BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

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IN THE MATTER OF: : Docket Number

HYDRO LICENSING STATUS WORKSHOP : AD02-21-000

- -x

Commission Room 2C

Federal Energy Regulatory Commission

888 First Street, N.E.

Washington, D.C.

Friday, November 8, 2002

The above-entitled matter came on for workshop, pursuant to notice, at 10:10 a.m., Chairman Pat Wood III, presiding.

P R O C E E D I N G S

(10:10 a.m.)

CHAIRMAN WOOD: Good morning. I'd like to welcome our hydro friends back. I appreciate the good work yesterday. I learned a lot, had a lot of aqueous thoughts over the last 24 hours.

(Laughter.)

CHAIRMAN WOOD: We will continue that for the next several -- last year we had a very useful format that not only focused on the items at hand but I think got the attention of the Commission and our senior staff on the number of regulatory potential reform issues that could come out of the hydro licensing process.

The focus of this hearing is on the actual longest lived proceedings here at the Commission, and from that we do tend to get sometimes a skewed perspective on the process issues. But I think as we go through all these we do manage to pick out a number of the issues that I think are in most urgent need of attention.

I tend to be a believer that just focusing attention and getting the affected parties involved, particularly sister agencies and the licensee. So today we have before us about 30-some-odd -- 35 hydro license projects that have been pending at the Commission for more than five years.

I appreciate that that number is about two-thirds of what it was a year ago, but it's my hope that we get these down to zero, because that's still -- and these licenses are over five years old or over three years past.

We are back to looking at the 35 or so historic proceedings that have been here for more than five years,

which means it's three years past the licensing date. Our intention today is not to cast aspersion or blame but to really just try to focus on what information or what precedent, proceedings or documents that the various parties need in order to close out an affected license.

So that sometimes involves a state agency. It sometimes involves us. It sometimes involves the licensees, settlement parties or all of the above. So our intention today is to focus on what remaining process items are required to come to conclusions on the old dockets that we have here and try to get some commitments on the record from ourselves and from other parties as to what is necessary to come to closure on these dockets.

So we've split the day into afternoon and morning. In the morning I believe we'll focus on items in the Eastern half of the country. With no further ado, I'll turn it over to our Staff and go from there.

MR. KATZ: (Presiding) Thank you, Mr. Chairman. My name is John Katz. I'm going to be moderating the

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proceedings today. As an initial reminder, let me remind you that these proceedings are going to be transcribed, and there are also folks in the Atlanta, Portland, Chicago, New York and San Francisco regional offices, as well as folks that are going to be calling in. So it's very important that you speak up and give your name. The reporter is going to wave at me frantically if you do not do that.

For the folks who are here in the audience, you'll need to speak into hand-held mikes which our staff will bring around and make sure you give your name before

you speak. We will try to make sure that we check in with all the regional offices and the folks on the phone as we go through each project to make sure that everyone gets heard. If we don't, try and yell at us and we'll pick you up.

(Slide.)

On a more substantive note, I want to remind you that just as was true last year, what we're here today to deal with is the procedural aspects of these cases, what procedural steps we need to take to make these cases move forward, and not the particular issues that we're grappling with in each case.

If your question is why didn't John Katz get out the EAS like he promised eight months ago, that's fair game. If the question is you're not happy with what someone suggested for minimum flows at the project, that is not

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something we'll discuss in the conference. That's something that will be discussed in the individual proceedings on each case.

The way we're going to structure today is we're going to begin with a presentation by Tim Welch of OEP on the regional and coastal regional water quality certification and coastal zone management workshops that we held following last year's conference in an effort to get input from the states as to how they might be dealing with the issues and how we can better coordinate the processes.

We will then move on to the cases themselves. We're scheduled to start that at 10:45, or as the Chairman said, the cases on the East Coast. That will go as long as it needs to up until one o'clock. At two o'clock, we're

15 going to start the cases on the West Coast, and that is a
16 time certain, so the folks on the West Coast will have a
17 good idea when they needed to be there. In other words, if
18 we finish early, we will not be immediately turning to the
19 West Coast. That's going to be at two o'clock East Coast
20 time regardless.
21 With that, I will turn the stage over to Tim
22 Welch.
23 MR. WELCH: Thanks very much, John.
24 (Slide.)
25 Yesterday with my remarks, I talked a little bit

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1 on some of the things we had heard from the states on
2 integrating the state processes with the hydropower
3 licensing process. So I'm here today just to give you a
4 little bit more details about that effort.
5 (Slide.)
6 Just sort of recapping where we were last year in
7 December 2001 here at this meeting, as the Chairman
8 mentioned earlier, we reviewed 51 pending license
9 applications that were five years or older. One of the
10 common themes that came out was that the Commission was
11 unable to issue licenses for a substantial number of these
12 projects because they lacked a state water quality
13 certificate or a coastal zone management consistency
14 determination.
15 That prompted the question, what can we do to
16 help coordinate these processes a little bit better, and can
17 we start some dialogue with the states regarding this
18 matter? So back in March and June of last year, we

initiated our workshops on integrating state processes, and we met with representatives from various agencies that are charged with the water quality certification and the coastal zone management consistency determination.

(Slide.)

And we had a series of these workshops all over the country. We went to Manchester, New Hampshire. We went

to Milwaukee, Sacramento, Salt Lake City, up in the Northwest, Bellevue, Washington, and Charlotte, North Carolina.

(Slide.)

So our goal for the workshop was to number one sort of allow the states to familiarize the Commission Staff with the participating states' processes involving water quality certification and CZM consistency determination.

As you can imagine with the different states, the processes varied quite widely. And then on the other hand, it was sort of FERC Staff's job to familiarize the states with our licensing process. So once we did that, we were hoping we could look for places where we could increase efficiency by identifying our common attributes and developing potential ways to integrate the processes.

So on a typical two-day workshop, what happened was like the first day was just spent going over just pure processes. Commission Staff presented, the state agencies presented, and then we would -- that would take up most of the day. Then we would go back to our respective hotel rooms and brainstorm a little bit and come back the next day to lay out the processes and then begin talking about how we

can work together better.

(Slide.)

I'll give you some of the results of some of our

brainstorming that we did with the states. I think the number one bullet -- and it's something that we heard yesterday on some of the panels from some of the states -- they felt that one of the impediments to their issuing timely water quality certificates in CZM consistency determination was a problem with incomplete license applications. By that, they meant that in certain instances the applications lacked a lot of time and the studies that the states felt were needed to move forward on some of those things.

We asked them the question, how can these applications be more complete so that you can do your job more efficiently? And I'll go over what we heard about that in a few minutes.

Some of the other things we heard, and we also heard a little bit yesterday from Polly Zemm from Washington State, some states actually as part of their state law require preparation of a state environmental review document, almost like a state NEPA document, or some states use FERC's final NEPA document that they need to do prior to their water quality issuance.

That leads to the third bullet there. Some states may defer their water quality certification action until after FERC issues their NEPA document.

(Slide.)

Some of the other things that we heard some of the states were unsure about once the water quality terms and conditions on the certificate are filed with the FERC, some states were unsure exactly how are these going to be translated into actual license articles. So there was a lot of questioning about that.

Most of the coastal zone management agencies pointed out that FERC's current regulations under the traditional process do not include consultation with coastal zone management agencies as they do for water quality certifying agencies.

(Slide.)

Going over some of the solutions that we brainstormed with the states, once again I asked the question to most of the states, how can these license applications be more complete for your purposes?

As you can see from the slide, the common theme there is early, early, early, and we heard that a lot yesterday. Once again, early FERC and staff involvement in the licensing process in order to identify issues early, get study plans out and reviewed at an earlier point in the process, a big one, resolution of study disputes early in the process rather than post-filing, and an early establishment of a licensing schedule for all parties, including the state water quality certifying agencies and

the CZM agencies, have a complete understanding exactly what's expected of them and what's expected of the

applicant. They felt that should be done early on.

And this is something that we are looking at in the current rulemaking effort as well.

(Slide.)

Another point that was brought up, a suggestion was made that FERC could issue licenses to potential applicants one to two years prior to the notice of intent, sort of an early heads up letter, Dear Applicant, your project is coming up for relicensing in a number of years, and giving them a heads up to outline the information that will probably be needed in the application and identifying the key state or even county agency contacts for both water quality certification and coastal zone management determinations, and at least promoting early contact with these state folks.

Once again, if you look at the IAC proposal, this is something that's in that particular proposal.

(Slide.)

Another thing that we're going to do, and we've already started this, is we're going to continue our discussions with both California and Washington regarding cooperation on environmental documents or at least how we can sort of get around some of those legal impediments that

Polly Zemm was mentioning yesterday, and how we can just better work and coordinate those separate efforts so that we can work together a little bit more efficiently.

Another suggestion was made that FERC could include the draft license articles in the NEPA documents so the states would clearly understand exactly how we would

translate their terms and conditions on the water quality certificate into license articles. That's something we've done in a couple of project-specific cases already.

And the CZM agencies recommended that we change our regulations to actually require consultation with the CZM agencies early on in the process, and that would be something that we would consider in the new rulemaking.

So that's a wrap-up of our regional water quality workshops. If you all have any questions.

MS. NYGAARD: Kris Nygaard, OGC Hydro Energy Projects. Tim, I'm a little confused about your reference to questions about how the Commission will reflect in licenses 401 conditions. For a while now, we append them verbatim to the license, and I think we've been moving away from it in an attempt to sort of reweave them into Commission-drafted articles, although sometimes there are implementing article texts. Were you able to clear up confusion on that with the states?

MR. WELCH: We mentioned that, but I think a lot

of them were coming from past experience where we were sort of weaving, trying to weave them throughout license articles. And I said there was a little bit of confusion there. But we did mention to them that we're actually attaching the water quality certifications to the licenses.

MS. NYGAARD: Right. Because the Commission has really focused on that lately to make it crystal clear to everybody.

MR. WELCH: Anything else?

CHAIRMAN WOOD: I'm looking at the early, early,

11 early slide. Are we able to implement that right now, or do
12 we need regulatory changes to do that?
13 MR. WELCH: Right now under the traditional
14 process, Staff is typically not involved in that prefiling
15 process. I don't know, and I'll defer to Kris on this, I
16 don't know if we're precluded from doing that. We do it in
17 the ALP process, but I don't know if we're precluded from
18 doing it under the traditional or not.
19 CHAIRMAN WOOD: And the answer is?
20 MR. ROBINSON: I don't think we're precluded from
21 doing it. In practice, I'm not sure whether we are.
22 MS. MILES: Ann Miles. There are a number of
23 cases where licensees are choosing traditional, and they are
24 asking us to be involved early. As resources permit, we're
25 trying to do it. But it's certainly not a requirement.

1 That's one of the major differences between the ALP and the
2 traditional. In the ALP, we are out there much more often
3 early on.
4 CHAIRMAN WOOD: The notice of intent to file
5 timeline is T minus four years?
6 MS. MILES: It's five to five-and-a-half years
7 before expiration.
8 CHAIRMAN WOOD: Is that early, or do you need
9 earlier than that to accomplish these bullets on your slide
10 here, Tim?
11 MR. WELCH: I think that's early. But even with
12 that pre-notice of intent letter, we're talking about one to
13 two years even before that five-year period to get people
14 thinking in terms of that. But as far as earlier goes, we

were thinking that five to five-and-a-half years would be helpful.

CHAIRMAN WOOD: I just wonder if it could be something that we as a practice just stick in right now. When we get a notice of intent, they kind of get the form letter saying we don't want to talk to you about scheduling, about review and study plans, we want to give you a list of people to contact which you may not have thought of. We want to give you form by which we can identify the issues.

We kind of basically go through the five bullets that you put up on the screen and do that kind of without

waiting till next July when we adopt the new process, because I think what I heard yesterday is we're probably going at a minimum to want to keep around the traditional ND ALP for certainly a number of certificates that are kind of in movement phase right now.

So we're going to have to work with this now, but having heard that last year, I do think -- and heard it on the road show that y'all have done on our behalf, I think it's incumbent on us try to implement that stuff now through as informal means as we can to really accomplish the result that the states and the other Intervenors say that they need.

So if there's any problems with doing that, I guess let's kind of kick those around, you know, in the near term so that we can take advantage of what we learned in the last year and implement it way.

MR. KATZ: Thank you, Tim. We're going to be taken through the first set of projects by Tom Dean of the

Office of Energy Projects. Tom, we'll give you a minute to get up here and get up here and get situated and then start as soon as you're ready, please.

MR. DEAN: Thank you, John. This morning I'm going to be presenting 13 projects by state.

(Slide.)

The projects are going to be presented in the

following order: Four projects in Main; three projects in New York; four projects in Vermont; one project in Michigan; and one project in Wisconsin.

As you can see, the slide that's currently shown, these are the first four projects that will be presented. This is their general locations within the state.

(Slide.)

The Gulf Island-Deer Rips Project Number 2283 is located on the Androscoggin River. It's a multi-development project with over 31 megawatts of installed capacity. The relicense application was filed in 1991 by FPL Energy Maine Hydro.

Since the July 2001 workshop, the Maine DEP, and that's the Department of Environmental Protection, has advised us that it is waiting for the Maine legislature to revise the state water quality standards for DO oxygen limits.

The remaining option is that we need a water quality certification from the DEP. If the state legislature revises the dissolved oxygen standard, the Maine DEP expects to issue the water quality certification by September of 2003.

Are there any questions or comments?

CHAIRMAN WOOD: This issue shows up on the next couple. Do we have someone from Maine on the phone here?

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MR. DUNLAP: Good morning. This is Frank Dunlap.

CHAIRMAN WOOD: Is there someone from the Maine DEP on the phone?

MR. DEWITT: Mr. Chairman, I talked last week to the Maine DEP, Dana Murch, whom we all know and talk to quite often.

I talked last week to the Maine DEP, Dana Murch. Unfortunately, he regrets that he's unable to either attend this workshop or even participate on the phone, but he has reviewed the information that we had in our notice.

They will be filing by the due date -- I think it's December 9th -- a complete rundown of the water quality certifications that are pending before them, a schedule for when they hope to have them completed, and the route that they needed to take to get that. So, again, Dana apologizes for not being able to be here.

CHAIRMAN WOOD: I guess I had a legal question. Can a legislative body come after an application has been filed and change the standards for that to be reviewed upon? Would that just be available on a prospective basis only?

MS. NYGAARD: That would be up to the state, and review of that action would be through the state courts.

CHAIRMAN WOOD: I just wondered why that was necessary if there was a standard for review that existed prior to now, why that wouldn't just apply and then if the

law changed, that applied to anything go forward. I agree that's a state issue. I just wondered if their jurisprudence would be that different up there than everywhere else.

So that's an issue.

MR. DUNLAP: This is Frank Dunlap. In this case, we've been working with the Maine DEP. I don't believe we'd object to amicable revisions of the statute to accommodate the difficulties with this project.

CHAIRMAN WOOD: Frank, is there a DO standard right now that's applicable, or is there just not one at all?

MR. DUNLAP: There are DO standards, but they're set primarily for riverain situations, and this is an impoundment situation, so there's difficulty with meeting the compliance in the deepest portions of the impoundment where stratification occurs and would occur naturally.

So that's the specification of the issue that we're facing.

CHAIRMAN WOOD: Since I assume you're on the ground with the political situation, is there a proposed legislation that's out there that would basically codify the ability of the DEP to promulgate a standard, or is that kind of all still in play? Are we looking at something that could happen in early '03?

MR. DUNLAP: Yes. They're looking at draft

language now to propose next month for action in this legislative session. As usual, there's no guarantee. We've worked through this several times before, but that's the present plan at this point.

CHAIRMAN WOOD: Have we seen this issue in other states where there's just not a standard of review available for DO or VOD or anything else that comes up?

MR. DEWITT: I have not.

CHAIRMAN WOOD: Okay. Thank you, Frank.

MR. KATZ: Does anyone have anything further on Gulf Island-Deer Rips?

(No response.)

MR. KATZ: If not, we'll move on. Let me first say that our IT people have told us that if you mute, for those out there in the great listening audience, if you mute your phones, at least in some instances, that involves hitting asterisk six, that may cut out some background noise and make it easier to hear.

Tom, please proceed.

MR. DEAN: Thank you, John.

(Slide.)

The next project is the Burnham Project Number 11472 located on the Sebasticook River. It's an unlicensed operating project. The license application was filled in

1994 by Ridgewood Maine Hydro Partners.

This is the exact same issue that we just spoke of on the Deer Rips Project where we're waiting for the state legislature to act on revisions to the state water quality standards for DO. We are in need of a water quality

certification standard, and we hope that when and if the state legislature can revise these standards that the Maine DEP would issue a water quality certification by September of 2003.

Again, are there any questions or comments on this project?

CHAIRMAN WOOD: It's unlicensed now. Why is it coming in for licensing at this stage if it's been unlicensed?

MR. DEAN: Usually in the instances we find a project jurisdictional, usually from navigation or interest in connection to commerce.

MS. NYGAARD: I don't recall working on a jurisdiction case here. It could be post-35 construction, but I don't recall this being one where we called them in.

MR. WEBB: Kevin Webb from CHI Operations representing Ridgewood Maine Hydro Partners. Can you hear me? I can barely hear voices there.

I just want to confirm, we're trying to work as best we can with Maine DEP on this situation. We're hopeful

that this is the last go 'round on the administrative rule change. Unfortunately, they concluded that that was not going to work.

CHAIRMAN WOOD: Why is the project in for licensing and not having been licensed before?

MR. WEBB: I don't know why it was not licensed before. I believe back in the '80s at some point, the Maine DEP asked FERC to review its licensing jurisdiction over a number of unlicensed hydro projects, Burnham being one of

them. Another one, though, being the Damariscotta Mills Project, which is coming up two items down on the agenda.

Jurisdiction was claimed on Burnham I believe it was due to navigation, to start navigation on the river, so the licensing order was issued I believe in 1991. And we filed the application that was indicated by Mr. Dean in April of '94.

CHAIRMAN WOOD: Thanks.

MR. WEBB: You're welcome.

(Slide.)

MR. DEAN: The next project is the Flagstaff Project Number 2612. It's located on the Dead River. This is a storage project. It does not have generating facilities.

The license application was filed in 1995 by FPL Energy Maine. Actually, since the December workshop, the

applicant is currently negotiating with the Maine DEP on water quality certification terms for this project and two other projects. We are in need of a water quality certification. We understand that the water quality certification will not be issued this month.

Are there any questions or comments?

CHAIRMAN WOOD: Do we still have Frank there?

MR. DUNLAP: I'm still here.

CHAIRMAN WOOD: Is this the same DO issue, or is it something different?

MR. DUNLAP: No. This is a drawdown issue. The DEP is using standards developed for a stream, small stream situation, with I believe a control emphasis and are working

this to a storage project that has a 10 to 20-foot drawdown in the winter. And we've been in continuous discussions and contact with DEP on that, relative to the studies we've done and so on.

The current status that I have faxed to Nan Allen earlier last week is the request by DEP, a procedural request to withdraw and reapply to save a procedural denial as they continue to work it through with them.

CHAIRMAN WOOD: Are there any issues that FERC or our Staff or any other party other than yourself can provide to the state to get to closure on this one way or the other?

MR. DUNLAP: Shy of convincing DEP to waive, I'm

afraid not.

(Laughter.)

CHAIRMAN WOOD: Staff, you all have indicated -- you had indicated an October 18th letter from the state. What was the gist of that letter?

MR. DEAN: Perhaps our support staff coordinator, Nan Allen, might have an answer to that.

MS. ALLEN: Nan Allen, Coordinator for the Flagstaff Project. I believe that's the letter that Frank just referenced. Is that not correct? Asking FPL to withdraw and refile for their 401 certification.

CHAIRMAN WOOD: Is that correct, Frank?

MR. DUNLAP: Yes, October 18th this year. Again, I appreciate your letter to keep the project active and going.

CHAIRMAN WOOD: So on our side, when we've got a relicense, do we just have an annual license go forward for

these folks as necessary?

MS. ALLEN: Correct.

CHAIRMAN WOOD: And again, the drawdown issue, is that something that we on the FERC side involve ourselves with in other states with other licenses or is that kind of traditionally a state issue?

MS. ALLEN: It is affecting the Storage Project also in Maine. That is one of the projects that is under

negotiation prior to them taking up the Flagstaff Project, Storage Project isn't yet or is not on the list for five-year-old licenses.

CHAIRMAN WOOD: That's pending before us?

MS. ALLEN: Yes.

MR. KATZ: Mr. Chairman, just to clarify, if there was an issue regarding the impact of drawdowns on the aquatic environment, certainly that's something our Staff would study. It's just a question of whether Maine needs to impose separate requirements under their authority, which they have to satisfy themselves as to. But certainly our Staff would have studied that and had recommendations on the subject.

MS. ALLEN: We analyzed that when we issued the NEPA documents. We anticipate analyzing it again prior to issuing the order when we see what comes in with 401. We will need to revisit that issue. That's our current intention.

I might also mention that I had also talked to Dana Murch with the state and broached with him the potential for possibly having an ADR dispute resolution

alternative process. He did not feel that it was appropriate at this time because of the policy and procedural efforts that the state needed to make before they could issue the water quality certification.

CHAIRMAN WOOD: Tell me a little bit more about how this is tethered up with the Storage Project? Physically the Storage Project is up river of this?

MS. ALLEN: No. It's basically the same issue on the Storage Projects. As Tom indicated, the state is negotiating 401 conditions with two projects preceding their negotiations that they're going to finalize for the Flagstaff Project.

One of those two projects, the Storage Project, has the same issue. These are large storage impoundments that are drawn down to great depths during the winter and then refilled during the spring. Maine is looking at how they should be treating these drawdown issues. As Frank indicated, the criteria that they're applying is not really appropriate for a drawdown situation, and so the state is relooking at that internally and also in combination with these negotiations that they're doing on the certification for these two projects.

MR. DUNLAP: Nan, I couldn't hear all that. Is the Storage Project that you're referencing the upper and middle dams?

MS. ALLEN: I believe so. Hang on just a minute. It's on the Penobscot.

MR. DUNLAP: The Old or Great Northern.

CHAIRMAN WOOD: And from the Staff notification

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on this document, it looks like these projects are all being dealt with as a package, both here and at the state level, so that they're all reviewed?

MS. ALLEN: Not necessarily. They're on different timelines. It just happens that in terms of the 401, the state has the same issue with both projects, looking at the 401.

CHAIRMAN WOOD: In light of what heard yesterday, is it possible to put the expiration on these three licenses if they're granted to the same point so they're dealt with simultaneously next time? We heard that a lot yesterday.

MS. ALLEN: The 401 timing is based on when the licensee filed for the 401 certification, and that is different for different projects. They generally do that at the time they file their application.

MS. NYGAARD: Kris Nygaard. Are these various Maine --

MR. DUNLAP: Frank Dunlap again. If I could understand correctly to that point of the coterminous licenses, the projects that I believe Nan is referring to are on different river basins, a different applicant. FPL has made a conscious effort over the last several years to work with the Commission to get ours as close to coterminous as possible, although these would be conflicting river basins and timelines completely.

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MS. NYGAARD: That was going to be my point.

MR. KATZ: Is there anything further on this one, or should Tom move ahead?

(No response.)

MR. KATZ: Tom, you can move on.

(Slide.)

MR. DEAN: The next project is the Damariscotta Mills Projects, Number 11566.

MR. DUNLAP: This is Frank Dunlap again. We are getting the interruption as you're discussing. Have we completed the Flagstaff project?

MR. DEAN: Yes, sir. We're now on to the Damariscotta Mills Project, 11566, located on the Damariscotta River. It's another unlicensed operating project. The license application was filed in 1995 by Ridgewood Maine Hydro Partners. Since the December workshop, there have been several activities that have been completed, including the issuance of a draft EA in January of this year.

We completed the endangered species consultation. We've signed the programmatic agreement in July of this year, and as well we've issued a final environmental assessment in July of this year.

We are in need of a water quality certification. We understand that the water quality certification will not

be issued this month. The Maine DEP plans to meet with the applicant in the near future to discuss the water resource issues associated with this project.

Are there any questions or comments?

MR. WEBB: Kevin Webb from CHI Operations

representing Ridgewood Maine Hydro Partners. Again I'll confirm that everything has gone as was described by Mr. Dean. Next week we will be withdrawing our application for water quality certification and reapplying to set the one-year clock and waiting to hear from Mr. Murch to set up.

CHAIRMAN WOOD: Kevin, this is Pat Wood. What issues do you need to discuss with the DEP to get this?

MR. WEBB: Quite honestly, I don't see any contentious issues in the certification, Mr. Chairman. I think the EA is the document the DEP intends to use as the basis for its decision, and I believe the Staff has done a really good job of summarizing it and analyzing the issues.

I also might point out that our minimum flow schedule was specifically designed to meet the concerns of DEP's technical staff, but I don't think there should be any danger of hangups in the certification process once it starts.

CHAIRMAN WOOD: And you indicate that that will be a meeting that you'll have next week?

MR. WEBB: No. We have no meeting scheduled.

What I said is that we will be withdrawing and reapplying for the certification just to reset the one-year clock on the application. That's all that's scheduled for right now.

CHAIRMAN WOOD: Is there any dissolved oxygen issues like we talked about with the other Maine projects?

MR. WEBB: I'm sorry, Mr. Chairman. I'm having a hard time hearing you. There's a lot of cross-talk and back chatter here. Could you please repeat that?

CHAIRMAN WOOD: Is the dissolved oxygen issue

that we heard about in the FPL project the same issue here or not?

MR. WEBB: No. There should not be any oxygen issues at the Damariscotta Mills Project. The issue with Gulf Island and Burnham is they basically have lakes that are classified as rivers or, they're impounded rivers. Here we have a natural lake that is under a different water quality standard called GPA or Great Pond A standard, and there is no numerical oxygen standard for GPA waters.

CHAIRMAN WOOD: Great. Thank you.

MR. WEBB: You're welcome.

(Slide.)

MR. DEAN: The next set of slides --

CHAIRMAN WOOD: Before you go on, let me ask y'all. Here's a question to our Staff. Is the 401 one year, is that federal statutory? We need to recommend that

that be changed right now while the energy bill is open. That's ridiculous. We heard all about that last year, and I bet people spend more consultant and lawyer time pulling something down and refiling it than they do mitigating the project.

MR. KATZ: I wanted to make sure you know, that is part of the Clean Water Act, so you'd have to deal with whether or Congress would be willing to open the Clean Water Act separately.

(Laughter.)

MR. KATZ: That, like the ESA and other statutes can be a big issue.

CHAIRMAN WOOD: I'd like our Commission to go on

record to recommend that. I mean, this procedural stuff is just ridiculous. For these little -- this project was 400 kilowatts.

MR. DEWITT: The actual language is reasonable timeframe not to exceed one year. That's the language that's in the Act.

CHAIRMAN WOOD: Which means that Congress envisioned that this process would actually work expeditiously, and I think we keep hearing that one of these guys has been going for eight years. This is a multilateral negotiation. But I think they envisioned weeks, not years, on these kind of things.

All right.

MR. DEAN: The first project is the Hoosic River Project, 2616, located on the Hoosic River.

(Slide.)

It's a multi-development project. The application was filed in 1991 by Erie Boulevard Hydro. We have some good news for the stakeholders with interest in this project. The license order was issued on November 6th consistent with the settlement agreement. The relicense application is no longer pending before the Commission.

Are there any comments?

(No response.)

CHAIRMAN WOOD: Duh.

(Laughter.)

MR. SANDERS: This is Ken Sanders, New York State DEC. We were pleased to hear that this license was issued. We were wondering when it was going to happen.

MR. DEAN: You heard November 6th.

CHAIRMAN WOOD: That's a the benefit of having a hearing on November 8th is clean up as much as we can.

All right. That was issued because it was unprotested, is that right, at this stage, Mark?

MR. ROBINSON: That and the water quality certificate was issued in September of this year.

CHAIRMAN WOOD: You all issued that under

delegated authority?

MR. ROBINSON: Yes.

CHAIRMAN WOOD: Okay. Wonderful.

(Slide.)

MR. DEAN: The next project is the Oswego River Project, Number 2474, located on the Oswego River. It's a multi-development project. It was filed -- the license application was filed in 1991 by Erie Boulevard Hydro.

Since the December workshop, the Commission Staff has been assisting stakeholders in the settlement negotiations. We expect and hope the settlement will be filed by March 2003.

The stakeholders who are involved with this project are virtually the same stakeholders who were involved with the Hoosic Project. Now that the settlement negotiations have been completed for the Hoosic Project, the stakeholders will now turn their attention to settlement discussions for this Oswego Project. Are there any questions or comments?

MR. SANDERS: I'm also the project manager for the Oswego, and after this the School Street Project. We

have concluded the Oswego negotiations and are in the process of getting into the signature stage on the settlement agreement.

Reliant Power has just issued the final draft of

the settlement agreement. We should have this all wrapped up by the end of the month hopefully in terms of signatures and having 401s consistent with that out by the end of the year.

CHAIRMAN WOOD: Good luck. Stick to it. We'll put those down. Anything that you need from FERC?

MR. SANDERS: Not at this point. We just need to get the settlement agreement signed, and then once that's signed and filed, then we can proceed with the closing of the 401 hearing process.

Then following the closure of that, we can issue a 401.

CHAIRMAN WOOD: Great. Ken, thanks. Any questions?

(No response.)

(Slide.)

MR. DEAN: The next project is the School Street Project, Number 2539, located on the Mohawk River, and the application was filed in 1993 by Erie Boulevard Hydro.

Since the last December workshop, the Commission Staff has been assisting the stakeholders in settlement negotiations. Once a settlement is filed with the Oswego Project, we expect that the settlement will then be filed for the School Street Project.

Are there any questions or comments?

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MR. SANDERS: Ken Sanders again, New York State DEC. Following the conclusion of the Oswego negotiations, we've initiated with the applicant and the Fish and Wildlife Service parties interested in what were characterized as the fisheries issues associated with School Street, we haven't negotiated that in the negotiation sessions at all.

The interested stakeholders at this point will try to resolve some of the stickier issues concerning the fisheries restrictions and habitat flows that need to be resolved.

We've made some progress on that. We've had two meetings already and at this point are scheduling a third before the end of the year. We're making progress on that, and hopefully we can have something out in the first half of next year -- hopefully.

MR. LITTLE: Mr. Chairman, this is Bill Little also with the New York State DEC. As may have become apparent from the previous two projects, we've been resolving what we've called the class of '93, the School Street Project is the final one. Our hope is that with the use of some common documentation and practices we'll be able to apply what we've learned before to wrap this one up.

I concur with Ken Sanders' opinion that we can probably do this by the middle of next year. We have in a sense saved the best for last in that we were resolving

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those amenable to settlement and have now gotten to the final case where the technical issues are somewhat more difficult, and perhaps for some of the parties, not at the level of concurrence that has been experienced in previous cases.

But I think that going through those previous experiences has led us to believe that this one is settleable as well. We think it may take a little bit of time. Certainly now that the snow has begun to fly up there, we would invite FERC Staff to participate. I think we have a template to use, and I just wanted to chime in that although this has been commonly known as a tough one and saved for the end, our experience is such that we think we can probably resolve this one in a manner similar to those that have already been settled.

Thank you.

CHAIRMAN WOOD: You sound like you've got it figured out. Anything we can do to facilitate that effort on either of those last two, Bill?

MR. LITTLE: We would certainly let Staff know. I think it's been encouraging to have their assistance in the past on previous cases.

CHAIRMAN WOOD: Glad to hear it. If we don't hear from you, we'll just hang tight.

MR. LITTLE: Thank you.

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MR. SANDERS: This is Ken Sanders again. One thing that we need to make note of, and this is the last of the class of '93 licenses originally filed by Niagara Mohawk in that class of '93, there were at least 38 different

facilities that required licensing.

Niagara Mohawk or their successors have never had the ability to give the 38 licenses at the same time. We think of this -- it's taking a long time to get this one done, but we didn't realize that we were dealing with a huge class of licenses that all needed to be done at the same time.

CHAIRMAN WOOD: It's a fair point. Good luck.

(Slide.)

MR. DEAN: The next set of slides we'll be discussing four projects in Vermont.

(Slide.)

The Carver Falls Project, Number 11475, is located on the Poultney River. It's an unlicensed operating project. The license application was filed in 1994 by Central Vermont Public Services Corporation.

The activities since the December workshop, the Commission Staff continues to discuss water quality certifications with the VANR, that is the Vermont Agency of Natural Resources. We are in need of a water quality certification. The VANR reports that the water quality

certification may be issued as early as February of 2003.

Are there any questions or comments?

CHAIRMAN WOOD: What issues are in play for that issuance?

MR. DEAN: I understand there's two water quality certification issues, one aesthetic flows, and another bypass flows.

MR. QUETO: This is Jeff Queto from the Agency of

Natural Resources in Vermont. The two primary issues are the bypass flows and actually an issue regarding the system on the dam and relatedly the drawdown of the impoundment. We have actually drafted a water quality certification recently, and we're sort of moving forward on this project. We're planning on meeting with the utility and other interested parties in the not-too-distant future. So I'm fairly optimistic on this project.

CHAIRMAN WOOD: Is the February 2003 date?

MR. QUETO: Exactly. Yes.

CHAIRMAN WOOD: Is there anything, Jeff, that we can offer from our agency to assist in meeting that deadline?

MR. QUETO: Just continuing moral support.

(Laughter.)

CHAIRMAN WOOD: You've got more than that. Thank you.

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(Slide.)

MR. DEAN: The next project is the Silver Lake Project, Number 11478 on the Sucker Brook. It's an unlicensed operating project. The license application was filed in 1995 by Central Vermont Public Services Corporation.

Since the December workshop, the Commission Staff continues to discuss water quality certification issuance with the VANR. We are in need of a water quality certification. The VANR reports that the water quality certification may be issued as early as May of 2003.

Are there any questions or comments?

(No response.)

MR. DEAN: Jeff, is there any update or report in addition to what I said?

MR. QUETO: The primary issue here regards the management of the associated storage reservoir, Cherry Hill Reservoir. We this summer had done sampling of the reservoir, and we're processing the data now and planning on meeting with the utility to discuss the operating mode for that reservoir.

This is a case where we actually drafted a certification, put it on public notice over two years ago, but being concerned about the proposed reservoir management at that time that was expressed by the public, so the

utility withdrew the application. So we were then working subsequently on collecting additional information to inform our decision on reservoir management.

So we've been working pretty hard on this one with the utility. I think we're on track for May.

MR. SCARZELLO: This is Mike Scarzello from Central Vermont Public Service. I concur with Jeff's comments regarding working on resolving outstanding resource issues with Sugar Hill water level management.

Being a small mountain storage project, we're also struggling with concluding a few other issues outstanding at the project. There's another element at the project called diversion dam. We have some outstanding differences on the diversion dam. We're also reviewing the water level management at the Silver Lake impoundment. I guess that's it on my list, Jeff.

MR. QUETO: You might add an extra one. We'll have to talk about it.

(Laughter.)

CHAIRMAN WOOD: That wasn't the point of this call.

(Laughter.)

CHAIRMAN WOOD: We're in the funnel, not the other way around. Thank you all.

(Slide.)

MR. DEAN: The next project is the Lamoile River Project, Number 2205, located on the Lamoile River. It's a multi-development project. The license application was filed in 1987 by Central Vermont Public Service Corporation.

Since the December workshop, the Commission Staff continues to discuss water quality certification issuance with VANR. We are in need of a water quality certification.

I believe we are expecting a status reporting regarding the water quality certification negotiations from the VANR this month. Jeff, is that something that you can confirm?

MR. QUETO: Yes. We're I think probably entering the third year of negotiations on trying to resolve 401 issues on this. This is a case where we had issued a water quality certification a number of years ago. It was appealed to the Water Resources Board, and the appeal was withdrawn, and additional studies were done subsequently by the utility.

So we're negotiating the terms right now of the proposed water quality certification. So all I can say is

that negotiations are pretty far down the road, and we're looking forward to resolution fairly soon if things work out.

MR. DEAN: Fairly soon? Do you think that could be as early as April of next year?

MR. QUETO: Yes. In terms of any settlement agreement would be in advance of April I think.

MR. ROBINSON: Jeff, can you hear me? We've got you down for April then? Sounds good?

MR. QUETO: April sounds good for now.

(Laughter.)

MR. ROBINSON: All right. Thank you much.

MR. QUETO: I'm not one to predict in terms of actual issuance of water quality certification. Those are in settlement discussions.

(Slide.)

MR. DEAN: The next project is the Clyde River Project, Number 2306, located on the Clyde River. It's a multi-development project. The licenses application was filed in 1991 by Citizens Utility Company.

Activities since the December workshop, the water quality certification was issued in August of 2002 but has been appealed by some NGOs and is stayed pursuant to state law. We need to have that stay lifted, and a water quality certification issued.

We understand the appeal process can take between one and two years to complete. Jeff, is there something that you can confirm?

MR. QUETO: First of all, I want to say we

actually did our job and got the 401 out.

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(Laughter.)

MR. QUETO: The appeal is proceeding before the Water Resources Board. They recently had a site visit at the project. Prefiled testimony is done in these proceedings. The due date for at least the initial round of direct prefiled testimony is in January, and the hearings themselves, it's planned for two days right now with a target of April 1st for a hearing date.

I would expect that probably a decision would be reached in 2003 on that.

MS. RIPLEY: Barbara Ripley with Citizens Communications. All that Jeff says is correct. We're very hopeful that the appeals process will move along the way the Water Resources Board has said. We don't have any reason to believe that it won't.

If the hearing goes on in April, we'll be in pretty good shape, and the issues are fairly narrowly circumscribed on the appeal.

MR. DEAN: Thank you for the update.

(Slide.)

The next project is the Bond Falls Project, and you can see it's located in the upper part of Michigan. The Bond Falls Project, Number 1864, is located on the Ontonagon River. It's a multi-development project. The license development project was filed in 1987 by Upper Peninsula

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Power Company.

The activities since the December workshop. The DEIS was issued in December of 2001, and the FEIS was issued in June 2002. We are waiting for the final 4(e) conditions from the Forest Service. A settlement has been filed and was signed by the Forest Service for this project. We expect that the final 4(e) conditions will mirror the conditions of the settlement.

Are there any questions or comments?

MR. TORQUEMADA: Rich Torquemada with the Forest Service. We'll update activities. Since June of this year, the Forest Service reviewed the FEIS, and in consultation with our NEPA and OGC attorneys, we determined that a supplemental environmental impact statement was needed.

We issued a draft for public comment. That comment period closed on the 28th of October, and is now -- the record of decision is now in final review and for signing by the regional forester. So we anticipate that we'll be submitting the final 4(e)s in December.

CHAIRMAN WOOD: Rich, this is Pat Wood. I'm just curious. Just so I understand the process better, because I'm a bit of novice on this. The need for the Forest Service to do a supplemental EIS, what drove that? I'm just curious.

MR. TORQUEMADA: Well, we responded to the draft

EIS from FERC in February, and when the final EIS came out, we felt that there was still a conflict between two of the 4(e) conditions as stated in the final EIS.

In addition, for the forest plan, which is the

federal agency's management document for that area, there was a management indicator species that had not been addressed, and then we felt it necessary to complete, and we did complete a Wild and Scenic Rivers Section 7 determination document for that also.

So given all that, and in discussion with OGC, we decided to bundle all that information up into the supplemental EIS and issue a draft supplemental EIS.

MR. DEAN: Thank you, Rich, for that update.

(Slide.)

The next and last project is located in Wisconsin.

(Slide.)

The Holcombe Project Number 1982 is on the Chippewa River. The license application was filed in 1996 by Northern States Power Company. The activities since the December workshop, a scoping document was issued in February of this year. Endangered species consultation was completed in July of this year, as well as an EA was issued in July of this year. The remaining actions is for the Commission to issue a license order. The water quality

certification has been issued. We have completed the NEPA process and we are now ready to issue the license for the Holcombe Project.

Are there any questions or comments?

CHAIRMAN WOOD: So we anticipate that being on our December open meeting?

MS. MILES: This is a delegated action.

CHAIRMAN WOOD: So there are no outstanding

issues then?

MR. DEAN: There are none.

CHAIRMAN WOOD: Let's get it out.

MR. KATZ: Thank you very much, Tom. With that, we have completed the morning portion of our agenda. As I stated, in case anyone came late, we are going to begin our afternoon session at 2:00 Eastern Time certain so that the folks on the West Coast will be able to get to the phones and the teleconferencing facilities.

If no one has anything further, we will adjourn until 2:00 o'clock.

(Whereupon, at 11:25 a.m. on Friday, November 8, 2002, the FERC Hydro Licensing Status Workshop recessed, to reconvene at 2:00 p.m. the same day.)

AFTERNOON SESSION

(2:10 p.m.)

CHAIRMAN WOOD: All right. This is Pat Wood. I appreciate folks participating on the phone. We will pick up where we left off and move out West. So why don't I turn it over to Nick.

MR. KATZ: Let me mention a couple of housekeeping matters beforehand for those who were not with us this morning. Folks need to be sure to speak into the microphones, whether you're on the teleconferences in San Francisco or Portland. Identify yourself the benefit of our court reporter, please.

For the folks who are here, there are hand-held mikes that Staff will bring around to you. If you raise you hand and indicate you'd like to be recognized, they will do that. We again emphasize that the purpose of this proceeding is to discuss procedural roadblocks to the successful conclusion of licensing cases. We are not here to discuss specific issues in those cases. Those matters will be dealt with in those individual proceedings.

As the Chairman indicated, Nick Jayjack of EP is going to be taking us through the afternoon cases.

MR. JAYJACK: Thank you, John, Mr. Chairman, Commissioner Brownell. I'm going to begin in Arizona.

(Slide.)

We have one project with an application pending at least five years, and that project is the seven megawatt Childs Irving Project located on Fossil Creek in Central Arizona.

(Slide.)

The Childs Irving Project is an existing project located entirely on U.S. Forest Service lands. Since the last workshop, the Commission issued a declaratory order pertaining to a number of novel issues.

Our first impression related to project decommissioning. Subject to the Commission's issuing of the declaratory order, Arizona Public Service Company, the licensee the for the project, filed an application to surrender the project.

Arizona Public Service Company's surrender application supersedes its relicense application filed in

1992. The Commission subsequently noticed the surrender application in May of this year, and shortly thereafter, Commission Staff requested that Arizona Public Service Company provide additional information.

The additional information in part is due next month and in part in March of 2003. Commission Staff expects to issue a draft environmental assessment next April. We will need to conduct formal Endangered Species Act consultation with the U.S. Fish and Wildlife Service,

and we will need a water quality certificate for the surrender application.

Is there somebody here from Arizona Public Service Company or somebody online?

MR. SAVORSKI: Yes there is. This is Nick Savorski from Arizona Public Service Company.

MR. JAYJACK: Hi, Nick. I just wondered if you could verify for me the dates I gave for the additional information and to give some indication as to how that is proceeding.

MR. SAVORSKI: We're proceeding very well now. We had some delays this summer. You said the end of December is when we're going to submit everything except for our historic resource plan, which will be in March of next year.

MR. JAYJACK: Right. That's correct.

MR. SAVORSKI: Yes.

MR. JAYJACK: Great. Thank you. Are there any other questions or any comments on this project?

CHAIRMAN WOOD: The notes indicate that we need a

formal ESA consultation and a water quality certification for surrender application. Is that moving forward? What are the timelines on that?

MR. JAYJACK: As far as the water quality certificate goes, we notified Arizona Public Service Company

this past October that we believe a water quality certificate is going to be necessary for the surrender. APS responded back that it expects to file for a water quality certificate application with the state of Arizona later this month. I believe the date is November 22nd.

As far as the ESA requirements there go, we would expect to initiate consultation if necessary at or shortly after the time that we would issue the draft EA. That's typical processing of our Endangered Species Act requirements during the NEPA process.

CHAIRMAN WOOD: Looks good.

(Slide.)

MR. JAYJACK: We're now going to proceed to California where we have ten applications pending at least five years. Two of those applications are additions to this year's list.

(Slide.)

The first three projects are located in San Bernardino County. The first one, Lytle Creek, Santa Ana Powerhouse Numbers 1 and 3 and Mill Creek 2 and 3. Collectively, these projects are more commonly known as the Santa Ana projects.

The projects occupy U.S. Forest Service Land as well as some private land. Since the last Forest Service

25 workshop, settlement negotiations among Southern California

1 Edison and interested parties have been ongoing.
2 This past May, Commission Staff prepared and
3 issued a draft environmental assessment for the projects.
4 In August we conducted Section 10(j) negotiations. Staff
5 issued a final environmental assessment about one month
6 later.
7 Presently we are awaiting the U.S. Forest
8 Service's Section 4(e) conditions for the project which are
9 due this month. We still need a biological opinion for the
10 Lytle Creek Project by the U.S. Fish and Wildlife Service,
11 which we're also expecting this month. And we are awaiting
12 a water quality certification for the Santa Ana Project,
13 which we expect in March of next year.
14 I guess I would first ask how things are going
15 with the Forest Service in those 4(e)s. Is there a
16 representative of the Forest Service that might speak to
17 that?
18 MR. HAWKINS: Yes. This is Bob Hawkins from the
19 U.S. Forest Service in California. We are on track to meet
20 the deadline for the 4(e)s.
21 MR. JAYJACK: Great. How about the U.S. Fish and
22 Wildlife Service? If there's somebody here, could they give
23 us an update on the processing of the biological opinion?
24 MS. SMITH: Gloria Smith, Department of the
25 Interior, Solicitor's Office. I checked with the Fish and

Wildlife Service in the region. They expect to have that biological opinion out this month.

MR. JAYJACK: Very good. Thank you, Gloria.

Jim, I think I heard that you were here for California, the water quality survey agency?

MR. CANADAY: Jim Canaday. I'm the team leader for FERC relicensing in California for the State Water Resources Control Board.

MR. JAYJACK: Thank you, Jim. I'm just wondering if you could give an update as to the status of the water quality certification processing from your office.

MR. CANADAY: We're meeting with staff of Southern California Edison next week to take one final look at a report on the project. We are ready to issue our certification. We'll have it before March.

MR. JAYJACK: That's wonderful.

MR. ROBINSON: Do you have any idea how much before March?

MR. CANADAY: No I don't, because it relies on the executives. Any questions and back-and-forth they may have based on our recommendations, but we'll certainly meet the deadline.

Our intent is to get it done as soon as we can.

MR. COLLINS: Richard Bruce Collins appearing on behalf of San Bernardino Valley Audubon Society and

California Trout. I'll address the status of Mill 3 specifically. The Powerpoint indicates that ESA consultation has concluded for that project. It is correct

that the Fish and Wildlife Service issued a null effect letter on August 27th of this year. However, the letter reserved U.S. Fish and Wildlife Service's authority to restart consultation if any of the listed plant and animal species were subsequently found in that reach.

The Department of Fish and Game is still undertaking surveys for the Mountain Yellow-Legged Frog. And we recently submitted evidence, expert evidence that the Lowell Flycatcher, which is an endangered species, is found in that reach. So as far as we're concerned, ESA consultation for Mill 3 is not yet complete.

MR. ROBINSON: Richard, do you know when the surveys you're talking about are supposed to be completed? Do you have any timeframe from the Fish and Wildlife Service as to when they're going to respond to your Flycatcher submission?

MR. COLLINS: In answer to the second question, no, although I expect the Fish and Wildlife Service to respond promptly. With respect to the surveys, the Department of Fish and Game indicated in an August 26th letter that they would conduct surveys in the spring and summer of 2003 in addition to the survey they completed in

September of this year.

MR. ROBINSON: Thank you.

MR. JAYJACK: If there are no other questions, I'll move forward.

(Slide.)

The next project, Big Creek Number 4, is also new to this year's list. The project is located on the San

Joaquin River and occupies U.S. Forest Service lands within the Sierra National Forest.

Since the date of the last workshop, we requested formal ESA consultation with the U.S. Fish and Wildlife Service in January and issued our final environment impact statement the following month.

The U.S. Forest Service filed its Section 4(e) conditions in May, and we are currently awaiting Section 401 water quality certification for the project, as well as a biological opinion.

I guess I would ask Jim again if he could give us an update on the water quality certification process.

MR. CANADAY: Yes. We submitted a draft cert to Southern California Edison approximately two months ago requesting comments to make sure that the language that we agreed to was consistent.

We just got a response last week. So the 401 is up in executive as we speak.

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MR. JAYJACK: Okay. Do you expect the final decision to be made soon or anytime now?

MR. CANADAY: Yes.

MR. JAYJACK: Thank you. If I could ask the Fish and Wildlife Service if you have any updates on the biological opinion? Gloria is nodding her head no. Thank you.

Any other comments or questions regarding this project?

CHAIRMAN WOOD: Once those are in, what's the steps from that point?

MR. JAYJACK: Once those are in, I believe we're ready to move forward.

CHAIRMAN WOOD: Your notes indicate that the biological opinion would be expected from Fish and Wildlife before year's end. Is that based on some correspondence?

MR. JAYJACK: Yes it is.

CHAIRMAN WOOD: Thanks.

MR. ROBINSON: It would be shortly after receipt of the water quality certificate in this case. We should be ready to put a Commission order together.

MR. GOOD: This is Ron Good out in San Francisco with the North Fork Mono Tribe. We've had a long ongoing negotiation with SEE and FERC on Powerhouse 4. There's still some slight differences on what we're working on.

We've asked the Wildlife Service to check into the endangered species. The eagle, there's been a claim by FERC that the eagles are not within the project area, but we have found that that is not correct -- that they are, and there's also some aquatic issues that we're needing to have addressed as well as tribal rights to water issues and cultural heritage rights that are not being addressed at this point in time.

CHAIRMAN WOOD: For Big Creek Number 4?

MR. GOOD: For Big Creek Number 4, yes.

CHAIRMAN WOOD: Where are we on that?

MR. SMITH: This is John Smith. We had made a no effect call in the bald eagle, but since they did not concur with us, that's why we're in the formal consultation right now and are awaiting the BO.

CHAIRMAN WOOD: That's been teed up to the WS for that determination. What about the aquatic and tribal rights issued that the gentleman raised?

MR. SMITH: I assume -- I'm not the cultural resource person, but I believe that the tribe is the entity that's in opposition to the project, and that's why it's going to be a Commission action.

I understand that they are working with the applicant to try to resolve their differences and that there was some progress on that.

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COMMISSIONER BROWNELL: Sir, perhaps you could elaborate on what some of those cultural issues are.

MR. GOOD: Yes. We had previous damages by the dams. The pen stocks roadway power poles on archeological sites. We have archeological sites that are being damaged by the water reservoirs and by the dam structures.

We have a statement made by FERC Staff that they will not deal with previous damage. But if relicensing continues, the damage will continue, and we want that addressed.

COMMISSIONER BROWNELL: Thank you.

CHAIRMAN WOOD: The procedure, that would then be kept for the Commission at the time of the final licensing?

MR. JAYJACK: That's correct. If there are no other questions or comments, I'll move to the next project.

(Slide.)

CHAIRMAN WOOD: Is someone from So Cal Edison on the phone or here?

(No response.)

MR. JAYJACK: The next project is the Escondido project, which is an existing project located on the San Luis Rey River. Pursuant to 1988 legislation, any new license that the Commission issues for the project shall be subject to and therefore must await development of a comprehensive settlement agreement among the project owners,

six affected Indian tribes, and the United States.

Since the last workshop, the city of Escondido has filed two status reports regarding the development of a settlement agreement. At this time we have not received the settlement agreement, but settlement negotiations continue to take place. It appears that a final agreement may be reached in the next 12 to 18 months. Therefore, we are currently awaiting the completion of the settlement agreement in order to proceed forward.

Is there anyone here from the city of Escondido that could perhaps get us an update as to how the settlement negotiations are proceeding?

MR. OTTINGER: Thank you. My name is Greg Ottinger with the law firm here in Washington of Duncan & Allen. I'm here on behalf of the city of Escondido.

Since the last status report was filed, the parties have executed principles of agreements in which they describe who will pay what to whom for 16,000 acre-feet of new water which they think they've developed through conservation and lining of some of the canals out West and how that water will be delivered to implement the settlement.

I haven't polled all of the parties to these

24 principles of agreement to find out when they believe they
25 can be converted from principles into a detailed final

1 agreement, but at least one of the key players is optimistic
2 that that could happen as early as the end of this year.
3 The next six-month status report is due December
4 2nd. It will be jointly prepared by all the key players,
5 and therefore should be a more accurate indication of when
6 that could happen.
7 MR. JAYJACK: Greg, thank you. If there are no
8 questions or comments, we'll go ahead and move to the next
9 project.
10 CHAIRMAN WOOD: Let me ask one question before we
11 leave Escondido. Who is the United States in that law? Is
12 it all the agencies as we do in a normal license?
13 MR. OTTINGER: Thank you. Greg Ottinger. I'm
14 still Greg Ottinger.
15 (Laughter.)
16 MR. OTTINGER: The United States executed the
17 principles of agreement through the Department of the
18 Interior. It has been the Bureau of Indian Affairs within
19 the Department that has been the key player.
20 (Slide.)
21 MR. JAYJACK: The next project is the existing 29
22 megawatt Crane Valley Project located on U.S. Forest Service
23 land within the San Joaquin River Basin.
24 The license application for the project was filed
25 by Pacific Gas & Electric in 1986 and was subsequently

amended in 2001.

Since the last workshop, Pacific Gas & Electric filed additional information this past March, and shortly thereafter noticed that the application was ready for environmental analysis. In September, we issued a supplemental environmental assessment.

Currently we are awaiting Section 4(e) conditions from the U.S. Forest Service and a signed programmatic agreement, all of which are due this month.

One update to this.

(Slide.)

The U.S. Fish and Wildlife Service filed a letter on November 1st stating that they concur with Staff in part on Project effects on listed species. We are currently evaluating the U.S. Fish and Wildlife Service's response.

I guess I would ask the Forest Service how things are proceeding with the Section 4(e) conditions.

MR. HAWKINS: This is Bob Hawkins again with the U.S. Forest Service in California. We have a cooperator with the Commission on the supplemental environmental assessment, and we're on track to have a decision this month.

MR. JAYJACK: Great. Thank you.

CHAIRMAN WOOD: Tell me the difference between that and the programmatic agreement. Explain to me the

difference.

MR. JAYJACK: The cooperator refers to the preparation of a NEPA document, whereas the programmatic

agreement is crafted by our responsibilities under Section 106 of the National Historic Preservation Act. It's a signed document that is used in the cultural resources line of things in the operation of the NEPA process.

CHAIRMAN WOOD: We've got a concurrence in part. What about the other part?

MR. JAYJACK: The Fish and Wildlife Service concurs that the project is going to have no effect on a plant species called the Mariposa Pussy Paws and our call of not likely to adversely affect California Red-Legged Frogs, so that's the first part.

The Fish and Wildlife Service does not concur with our not likely to adversely affect call determinations for the Valley Elderberry and Longhorn Beetle and bald eagles. As part of Fish and Wildlife Service's response, they also request more information with respect to the bald eagle nesting sites and roosting sites and project effects on bald eagle prey. We're currently assessing that request.

CHAIRMAN WOOD: So is that data request to us or to the applicant -- licensee?

MR. JAYJACK: That is a direct request to us.

CHAIRMAN WOOD: And then so what do we do based

on that?

MR. JAYJACK: I believe what we're going to be doing is assessing --

MR. CROW: Lon Crow with the Commission Staff. Late breaking news is -- we sent a letter to the Fish and Wildlife Service this morning.

COMMISSIONER BROWNELL: Nice timing.

(Laughter.)

MR. CROW: They basically said okay, we'll do formal consultation. You've got everything we've got. Please give us your biological opinion. It should be coming in in 135 days plus or minus a day or two.

CHAIRMAN WOOD: So if in fact there are impacts on the nesting and roosting of the bald eagle and impacts on the beetle, that's reflected in the biological opinion and conditions are attached to address that?

MR. CROW: That's right. They would in theory include conditions that would ensure that those species are protected.

CHAIRMAN WOOD: Back to the programmatic agreement. Where are we on the process of that?

MR. CROW: The programmatic agreement, I believe it should be -- all the parties should be signing that. It's been signed and we should be getting it out shortly.

CHAIRMAN WOOD: You've got the biological opinion

issue on the endangered species at the Fish and Wildlife. We've got the programmatic agreement. That's under natural resources. And then the Forest Service with its 4(e) conditions is this month as well?

MR. CROW: Right. I'd like to add that in California in particular, there are three projects in total that we've done cooperative NEPA documents with the Forest Service. Frankly, we established in cooperation with Forest Service pretty aggressive schedules to get those documents done.

I'd like to express the staff's thanks to the

Forest Service. In each and every case they met all the deadlines we established in our agreements or exceeded them. So that will ultimately help shorten the process.

CHAIRMAN WOOD: In light of yesterday's discussions about interagency cooperation, is it often that we do a joint NEPA document? Have we done that a lot?

MR. CROW: Yes we have. It depends a lot on the part of the country. In California, we've probably done it more there than in any other part of the country I'd say.

CHAIRMAN WOOD: Is there anything about the projects or that part of the country that make that more likely to happen than not?

MR. ROBINSON: Federal lands. The Western part of the country has a lot of federal lands. We end up doing

cooperative agreements there.

The East Coast, there's not as much involvement of the federal agencies because of the lands issue.

MS. OLSON: Samantha Olson, Staff Counsel for the State Water Resources Control Board. I just want to note that the Board still believes that the water quality certification is required for the Crane Valley Project, because it comes for an amendment for a new license. We'll be submitting our argument in our NEPA comments.

CHAIRMAN WOOD: Explain to me, is the State Water Resources Control Board needs to do a 401 on a project that's on federal lands because of what, downstream impact?

MR. CROW: I don't want to speak on behalf of the state, but I think the state's position is they feel that a 401 is necessary for the project, as indicated in the slide

as amended here, and they believe that amendment would trigger 401.

CHAIRMAN WOOD: I'm sorry. The amendment?

MR. CROW: The license application would trigger their ability to issue a new 401 for the project.

MS. OLSON: Right. 401 was originally waived inadvertently through the 464 report order from FERC. But the amendment in 2001, it was never licensed, so it's a new license, so there's a new discharged, and the amendment triggered 401 we believe under FERC regulations.

We also don't believe that the project as contemplated complies with the basin plan. So 401 would be the most appropriate way to make sure that it does.

MR. KATZ: Mr. Chairman, just to clarify, the fact that a project might be located on federal lands within the state doesn't obviate the need for a 401 from the state.

CHAIRMAN WOOD: Does this Commission make that determination or is that going to be done in the court, or how is that clarified?

MR. KATZ: On the point just raised?

CHAIRMAN WOOD: Right.

MR. KATZ: That would be a decision that we would make initially, the Commission would make initially, and could be challenged in court.

CHAIRMAN WOOD: And made at the final licensing phase?

MR. KATZ: It would be made at whatever point during the process was appropriate. Typically, yes. If that was an argument that was carried with the case, it

would be made by the Commission at that point. If there was a reason to address it earlier or it was raised earlier, that could occur also.

MS. BORALYA (phonetic): This is Annette Boralya for PG&E. It's been our position that the regs only require a new certification if an amendment results in a material

adverse discharge. And the amendment to the Crane Valley relicensing application does not. So we have taken the position that a new 401 certification is not appropriate.

CHAIRMAN WOOD: Again, the standard of reviewing it after an amendment is -- what did you just say?

MS. NYGAARD: Kris Nygaard, FERC. The speakers are referring to the issue of when a proposed revision to a license project would trigger the 401 requirements. The Commission has an interpretive rule, but of course, more to the point is the Clean Water Act itself. So the issues that these people have raised will be met probably in the license order if not before, and then very likely go to court after that.

CHAIRMAN WOOD: But the standard for -- I'm sorry. The woman on the phone just stated the standard for review or for trigger?

MS. BORALYA: An amendment that causes a material change in water quality.

CHAIRMAN WOOD: Okay. That's what I was looking for. Thanks.

MS. BORALYA: The FERC regs specifically use the language, an amendment that would result in a material adverse discharge into the water.

It's Pacific Gas & Electric's position that this amendment does not result in such a discharge, and we've

sent several letters to FERC and the Water Board to that effect.

VOICE: Actually, it was only until the SEA was issued that we got an answer to our arguments that were submitted in 2001 about the water quality certification, and so that's why we're responding now instead of previously. Because this is the first that we've heard that you absolutely don't think a 401 is required.

MR. KATZ: We appreciate the clarifications by the parties. As I understand it, I don't think the debate on this legal issue represents a procedural roadblock to the case moving forward.

So unless I misapprehend, that's useful information, but the project processing will go forward on the schedule as discussed.

Nick, if there's nothing further on this one, I think we can move ahead.

(Slide.)

MR. JAYJACK: Our next project is the Pit 1 Project.

MR. KATZ: If someone else has another comment, please do so. But as we said earlier, we're not going to resolve legal issues here. The question is whether there are procedural roadblocks that some or all the parties can work together to remove. But please go ahead and make your

comment.

MR. GOOD: This is Ron Good from the North Fork Mono Tribe. The Crane Valley Project, along with the SCE, is also in our territory. We have not signed the programmatic agreement at this time, and we still have a lot of differences in water relief, plus a few other issues. I just wanted to bring that up, since your Staff brought up about the programmatic agreement being signed.

MR. KATZ: Thank you for that clarification.

CHAIRMAN WOOD: Who are the parties to the programmatic agreement?

MR. CROW: Traditionally, in this case it would be the Forest Service. We would sign it. The licensee would also sign it. The state's historic preservation officer would sign it, and we have a signature from the state's historic preservation officer. I thought the others were forthcoming.

MR. GOOD: If they choose to sign.

MR. CROW: If they choose to sign it. You have concurring parties and you have another, I forget what the other. You have the concurring parties and then you have another level of parties that can sign these things, and these may actually be reserved to the tribes.

MR. ROBINSON: Sir, the gentleman that just gave us the information about the tribe's position, could you

give us a little more clear picture of what the status of you all's involvement is and whether or not there are

signatures or issues that are holding you up from signing the programmatic agreement?

MR. GOOD: Sure. Signing the programmatic agreement is just to say that we're proceeding with procedures. We're more interested in the issues actually being dealt with on the table before a license is issued. I'm not interested in having a license issued to any company until we know that our conditions and issues are being met.

That is not the case at this point. That's why we are not at that point of signing any agreement at this point, and this is in our territory.

We are also -- we've never relinquished our water rights.

CHAIRMAN WOOD: So the substance of your disagreements with -- or one of the substance of your concerns has not been addressed?

MR. GOOD: I didn't hear your statement.

CHAIRMAN WOOD: What are the concerns of yours that have not been addressed that you just referred to?

MR. GOOD: There's many. But for one major point, the fact that we're not getting enough water release out of the Back Lake and down through Willow Creek.

So, therefore, we have a lot of loss of our

fisheries and our habitat and our cultural resources, gathering materials for our basket materials and many other things that are not taking place until we get these various changes, and we don't have any access to many of our burial sites where the dams were built, where the powerhouses are, are still built around a lot of our ancestral sites, and all

those kind of issues have not been worked out yet.

MR. MARKOVICH: This is Nicholas Markovich with Pacific Gas & Electric Company. I'd like to make a comment along these same lines.

We are working with federal agencies. There's a lot of Native American Community representatives to address many of the issues that Ron Good has brought up. Not all of them have been resolved. I don't think all of them will be resolved.

For example, the flows. There will be new license conditions to provide the flows that the FERC Staff is recommending to address some of the concerns of the Native Americans. We are visiting sites and addressing the access and protection needs. But I think those will be handled as part of the historic properties management plan, which will be released in draft form.

CHAIRMAN WOOD: Looking at this one, and I'm looking at it was filed in '86, and I wondered, we're coming up on 17 years now, is that right? Why is this taking so

long to get to closure on?

MR. CROW: We prepared an environmental assessment I think in the early '90s, in '92, somewhere around there. There were 4(e) conditions that were set forth that made the project uneconomic, or they were physical;y unable to comply with the 4(e) conditions.

That set in motion a multi-year process where they're trying to address that conflict. They weren't able to come to closure to that until they filed at least a partial settlement here in the latter part of last year.

The 4(e) conditions have kind of kept them in limbo for that length of time.

MR. HAWKINS: Bob Hawkins with the Forest Service. I think also in part there were some changes to the project made by the licensees that caused the delay.

MR. MARKOVICH: This is PG&E again. I'm not sure if there were project changes, physical changes that caused the delay. I'm not aware of those.

We did propose and enter into negotiations in the '90s to resolve some of the issues that were causing delays previously.

CHAIRMAN WOOD: It seems like a long time to be working through this stuff. What happened? The dam just continues under the power license. I sure hope everybody wants to solve the problems here, because it sure has been

here a long time. It looks like we've got a bit more work to do.

MR. ROBINSON: I think some of the issues that have been brought up by the gentleman in California at the regional office are addressed. They're well understood. It's just going to be a matter of now getting them in front of the Commission with recommendations as to how it should be licensed, and we're at that step.

CHAIRMAN WOOD: That's what we're here for. Anything else on this one?

(No response.)

CHAIRMAN WOOD: Okay.

MR. JAYJACK: Our next project is the Pit 1 Project located on the Pit and Fall Rivers. This project is

very near completion.

Since the last workshop, the state issued a 401 water quality certificate. That took place in December of 2001, and as an update to this slide, I learned today that the U.S. Fish and Wildlife Service filed their biological opinion for the project.

So that's everything we need to move forward. Were there any comments or questions?

MR. ROBINSON: This is an example of a project where the materials came together in this timeframe, but it was after this meeting here, just like some things came

together just before. So even though issuances may have occurred a couple of days ago, some have occurred a couple of days after. It's just a matter of happenstance. Things pull together and we can get the project out of here.

CHAIRMAN WOOD: All right.

(Slide.)

MR. JAYJACK: the next three projects, Angels Project, Utica Project and Upper Utica Project are existing projects located in the North Fork Stanislaus River Basin.

Upper Utica is one of three projects new to this year's five years and older project list. Upper Utica is one of three existing -- I'm sorry. Utica and Upper Utica are partially located on lands within the Stanislaus National Forest.

Utica Power Authority is the license application for both the Utica and Angels Projects, and Northern California Power Agency is the license applicant for Upper Utica.

Since the last workshop, we issued in May a multi-project draft environmental assessment cooperatively written with the U.S. Forest Service in July. We requested Endangered Species Act consultation with the U.S. Fish and Wildlife Service, and last month we issued the final environmental assessment.

We are currently awaiting the U.S. Forest Service

final Section 4(e) conditions for Utica and Upper Utica Projects, which are due in January, and we are awaiting the U.S. Fish and Wildlife Service's biological opinion for all three projects, which is due next month.

Perhaps if I can get an update from the U.S. Forest Service regarding their processing of the Section 4(e)s.

MR. HAWKINS: This is Bob Hawkins with the U.S.Forest Service in California. Because we worked cooperatively with Commission Staff on the 4(e)s, we are in a position to make a decision in December. So we hope to file ahead of the deadline.

MR. JAYJACK: Thank you. Does the U.S. Fish and Wildlife Service have any comments regarding the processing?

MS. SMITH: Gloria Smith. It's my understanding that the period for formal consultation hasn't run yet. The Service will get its BO out as soon as it can, but it sill has time under the statute.

MR. JAYJACK: Thank you.

MR. WEXFORD: Adam Wexford for CPAC on the phone. Is it appropriate to make some comments here?

CHAIRMAN WOOD: Yes.

MR. WEXFORD: We are in receipt of the final environmental assessment and do have some comments with regard to a few statements therein.

MR. KATZ: Let me interrupt you just for a minute. Again, this was not noticed as a workshop on the substance of issues, so if you disagree with matters within an environmental assessment or an environmental document, it's appropriate to file comments on those. But what we're here to do is to determine whether there are procedural matters that can be handled to move cases forward.

So if your comments go to things that the Commission Staff can do or other parties can do to move these particular projects forward, that's fine. But if what you want to do is to talk about disagreements with statements made in the environmental documents, that you need to do by formal filing and not at this proceeding, please.

MR. WEXFORD: Okay. Who do I file that with?

MR. KATZ: With the Secretary of the Commission.

MR. WEXFORD: How many copies?

MR. KATZ: It's generally one and 15 I believe. One and eight. I'm sorry. I'm told eight. Original and eight. ANd you need to serve it on the parties to the proceeding as well.

But if you have questions about how to file documents, if you can contact someone either in OEP or the Office of General Counsel.

CHAIRMAN WOOD: Why don't we give him a name and

a number right now?

MR. JAYJACK: The coordinator for the project is Tim Welch.

MR. WEXFORD: I've spoken to him before, so I do have his number. Thank you.

MR. KATZ: I appreciate your understanding, sir.

MR. WEXFORD: Certainly.

MR. JAYJACK: And if there are no other comments and questions, I'll move over to Idaho.

(Slide.)

In Idaho we have four applications over five years old. Last year we presented and discussed three of those projects -- Bliss, Upper Salmon Falls, and Lower Salmon Falls. Together they have a combined capacity of 169megawatts.

New to this year's list is the Shoshone Falls Project. All four projects are owned and operated by Idaho Power Company. They're located on the Middle Snake River in South Central Idaho.

(Slide.)

Since the last workshop, Commission Staff issued a draft environmental impact statement and requested formal Endangered Species Act consultation with the U.S. Fish and Wildlife Service. That occurred in January.

In June, Staff participated in Section 10(j)

negotiations with the Fish and Wildlife agencies, and the following month we issued the final environmental impact

statement.

We have completed our consultation obligations under Section 106 of the National Historic Preservation Act, and the state has granted water quality certification for the projects.

We are currently awaiting the U.S. Fish and Wildlife Service's biological opinion for the project.

CHAIRMAN WOOD: Do we have a date on that?

MR. JAYJACK: Yes. The biological opinion was actually due August 23rd, but in informal consultation with the office yesterday, we learned that the biological opinion has been written, but it's currently being peer reviewed. Then I believe it has to go to the Washington office of the Fish and Wildlife Service for approval before it can come to us.

We tried to get a feel for when the biological opinion would be completed and when the Washington office would finish their review, but the person we talked to wasn't quite sure. And so we originally expected it this month. We're not entirely sure that will happen.

That's as much as I know about the Fish and Wildlife Service.

CHAIRMAN WOOD: The August date was based on

what?

MR. JAYJACK: I believe it was based on the statutory 135 days that is required for the consultation. Ninety of those days are for consultation, and there's 45 days for the Fish and Wildlife Service to prepare their biological opinion.

MS. SMITH: Gloria Smith. This consultation turned out to be a little more complicated than the Service expected, and it's for listed snails, I believe. It has been sent up to D.C. to our headquarters office, and hopefully we'll get that out soon.

MR. JAYJACK: Thank you, Gloria.

CHAIRMAN WOOD: I wish we could waive our statute too. Great. We look forward to getting that. All right. That's Idaho?

MR. JAYJACK: We're finished with Idaho, and we're going to go to Oregon.

(Slide.)

In Oregon, we have one application that is at least five years old. That is the application for Pacificorp's North Umpqua Project on lands within Umpqua National Forest.

(Slide.)

MR. JAYJACK: The existing project consists of developments that have a combined installed capacity of 185 megawatts. Since the last workshop Staff issued an Environmental Impact Statement in April, and requested formal consultation with the U.S. Fish and Wildlife Service

and the National Marine Fisheries Service in May.

The State issued a 401 Water Quality Certificate in June. Next month, we plan to complete and issue a final Environmental Impact Statement.

We still need to complete a final programmatic agreement, and we are expecting biological opinions from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, later this month.

We also need final Section 4(e) conditions from the U.S. Forest Service. We are also expecting an amendment to the settlement agreement for the project from the participating agencies, any day now.

CHAIRMAN WOOD: Is that amendment intended to address concerns with the original settlement raised by non-settling parties?

MR. JAYJACK: That is correct. It is an aquatics issue below one of the developments. They wanted to sit down and re-discuss that.

MR. SMITH: John Smith. The amendment modifies some of the provisions in the original settlement among the federal and state agencies and the licensee, but it doesn't speak to the opposition from the non-governmental parties to the settlement.

MR. DORCH: Walt Dorch.

CHAIRMAN WOOD: We lost you there, Walt.

MR. KATZ: I know you're with the Forest Service.

MR. DORCH: With the Pacific Northwest Region of the Forest Service. I wanted to advise that the amendment has been filed, and it does deal with gravel augmentation

and habitat restoration below Soda Springs Dam.

That amendment was filed on November 1st.

CHAIRMAN WOOD: All right. Do we have a date on the BOs?

MR. SMITH: We had -- we sent out some letters to Fish and Wildlife Service and National Marine Fisheries Service a couple of months ago. National Marine Fisheries Service has let know that they are making progress and that should be any time now in November.

Fish and Wildlife Service, I have not heard back from them yet, but they are also working on it.

MR. JAYKACK: If there are no other comments or questions, we're gong to move to Washington.

(Slide.)

MR. JAYJACK: In Washington, we have eight applications that have been with us at least five years. Six of these are applications to construct and operate original projects.

(Slide.)

MR. JAYJACK: We'll first start in southern Washington, in the Columbia River Basin with the 14.7 megawatt Condit Hydroelectric Project, owned and operated by Pacificorp.

A relicense application was filed by Pacificorp for the project in 1991. Subsequent to Staff's completion of an Environmental Impact Statement, further relicense application, Pacificorp filed a combined amendment application and settlement agreement for decommissioning the project.

Since last workshop, the Commission issued a Declaratory Order pertaining to a number of novel issues of first impression related to the project decommissioning proposal.

The Commission clarified the Declaratory Order in March. In the Declaratory Order, the Commission stated that it will treat the combined amendment application and

settlement as a request to surrender the existing license for the project.

In June, we issued a Final Supplemental Environmental Impact Statement for the Project, and in September, we received a biological opinion for the project from the U.S. Fish and Wildlife Service.

We are currently awaiting the National Marine Fisheries Service's biological opinion and a water quality certificate for the combined amendment application and settlement agreement.

I recently spoke with the National Marine Fisheries Service on their progress with the biological opinion. They, the last I heard, were expecting it perhaps in January or February, early 2003, so they are working on it.

The water quality certificate, I believe I had spoken with someone from Ecology. I don't know if they are here now. Polly, could you please give us an update?

MS. ZENN: Polly Zenn from the Washington State Department of Ecology. Prior to being able to issue the water quality certificate, we have to complete a state environmental review supplement under CEPA.

So our current schedule, I think, is accurately reflected here. We hope to complete both those actions during the month of May, 2003.

MR. JAYJACK: Thank you, Polly.

MR. WHITACKER: John Whitacker from the law firm of Winston and Strawn.

I'm appearing here today on behalf of Klockitat and Skamania Counties. They are the counties in which this project is located and would be adversely affected by the removal of the project.

We oppose the dam removal, but I don't want to get John Katz angry at me, so I won't go through that.

But it is our opinion that before the 401 can be issued by the State of Washington, the State has to amend the water quality standards. The current standards would not permit the State to issue that 401 certification. Maybe Polly can opine on that.

That's our understanding; that the 401 cannot be issued because it fails to meet turbidity standards, and anti-degradation requirements.

MS. ZENN: Polly Zenn from Washington State. I really don't see this as the appropriate forum for us to try to resolve issues with you about our current water quality standards and how we'll approach the 401 certification on those two issues.

MR. WHITAKER: It is relevant to the process issue. If the water quality standards have to be amended before the 401 can be issued, that process could take awhile

and could endanger the projection of acting by 2003.

CHAIRMAN WOOD: Polly, I assume the Department has procedures to address the gentleman's concern, and that would be addressed through -- would that protest, I guess, be addressed on the final action on the 401?

MS. ZENN: We're certainly aware of the concerns that the two counties have with the project. Our current procedural standpoint here is that we believe we can process the 401 and make a decision under the current water quality standards.

We do have new standards proposed and in place, and it is not sure at this point, when those new standards will actually be adopted by the State and approved by the federal agencies.

We are not at this point considering that we can't make a 401 decision without the new standards in place.

CHAIRMAN WOOD: What process exists under state law? Is there an appeal for a 401 after it's issued?

MS. ZENN: There is an administrative appeal process in the state for 401 decisions, and if we make a decision under either the current or proposed standards that the counties determine needs to be appealed, that is the process.

CHAIRMAN WOOD: Does that stay any action here?

I know there was another state appeal route for 401.

MS. NYGAARD: It's more sort of a hot potato issue. We could stay issuance of a license or stay an issued license. We could sit on the rehearing request until it unravels.

Occasionally we've passed it on to the courts, who weren't too happy to have to sit on it till the whole thing unraveled, so it's more of a policy choice.

CHAIRMAN WOOD: So we may -- thank you for flagging that concern. I'll assume we'll see that work its way through at the appropriate time.

MS. ZENN: This is Polly Zenn again. I would make a distinction between an issue that came up this morning. That State is required at this point to have its legislature adopt water quality standards.

CHAIRMAN WOOD: This is why I think --

MS. ZENN: We are not; this is an administrative adoption that does not require legislative action.

MR. WHITAKER: If I could add a point on that, Polly is right; the State issued a proposed notice to change their water quality standards in September.

Once they go through that process and they make that change, which we believe they have to make before the State can even issue the 401, that process will be subject to judicial, as will the issuance of a 401 by the State for

the Project.

There's kind of really two potential legal challenges out there, avenues to challenge the 401 issue on this project.

CHAIRMAN WOOD: Thank you.

MR. JAYJACK: Any other questions or comments.

(No response.)

(Slide.)

MR. JAYJACK: Moving to the Northwest part of the state, the Snoqualmie Falls Project is located in the Snoqualmie River and is owned and operated by Puget Sound Energy. Since the last workshop, the U.S. Fish and Wildlife Service concurred with Staff's not likely to adversely affect Endangered Species Act conclusion for the project.

We are currently awaiting Section 401 water quality certification, completion of a Endangered Species Act consultation, and state action with regard to the Coastal Zone Management Act.

CHAIRMAN WOOD: Who is the CZMA? Is your group, Polly, that is the CZMA?

MS. ZENN: Polly Zenn from Washington State. Again, yes, it is the Department of Ecology that issues the CZM consistency determination.

I believe we have Linda Rankin from our Staff on the telephone, who could answer any questions about the CZM.

Linda?

MR. MARTY: This is Jeff Marty with the Department of Ecology. Linda wasn't able to join us today, because she got the flu, but I can try to pinch-hit for her.

Essentially the way the Coastal Zone consistency process works in Washington is that within the Coastal Zone Program, there are certain enforceable policies that have to be met before we can find consistency. And the two primary ones that are relevant in the case of Snoqualmie Falls are

the shoreline permit, issued by the local jurisdictions, and also the water quality certification.

Neither of those have issued in the case of Snoqualmie Falls, so the Coastal Zone consistency review is on hold.

CHAIRMAN WOOD: Do you have any sense for when that would no longer be on hold?

MR. MARTY: It all depends on when the shoreline permit and the 401 certification issue and those themselves are part of a supplemental environmental review that must be conducted by Ecology and the City of Snoqualmie.

The intent is that that will be completed by this February, that environmental review, and the certification then should be able to issue by April, which is when the one-year deadline comes up.

MS. KRUGER: Pamela Kruger, here on behalf of

Puget Sound Energy. I can provide some additional comments as well on status.

CHAIRMAN WOOD: Please do.

MS. KRUGER: Thank you. With respect to the State environmental process, I just wanted to give an update to the testimony we had provided last November. At the end of February, 2002, the City of Snoqualmie -- and they are actually working cooperatively with Ecology on the CEPA process, provided Puget with a draft SEIS.

Following that Puget provided some comments on it. There was a meeting around the August timeframe where we all discussed completion of this process.

And we kind of are looking toward completion near

the end of this year. Since that time, Puget has also had some discussion with the City and has made a mitigation offer to resolve all of the remaining environmental impact concerns.

And so we are hopeful that within the next month or two, that those issues will be resolved.

With respect to the water quality certification process that we've also been pursuing independently, Puget has provided DOE with some analysis with respect to some of the flow regime questions that have come up. There was a public notice that Ecology issued on the certification in September.

There was one comment letter filed within time and one filed out of time, and I think that although this is pending on the completion of the environmental review process, to the extent that we can, I think the parties are diligently working toward completing what can be done before that is done.

And I think that as far as the CZMA goes, I understand that that would occur within six months from when the shoreline permit would issue, which would hopefully would shortly follow the completion of the CEPA process.

On the ESA side, besides the concurrence by U.S. Fish and Wildlife, we still have a pending issue with NOAA Fisheries. And what happened with respect to that is, in about the November timeframe, FERC issued a BA with respect to the Puget Sound Chinook. NOAA Fisheries responded to that BA. Actually, Puget filed some comments on it, and then NOAA Fisheries responded to it in February, looking for

more information to assess the impacts.

Shortly following that, Puget offered to act as FERC's non-federal designee to provide that information in the form of supplemental BA if necessary. But subsequent to that, FERC rejected that request, and instead sent NOAA Fisheries correspondence, requesting that they complete their biological opinion by October 8th, looking at a likely-to-adversely-affect opinion, I believe, and it was

originally not likely to adversely affect.

NOAA Fisheries, I don't believe, has had the opportunity to complete that. I think FERC was looking for that to be done by October.

Puget has and continues to stand in the ready-to-provide information or analysis mode that could help in completing that process, but at this point, we're not in the position to act as non-federal designee, because it's been passed over to NOAA Fisheries.

MR. JAYJACK: I'd like to add a little something to that. In the letter we sent to NMFS, which we hope would allow them to do their analysis. The latest I've heard from NMFS, in talking to -- well, Cary, could you please give us a little update? Maybe it's better to go right to the source.

MR. GRIFFIN: Cary Griffin with NOAA Fisheries. I don't think there is anyone from our region on. They might be, but they're being silent.

I just want to address one thing: We're very decentralized in NOAA Fisheries, so the regional people are the ones with the real expertise. Regarding the biological

opinion, I haven't heard -- and as far as I know, no decision has been made about whether it will be likely or not likely to adversely affect.

So I just wanted to correct the record. That

decision has not been made.

MS. KRUGER: I'm sorry about that. I didn't mean to imply that NOAA Fisheries had made a determination of concurrence. I meant that FERC had passed it on to NOAA Fisheries, expecting formal consultation.

MR. GRIFFIN: Thank you. The upshot is that a decision is pending very soon, so I think your information is accurate.

MR. JAYJACK: Thank you, Cary.

(Slide.)

MR. JAYJACK: We will move to the next project. That project is Warm Creek, which is a three megawatt unconstructed project that would be built and operated by Warm Creek Hydro. Since the last workshop, Commission Staff issued a Final Environmental Impact Statement that gave a combined analysis of the Warm Creek and Clearwater Creek Projects.

We are awaiting a biological opinion from the U.S. Fish and Wildlife Service for the Warm Creek Project, which we expect to receive this month. We also need water quality certification for the project.

MS. ZENN: Polly Zenn from the Department of Ecology. We have not yet received an application for the 401 water quality certification.

MR. JAYJACK: Perhaps I can give a little

background on that. A water quality certificate for the project was issued, but it expired because project construction did not occur within five years of the water quality certificate issuance.

That was a provision, I believe, that was written into the water quality certificate. This past September, we requested that Warm Creek Hydro provide us with an update on the status of water quality certification for the project.

They responded to us in early October and said that it lacks the staff resources to respond to the Commission, and that it would need an extra 60 days to prepare that update. I learned, I believe, this morning, within the last couple of days, we re-granted that request and we are awaiting a response by December 18th.

I'm wondering if there is anybody from Warm Creek Hydro that could give us an update or clarify anything that I may have said incorrectly?

(No response.)

MR. ROBINSON: Polly, do you have any further information about the activity with you all in trying to resubmit for a 401?

MS. ZENN: We don't have any additional information. Jeff, if you want to describe your recent attempts at contact with the Company, this would be the time.

MR. MARTY: Sure. Warm Creek Hydro is owned by a

company named Ballatin Energy, which took over the interests in the project from the previous owners. Ballatin actually now owns the interest in all those small projects proposed up in Northwestern Washington.

I don't want to mischaracterize the status of the corporation, but my impression is that they are currently going through restructuring and financing for the project is iffy, and I placed a call to Ballatin this week to talk to Dan Pfeiffer, who was the licensing manager for them on these projects.

Basically they were in the midst of laying off people, including Dan himself, so it sounds like it's a pretty grim situation for the Company, and I really don't know how likely these proposals are to go forward if the Company can't get additional financing.

I also know that they don't actually have the consultants onboard anymore, either, the consultants that they usually work for that do the processing of permits and that sort of thing.

They aren't being paid, so they aren't empowered to work with them. That applies not only to Warm Creek, but to Martin, Rocky, Irene, and, I think, Clearwater, as well.

MR. FOLLIN: I'm Andrew Follin with American

Rivers. I'd like to just make a couple of comments on these projects.

As everybody knows, these are somewhat unusual projects relative to the rest of the ones on the list, given that they are original licenses and not new licenses. The

status of the Warm Creek -- at least the Warm Creek and Clearwater Projects, the FERC's EIS indicated an inconsistency with the State of Washington DNR HCP developed for the area.

Although the FERC EIS still indicated that the preferred alternative was to move forward with the project, I'm not exactly sure how that's going to get resolved. But it was a significant red flag for us in this regard.

I think it would come as no surprise that we're opposing construction of these projects, but the other matter relative to Warm Creek and Clearwater Creek is that in August of 2002, EPA sent a letter, saying the inadequacy of the NEPA document that the Commission submitted or drafted for this project -- so I just raise those two red flags as some concern about moving forward with these projects.

MR. BARSTOW: John Barstow with the State of Washington Department of Natural Resources. I have a comment also.

MR. KATZ: Please go ahead.

MR. BARSTOW: As the previous speaker mentioned, we do have a habitat conservation plan that covers the 1.6 million acres of forest lands, including these areas that are addressed in four of the projects: Warm Creek, Clearwater Creek, Irene Creek, and Rocky Creek.

That ACP was negotiated with the U.S. Fish and Wildlife and National Marine Fisheries in 1997. It's a multi-species HCP, good for 100 years.

These projects involve state lands. They are

trust-managed lands that we manage for the beneficiaries, and it would have significant impact. The difference we had made in the habitat conservation plan, including habitat for the Spotted Owl and some salmonid species, so our concern is that the HCP was not adequately addressed in the documents that have been submitted to date, or the impact on the HCP.

So, if the Department is unwilling at this point to authorize a use or right-of-way for these projects, which would then initiate a major amendment to our HCP, because of our trust obligations.

MS. HILL: Jennifer Hill from FERC. I wanted to indicate that we had talked with the applicant over the past couple of weeks, Dan Pfeiffer being a representative at that time. He had indicated that the project is undergoing -- that the licensee is undergoing -- or applicant, rather, is undergoing significant restructuring of the Company, and

that the earliest that they would expect to get any financing would be towards the beginning of the year.

So until that time, they have very limited funds in which to carry out any of their functions whatsoever.

95

(Slide.)

MR. JAYJACK: The next project is the Clearwater Creek Project, which is unconstructed, and which would be located near the Warm Creek Project.

The applicant is Nooksack River Hydro. I think I need to clarify something. Jeff Marty had mentioned before on the previous project, Warm Creek, that Ballatin Power was a new license applicant.

It's my understanding -- and this project fits into that same category -- it's my understanding that Nooksack River Hydro, in the case of this project, and Warm Creek Hydro, in the case of the previous one, are subsidiaries to the larger Ballatin Power projects, just to clarify that so as not to lead to confusion.

Since the last workshop, we issued a Final Environmental Impact Statement. That occurred in June. We are awaiting a biological opinion from the U.S. Fish and

Wildlife Service this month. A water quality certificate for the project is due in September 2003, and we will need a state Coastal Zone Management Act Consistency Determination from the State of Washington Ecology.

Just a little update: We went a letter, likewise, on the Clearwater Creek Project as to the Warm Creek Project regarding a status update on the water quality certification. Again, we're waiting for a response in 30

days.

This project is very similar to the one previous.

CHAIRMAN WOOD: That request was to whom, Nick?

MR. JAYJACK: That request was to Nooksack River Hydro, but it went to a representative of Ballatin Power.

MR. MARTY: Jeff Marty with the Department of Ecology.

We anticipate issuing the Clearwater 401 November 15, which is what our target date is.

MR. JAYJACK: Thank you, Jeff.

MS. SHIKUN: Risa Shikun. I'm the Executive Director of the American Whitewater and Hydropower Reform Coalition and am very active in over 100 relicensings right now across the country, so we have a lot of experience.

We are the primary representative of recreationists on the rivers besides anglers, so our work in that context, besides being conservationist, is kind of the desire for recreation.

The final EIS was produced this summer. We were not on the distribution list, so we didn't find out about it till by accident through a member of ours in Washington,

22 D.C., and we found out about it in October.
23 We have read it, and, in general, are in support
24 of Andrew's position of not being in support of construction
25 of the project. I mention this only in the context of

1 process, because that's what we're here for.
2 But because of our role in many of these
3 relicensing projects, it seems that perhaps we blinked.
4 It's possible we blinked at the draft EIS stage, but for us
5 to not be on the distribution list and to not know anything
6 about it, will just require a little bit of extra work at
7 the back end, I believe.
8 Since recreation is one of the non-power uses
9 that needs to be considered in the final license --
10 MR. KATZ: If you were on the service list,
11 certainly you should have gotten a copy. We regret any
12 error that may have been made. Our Staff does a pretty good
13 job, but nobody's perfect.
14 CHAIRMAN WOOD: Is there an opportunity, even
15 though late, for a late recipient to participate in
16 comments, or how does that work?
17 MR. KATZ: The Commission's policy has generally
18 been that so long as comments come in in a reasonable time
19 before the Commission is prepared to act, usually the
20 comments are considered.
21 MS. SHIKUN: We have filed a late motion to
22 intervene. It's probably near mailbox right now, so we're
23 following that process.
24 CHAIRMAN WOOD: To sum up on this one, we've got
25 the State Water Quality Service, and I think we just heard

just then, right? This month, the BO from the Fish and Wildlife Service --

MR. JAYJACK: It's due in November. Staff just reviewed a draft of that opinion, and this past week, we've forwarded our comments to the Fish and Wildlife Service.

CHAIRMAN WOOD: Then they do the final BO, and then at that stage, it can go to the CZM review at the State? Is that's what required to get to the CZM stage?

MR. JAYJACK: I don't think it's directly related at all to the CZM; it's a separate process. Jeff, could you fill us in on the CZM status for this? I know a shoreline permit will probably be required on this one from Whatcom County; is that correct?

MR. MARTY: That is correct. The CZM review has basically been put on hold, pending receipt of the shoreline permit. The shoreline permit application, I think, has probably been pending since '92 or so.

What the counties generally do is that they will wait until FERC completes the final NEPA document and then they adopt that and use that as their CEPA review statement in issuing the shoreline permit.

Now that the Final EIS is out, what probably needs to happen is that the applicant needs to ring the bell of the County Planning Department and remind them about this pending permit application. That would probably be at a

minimum; that's probably what needs to be done to get the process moving along again.

MR. JAYJACK: Thanks, Jeff. Actually, I believe we had sent Nooksack a letter requesting status on that. I think it's due mid-November, so maybe that will trigger startup of that, or the restart of that process.

MR. MARTY: Right. A couple of weeks ago, in a conference call with Ballatin Power, and I'm talking about the Rocky Creek Project, and essentially since they've taken over the projects, it sounds like they're still getting up to speed on what these projects actually are and where they are.

They said that all their materials for the projects are still in some warehouse in Bellingham, so it sounds like Ballatin needs to get hold of the materials associated with the projects, and actually understand what the projects are, where they are located, what the pending permit requests are, and that sort of thing, and then get moving on those.

MR. JAYJACK: Thank you, Jeff.

MR. FALLIN: Just a quick question, and it is procedural: How does the Commission imagine these projects that are deemed inconsistent with the HCP -- how do you imagine these moving forward? If the state says they're inconsistent, and there is evidence that they are

inconsistent, then -- and they're not going to issue any kind of a permit to develop the project, how can they move forward? I'm just curious.

MR. KATZ: I'm not entirely convinced that that's

a procedural question. Whether there is a legal impediment to project licenses issuing, can be a matter that would be dealt with in the Order. If the matters that you discuss prevent the issuance of documents that are necessary for the project license to be issued, such as a state 401 or a CZM certification, then they would prevent those from issuing, and the Commission's responsibility would fall away. Wouldn't permit for use of lands fall into that category, John?

MR. ROBINSON: Another way to look at moving forward is, from our perspective, is getting the record sufficient for the Commission to act on it. It doesn't necessarily mean issuing a license. It's just putting all the information together so the Commission can act.

MR. FALLIN: I'm basing my question on the preferred alternative that's put forward in the EIS.

MR. ROBINSON: But all the issues beyond what's covered in the NEPA document with the preferred alternative would be part of the record presented to the Commission so that they could act on it. That's what we mean by moving forward, moving that process forward to get the record to

the Commission.

CHAIRMAN WOOD: Let me follow up on that. It's going to be on my deck soon, so it might as well be probably -- apprise me of exactly what the issue is. The HCP, which the gentleman from Washington just discussed, exists for, I think, a number of these projects right here at the end of the list.

Your point, Andrew, is, how does --

MR. FALLIN: My question is simply how does the Commission imagine moving forward with these projects, if, in fact, the projects are inconsistent with the HCP?

CHAIRMAN WOOD: The consistency determination under state or federal law is made by whom? Us?

MR. KATZ: I think we would have to make it. It's similar to when a project is on a reservation. The Commission needs to make a finding in regard to the project's impact on the purposes, the reservation. The Commission does that at the time that it considers the license order for the project and decides yes, no, whatever decision it makes.

I don't know if I'm not understanding you correctly, Andrew, but it sounds like the category of legal question that the Commission would have to deal with at such time as it took up orders regarding these projects.

MR. FALLIN: I'd just point out that the EIS said

that it's inconsistent, so my question is, procedurally, if it's inconsistent, and admits that it's inconsistent, yet it's advocating moving forward, I'm not sure how those two things jibe with one another. I may just be ignorant; I don't know.

CHAIRMAN WOOD: I think Mark answered that. It moves forward the way we make that cut, and whether we agree with the Staff, yea, or we don't.

It seemed like an applicant would get involved at that stage, before it comes to us, and maybe address those issues, but it's kind of stupid. But we listen to you guys more often than not, so I would suggest it's probably a

pretty good read of something that we might ought to take and consider. Anything else on Nooksack?

(No response.)

(Slide.)

MR. JAYJACK: The next project is Irene Creek. This is another unconstructed project that would be located on Irene Creek, which is located in the Skagit River Basin.

An original license application for the project was filed by Cascade River Hydro in 1990. The application was subsequently amended in 1999. The project will be located partly on U.S. Forest Service lands.

Since the last workshop, Staff issued a Draft

Supplemental Environmental Impact Statement. That occurred in January and requested formal Endangered Species Act consultation with the U.S. Fish and Wildlife Service one month later.

In September, we issued the Final Supplemental Environmental Impact Statement. Currently we are awaiting the biological opinion, U.S. Forest Service's final Section 4(e) conditions, and state action on the Coastal Zone Management Act Consistency Determination.

I think this project is somewhat similar to the previous ones.

MR. BARSTOW: John Barstow from the Department of Natural Resources, again. Yes, this one also impacts a Spotted Owl nest patch. One involves pipes wandering across unstable slopes, all of which causes problems with our EIS.

MR. JAYJACK: Thank you.

(Slide.)

MR. JAYJACK: The next project is Anderson Creek, which is also an unconstructed project that will be located on a tributary of the Skagit River.

CHAIRMAN WOOD: I missed what the gentleman on the phone just said.

MR. JAYJACK: The previous speaker, could you please restate your comment? The Chairman couldn't hear.

MR. BARSTOW: This is the comment again from the

Department of Natural Resources, regarding the Irene Creek Project. It also is going to be impacting HCP commitments that we've made, and, if approved, would probably initiate a major amendment to our habitat conservation plan that we're not willing to open for the sake of the right-of-way that would be required for this project.

It involves as Spotted Owl nest patch, a riparian protection that we are committed to, and I believe there are some. Thank you.

MR. JAYJACK: The Anderson Creek Project, like I said, is unconstructed on a tributary of the Skagit River Basin. It's similar to the Irene Creek Project.

The applicant, in this case, Washington Hydro Development Corporation, filed an original license application in 1990, and amended it in 1999. The Project would be located mostly on the U.S. Forest Service lands.

Since the last workshop, we issued a Draft Supplemental Environmental Impact Statement in January and requested Endangered Species Act consultation the following month. This past September we issued the Final Supplemental

EIS, which was a multi-project EIS with Irene Creek, which we discussed previously.

Similar to the previous ones, we are awaiting a biological opinion, which we expect this month, and Section 4(e) conditions from the U.S. Forest Service, which are due

next month. This particular project, I don't believe, has the habitat HCP issue. That is the only difference, I believe.

(Slide.)

MR. JAYJACK: The next project is the Rocky Creek Project, which is also unconstructed. It's located on a tributary within the Skagit River Basin. Skagit River Hydro filed the original license application in 1990, and amended it in 2001.

Since the last workshop, Staff issued a Draft Supplemental Environmental Impact Statement in April and a final last month. We are awaiting state action on Coastal Zone Management Act certification.

This project has an interesting twist. I'm hoping someone from Ecology -- Jeff, Marty, would you please kind of give us an update and explain the intricacies of this?

MR. MARTY: I don't know how intricate I can get. Generally, there is an interesting hangup on the project, because it's proposed, part of at least, is proposed to be located on private land. The landowners, which I understand to be timber companies, are not willing to grant access to their land without compensation.

They aren't even willing to grant access to the

25 local shoreline permitting people from Skagit County. The

1 County, in turn, has a policy or at least a practice that
2 before they can issue a shoreline permit, they have to do a
3 site visit, but they can't do a site visit if they don't
4 have access.
5 So there is a bit of a conundrum there. A couple
6 of weeks ago there was a conference call, initiated by FERC,
7 with the landowners and the applicant and the County, and
8 Ecology, as well, and at that time, the County was going to
9 see if they could depart from their practice of requiring a
10 site visit before they could act on the shoreline permit. I
11 just saw a copy of a letter a couple of days ago from the
12 County.
13 They said that they are not going to depart from
14 that practice. They still are going to require a site
15 visit. So I think that leaves us back where we started
16 from, at a bit of a stalemate.
17 MS. RODMAN: Diane Rodman with FERC. We haven't
18 received that letter yet in Washington. I have been
19 checking hourly this morning.
20 MR. MARTY: This is Jeff Marty. I would be glad
21 to e-mail it to you, Diane, because I got it electronically.
22
23 MR. ROBINSON: Jim, do you have any suggestions
24 for taking care of the stalemate?
25 MR. MARTY: I think it's probably a matter of the

applicant and the timber companies coming to some meeting of the minds, working out some access agreement.

The timber companies were pretty clear that they weren't very excited about having a project on their land, I think, just because they're concerned it's going to create management issues or management headaches. There is little incentive for them to cooperate on access before they have an agreement about compensation.

And then, in turn, the new owner of the project, Ballatin Power, it sounds like, you know, they are in a bit of a financial distress, so they're probably not in a good position to talk about compensation. And, add to that the fact that the licensing manager has just been laid off, things are in a bit of disarray there, I would say.

One thing that I think would be helpful for FERC to do, not just in regard to Rocky Creek, but to all these Northwest projects, is to get some sort of definitive statement from the applicant as to whether they are in a position to continue pursuing these projects.

In the meantime, these processes sort of lurch along and it doesn't make sense for these processes to continue if the interest in those projects still isn't there.

MR. ROBINSON: I think that's what our intent was with the letter we sent. We gave them 60 days to get their

finances in order. I guess we'll be revisiting that at the first of the year with the applicants for all of these projects.

CHAIRMAN WOOD: That went out when, October,

right, Jim? I think -- when did you send out the first one on Warm Creek, or was that an earlier one?

MR. JAYJACK: I believe it was October 11th.

CHAIRMAN WOOD: So three scenarios: No, we're not interested. Okay.

Yes, we're interested, and I assume we move forward in this process. When are we going to hear back? What if we don't hear back? Is that a "no"?

MR. ROBINSON: I'd say that's no, if we don't hear back. Beyond just the letter, we'll try to reach them and maybe set up a session out there or back here with them. But the fundamental issue is going to be, are you pursuing these projects or not? If they are pursuing the projects, we'll continue to work with them through this process, but they need to demonstrate that they can do that.

If they can't work through it, if they don't have the means, then we'll be in a position to maybe recommend to the Commission that we dismiss these applications.

CHAIRMAN WOOD: Has that happened before?

MR. ROBINSON: Yes. We try to work with applicants, because of a number of things that come up

during the course of an application. But at some point, you have to recognize that there's just not a lot of potential, and cut it.

CHAIRMAN WOOD: So that would be for really all of the last six that we looked at.

MR. ROBINSON: Six unconstructed projects, I believe.

CHAIRMAN WOOD: Are Ballatin the owners of the

first two, or is that for all projects?

MR. JAYJACK: That's for all six, is my understanding, that they purchased the companies or they are a subsidiary to Ballatin Power, the six of them.

CHAIRMAN WOOD: Okay. Why don't we take these up internally, after we hear back, and see what we do hear, because my usual follow-through here, there's just a lot left to do here, rather than the one or two steps away from a decision.

There's just a lot to do, and a lot of other people involved in that one. It would be helpful to know that they are serious.

MR. ROBINSON: Will do.

(Slide.)

MR. JAYJACK: We'll go ahead and do this last one. It's very similar to the previous ones. This is Martin Creek, an unconstructed project again.

The project is located in the Skykomish River Basin, and would occupy U.S. Forest Service lands. Since the last workshop, the Staff issued a Draft Environmental Impact Statement, and then requested formal ESA consultation with the U.S. Fish and Wildlife Service, both of which occurred this past February.

We are awaiting U.S. Fish and Wildlife Service's biological opinion, Section 401 Water Quality Certificate from the State, due next month, and final Section 4(e) conditions from the U.S. Forest Service, which are due next month as well.

Are there any questions or any additional

comments?

MR. MARTY: Jeff Marty with the Department of Ecology. I spoke with King County Planning this week. The King County Planning Office has apparently gone over to a billable-hour basis, and at least if you don't pay the dues, you don't get review of your permit application.

So in the case of Martin Creek, you now have a county that will not review the permit application until the applicant pays. And then the applicant, in this case, apparently doesn't have the ability to pay, at least for the time being, so until they get additional financing, I don't see that there will be much progress at the shoreline permit level.

MR. JAYJACK: Thank you. Are there any other comments or questions regarding this project?

(No response.)

MR. JAYJACK: With that, I will turn it over to John.

MR. KATZ: We've gone through our agenda. Does anyone have anything further?

(No response.)

MR. JAYJACK: If not, Mr. Chairman, I leave it to you to declare us adjourned.

CHAIRMAN WOOD: I want to thank all of you all and all the folks on our Staff, and the folks, the licensees, intervenors, sister state and federal agencies for their help in going through this list.

Again, I'm pleased that it's shorter and that the list of tasks that remains looks a lot different than it did

in my little notebook last year. I appreciate the hard work that people have done.

I know that there are a lot of licenses that aren't five years old that take a lot of time, and I appreciate the effort, of course, on those. But I do think it is incumbent on us to -- as we've talked about in these last few, the potential is for there just being a, no, it's not just this hurried rush to yes that we're doing here, but hurried for a 14-year old document, but a thoughtful and

aggressive rush to a proper answer is what we're about, and I appreciate the work that went into preparing for today, but, more importantly, the work that goes on to get these projects dealt with through the state and federal gauntlets that we have set up, appropriately to go at the issues raised here.

Thank you all for your hard work, and I thank the folks visiting with us on the phone and in the audience. The meeting is adjourned.

(Whereupon, at 3:55 p.m., the Hydro Licensing Status Workshop was concluded.)