

The magnitudes there are significantly
different, and we would be looking to seek FERC on the
trust responsibility as a target as opposed to meeting
regulatory minimums under competing laws.

MR. MILES: Okay. Anything else?
Resolving culture disputes. Have those been addressed
differently than what we've talked about before?

MR. CLARY: Yeah. I think John
Meisinger brought this up.

MR. MILES: Would you like to defer it

until he gets back?

MR. CLARY: That might be a better--

I would like him to be here for the conversation.

MR. MILES: Then why don't we do that.

Okay. Tribal water standards versus tribal rights, water rights. I guess that's --

MR. HEINITH: I brought up this. I

think that was one of our comments in our direct testimony on the 5th.

We have to have a way that standards both on reservation and ceded areas, tribal standards are incorporated into the relicensing, that they're fully considered on the same level as 401 certification.

In terms of water rights, those also need to be considered, whether they've been adjudicated or not. In many cases they haven't been, and yet, you know, water rights are routinely reissued for FERC projects without consideration or tribal right issues.

MR. MILES: Understandable. Questions?

Comments?

MR. WELCH: Just on the water quality

standards, Bob, you know, we are seeing that more and more in the relicensing, especially the granting of 401 authority to many of the tribes.

The only thing we were asked is just to

ensure that the Commission staff is -- I mean, we seem to be always well aware of the state criteria, but making sure that the staff is well aware of the tribal water quality criteria as well.

MR. MILES: Moving on. Supporting or assisting the tribes in the relicensing process either being direct financial support of other types of support in the process that we're talking about.

Any comments or thoughts on how that could be achieved or how that might be -- not so much achieved, but how that might be addressed in a new rule or something that should be -- as a general observation? Yeah, Bob?

MR. HEINITH: Yeah. I guess I brought this one up. Again, my understanding now is if the licensed applicants have to basically give funds to FERC or either directly to Commerce and Interior, it provides those folks with a means to fully participate in the licensing. I guess my query is, why couldn't that same sort of process be done for tribes that are affected in relicensing?

MR. WELCH: I guess it's me. Please chime in, those of you that are more -- especially with the resource agencies -- that are more aware of the issue.

Bob, you're right. There's the annual charges that are paid by licensees to FERC. The regulations

do provide, but there's some sort of a cost recovery to the resource agencies. For whatever reason that I don't understand, those monies are just put into the general U.S. Treasury, and they're appropriated just like any other monies, so there's -- this whole cost recovery thing is an issue that FERC is trying to work out with the resource agencies.

Did I characterize that right? Mona is making a terrible face like I totally messed that up.

MS. JANOPAUL: Mona Janopaul, Forest Services.

No, you did not mess it up. I just wanted to clarify. The representative of the Duck Valley tribe this morning described the pending energy legislation. There had been some discussion in there of rather than -- and I think it's Section 10(e) of the Federal Power Act-- instead of putting those funds -- each year the agencies submit to FERC the expenses that they have incurred in either licensing or administering existing licenses. They submit those to FERC, and FERC collects, based upon calculations of annual energy production, an annual fee from each licensee.

Those funds do not go back to Interior, Commerce, or Agriculture. They, as Tim said, go into the general fund. There was some discussion of direct returning

to the agencies for their out-of-pocket expenses, but that was considered and not taken up in the pending legislation. Even though the Forest Service has submitted through OMB a proposal to amend the Federal Power Act to provide for direct return to the agencies, that has not gone any further than OMB.

The other issue, which tribes might pursue also -- and this is not independent energy legislation -- was the issue of -- I will call it "rental fees." That is a fee charged to a licensee for those portions of the project or the entire portion of the projects that are on federal lands.

There had been some movement -- congress had directed a fair market value calculation for those lands, but that is being reevaluated as well. I'm not quite sure I've got the split right. Again, FERC collects that, retains a certain portion for administration. A large percentage goes to the relevant state, and the rest of it goes back into the treasury. I certainly think that if the tribes have an interest, you know, talk with BIA, talk with the rest of us. I think the ALP provides for some opportunity for tribes to work with licensees and has been relatively successful.

When you're talking about different licensing processes, if you've had some positive experiences

with funding by licensees -- and that has been mentioned in other tribal forums. Just yesterday it was mentioned, and I remember it being mentioned elsewhere. If you've had good experiences, please share those with us.

MR. MILES: Just as an aside, also within the oil, electric, and gas industry, we charged under our jurisdiction a fee. The money collected goes directly into the federal treasury, so that money never is -- we have to go to congress every year and justify the budget that we need just like every other federal agency. Yes?

MR. DARYL: Hi. I'm Daryl with (inaudible) out of Washington, D.C., and I'm here with Duck Valley.

Regarding your energy legislation and the cost recovery issue, I think, you know, because the energy legislation isn't likely to pass this year, I think it would be wise for tribes to go to congress to get a direct -- if not in the energy legislation itself, at least through the appropriations report and get it directed to the agencies to do this for the tribes.

I think that's one avenue that we can pursue, but of course that has to come from the tribal council because FERC isn't allowed to do those things.

MR. MILES: Yes, Robert?

MR. MATT: Robert Matt with the Coeur

d'Alene Tribe.

I think what's important on this funding issue is, you're not going to resolve disputes with the tribes if the tribes aren't sitting at the table, and it's in everybody's interest to have us there.

In terms of improving efficiency and reducing costs, the long-term goals -- of both short- and long-term goals, and what this discussion here today is about, these costs up-front I think are vital to reducing the costs and improving the time constraints that these relicensing efforts often pose.

You know, we can't discuss issues and resolve issues if we can't sit at the same table. The message is clear today, I feel, that tribes are telling FERC, and I think the industry representatives who are here, we want to engage in resolving these disputes in a manner different than litigation and these long drawn out processes, but the only way we can do that is to get help and be at the table.

In terms of FERC and the United States Government, I personally believe they have an obligation to make sure the tribes are at that table if it's affecting a trust and treaty resource. That means providing the financial resources necessary and how we can all work together to work the political angles and the appropriations

process if necessary to get us there is maybe something we ought to talk about in the future.

Whenever tribes lobby before congress, it's "Oh, the Indians are here looking for more money." I think there's more a likelihood for that to be successful if FERC is standing there beside us and the BIA is standing there beside and the Forest Service is standing there besides us making the same request.

In the development of these regional and agency level budgets at a national scale, I think it's important to involve tribes in the preparation of those budgets and their requests that go into there.

It's dismal to hear this morning that the BIA has \$701,000 appropriated to hydropower relicensing, and there's thousands of dams coming up for relicensing in the next ten or twenty years. That's going to be a lot of dispute. If we want to resolve that in a manner that's, you know, supportive of both the tribal and, I think, the industrial perspective of cost effectiveness and timeliness, we've got to make sure the tribes are at the table, and innovation would be nice, to find ways to get us there.

MR. MILES: Any more comments? Rick?

MR. EICHSTAEDT: I guess just a thought. You know, looking at the rest of this process for the rule making, it looks like there's going to be other

kind of check-in point and participation. I know in December there's going to be a -- I forget what it's called, but some sort of drafting session. I don't know if FERC or the other agencies, you know, will help make sure that tribes are able to be at that table. I think that's essential.

I think one of the biggest problems with the two proposals is, there wasn't any tribal representatives at those tables. I think that FERC, especially as a federal agency with trust responsibilities, should help to ensure there is tribal involvement as that process goes forward.

MR. MILES: Okay.

MR. DACH: Before you leave that, is there -- just for a practicality standpoint, how would that work? My concern is that we had one tribe or two tribes there and the other 475 tribes that are recognized in the United States would say, "Well, you didn't talk to us."

Personally I think that's a legitimate concern, and I also don't think because of that is a reason why we wouldn't want to have any tribes there. I'm curious as to -- is there a way to get tribal representation that would satisfy, you know, satisfy all of the tribes? I don't know what that is, so I'm asking that sincerely.

MR. (Unidentified): In terms of

consulting with tribes, I think that, regardless of how we view the BIA, we have come up with a system over the last 20 years perfecting it.

There is no -- there is one national organization in Chicago for the American Indians. They represent a lot of tribes, but they don't represent all of the tribes. In the last trust reform consultation process, not only did the Committee on Indian Affairs Administration come together to go and do regional consultation with regional organizations rather than trying to do all of the tribes in one city, so I think that would be a better process to do that.

MR. DACH: So similar to what we're trying to do with this forum?

MR. (Unidentified): Yeah. There are models out there, and I think that the EPA has developed a really good model in developing a tribal office and consulting with tribes. To a certain degree, there are models out there that we could possibly use.

MR. MILES: Bob?

MR. HEINITH: Bob Heinith, Intertribal Fish Commission.

I guess this sort of raises the question that the streamline process we're in now -- to develop another process for relicensing may be going too

quickly to adequately bring in the tribes and address their concerns.

MR. MILES: That's been an observation made. Any other questions at this point? Let's return to No. 7, resolving cultural disputes.

MR. MEISINGER: One of the things that I'm hearing from our tribal chairman and from our cultural resources person is that, especially with respect to Idaho Power, in some of the studies that are being done, they send out their own archeologists and they look at the site that's sacred to the tribes, and preclude conventional archeological conclusions. They just don't recognize what it all means to the tribes, the sacredness of the site, for instance, or the artifacts that are involved and that type of thing.

Talking about, I guess, two different breeds of archeologists, one that goes out and says, "This is indeed something that is very sacred to these people, and I know why because I know the oral history of it, and know all the rest of it." The traditional archaeologist goes out and says, "Well, yeah. This is some evidence that people were here at one time or another." And they come to two different conclusions. I'm hearing from the council of the Shoshone Paiute on, you know, very definitive terms that they're disturbed about that.

MR. MILES: How would you recommend

that it be addressed, in the pre-licensing or the licensing process?

MR. MEISINGER: Well, I guess when we're doing the studies is the time to look at that. For instance -- we had one instance where an archeologist came on the reservation unannounced to the tribe and went around and questioned people that they saw on the reservation. Then they went back and said that they did a consultation and they did archaeological studies, and we're not buying that.

This is a real problem as far as the people that I'm connected with. They're just not saying that they're going to accept the -- and I'll use the secular archaeological find as being the final word.

MR. MILES: To give an example of ways of addressing that -- about six months ago we had a dispute at the Commission involving the treatment of human remains by a consultant of the licensee, and how that should be addressed in the tribes. They saw it differently, and so two individuals from FERC, someone from my shop and somebody from the office of energy projects went out there in one of two meetings, and they were able to resolve it just by addressing it -- not only resolve it, but also how it should be addressed in the future.

MR. BLAIR: So if I hear you correctly,

if you had early consultation and if the tribe was involved in the actual selection, in this case of an archeologist, then that might resolve that type of issue; is that correct?

MR. MEISINGER: I think it would. I just don't think unilateral selection by the applicant of who is going to do the archeological look is going to work.

MR. CLARY: I think -- and methodology. I think part of the problem that John was just alluding to, the problem was that oral histories were not adequately considered in this process.

MR. CARRINGTON: Yeah. I think our original idea of having a tribal liaison would help in this case because there is a lot of confusion sometimes as to what is required for cultural consultation, and people a lot of times don't realize there is a difference.

On our project, we had the tribes select who they want to go out there and do the TCP because we knew it had religious purposes and because they didn't want to reveal in all instances where those sites were located. I think it's just more of a misunderstanding in a lot of instances, and in other areas it may be that the -- it may not be a misunderstanding, but I think tribal liaison would help considerably.

MR. MILES: Right. And on this point, there may be times when you want to allow for

confidentiality, and the process would allow that. In a case like back in the '80s, the Confederated Tribe, their religion was very, very (speaking simultaneously.)

MR. MEISINGER: This confidentiality is very important to the tribes. As a matter of fact, going back to what I said before, some people came on -- an archeologist came on the reservation and talked to some people, and the result was that he thought the people wouldn't tell him anything simply because of the confidentiality of grave sites and grave robberies that are going on and the whole thing, so --

MR. MILES: So the process of addressing it.

MR. MEISINGER: I think getting the tribes involved at least in some kind of a consultation, I guess, is an overworked word, but getting them involved in who's going to do these studies is extremely important. Otherwise, it's going to be -- it will fall apart down at the end someplace.

MR. MILES: Good. Rick?

MR. EICHSTAEDT: I guess one other quick point on this issue is that many tribes now do have staff archeologists. You know, I don't know if there's a way in the pooling process to encourage applicants to actually contract with tribal archeologists who are within a

certain area. Certainly there's other federal laws that encourage contractors, so --

MR. MEISINGER: Just as a real quick example of this: The tribal chairman and I were standing on the patio of the hospital just last week, and he reached over and picked up a stone, and he said, "Look at that." It was as big around as a half-dollar. I looked at it, and I was going to toss it, and he said, "Give that back to me." I said, "What's going on?" He said, "Well, there's been work done on that." That meant something to him that was -- you know, it didn't mean anything to me. As a non-Indian it didn't mean a thing to me. It was just another piece of stone. But to him it meant something. That's where the two archaeologists probably differ. That's the thing that we have to overcome.

MR. MILES: If there's nothing else --
Bob?

MR. HEINITH: One more quick comment.
Bob Heinith.

My folks always told me that cultural resources are more than just stone and bones, and I think there needs to be a common understanding of what comprises a cultural resource. To my folks, it's the air, it's the water, it's the wildlife, it's roots, it's berries, it's fish. All those are just as important as other

archaeological-type resources.

I think that's really important in this rule making, that there is a common understanding because I think that's a lot of times mistake in kind of a definition there.

MR. MILES: Good conversation. Deane?

MR. OSTERMAN: I think that's a good point. This is Deane Osterman, Kalispel Tribe.

You know, true mini-tribes have a very expansive definition of cultural resources. I have worked in the cultural resource field all my life, and one issue with contemplating all of those different aspects into the definition of cultural resources -- we have a hard enough time as it is dealing with the 106 issues in terms of protecting cultural resource properties, traditional cultural properties and whether they are physical archeological sites without adding all of those other issues on top of it.

You know, my recommendation is effective communication. The gentleman from the Nez Perce Tribe recommended exactly what we do at the Kalispel Tribe. We do the cultural resources. We do the archeology. We do the logistics. We do all of that. That's one way you really get some control over your own information. It's very important to us, and it's been very effective. That's about it.

MR. MILES: Okay.

MR. MEISINGER: That presupposes that you have the resources to do it.

MR. OSTERMAN: True.

MR. MILES: Okay. Let's move on. Okay. Time periods. We talked about that some already.

MR. CLARY: I would like to make a general comment. Some consideration should be going on with regards to the time periods specified in the proposed rules, again, because of the lack of resources and the issues that we confront. I know historically -- and many of the regulations currently are 60 days. Even 90 days in some instances may just not be adequate for the tribes. If you're trying to contract the overall process, these periods become even more critical, so maybe perhaps you might want to give some consideration for either extended -- larger periods or potential requests for extensions if it should become necessary on good cause and things along those lines so that we can get an adequate and good record.

MR. WELCH: Tim Welch with FERC.

Yeah. You know, some of these time frames that have been proposed, you know, you start to look at them and you go, you know, "Where did that one come from? Where did that one come from?"

In addition to maybe proposing some sort

of a -- under what circumstances you would get an extension of time, it would be time frames that are realistic to the tribes as well. You know, sometimes federal agencies say, "Oh, yeah. We can do it in 30 days," you know, but you're right.

MR. MILES: As part of my training, so to speak, in mediation, I think of options. One option would be another -- I'm not recommending this -- would be to put in a six-month buffer period where you put in two months of blank to allow for that sort of potential. Yes? Did you have something, Bob?

MR. DACH: Me? No, I'm not going to comment on that.

MR. MILES: Any other comments? Okay. You know, it's 3:10. My thought is just keep going because we haven't got that many more. If we take a break, it's going to take 20 minutes to get you back in this room.

All right. Cost and practicality. Robert?

MR. MATT: Actually, I guess members of your task force raised that by adding this as a criteria for evaluating whether or not to pursue a study or not, and --

MR. MILES: You're saying that it should be -- if you're going to put together a set of

criteria of whether or not litigation or a study ought to be done, including something other than the practicality of it and the costs of it, but also whether or not that study needs to be trust responsibilities or --

MR. MATT: I think that's part of it.

My concern is that this is the paramount line of defense that tends to surface in these disputes over appropriately documenting and addressing impacts that a project may have. In many circumstances a lot of these impacts have been unaddressed for a very significant amount of time, a lot of that money has been pocketed over the years. To all of a sudden come up with a criteria that prevents investigating an environmental or a resource issue or a trust and treaty issue appropriately simply because of cost or -- a perfect example would be on the Columbia River system, fish passing. It's not cost-effective or practical to deal with the blockage at Chief Jo and Grand Coolie Dam in some people's minds. Tribes disagree with that. In fact, I think every tribe in the Columbia River basin agrees on that issue alone, which is very rare.

MR. MILES: They didn't need mediation there, huh?

MR. MATT: What I'm suggesting is-- I'm respectful of the need and the desires of the project applicants to remain economically viable; otherwise, there's

no point. But there's also an obligation that exists to do the best job we can to identify and address impacts these projects are having. Making that an exclusionary or threshold-type criteria may not be appropriate, I guess. I'm not sure that those criteria are proposed as thresholds, but --

MR. DACH: To clarify on that particular criteria, the idea wasn't to not conduct a study because it was too expensive. The idea was to have -- if there was a way to conduct the study for less money, then those are the -- the idea was to have -- you would do the study in order to get the information that you needed, but if you could do the study one way for, you know, \$1,000 versus doing the study another way for \$10,000 and it would get you to the same result, then you would choose the \$1,000 one.

The criteria, you know, of course we hadn't applied those to the types of mitigation that would eventually result in the process, but what we wanted to do was recognize that a Cadillac wasn't necessary all the time.

MR. MATT: This is Robert Matt.

I think that, in responding to that, I would agree with you in most circumstances. I just think that if you're going to have that as a qualifier, you may want to add some detail to exactly what it is that that

means and the limitations you described would be valuable to see in a document, I think.

The energy legislation that was proposed in the last document, and now it is dropped in the criteria. It was very prevalent throughout that document that cost and practicality or using the least cost alternative received much deference. I'm not arguing against that so much as just making sure that trusts and treaties -- it's understood that trust and treaty rights and opportunities to access those aren't for sale. There's not a dollar figure on those.

MR. DACH: Right.

MR. MATT: And to us, the costs have been grander than any improvement a facility could ever cost in many cases and especially when it comes to species extirpation. We want those back and we will continue to advocate for those kinds of rights, and we believe it's in the best interest of everybody to resolve these disputes to pursue the information necessary to make that happen.

MR. DACH: On the criteria themselves -- or on everything, but specifically since we're on the issue of the criteria, if you knew how to phrase it better, you know, to send the specific language in, that would make our lives much easier as opposed to trying to guess exactly what is required to satisfy it. If we could see from your

perspective how it would need to read in order to make it palatable, that would be helpful.

We're not trying to -- we're really not trying to not do something because it's too expensive with this particular criteria.

MR. MATT: Well, the information you get from us would likely read to remove it.

MR. DACH: That's fine. That's fine.

MR. MATT: We really don't want to justify something that we don't agree with.

MR. DACH: No. I completely understand if that's -- yeah.

MR. OSTERMAN: I have a question. This is Deane Osterman, Kalispel Tribe.

Is there any language in the two proposals or any of the other ones that we don't have about developing cost estimates for 4(e) conditions or 10(j) or any of those other recommendations in the process earlier, later?

MR. CARRINGTON: In the NRG there is not.

MR. DACH: I haven't seen any yet. I don't know.

MS. JANOPAUL: Mona Janopaul.

In testimony to congress in the last

few years, the Department of Interior representatives on behalf of also Commerce and Agriculture talked about policy, certainly, and Forest Service regularly says this in letters, welcoming alternatives proposed that would still meet our needs and requirements. So we already have that policy in place. I know that the legislation that would mention it would make it imperative, but we do have that policy in place.

I just wanted to refer back to Tim's presentation this morning where he talked about our former body, the Interagency Task Force, and he mentioned some of the reports in that. I believe the reports are both on the FERC Web page and the Department of Interior Web page, and one of them talks about studies.

As agencies, we agree that studies we proposed we would link to our management goals and objectives. We would make it clear on that. I might suggest that the tribes look at that and see if that kind of approach would work for them to get away from this issue of cost, if that kind of approach would work.

I also wanted to say for the record that one of the -- the federal advisory committee to that Interagency Task Force did have a tribal member, at least the Warm Springs Tribe was a regular participant, and we had other tribal members earlier on in the National Review Group

as well.

MR. MILES: Okay. If there aren't any other comments, then we'll move on to the topic which is settlement process, time periods and how to encourage it. Does the process in place discharge the settlements? Any thought or comments? That's something that we want to take into consideration. Yes, Robert?

MR. MATT: Robert Matt with the Coeur d'Alene Tribe again.

Kind of on this issue, I'm not sure I'm speaking specific as to what it was intended for and why it was put up there, but under this alternative licensing process that exists, under the context of this settlement agreement is one that we've been concerned with and what exactly constitutes a settlement agreement.

There aren't any guidelines established that require a certain level of endorsement of an agreement to be considered a settlement agreement. An example would be a project of license in our area recently where there was 50 stakeholders at the starting process and 24 signed on as settlement agreement. Does that constitute an effective settlement agreement or not? In the cases of projects involving trusts and treaty resources, I think you would make it obligatory that in order for an agreement to be promoted as a settlement agreement, the tribe would need to

be signed and clearly be supportive of that.

MR. MILES: If I can go back to my former life when I managed litigation in the '90s, we had a case where settlement was reached -- not in a hydro case, but I think it was a gas case -- there were a large number of parties, 20 or 30 parties. The majority had signed on to it, and there were a few that did not that took it to the Commission. The Commission accepted the settlement and they took it to the court of appeals, and the court of appeals made the finding that the settlement was okay. The Commission could not rubber-stamp a settlement just because you've got a settlement that goes up to a jurisdiction. It doesn't mean that the federal agency can rubber-stamp that. The federal agency still has the obligation to make sure that settlement that is submitted meets the statutory obligation of that agency.

I assume that kind of flies with the other agencies too, that if you get involved in the settlement, you still have the responsibility, ultimately, to make sure that that settlement is in the public interest and meets the statutory obligations of all of the different authorities. Okay.

MR. CLARY: How is that achieved?

MR. MILES: What do you mean, how is it --

MR. CLARY: In other words, do they have to go through a hearing to do that, or -- in other words, does that defeat the purpose? I mean, if they stamp off on it --

MR. MILES: Well, what I'm saying is that ultimately the Commission may reject it too. The Commission -- I assume that if an agreement is reached -- I assume any federal agency that signs off on a settlement agreement has reached a conclusion that it's statutory, in this situation -- the statutory trust responsibilities have been met. Otherwise, they wouldn't sign off on it. Somebody may challenge that and say they hadn't done their job.

MS. SMITH: I think Robert makes a really good point. We have sat and thought about settlement only in terms of, "Is it going to fit within in the time lines of any of these proposals?" You've raised a completely different issue that no one has raised yet in any of the public meetings that I think would be very helpful if you guys fleshed that out in your comments because it's a really good point.

It's been raised many times and I talked to Bob about it before, but we just haven't tackled it yet.

MR. MILES: If you have ten parties and

six sign off on it, it doesn't mean it's a good settlement.

It doesn't mean that it meets the statutory obligations.

MR. HEINITH: In our case, we have gone to -- the Department of Interior and the Department of Commerce and the state fishery agencies all signed off on the settlement, and one tribe signed the settlement, and yet two of our member tribes are opposing, so --

MR. MILES: That's possible. Yeah.

MR. HEINITH: What does FERC do in that instance?

MR. MILES: I don't know if something like that has come to the Commission --

MS. SMITH: Yeah, it has.

MR. MILES: I'm just trying to think recently.

MS. JANOPAUL: Mona Janopaul.

There are regs in FERC part 285. You can take a look at them, but not all parties to the proceeding need to sign the settlement. A settlement may be considered by the Commission as a partial or all parties signing, but certainly we've had experiences with recent hydropower and particularly through the '90s where settlement was signed by some or all parties and the Commission adopted parts of it into their final decision.

That is a very different experience than

resource agencies have in other settlements as opposed to FERC, which is a quasi-judicial independent agency. When we sign settlements and submit them to a court, the court does not alter the settlement, whereas -- and they must be signed by all parties.

So we have different experiences when we come to FERC, and this is certainly important for the federal resource agencies because, as opposed to other parties to the settlement who often argue that the settlement exists outside, somehow, of the FERC license, and that can be enforced through state contract law.

Federal agencies cannot go to state courts for enforcement of such a settlement. The only thing they can seek enforcement of is the FERC license terms, so we are adamant about, when we sign a settlement, that those portions that affect are -- particularly our managing conditioning authority Section 4(e), Section 18, that we also submit those separately. They are often pulled out in the settlement and submitted separately so that they will be not just part of the settlement that is considered by the Commission and may be altered or whatever.

MR. MILES: Right.

MS. JANOPPAUL: You know my personal view is that a settlement is a proposal to the Commission on what a decision should be, and that's about the extent

of it.

MR. MILES: I would say in response, 98, 99 percent of the time, the Commission will accept the settlement. It's very rare -- yes?

MR. EICHSTAEDT: Can we just repeat the question so Tim can hear that and maybe address it?

MR. WELCH: If I understand correctly, the question was, what does the Commission do if there's-- with a non-signatory of a settlement; is that correct?

MR. MILES: Correct.

MR. WELCH: Okay. Once a settlement is submitted to FERC, as with any process, the Commission considers all viewpoints and comments and the non-signatory -- it would be -- we would hope that they would file their comments on the application separately from the parties signing on to the settlement and the Commission would consider those separately from the settlement proposal.

Now, I mean it's not a majority rules type of thing. You know, we would give the same weight-- we would give the same consideration to that comment as we would with a settlement. But, you know, on a practical standpoint, I guess, you know, you would just have -- if you chose not to sign a settlement, you would have to answer yourself the question of whether that would be, you know, in your best interest or not.

MR. MILES: For the most part, settlements are not a problem with the Commission. If there are three offers of settlement on one case, that tells you that you don't have a settlement. All right.

Process for tribe as an applicant. I forgot who raised that. Should we have the same process? a different process? Is that what we're talking about?

MR. CARRINGTON: He's gone already.

MR. MILES: Okay. All right. Let's take on the last one. Streamlining decommissioning rules. How would that be addressed in the relicensing draft process? Any thoughts? Who raised that one? Do you remember? I guess the question is -- are you suggesting that this is something that needs to be addressed?

MR. HEINITH: Yes, we are, because there doesn't seem to be any consistent or steadfast rules regarding decommissioning of a project right now. There needs to be some clear and set rules on how to go about the decommission in a project -- if a project needs to be decommissioned or what have you.

MR. MILES: Right.

MR. EICHSTAEDT: I'm not sure if the rule making is the place to do this too, but someplace the process has to recognize that dams have a limited life, and that applicant has a responsibility to consider when is the

stamp -- the useful life of this stamp going to expire and how they're going to address that.

MR. MILES: Okay. If there aren't any questions or comments or no other topics, then I think --

MR. WALSH: Actually I would like to raise one more. Stan Walsh, Skagit System Cooperative.

I'm not sure that this is the process for it, but I would like to talk about 10(j) authority. The Federal Power Act recognizes tribes as having 10(a) authority but not 10(j) authority, but it does recognize state resource agencies that have fish and wildlife management responsibilities as having 10(j) authority.

In any case, the tribes are designated by federal court orders as comanagers of the resources, so they should, but by virtue of being comanagers of the resource, have 10(j) authority. I don't know whether that -- you know, how that fits into that process or not, but it is something that I think should be brought up.

MR. MILES: Any comments? Robert?

MR. MATT: Robert Matt with the Coeur d'Alene Tribe.

I kind of view 10(j) responsibilities for the tribes as the same as protection of trust and treaty rights. Lots of times they're the same, and it should be recognized.

The fortunate thing about 10(j) is they're promoted as recommendations, and sometimes it's cloudy as to who has the responsibility to prove it's an appropriate recommendation. It seems the burden is on the resource agency as opposed to the applicant.

Unfortunately, their abilities to approve a 10(j) recommendation is necessary is limited by information availability or time. A Fish and Wildlife management policy is a Fish and Wildlife management policy, and the Federal Power Act calls for a need to give deference to those policies and be consistent with them. The tribes are management authorities who clearly have statutorily supported management rights that I think are very reflective of the need for -- a call for 10(j) for tribes.

Helping applicants understand that I think is important because it -- it's kind of like Clean Water Act certification, that a historical inference is that that is a state issue in the context of the political state and not state in the context language in the Clean Water Act. It seems important, I think, to help educate applicants as well that that's the case. They need to be consistent with management policies of the tribe.

I know in the Northwest here the trust and treaty rights of the tribes govern or are the basis for

our Fish and Wildlife management policies in most cases, and great expanding has gone to fund the tribes to the document and to get those goals out into the hands of the people in the general public. It seems like a simple acknowledgment or reaffirmation of that on the part of FERC and could help address problem.

MR. WELCH: Tim Welch, FERC.

Well, I guess -- two things. So Section 10(j) comes directly out of the statute, you know, the Federal Power Act itself, and I don't know exactly what the exact wording is, but I think it says state and federal Fish and Wild--- whoa. Bob's got the Federal Power Act right there.

Anyway, I think it's -- Robert, the point you brought up about the Clean Water Act, I would be interested in seeing what it would say -- I will now read it. "Such conditions shall be based on the recommendation pursuant to the Fish and Wildlife Coordination Act from the National Marine Fishery Service, the United States Fish and Wildlife Service and state Fish and Wildlife agencies."

I do think you raised an interesting point about what the Clean Water Act -- you know, with the states receiving 401 authority from EPA. I don't know. This is a legal question. I don't know if anyone has ever brought it up to the Commission.

To also answer your second question about, you know -- I think FERC does, under 10(a), recognize Fish and Wildlife management plans and goals of tribes, so that is also put in the whole mix. You're right. It is under 10(a), but, you know, in our comprehensive development, we do consider all Fish and Wildlife management plans.

MR. WALSH: I don't think that 10(a) recommendations -- or 10(a) comments carry the same weight as 10(j) recommendations. 10(j) recommendations have a dispute resolution process built into them, so they're not quite equal. And I know that I have written 10(j) comments for the tribes that I work for that have not been acknowledged in the final license.

MR. DACH: Certainly in the IHC proposal, there's kind of a blank when it comes to 10(j) recommendations and 10(a). We went through the whole process and we knew it was out there, but we haven't really determined how exactly we would fit the 10(j) process in. If we need to do anything different with the 10(j) process or if it's just fine as sort of its own separate thing. I don't know how those time lines would fit.

You know, in our desire to sort of coordinate everything to one process, it would be good to get some feedback and some input on exactly what to do with

the 10(j).

MR. MILES: Is that it? Robert?

MR. MATT: Robert Matt.

I'm going to pose another question.

MR. MILES: Sure.

MR. MATT: I'm not sure if it's

semantics or not, but can someone from Commission staff speak to the relationship between surplus and the relicensing process and what happens when there's a Superfund site that's under the influence of project operations?

My understanding is that it's a reasonably new issue and it's kind of being tested on a couple of draft licenses right now. It's kind of a personal issue because we're initiating a new relicensing proceeding on the Spokane River. There's a pool affecting a Superfund site and a rod had been issued on the site -- or for the site. How is FERC and EPA then paving ground to resolve discrepancies or consistency issues there --

MR. WELCH: Yeah.

MR. MATT: If you can answer that question or comment. We had that as a topic at another gathering.

MR. WELCH: I might have to ponder on that one, Robert. I'm not familiar enough with the issue,

but Mona is.

MS. JANOPAUL: Mona Janopaul, Forest Service.

There was a recent license issued for the Atlanta project on the Idaho national forest which involves a surplus site under the reservoir. You might look at that. The Fish and Wildlife service was very actively involved in that, as was the Forest Service. I don't know that there were any tribes involved in that. That was a relicensing.

There is an original project that is proposed in the town of Telluride on the San Miguel River which would involve the inundation of some PCP laden soils and Forest Service and put certain 4(e) conditions on and states through its water quality certification. I believe that project has not gone forward, but it has received an additional decade. Its license expired before there was construction, and most of it had to do with meeting those state 401 and the Forest Service 4(e) conditions for dealing with the inundation of a funded sites basically. I can at least direct you to those two.

MR. MILES: Tim?

MR. WELCH: Just -- I want to raise another quick question before we break. Back to the tribal consultation issue. I just wanted to ask a question for

those of you who are still left here. A lot of times, as you all know, a lot of FERC projects, several tribes are involved as opposed to one.

Just getting back to the tribal consultation question. Would a government-to-government type of meeting with several tribes at the same time -- would that -- tell me about that.

MR. MERKLE: I'll take a stab at that.

This is Carl Merkle with Umatilla.

Again, other tribes I'm sure have different points of view, but I would say most definitively it depends.

I think there are circumstances where a particular meeting may be suggested or a particular issue may be addressed that the tribes and I think Robert mentioned and the interests of efficiency would recognize that a number of tribes could meet with a single federal agency or even a number of federal agencies in that instance and feel comfortable that the consultation had occurred if they were satisfied with that meeting and perhaps the outcome of that meeting. I'm afraid that it is probably a situation-by-situation case. That would be my thought on it.

MR. EICHSTAEDT: If I could comment on that. I guess I agree with Carl on that point. I mean,

there's certain situations where it might make sense and certain settings, for example, you know, when there's a tribal coalition. If it's the Columbia River and another fish Commission that at times consider this a mechanism for FERC to consult on a specific issue.

You know, also keep in mind that not all tribes get along. There are legal proceedings, you know, where tribes are adversaries. You know, don't call a meeting in Idaho and expect everybody to come and be candid about, you know, various discussions with FERC.

MR. MERKLE: Yeah. I would just add that -- yeah, there are instances where, you know, my leaders, my supervisors have said that consultation in a particular instance meant representatives -- senior policy board members of the Umatilla Tribe meeting with senior executive or usually regional agency administrators only, one tribe, one federal agency. And other times when they've been, you know, far more expansive with the, you know, four or more tribes and/or more than one federal agency. It just varies.

MR. WELCH: We're really trying to work to improve our tribal consultation processes, and this is -- I think parolles a tremendous opportunity. Looking at a new hydro project, how we can better do that and how it can be integrated into the process, so we're anxious to hear your

specific thoughts on tribal consultation.

I will tell you that we have this list that we had gotten from the BIA of almost 600 tribes, and what we're going to do is to hopefully continue to work with the BIA to maybe actually get projects associated with those tribes so when a license does come up for relicensing, very early on in the IHC proposal the pre-NOI letter that the tribes can be identified at that particular point and either get a letter from an applicant or get a letter from FERC for that matter, just sort of setting the groundwork for future consultation.

MR. MATT: Robert Matt. One last question.

Earlier I mentioned that consultation being a checklist on a box. The reason I mentioned that is there's a difference between getting the tribes together collectively because there's a common issue or a common theme that the tribe may all want as opposed to getting us all together because there's a time clock that needs to be met and a box that needs to be checked. That was kind of what I was getting at with that. In many cases our issues are mutual and in many cases there's an upriver/downriver fight and in many cases there's other issues that --

MR. MILES: All right.

MR. WELCH: And not all federal

agencies get along all the time either.

MR. MILES: All right. Then we go to the next step. Where do we go from here? If I can ask you to turn to the back of the blue book. As you can see, we finished the first large block and we'll finish it tomorrow in Tacoma on the 22nd.

On December 10th there will be a post-forum stakeholder meeting in Washington, D.C., to address what we heard and where we are going and what we heard during the different forums that we have conducted around the country.

On December 11th and December 12th there will be post-forum stakeholder drafting sessions in Washington, D.C. They're open to all. Tim, do you want to say a little bit more about that?

MR. WELCH: Yeah. First of all, the meeting on December the 10th, the post-forum stakeholder meeting in Washington, basically that's going to focus on-- in the parenthesis there -- what we heard and where we are going. Basically that is a wrap-up of all of the public and tribal forums that we've had throughout the country plus a wrap-up of the written comments, so you can see what other people in other parts on the country have been saying. So that will probably be most of the morning session.

The afternoon session in that particular

December 10th meeting will be focused primarily on the more global issues associated with the rule making, one of which is the one about the -- how many processes there should be and that type of more global issues.

That particular meeting, the notice is on the Commission's Web site and there's specific instructions if you want to view it over the Internet. If you can't make it to Washington, D.C., there's instructions on how to view that over the Internet.

Now, the next day -- the next two days, December 11th and 12th, will be post-forum stakeholder drafting sessions, and that will focus primarily on getting more specific input on an integrated licensing process.

As I mentioned earlier, we have a number of proposals, only two of which you've heard today. There are a couple more out there and we're going to be asking -- putting -- assigning people into different groups to work on various aspects of the process.

There is an on-line registration for participating in that stakeholder draft session where we're asking people to give us your preference for what particular drafting group you would like to participate in, and those will be facilitated sessions where we're going to guide people sort of through the process, looking at various proposals that have been made and asking -- trying to get

some sort of a feel for folks' feelings on exactly how the -- at least on a conceptual basis -- what that new and integrated process should look like. I would add that that will not be broadcast on the Internet.

MR. OSTERMAN: Just a question for clarification. What's your definition of "stakeholder"?

MR. WELCH: My definition of "stakeholder"?

MR. OSTERMAN: Or what you are using here. Is this everybody?

MR. WELCH: Yeah. Anybody who is interested in this rule making.

MR. OSTERMAN: Do you anticipate on the 10th, four days after the deadline for written comment -- how much are you going to be looking at these things? I mean --

MR. WELCH: I'm sorry. I missed that.

MR. OSTERMAN: To what extent, in practical terms, do you think you will be able to deal with the written comments four days after they pile in? I mean, you're not going to be able to deal with them in much detail, are you? I wouldn't think --

MR. WELCH: We're summarizing them as we go along and as they come in. We're asking people to get them in as early as possible. There will be people

working over the weekend to summarize them and, you know, compile them the best we can so people can have, you know, a firm grasp on what we're doing.

Anyway, those are the two stakeholder drafting sessions that are coming up. So, Rick, do you want to --

MR. EICHSTAEDT: I don't know if it's essential, but the issue about 10(j) if it will be put on the list --

MR. MILES: Well, we'll put that-- that will be in the report, correct? Okay? We'll put that up. Okay. Before I leave, we'll put up 10(j).

Thank you very much. On behalf of FERC, Commerce, Agriculture, Interior, thank you for your assistance and cooperation.

(Whereupon, the meeting was concluded at 3:51 p.m.)

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CERTIFICATE

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

IN WITNESS HEREOF, I have hereunto set my hand this 5th day of December, 2002.

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Signature

Expiration Date

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