

1 FEDERAL ENERGY REGULATORY COMMISSION

2

3 Bucks Creek Hydroelectric Project

4 P-619-164

5 Thursday, August 1, 2019

6 10:00 a.m.

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8 Feather River Tribal Health

9 2145 5th Avenue

10 Oroville, CA 95865

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1 SPEAKER LIST

2 Alan Mitchnick, FERC Chair

3 Jim Hastreiter

4 Evan Williams

5 George Gilmour

6 Jeff Boyce

7 Beth Lawson

8 Robyn Rice

9 Jeannie Heltzel

10 Sean Hobler

11 Matt Fransz

12 Ian Kroll

13 Patricia Sussman

14 Sarah Lose

15 Amy Lind

16 Carol Efird

17 Nathan Fitch

18 Jeremy Pratt

19 Jennifer Hartman

20 John Davidson

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

2 CHAIR MITCHNICK: Alright, I'm Alan Mitchnick
3 and I am the project coordinator for the Bucks Creek
4 Project. And I want to thank everybody for coming out on a
5 hot summer day, where you probably could find a lot better
6 things to do than come to a meeting.

7 But I appreciate everybody that showed up. This
8 meeting is to give people the opportunity to provide oral
9 comments and we'll talk about the schedule for providing
10 written comments, and some of the other procedural deadlines
11 that exist.

12 This meeting is a little unique in that it's sort
13 of a joint meeting with the City of Santa Clara on the CEQA
14 process, the California Environmental Quality Act process.
15 And they will be providing a little presentation before we
16 get going this morning.

17 I guess I'd like to introduce everybody, and
18 we'll start with the FERC staff. Jim, do you want to begin?

19 MR. HASTREITER: Yeah, hi, I'm Jim Hastreiter,
20 I'm an aquatics ecologist with FERC out of Portland.

21 MR. WILLIAMS: I am Evan Williams, I'm a
22 recreation planner with FERC out of D.C.

23 MR. GILMOUR: I'm George Gilmour, I'm a fish
24 biologist with Meridian Environmental out of Seattle, and
25 we're a consultant to FERC.

1 MR. BOYCE: Jeff Boyce, forestry land use planner
2 from Meridian Environmental out of Seattle.

3 MS. RICE: Robyn Rice, fish biologist out of
4 Seattle, Meridian.

5 MS. HELTZEL: Jeannie Heltzel, I'm working with
6 Meridian on this project in terrestrial resources.

7 CHAIR MITCHNICK: Okay, this is where I introduce
8 the staff of -- working with Santa Clara, but since I'm
9 going to ask everybody to introduce themselves anyway, I
10 don't feel I need to repeat myself, but I'll let them start
11 off in the back.

12 MR. PRATT: Thanks, I'm Jeremy Pratt, TRC, we're
13 supporting the City of Santa Clara.

14 MR. KROLL: I'm Ian Kroll, I'm also working for
15 TRC on behalf of the City of Santa Clara.

16 MS. SUSSMAN: I'm Patricia Sussman, I'm with EN2
17 Resources, working as a consultant to the City of Santa
18 Clara.

19 MR. DAVIDSON: John Davidson, Planner with the
20 City of Santa Clara.

21 MR. FITCH: Hi, I'm Nathan Fitch, with the State
22 Water Resources Control Board.

23 MR. FRANSZ: Matt Fransz, aquatic biologist
24 and technical coordinator for PG&E.

25 MS. HARTMAN: Jenn Hartman, relicensing project

1 manager for PG&E.

2 MS. EFIRD: Carol Efird, recreation planner,
3 consultant to PG&E.

4 MS. LOSE: Sarah Lose, California Department of
5 Fish and Wildlife.

6 MR. HOBLER: Sean Hobler, fisheries biologist,
7 California Department of Fish and Wildlife.

8 MS. LIND: Amy Lind, Forest Service, Tahoe and
9 Plumas National Forest Hydroelectric coordinator.

10 MS. LAWSON: Beth Lawson, an engineer for the
11 California Department of Fish and Wildlife.

12 CHAIR MITCHNICK: Okay, thanks. So, I just
13 wanted to start off with some sort of procedural matters in
14 terms of time and some deadlines. As you all should know,
15 the DEIS was issued on June 14th. We're having these two
16 meetings today, this morning's meeting and then at 7 o'clock
17 a meeting at the Holiday Inn Express down the road.

18 Comments in response to the notice on the DEIS
19 are due August 13th. Modified terms and conditions from the
20 mandatory condition agencies are due October 14th, 60 days
21 after the comment date. And the FEIS is scheduled to be
22 issued sometime in January of next year, but we hope to move
23 that back into December of this year.

24 There's a number of other regulatory processes
25 that are going on at the same time. Again, the National

1 Historic Preservation Act, Section 106, consultation
2 process, we have a Historic Property Management Plan, and we
3 requested PG&E to correct some minor edits that we found in
4 a review of plan, so that is due August 16th.

5 So, as soon as we get that information, and we
6 get it corrected, HPNP, then we will circulate that and a
7 copy of the Draft Programmatic Agreement with the
8 appropriate agencies, State Historic Preservation Office,
9 and the Advisory Council, in particular, and some of the
10 co-signage, whatever cooperating agency.

11 And we'll be doing that you know, pretty soon. I
12 suspect that will be some time in September, we'll go ahead
13 and do that. We also have Endangered Species Act
14 consultation ongoing. On June 18th we requested concurrence
15 with a finding of not likely to adversely affect on the
16 Sierra Nevada yellow-legged frog. And on June 26th, the
17 Water Service responded saying they believed the formal
18 consultation was necessary and so we're trying to figure out
19 some last-minute details before going back to the service
20 requesting the formal consultation. Hopefully we'll be able
21 to do that sometime in mid-September.

22 The other regulatory aspects is the water quality
23 certification. The application was filed August 14th, 2018,
24 so the one-year timeframe is to expire in a couple weeks and
25 maybe the Water Board might want to provide any insights on

1 that, Nathan?

2 MR. FITCH: Yes, so because the project has not
3 been analyzed through CEQA, so we're anticipating sending a
4 without prejudice letter to the licensees in the coming
5 weeks, so it hasn't been analyzed under CEQA, and I guess,
6 we'll talk about your comments. We're anticipating a few
7 changes to the application for water quality certification,
8 so the draft management measure, that I'll talk about in the
9 natural comment section, and the licensee has been working
10 on an aquatic invasive species plan, so.

11 So, that letter will come out in the next couple
12 of weeks and we're anticipating coming out with the Draft
13 Water Quality Certification in the winter, and then a Final
14 after that.

15 CHAIR MITCHNICK: Okay, thanks Nathan.

16 MR. FITCH: You're welcome.

17 CHAIR MITCHNICK: Okay, I'll talk about little
18 bit about the conduct of the meeting. As you can see, we
19 have a court reporter as usual. And we'd appreciate it
20 before you talk to give your name and affiliation, at least
21 the first time give your affiliation and spell your name and
22 then when you speak, you know, later on give your name to
23 make sure your comments are attributed to the right people.

24 Are there any procedural questions before we
25 start to talk a little bit more about the more substantive

1 issues of the DEIS? Okay, I'm not sure if we should get
2 into the DEIS issues, or maybe let the City of Santa Clara
3 give an introduction maybe? Go ahead and do that now.

4 MS. SUSSMAN: Yeah, we have a short presentation.
5 I'll stand up and give that. Oh, I'm sorry, and also there
6 are copies of some CEQA related materials on this table that
7 folks are welcome to. Feel free to grab those, and a copy
8 of the certification and then a comment card.

9 The quality is -- I'm sorry, I'm standing in
10 front of folks here.

11 UNIDENTIFIED SPEAKER: Oh, that's alright.

12 MS. SUSSMAN: So, again I'm Patricia Sussman.
13 I'm with EN2 Resources, we're acting as a consultant to the
14 city along with TRC, John Davidson is the principal planner
15 with the city is also here, and we welcome you guys to jump
16 in as you like during the presentation.

17 So, the reason we came out here today to
18 participate in the FERC, essentially public input process
19 for the DEIS because the city is relying on the DEIS to
20 satisfy CEQA requirements and accommodations with the CEQA
21 supplement that we're just initiating preparation on.

22 So, we want to make sure that people understand
23 the role of the City of Santa Clara, Agency under CEQA for
24 the project. And then to let people know that they're
25 welcome and encouraged from the city to provide comments on

1 the DEIS that we'll be coordinating with FERC to draft those
2 comments, so that they're addressed in the Final EIS.

3 If there are comments that are particular to
4 components that will be included in the CEQA supplemental
5 analysis, then that's the type of comment you'll see it in
6 the CEQA supplement and maybe it wouldn't be addressed in
7 the FERC EIS, so.

8 Let's see, we'll be sharing any comments that the
9 city -- that are directed to the city with FERC through the
10 August 13th deadline, in case it's the comments that they
11 have opportunity to decide whether to address or not. After
12 that point, comments directed to the city would just inform
13 development of the CEQA supplemental document.

14 So, the presentation, there are four components
15 that looks like -- and I promise it's not. But first we'll
16 talk about the CEQA relicensing strategy and the plans rely
17 on the NEPA document. The relationship between the CEQA
18 process and the responsible agencies. What the CEQA
19 supplement looks like, the additional analysis anticipated
20 and then walk through the timeline that's showing the
21 relationship between NEPA, CEQA and the 401-certification
22 process.

23 Okay, so to start off, first the role of the City
24 of Santa Clara as the Agency, so the City of Santa Clara
25 also does business on providing power, maybe redundant

1 information, but so that's -- they're applicants along with
2 PG&E for this project. They are a public agency. As such,
3 it makes sense for them to serve in the CEQA agency role, as
4 a CEQA lead agency their primary responsibility is to
5 instruct with CEQA -- that includes the preparation of
6 supplemental documents and ultimately the city has primary,
7 discretionary approval of the project, so can reject or
8 approve the CEQA document and FERC license when the order
9 comes through.

10 Okay, so about relying on the FERC EIS to satisfy
11 CEQA. CEQA guidelines state that if NEPA has completed the
12 FERC CEQA, California agencies should rely on that as much
13 as possible, so long as they comply with the CEQA guidelines
14 and that's related to the agency is responsible for
15 supplementing the NEPA document with any information that is
16 not covered in that document.

17 It's essentially a more efficient and
18 contraceptive process. It reviews and eliminates redundant
19 environmental analysis and ensures that stakeholders move
20 through this process in a forward fashion, so we wouldn't
21 want to start over at this point with a simple EIR and
22 reopen scoping or something like that.

23 So, you know, we've all gotten to this point
24 across that, this could be a part of that process, and now
25 we're moving forward and just making sure that all resource

1 areas are analyzed under CEQA in accordance with CEQA
2 guidelines.

3 As part of the developing CEQA supplement we will
4 make use of all of the existing studies and aquatic records,
5 a final licensing agreement, the supplemental studies, and
6 the DEIS and yeah, as I mentioned, you know, make sure they
7 are cost-effective and an efficient process, and consistency
8 between all stakeholders involved.

9 So, moving to part two, the relationship between
10 CEQA, the CEQA process and responsible agencies, responsible
11 agencies here in the room, the State Water Board, and the
12 California Department of Fish and Wildlife essentially, the
13 relationship with the CEQA process is the same that you have
14 this, that any process for which a permit or approval is
15 requires, and for which CEQA has undertaken, the listed here
16 -- we put a statement to the preservation office, in their
17 consultant and concurrence, as they're required.

18 I'm not sure if it's in the REA. And then have
19 the State Water Board here, you know, before the water
20 certification process, I think as Nathan just outlined, is
21 critical to the FERC license order, so before FERC could
22 approve the project, the state must issue a
23 401-certification.

24 If the 401-certification can't be issued until
25 the CEQA analysis is complete. So, you know,

1 developmentally the city wants to make sure that it's
2 coordinating with the state to make sure that the CEQA
3 supplement includes all of the necessary analysis and
4 discussion required for issuance for the 401-certification.

5 This table -- it's kind of standard with their
6 approvals to responsible agencies engagement. And then,
7 what is the CEQA supplement, what does it look like? It's a
8 document, probably in the range of 60 to 100 pages, plus
9 appendices. It will evaluate the resource areas in our NEPA
10 analysis are adequate or inadequate.

11 It will evaluate CEQA's considerations that
12 aren't normally considered under the NEPA process with this
13 group and taking it back. It will complete it's
14 determination of the level of significance or impacts in the
15 process in slightly different methods for significant
16 determination and it will identify and capture any
17 mitigation measures needed to offset impacts and if there
18 are mitigation measures identified, that would be developed
19 in to mitigation monitoring and reporting plan.

20 So, the CEQA supplement will include analyses,
21 like I said, if the resource is not discussed, or for which
22 discussion should be augmented for CEQA adequacy. At the
23 moment we are expecting this with discussion and impact
24 analyses for the resource areas of this here.

25 This isn't necessarily a comprehensive list. We

1 haven't finished cross-checking the DEIS with all of the
2 resource areas required by CEQA, but certainly the more
3 stuff in it, one will be air quality emissions and
4 greenhouse gas emissions, especially, as related to
5 construction emissions.

6 And then other CEQA considerations I mentioned
7 from reducing impacts and mitigation measures. Also, though
8 there has been per the project record, good travel
9 consultant, but as far as the process we want to make sure
10 that the city is compliant with AB 52, and that the
11 participating or tribes that are geographically or
12 culturally affiliated with the region, understand that this
13 is another opportunity for them to request formal
14 consultation.

15 Okay, so the slide, it's a little blurry here,
16 if you get closer if you're interested, we have our copies
17 of the timeline. We can walk through this. This whole
18 timeline, basically the pinkish boxes on top, that's the
19 NEPA process. The green boxes are the CEQA process, and the
20 blue boxes are the 401-certification process, all needing to
21 move through it before FERC could issue its final license
22 order for the city to accept that and for the project to be
23 implemented.

24 Right now, we are in the comment period for the
25 DEIS, following close of this comment period FERC will take

1 comments, develop the Final EIS. I understand that's
2 anticipated to be released or this could be by early next
3 year. We will follow that with the Draft CEQA supplement.
4 That will be circulated much like an EIR for a minimum
5 45-day review period.

6 And then the Final CEQA supplement will be
7 developed. That will go in front of the City Council to
8 certify with the certification, but responsible agencies
9 will be able to provide their approval, if we're moving
10 forward to streamline.

11 That will trigger FERC's issuance of its license
12 order. That license order will go back to the Santa Clara
13 for adoption and questions, and then ultimately move to the
14 California Public Utilities Commission which will approve it
15 or approve PG&E's participation in compliance with the FERC
16 license.

17 So, yeah, so I think you know, we're looking at
18 2021 probably for sign-off to keep this moving. Questions,
19 comments, like I said before, the city welcomes input and
20 encourages input in the DEIS process at this point. We'll
21 be checking, like I said, those comments, especially through
22 August 13th.

23 This slide shows contact information for John
24 Davidson here, and also for myself and of course, the
25 licensing. That's it, did you have anything to add, anybody

1 on CEQA? Okay, I'll get my computer out of the way there,
2 and you can turn the lights back on.

3 CHAIR MITCHNICK: Okay, what we're going to do
4 next, or what I'm going to do next is sort of just go
5 through the measures that PG&E and the City of Santa Clara
6 recommended, or some of their 4E requirements by the Forest
7 Service that the Commission did not adopt or modify, and
8 talk a little bit about some of the additional requirements
9 that the Commission staff recommends to be included in any
10 new license.

11 You know, I would like to commend everybody for
12 the type of job they've done in resolving just every issue
13 that's come up, but they're not for the Commission, so we
14 have to make sure that these conditions meet Commission
15 policies. So, most of the changes were for that reason.

16 And I'll go through them. Some of the standard
17 conditions that are typically recommended for every license
18 in California is the annual employee training, annual
19 consultation meetings, ecological consultation group. Some
20 of these measures that you know, will aid in resolution of
21 issues in the picture going forward and compliance with
22 license conditions and things like that.

23 Also, some Forest Service conditions, annual
24 review of the special status species, and preparation of
25 biological evaluation, you know, when new features are

1 developed. So, these are measures that the Commission, at
2 least lately, and you probably could find the EIS's where
3 we've come up with the totally different answer, but our
4 current position is that we're not going to include these
5 types of measures because we don't feel they are necessary,
6 that they're sufficient.

7 Consultant requirements in the license and
8 requirements in a license that makes these conditions moot,
9 and I'm sure most of you disagree but that's the Commission
10 policy on those conditions.

11 In terms of what is determination? We just
12 modify that condition a little bit to require a consultation
13 with Fish and Wildlife Service, the Water Board, and
14 California Fish and Wildlife in developing the type. Fish
15 stocking plan, which where the licensee reached an agreement
16 to fund stocking with the state.

17 We have no control over a third party, so we
18 can't control with the state does with that money. We can
19 control what PG&E does, or the co-applicant, co-licensees
20 do, and require them to fund requirements, but so given that
21 we're going to require a plan, you know, the targets, the
22 numerical targets of fish species, you know, doesn't have to
23 change.

24 You know, I think that's been agreed to and the
25 Commission doesn't have any issues with the numbers, it's

1 just the process on how to make sure that it actually
2 happens, that we have control over the licensee. Licensee
3 is free to fund Cal Fish and Wildlife to do that, but if
4 something arises that results in some sort of issues, then
5 they licensees would be ultimately responsible for
6 stocking.

7 We've also required an avian protection plan.
8 The co-licensees have developed a measure where they were
9 going to evaluate the adequacy of the existing poles and
10 lines for bird collision issues and electrocution issues.
11 But that requirement doesn't include -- doesn't provide any
12 Commission oversight, so we required an avian protection
13 plan to make sure that you know, we're aware of what's going
14 on, we're aware of the results of the monitoring of the
15 poles, and we're you know, aware of what the licensees are
16 proposing to do to fix some of the problems. So, that's the
17 reason for that plan.

18 Trying to hold off monitoring to the end, so I
19 guess we're at the end. We did not adopt the aquatic
20 monitoring plan and for the same reasons, a lot of the same
21 reasons we didn't do it on other projects, Yuba River, Don
22 Pedro, and just the -- it's difficult for the Commission to
23 monitor, you know, some of the plans may not have targets or
24 thresholds, or follow-up actions, or you know, clear
25 objectives of why the monitoring is being implemented.

1 So, we did -- we basically rejected pretty much
2 all of the aquatic monitoring, which included stream fish
3 population monitoring, brook trout monitoring, mackerel
4 invertebrates and foothill yellow-legged frogs, water
5 temperature, water quality in rec areas and stream
6 camothology, wooden material and repairing vegetation.

7 You know, we did go with some of the gravel
8 monitoring which is tied to a requirement to maintain 37
9 cubic yards of gravel, so that was pretty much the only
10 aspect of the aquatic monitoring that we went with. But,
11 you know, bottom line is that these measures are largely
12 going to be included, if not totally included, in the
13 license anyway because they are either going to be mandatory
14 Section 40 conditions provided by the Forest Service, or
15 they're going to be Section 401 conditions -- mandatory
16 conditions provided by the California Water Board.

17 So, these measures are going to be included in
18 the license, but we still have an obligation to meet
19 Commission policies on monitoring. I think that's it,
20 unless somebody can think of something else that we didn't
21 talk about.

22 MR. GILMOUR: I was just going to say I think,
23 this is George Gilmour. I just -- you made my life a lot
24 easier by describing all that monitoring and issues and why
25 we're not recommending it, so. I'm sure you guys have more

1 questions about it though.

2 CHAIR MITCHNICK: And I understand this is
3 somewhat of a little bit of change in policy. I mean I
4 think we've always required these types of details in
5 monitoring, but typically where everybody has reached
6 agreement, we didn't think it was, you know, our decision to
7 you know, interfere with those plans since they were
8 important to the agencies and they're adopted by the
9 licensees.

10 But that is the change, the recent change in
11 policy the last couple of years. So, that's sort of where
12 we are with the DEIS. You know, again, I think all the
13 parties did a great job in resolving these issues and I
14 understand that some outstanding plans are still being
15 worked on and will be filed, you know, certainly before any
16 decision on the licensing so, everybody's continuing to
17 work and to resolve some of these last outstanding issues.

18 And I'd also like to note that you know, the
19 co-licensees did file a trial type hearing, with some of the
20 4A conditions, but those are resolved sort of outside the
21 formal process and so there wasn't a need for a trial type
22 hearing.

23 An example of measures that were able to be
24 resolved, so that's pretty much all I have to say. I would
25 like to hear from you. You know, in terms of what

1 conditions the Commission did not go with, or other issues
2 you think the Commission missed.

3 You know, the bottom line is you know, we want to
4 get things right. And we want to make sure that we've used
5 the best information, the most recent information, so you
6 know, that's your job, to make sure that we do that.

7 And with that I will open it up for questions or
8 comments or anything people want to say or do?

9 MS. LAWSON: Alan, this is Beth Lawson from the
10 California Fish and Wildlife. I think, did they find out at
11 the monitoring issue at the last time we had a meeting there
12 was a lot of discussion back and forth about this monitoring
13 issue and there was a suggestion. I'm not sure who started
14 the suggestion, but we have a workshop with FERC staff that
15 kind of talk about how to better craft our
16 monitoring/adapted management to be accepted.

17 And so, we put together a workshop agenda and
18 then that was rejected by FERC staff. And so, I guess,
19 we're just looking to you for some more guidance about how
20 to craft the measures that are -- that will be accepted.
21 And I think that the difficult thing is we had already
22 worked through this license by the time we were getting the
23 new guidance that you're talking about today, so we didn't
24 really have the opportunity to go back and re-negotiate
25 everything we already got through this license.

1 By the time we got to the end and understood
2 there was new guidance about this monitoring being not
3 accepted. So, I mean I don't know if you can provide us
4 with examples of this work. I mean it seems like the gravel
5 is one example here, but maybe that's what we need to be
6 doing -- every single monitoring measure needs to be tied to
7 a definite management.

8 We had been trying to stay away from a definite
9 management per FERC's guidance before this and try to have
10 things set. I guess we, you know, as sort of a resource
11 group in California, are looking to FERC staff for some
12 better guidance about how to get accepted. Something that
13 we do think that there has to be monitoring during the terms
14 of license, to understand a project's affects, or how the
15 project's operation and maintenance are continuing to affect
16 the resources within the project area.

17 MR. GILMOUR: You want me to tackle that one?

18 CHAIR MITCHNICK: Well, you can jump on it.

19 MR. GILMOUR: Okay.

20 CHAIR MITCHNICK: I mean first of all it wasn't
21 FERC staff that rejected the monitoring workshop, it's FERC
22 management that rejected the monitoring. I agree that
23 everybody would be helped a lot -- FERC staff included, if
24 there was some guidance.

25 And so, one of the things I'm working on, you

1 know, before I leave is internal endangered species guidance
2 document. And you know, I have a chapter on monitoring, you
3 know, based on what I've learned in the last year. And I
4 think something like that would be really helpful.

5 You know, so outline the things that need to be
6 included in the monitoring plan. I think, you know, at a
7 minimum, if you have that, you know, from objectives to, you
8 know, how it would -- how the data would be used, you know,
9 from you know, the beginning to the end.

10 I think that would be really helpful. You know,
11 and how to deal with confounding results and things like
12 that for you know, for example, for population monitoring
13 and things like that. So, I haven't quite given up although
14 I don't have a whole lot of weight, but you know, I would
15 like to --

16 MS. LAWSON: Advice about how to deal with
17 confounding results and monitoring through all that.

18 CHAIR MITCHNICK: Okay. You know, and in spite of
19 my research you know, I try to come up with examples of
20 where monitoring results actually made a difference. And
21 it's very tough to find, so you know, if you could track
22 stuff like that down, you know, I think that would be
23 helpful.

24 You know, I hate to -- the language that floats
25 around FERC a lot you know, is monitoring and you know, in

1 search of a problem, you know. Monitoring for monitoring
2 sake. I'm sure you've heard those, and that's sort of the
3 mantra, you know. So, you've got to get around that and you
4 know, if we're not willing to participate in some sort of
5 workshop, then maybe we can work a little more directly, so
6 maybe on a project basis to help.

7 And I'm not sure if I'll get any support for this
8 or not, but you know, I think I'm willing to you know, try
9 to pursue that. You know, I think maybe one of the things
10 that really turned management off perhaps was that in one of
11 the last emails talked about putting together FERC guidance.

12 So, I think that got people concerned that maybe
13 this is more than we really wanted to get into, but you
14 know, I have had discussions with our management, Ken Hogan,
15 sort of been the lead on that, but I certainly would be
16 willing to work with people. You know, I've got nothing to
17 lose, so I'd be willing to do that.

18 MR. GILMOUR: I think yeah, I was just going to
19 add that I think one other important aspect of monitoring
20 plans in general is that from my experience working with
21 FERC is that there has to be a suite of enforceable actions
22 that are included in the license.

23 And if it's vague, it's very hard, you know, for
24 FERC to enforce specific measures, or things that come out
25 of adaptive management unless they were pre-defined. You

1 know, we did agree with gravel augmentation for this project
2 because the goal was to maintain 37 cubic yards of gravel in
3 that given reach.

4 That's pretty enforceable and a lot of training
5 data shows that if it drops below that significantly, then
6 the applicants are going to have to augment that. You
7 know, there's always going to be challenges with this
8 population monitoring however, or monitoring, and I think,
9 you know, again there are so many factors outside of an
10 applicant's control that affect these populations.

11 Granted, you know, flows affect populations,
12 sediment transport affects populations, but you know there
13 are drought years, there are flood years, there are other
14 catastrophic events, forest fires, you know, these different
15 factors that can influence distribution and abundance of the
16 species.

17 And it's really very difficult to isolate those
18 from project effects. And I think that will always be
19 challenging and I can't even imagine a FERC guidance
20 document that would talk about how to address you know, or,
21 separating those effects from project effects.

22 And maybe that's where your biggest challenge is.
23 Things like gravel augmentation volumes, or wood volumes, if
24 there are target values, you know, that can be maintained, I
25 think that's something that gives FERC less heartburn. But

1 again, they need to be clearly defined, if those statements
2 in the management plan before FERC can jump onboard with
3 that.

4 MR. HASTREITER: Yeah, I agree.

5 MR. GILMOUR: Jump in.

6 MR. HASTREITER: You know, physical criteria
7 seems like it's a doable situation, anything with a physical
8 value to it, but as you know, the population estimates, and
9 numbers is a little different ballgame.

10 MR. GILMOUR: Yeah.

11 MR. HASTREITER: Just because of the outside
12 effects that on this.

13 MR. GILMOUR: Yeah, and I guess an issue that we
14 run into in the past too, if let's say the applicant
15 implements a series of measures to augment fish populations
16 in a very popular beach, or a reach that's very population
17 with fly fisherman.

18 They go through all this trouble to implement
19 these measures -- fly fishing is great. It gets hammered.
20 Is that the applicant's fault to mitigate for those losses?
21 It's a real challenging issue, or is that the Agency's
22 responsibility to manage that reach in a way that maintains
23 a desired condition? Does that make sense?

24 MS. LAWSON: Well I guess my question is put in
25 our shoes what would you do in this situation? Like, would

1 you be trying to craft monitoring measures that were tied to
2 statistics, population numbers, or three-year population
3 numbers? Like, how would you be trying to do this if you
4 are looking at a license that's going to be a minimum of 40
5 years, and looking at changes to operation that will be
6 coming in the license, potential, and you know, operational
7 failures, and everything that happens during the course of a
8 license needed to maintain a project.

9 How would you deal with the situation? Would you
10 not be putting monitoring in? Or would you be putting in
11 very specific monitoring tied to the adaptive management?

12 MR. HASTREITER: Well I think that's the
13 direction we're heading from management is it has to be that
14 way.

15 MS. LIND: So, I think that's a good segue to the
16 question I had for FERC. This is Amy Lind with the Forest
17 Service. You know, FERC is so okay, FERC staff you can feel
18 okay with doing modifications and some of the other measures
19 and plans. If there is something that you would want to see
20 in a monitoring plan, why not in a DEIS, put that in?

21 Why not make those recommendations? That's what
22 a DEIS is for. It's a Draft for people to respond to and
23 it's got those options. Instead of -- it feels like you put
24 a document up and then we're sort of in this conundrum again
25 of well, what do we do next time because we thought we all

1 got to agreement in the ILP process and the collaborative,
2 and then FERC just rejected it but didn't offer any
3 alternative approach.

4 And so, I guess I'm just wondering. I mean, it's
5 kind of too late, the DEIS is out, but why wouldn't you --
6 why wouldn't FERC's approach be to correct, fix those plans
7 rather than just rejecting them? Why not put in some of
8 these things that you're talking about you need to see in
9 such a plan?

10 MS. LAWSON: I mean through the ILP process,
11 we're sort of past that point of negotiation.

12 MS. LIND: Right.

13 MS. LAWSON: We've already made a plan and
14 submitted it, so we're -- I can't imagine trying to get back
15 together to put that back in the license when we've already
16 agreed to the monitoring package.

17 MS. LIND: I mean I think it's Amy again, I think
18 if FERC had said something in the DEIS to that effect of
19 here's what we recommend, we could get back together with
20 the licensee, because they have been open to already doing
21 that and some of the other things you've recommended.

22 So, at least we would have an opportunity before
23 the Forester's file their Final forays, and for the FEIS to
24 have this discussion again. But right now, we don't have a
25 vehicle to do that at this point in the process.

1 CHAIR MITCHNICK: Right and I think what you
2 probably could assume from that is that Commission staff did
3 not believe there was a need for monitoring, or at least
4 that the rationale for monitoring, I mean what was not
5 supported enough. I mean I think we would, if we thought
6 monitoring was necessary and the monitoring plan proposed
7 did not adequately deal with that, I think in that
8 situation we would modify the requirement to make it
9 consistent with FERC policies and practices.

10 But I think in most of these cases and correct me
11 if I'm wrong, and not just this project, but the other
12 projects, is that you know, I don't think we were convinced
13 in the first place that there was a need for monitoring.

14 So, I think that's passed one of the
15 short-comings and it is, you know, the objectives of the
16 monitoring. Why is there a need for monitoring just? And I
17 don't -- as a biologist, I don't necessarily disagree with
18 sort of using monitoring as an insurance policy, because a
19 lot of things can happen, you know.

20 We asked a question well, you know, what, why
21 monitor if nothing is changing? Well, things could change
22 that are unpredictable that we're not aware of and we have
23 no control over. Is that a sufficient enough reason to
24 monitor, you know, for a very important resource, you know,
25 critically endangered species, maybe it makes more sense

1 than for you know, rainbow trout or something.

2 But you know, and that has to be really clear.

3 And not just thinking about it a little bit, I don't want to
4 make it seem like, you know, it's just a matter of you know,
5 improving the quality of the monitoring plan and that's all
6 it's going to take. I mean I think justifying the need for
7 monitoring, or convincing FERC of the need for monitoring is
8 going to be difficult to begin with.

9 And, you know, given examples of where, you know,
10 monitoring, you know, turned out to be important that if we
11 didn't monitor we would never have known that, you know,
12 this was happening and but then it raises the question well
13 is it project related effects, or is it you know, weather
14 related? Is it, you know, things going on upstream of the
15 project?

16 You know, then are we talking about you know,
17 control size, reference size, and trying to adjust for that
18 or test for that and then all of a sudden you know, the
19 simple monitor plan becomes a very complicated, you know,
20 research plan. So, yeah, I think the basic question is you
21 know, we believe that monitoring is needed in the first
22 place and what that would take.

23 You know, we used to require monitoring all the
24 time on our own -- years ago, because it made sense to
25 protect sensitive species, you know, being able to detect

1 changes earlier than later, that makes a lot of sense.

2 But that's the old FERC. And you know, we
3 struggle with the same things you're struggling with. But,
4 you know, so the only thing I could suggest is that, you
5 know, we continue to talk about these things where we can.
6 You know, if I was a little more prepared today then maybe
7 we could have talked about these issues a little bit more.

8 But you know, I'm not sure if adaptive management
9 is the answer because adaptive management requires you know,
10 all the same things that the regular monitoring, you know,
11 you have to have a goal. You have to have, you know, a
12 threshold, you have to have management measures that could
13 be implemented, you know, based on those changes.

14 You know, adaptive management is just where
15 there's a lot more uncertainty and you know, you're doing
16 the monitoring just because there's no other way to find
17 out, you know, what a response to a particular action might
18 be.

19 So, you know, no one -- you know, I don't want to
20 give you false hope or waste your time, I mean this is
21 something that certainly would be good to have somebody with
22 FERC management explain these things.

23 You know, it may not change the outcome, but at
24 least understand, you know, sort of where we're coming from,
25 what we would expect to see and but that certainly wouldn't

1 guarantee that we would accept that.

2 MR. HASTREITER: I just want to touch on
3 something and maybe get your impression. But you know as
4 Alan mentioned in his earlier discussion was when he was
5 presenting what measures were proposed, what were adopted,
6 and then what was mandatory. You know, and he said well,
7 they're going to happen anyway, even if we don't adopt
8 them.

9 And I guess I'd like to hear, you know, from the
10 agencies, what sort of trouble. Does that cause you
11 difficulty? I mean the measures are going to be in the
12 license, and I don't know if it's a -- if it puts more
13 pressure on you then because FERC's disagreeing or you know,
14 ultimately the license is going to have in it what you
15 wanted anyway, so I'm just trying to understand, you know,
16 either internally or among yourselves or between the
17 agencies and the applicants and licensees, does that create
18 a rift or?

19 I'm just trying -- would like to hear you know,
20 what sort of trouble that causes?

21 MS. LAWSON: Yeah, I think from a state Agency's
22 perspective it's absolutely difficult. In this particular
23 instance we happen to be all on almost all force of plan,
24 and so that makes it that it's not this healthy because we
25 have the 4A Commissions.

1 But as soon as we step to the next project, a
2 watershed over where we're downstream and we don't have any
3 single plan with any mandatory conditions, then we have
4 almost no ability to get monitoring accepted because the
5 licensees are looking at what the most recent FERC decisions
6 are and they're going hey, we don't have to do any of this.

7 And so, then we have the backup of the State's
8 Water Boards 401-certification, but as you probably know,
9 the Hoopa decision is in California, is sort of undecided
10 law. There's a whole lot of -- I shouldn't speak too far,
11 but there's a whole lot of interpretations out there of how
12 far that can be pushed.

13 And there's a lot of people that are looking to
14 FERC or looking to the courts to resolve that, but in the
15 interim, while we're sitting here and waiting to find out
16 what happens with that, we're in a position where we are
17 hoping that the State Water Board's Clean Water Act
18 authority under Section 401 will be maintained.

19 And so, it is very difficult. We are looking for
20 partners. We are looking for FERC staff to require what
21 they think is needed to protect resources within this
22 project and Section 10J requires that. And so, we think
23 that the recommendations that we put in under 10J and some
24 of the requests by the FERC in 10J, which we agree we
25 disagree on that.

1 Those are measures to protect fish and wildlife.
2 Those are measures to monitor the population and we're not
3 doing our jobs as resource managers if we're not trying to
4 monitor and protect these resources by at least keeping tabs
5 on what's going on with them and how project operations are
6 affecting them throughout the life of a 40-year license.
7 And it's -- and I don't know if you're talking about
8 enforcement and that is from our analysis, it's an issue
9 we're dealing with a lot right now.

10 MS. LIND: I mean I don't have a lot to add. It
11 is difficult as a federal agency to have another federal
12 agency reject what we feel like we worked really hard to
13 develop with the licensee and the other Agency folks, so I
14 think it's at a really basic level, it's just making sure
15 that we understand why they would think to reject it, and we
16 have the ability to provide that -- have that dialogue in
17 the input to try to not be in that situation in the future.

18 It's -- we don't want to be there. We don't want
19 to be putting things in licenses and FERC saying, no, we
20 don't think you need that. We spent a lot of time on these
21 plans with working with collaborative, and it's -- I don't
22 know, it's more of a feeling, but it's uncomfortable.

23 MR. GILMOUR: And we don't like to -- this is
24 George Gilmour. We don't like to throw a wrench into these
25 agreements. But again, this is the current guidance we're

1 getting from higher up and it's the approach that we've
2 taken on this. And you know, I don't want you guys to give
3 up hope either. I think you know, again, if there are some
4 physical parameters that can be monitored with targets,
5 it's a lot easier than going the biological route.

6 I think no matter what you do, I think it's going
7 to always be a challenge to put together an acceptable fish
8 population monitoring plan, or a macro invertebrate
9 monitoring plan, just because of all these external factors
10 that are outside of the licensee's control. If you could
11 focus more on the build the habitat and they will come side
12 of things, I think that would be to your advantage because
13 again there are physical habitat parameters that can be
14 measured on a routine basis that are changed by high flow
15 events, or changed by, you know, low flows, whatever it may
16 be that are much more enforceable than abundance targets, or
17 percent composition or size class targets.

18 And that's really the only advice that I think I
19 could give you based on my experience. Other than that, I
20 think again, it's somewhat out of our control, kind of above
21 our heads as Alan mentioned from our pay grades.

22 MS. LAWSON: So, I mean I guess just in terms of
23 back and forth, we would love to engage in any preparation
24 of guidance documents or for sharing of plans that worked
25 for other folks. I know that it may not get into this

1 license, but going forward, we would really appreciate any
2 back and forth to help us understand how to do this better
3 and how to get more of our recommendations accepted.

4 CHAIR MITCHNICK: Yeah, you know, we could do our
5 best to try to get that information to people. Yeah, I mean
6 I think we need to have that discussion internally about
7 that and one, you know, try to convince management that it
8 does make sense this guidance. You know, I think to some
9 degree we could be perhaps a little more detailed when we
10 reject monitoring.

11 You know, in this case I'm not sure other than
12 some of the standards reasons that we've included for why we
13 don't like monitoring. But you know, if we could sort of go
14 down through sort of the list that you would expect to see
15 in a monitoring plan and sort of outline well this doesn't
16 include clear objectives, this doesn't include, you know,
17 how you would use the information when you got it, it's just
18 -- and I think that's a problem with a lot of the plans.

19 Okay, we have all this information, then you have
20 a lot of smart people getting together who know the area,
21 know the resource and they look at the data and they try to
22 figure out okay, is this an indication that something is
23 going wrong, or is this the normal fluctuation you would
24 have expected under these conditions?

25 You know, is there a problem? Can we wait a year

1 or two to figure out if there's a problem? You know, that
2 type of approach you might be very accustomed to, but it's
3 an approach that we can't enforce very well. We just
4 basically wait for the parties to tell us, you know, if
5 there's a problem or not, and what needs to be done or not.

6 So, but how do you get around that issue and I
7 mean I think that's real difficult. You know, pointing out
8 situations where you know, as I mentioned in the past,
9 before that you know, here's examples of where monitoring
10 did make a difference. Here is why we're concerned about
11 potential changes in the population because A, B, and C, you
12 know.

13 We always sort of ask the question well, you
14 know, why are we monitoring if there's no issue? Why are we
15 monitoring if we're proposing measures that would actually
16 improve the resource? You know, those types of questions,
17 so. I mean those types of questions need to be addressed as
18 part of the monitoring plan and sure, the more I talk the
19 more I understand that it certainly would help you more
20 knowing why we're rejecting these plans to give you an idea
21 of what it would take to get them accepted.

22

23 I will talk to Ken -- Ken Hogan,
24 and we'll see if we can develop some sort of a strategy.

25 MR. GILMOUR: Yeah, I was given some advice many,

1 many years ago I think by someone in FERC who said anytime
2 you write a monitoring plan, think of it as developing -- as
3 if you're writing a license article.

4 Think of it that you are FERC and you were
5 writing a license article that has these specific actions
6 and specific targets that need to be achieved, so that they
7 can be enforced.

8 CHAIR MITCHNICK: You know, what was real common
9 before -- we would have monitoring articles and then
10 basically we would require consultation and we require the
11 applicants to develop a mitigation plan or a management plan
12 based on the consultation.

13 So, our control of the process is determining
14 whether the measures agreed to by the applicant based on the
15 Agency comments are sufficient or not sufficient. So, you
16 know, in those situations we're basically able to enforce
17 the conditions through whether we like measures included in
18 the plan, whether the measures included might have you
19 know, met the concerns of the Agency and we agree with the
20 agencies or we don't agree with the agencies, but at least
21 there's something for us to evaluate, you know.

22 There's a need for measures or the applicant
23 believes there's no need for measures, and then we would
24 make a decision. I don't know if we like to be in that
25 situation, but I mean that was routine, you know, 10-20

1 years ago, but there's a lot of things that were routine
2 10-20 years ago that we wouldn't think about doing now
3 either.

4 MR. HASTREITER: Yeah, and I
5 think what else has changed is a lot more detailed
6 information is produced as part of the application process,
7 where in the past that wasn't necessary in the case as well.
8 I think there's an expectation that, you know, through that
9 process now, with all the detailed studies that we have a
10 lot better information to make those sorts of decisions and
11 you know, there's no anticipation something else is going to
12 happen that's different than what we expect.

13 And you know, therefore, why require monitoring.
14 I understand what you're saying things can change, you know,
15 but as George pointed out there's lots of variables that
16 affect those fish populations or macro verted. Is this a
17 wildlife monitoring issue much Alan, or it's usually
18 aquatics related so that for the most part?

19 CHAIR MITCHNICK: I think for the most part, it's
20 probably our quality incentives.

21 MR. HASTREITER: So, I just think the level of
22 detail of the information up front is a lot better nowadays
23 and that plays into it a little bit as well.

24 MS. LAWSON: I think we could go back and work
25 on that for hours probably, but you know, simply put there

1 are changes made during the license and we anticipate that
2 those are going to benefit the aquatic research because
3 we've negotiated those and we've listed all of the data
4 about the relicensing.

5 But without any monitoring on the back end, we
6 don't know and so, then when you get to the next license 40
7 years from now, you take another snapshot in time of maybe
8 two years of data, and then you're trying to interpret what
9 those two years of data means based on whether that's a dry
10 year or whether that's a wet year.

11 And with everything that's gone on in the
12 watershed agreement, as much as possible, but there has to
13 be some ability to be watching the watershed and
14 understanding what changes the project did over the course
15 of 40 years. I mean, I don't know if you want to talk to me
16 about the Rock Creek crest and the frog monitoring that has
17 gone on but has let the changes in license conditions. I'm
18 not sure what the policy is.

19 MS. LIND: I think they're leaning towards their
20 opinion. We could provide you some examples, Alan, of
21 places where monitoring has contributed to a change in the
22 license conditions, so we can take that as a work item I
23 guess, if you think that would be helpful.

24 I think we're also looking for, and you've
25 offered a couple, but we're looking for, you know, there's

1 relicensing coming in California that many of us will be
2 involved in, so we're trying to look forward to those. And
3 I have a couple questions of FERC just so that I understand
4 better what extent can FERC staff be involved in the filing
5 collaborative conversation.

6 What I've been told is that up until the
7 application is submitted, you can actually participate in
8 the conversations, and that would be really helpful if we
9 had someone at the table at that point. Is that -- can you
10 talk a little bit about your ability to engage more directly
11 with some of these discussions?

12 CHAIR MITCHNICK: Yeah, I mean that's sort of how
13 the ILP was designed to allow more FERC interaction early
14 on. And there are no restrictions on FERC communications
15 pre-filing. So, that certainly would be an opportunity and
16 we do, you know, participate in a lot of different efforts
17 pre-filing.

18 You know, so that's certainly something to think
19 about.

20 MR. HASTREITER: Can I interrupt Alan?

21 CHAIR MITCHNICK: Sure.

22 MR. HASTREITER: Just, I have thoughts about this
23 a little bit. You know, maybe that was the original
24 intention with the ILP, but it's such a schedule driven
25 process and the demands are you know, it's almost impossible

1 sometimes dealing with all the different projects and
2 information and meeting. And I think ultimately, the ILP
3 didn't meet that and it doesn't, and I don't think it will
4 just because of those demands, kind of demands on FERC staff
5 and resource agency staff.

6 And I think what we've seen, particularly in the
7 last couple years, agencies have realized that and even
8 applicants and licensees, and they've tended more to move
9 away from the ILP just because of that and do ALP's, you
10 know, which you know, there is supposed to be more
11 collaboratives.

12 Where I think the ILP is just a schedule driven
13 process and everybody's just hammering away. So, I guess I
14 disagree a little bit with Al, what he's saying that you
15 know, it may have been designed with that intent in mind,
16 but given the hard driving schedule and trying to deal with
17 complicated issues, I just don't think that's going to
18 happen.

19 So, and we've seen a lot of applicants come in
20 with ALP's and TLP's just because of that. And I think
21 we've even changed our letter, didn't we a couple of years
22 ago, where before we always demanded an ILP, but we've kind
23 of backed off from that and have asked applicants when they
24 come into relicensing to consider the other processes,
25 rather than just saying yeah, ILP's the choice and you need

1 to defend why you're not going to do an ILP, so.

2 CHAIR MITCHNICK: Right, and we see about 50/50
3 in terms of use of TLP versus ILP around the country, at
4 least for upcoming relicensing's so, yeah, certainly ILP is
5 not the you know, the default process like it was
6 anticipated to be, I mean. We are getting a lot of use of
7 the TLP.

8 MS. LIND: So, then just a quick question then on
9 follow-up. So, for neither ILP or TLP though, it sounds
10 like you know, we know we have the initiative at least in
11 California with modern training in particular, that's
12 probably the big one that we kind of have these
13 disagreements -- I guess disagreements on between FERC and
14 the Agencies.

15 So, would there be -- I think Alan, you alluded
16 to this earlier when you talked about project by project. I
17 mean maybe that -- we just need, when we start a new
18 relicensing under whichever, we need FERC staff to come and
19 really like address some of these issues that we anticipate
20 based on recent experience, it might be challenging.

21 And try to just kind of lay the groundwork with
22 FERC staff in the room and then hopefully we'll get closer
23 to, you know, to some of the things that you all are looking
24 for.

25 MS. LAWSON: And Jim, maybe that wouldn't include

1 coming to every meeting, it could be like a check, like a
2 six-month check-in. There can be a scheduled meeting with
3 FERC staff, not just over the phone a check-in, but really
4 having them there to help us move these issues in the right
5 direction.

6 CHAIR MITCHNICK: Yeah, you know, there are
7 numerous, you know, defined meetings as part of the ILP
8 process that involves FERC. So, at a minimum you have the
9 scoping meetings, you have generally the -- at least steady
10 planned meetings. Others, anybody?

11 So, at least those two meetings early in the
12 process where those questions can be discussed. You know,
13 whether we -- management would by you know, FERC
14 participating in an early meeting just to discuss some
15 specific issues, you know, maybe, you know, maybe Jim and I
16 disagree on that a little bit, but you know, I think there
17 are opportunities in the ILP, not so much in the TLP.

18 But certainly, in the ILP process where FERC
19 staff is involved and attend meetings and a certain part of
20 that meeting can be allocated to you know, specific issues
21 beyond with, you know, particular studies or particular
22 monitoring or compliance with the Endangered Species Act or
23 whatever.

24 So, I think that you know, at a minimum you
25 should try to make use of those regularly scheduled meetings

1 where FERC will be out and you know, make sure that FERC has
2 the right people there. I think that probably would be the
3 easiest thing for us to swallow.

4 This is all being recorded, right, so, I'll be
5 careful what I'm saying, but I mean I feel for you. I
6 understand exactly your situations, you know, and from our
7 perspective it's a lot easier to reject measures than to try
8 to work things out. But, you know, monitoring isn't what it
9 used to be.

10 MS. LOSE: Alan, this is Sarah Lose of CFW,
11 sorry. Is there an example of the gold star plan or fish
12 monitoring study that the criteria talked about?

13 MR. GILMOUR: Boy, I can't think of anything
14 recent that is a real shining example of how to address
15 these relatively complex, especially from like a fish
16 population parameter's perspective.

17 MS. LOSE: Sure, you guys have a nationwide view?

18 MR. GILMOUR: Yeah, I was also thinking too
19 another kind of prevailing feeling or official position that
20 FERC has, but it's the applicant's responsibility to
21 mitigate any adverse effects associated with the project
22 operations. And I would say it's more the Agency's
23 responsibility to then because once those effects are
24 mitigated, it's the Agency's responsibility to monitor and
25 manage those resources.

1 Because presumably, if the agencies are onboard
2 with these habitat improvement projects, or whatever it may
3 be, the project is mitigated. However, if the Agency in the
4 course of managing their resources determine there's a
5 problem, then maybe at that point they come back and you
6 know, get involved with the applicants again to better
7 address those measures.

8 MS. LOSE: But I mean operations is apparently an
9 ongoing process, right? Like, we can't -- I couldn't have
10 foreseen the way that PG&E was going to operate this or any
11 project five years ago before the changes in the California
12 energy market that have come about because of so many
13 renewable energy resources coming in the market.

14 And so, how do I know -- how does anyone in this
15 room know how they are going to be operating? They don't
16 know how they're going to operate their project 10 years
17 from now. They can forecast kind of how they're going to do
18 that, but nobody knows.

19 So, how is it operations -- there's no way to
20 decide how they're going to operate their project and how
21 that's going to affect resources because of unions working
22 today. And that's why it seems like we can't get any gold
23 star plan. We can't get any rubber stamps -- not rubber
24 stamps, but we can't even plan until FERC says yeah, this is
25 a good way to do it.

1 And so, there has to be some feedback in the
2 operations and maintenance. Operations and maintenance are
3 inherently not things that you can forecast. And so,
4 without any feedback, we are struggling.

5 And again, on this project we get it, on the
6 others without the mandatory conditions we don't, we're in a
7 tough position.

8 CHAIR MITCHNICK: Yeah, and that's the kinds of
9 things that need to be in a plan. I mean to explain the
10 rationale for why you want this resource to be monitored.
11 That one, that there is a potential uncertainty because of
12 A, B, and C and that may result in, you know, D, E and F,
13 and you know, and then you know, based on existing
14 conditions we might need to -- or based on existing license
15 conditions we might need to do, you know, something to
16 respond to that.

17 You know, I mean that would be helpful, you know,
18 to address, you know, well why monitoring if things are fine
19 now. Why monitoring if we're not changing things? Well,
20 there may be reasons to monitor and you need to be
21 convincing.

22 But, you know, even if you are convincing, you
23 know, does that mean that FERC will go along with you and I
24 have no control over that. I could, you know, I have a
25 little bit of control over what you might want to put in the

1 plan if you believe what I'm saying makes sense, but how the
2 Commission responds to that, certainly is outside of my
3 control.

4 But you know, I think what would be a good
5 exercise if we ever went that route was to look at some of
6 these monitoring plans and see, you know, go through the
7 steps and look at well, why doesn't this plan meet what
8 we're looking for?

9 You know, the goals are very, you know, you don't
10 know why you want to monitor, you just have some concern in
11 the back of your head that things may not be, you know,
12 perfect throughout the license term. You know, and we
13 certainly want to work with you, you know, to sure up all
14 these different steps in the monitoring plan, but whether
15 that's going to make a difference or not, you know, how
16 convincing do you have to be -- how convincing do you have
17 to be in order to convince the Commission that monitoring
18 the resource that's doing well now needs to be monitored
19 when the project isn't doing anything, you know, to impact
20 it at the time -- current time?

21 You know, it certainly could help to get through
22 all those steps, but it's come up with the best plan that
23 could be developed, but that again, doesn't mean that we'll
24 go along with it because you know, one person's you know,
25 rationale might make 100% sense to people and you know, it

1 may not make any sense to other people.

2 You know, and, you know, I think to some degree,
3 you know, how different agencies have different, you know,
4 statutory responsibilities and goals, you know, and so I
5 think that may be part of the conflict but you know, we
6 certainly could, you know, do what we can to help you
7 develop plans.

8 Well, I'd be willing to go, I don't know if you
9 know, the division as a whole, you know, I have concerns
10 about that. But you know, they may say well hey, these
11 monitoring plans never will make any sense, don't waste your
12 time.

13 But that would be good to know up front, you
14 know, if there's a very small percentage of monitoring plans
15 the Commission will actually ever approve, and we will only
16 approve those under these types of situations. I mean that
17 would be good for staff to know, and it would be good for
18 the agencies to know.

19 MR. HOBLER: This is Sean Hobler, with the
20 California Department of Fish and Wildlife. So, one of the
21 things that I kind of drew to me today is hearing that FERC
22 staff has some of the same concerns that the Agency staffs
23 have had about the question of how do you tease out
24 project's effect from background environment, and those
25 things.

1 And I know Sarah brought up, you know, what the
2 gold star plan. I would suggest that maybe FERC staff go
3 back in and look at some of the recent monitoring plans that
4 are written, because those are questions that we have looked
5 at hard and developed a timeline for monitoring frequency,
6 you know, where you have a baseline of information, you are
7 monitoring for back to back dry water years.

8 And the whole purpose of those is to tease out
9 those affects. Okay, what is because of a drought year or
10 versus normal project operations and the impacts that could
11 potentially occur at fisheries? And then that information
12 could be very useful in some more recent cases where we've
13 had flow violations, or deviations and we have had lots of
14 fishery -- or impact to fishery, but yet the most recent
15 data is from 30 years ago.

16 And so, now you have updated information, you can
17 look at the differences between the different water years
18 that the data is collected at, the impacts of multiple
19 drought years, and at least be able to make an accurate
20 assessment as to what is the actual impact to a fishery in a
21 particular watershed if there is a violation that occurred?
22 To be able to mitigate for it. So, I personally think
23 that's the gold standard right there, what we can develop in
24 the last several years.

25 And maybe it should be looked at just a little

1 bit more in detail by the FERC staff.

2 CHAIR MITCHNICK: Yeah, that's certainly the
3 types of things that would be helpful. You know, we've sort
4 of gone through the process and what if -- and providing the
5 basis and what value would be provided, you know.

6 I mean that would be helpful. Again, that
7 wouldn't necessarily ensure that the Commission would go
8 along with it.

9 MR. HASTREITER: I guess I just wanted to mention
10 -- so, when these monitoring plans come up or you know, if
11 there's like the gravel issue where there's a defined amount
12 of habitat that can be monitored and if it's not there then
13 you do something.

14 The other -- where we made a little ground.
15 Internally, I think is if monitoring is for a short period
16 of time versus the length of the license. There's something
17 you can do in a short period of time to monitor it. I think
18 that has to be more of a chance to be looked upon favorably.
19

20 You know I know it doesn't mean you meet your
21 objectives of different types of monitors over a 40-year
22 period, but I just don't think you're ever going to get that
23 sort of acceptance for that length of a monitoring plan.

24 MR. GILMOUR: Yeah, I think a good example of you
25 know, monitoring -- it's not very specific to this kind of

1 project, but an example where there is a bypass reach that
2 was opened up to allow access to anadromous fish. However,
3 there was a lot of concern that that bypass reach may need
4 to be modified to facilitate passage.

5 So, the way that the monitoring plan was
6 structured was that, you know, in years 1 through 10,
7 monitor the distribution of abundance of anadromous fish
8 throughout this reach, and then determine whether or not
9 there are obstacles that are either preventing them from
10 accessing that reach, and if there are -- implement measures
11 to correct those obstacles or to provide fish passage
12 facilities to better facilitate these or that extra
13 habitat.

14 That's -- those are very clearly defined actions,
15 and they're not crowded by kind of these obscure, you know,
16 environmental variables. They're very hard to keep out. I
17 mean, it's you know, it's ecology, it's trying to model
18 ecology is always been a huge, huge, huge, huge issue and it
19 continues to be, and especially when you're talking about
20 resources and resource areas that are so influenced by a
21 variety of different factors that include project
22 operations, recreation, changing weather conditions which
23 include climate change, you know, so many variables.

24 It's so hard to get a handle on those and to make
25 sense of it. And I think that's the issue that we're all

1 facing. You know, in a perfect world we would, you know,
2 it'd be great to monitor every year throughout the term of a
3 license, but that's just not going to fly, you know, given
4 the guidance we've been given lately.

5 CHAIR MITCHNICK: Yeah, and that certainly is the
6 other aspect, you know, this monitoring costs \$100,000 you
7 know, what sort of benefits are you going to get, you know?
8 Maybe 16 years from now there might be an event that might
9 cause this to happen, that would cause this to happen, and
10 you know, that's also something where you would have to
11 convince the Commission that that makes sense.

12 Spending \$100,000, even \$20,000 to do monitoring,
13 you know, basically just as an insurance policy, so. You
14 know, everybody has insurance policies, so why not have an
15 insurance policy for, you know, red-legged frog, you know,
16 downstream of a dam to make sure if something happens it's
17 detected as early as possible and could be fixed.

18 MS. LIND: Alan, I mean I think what I have heard
19 you all say, the challenge here is that what you're saying
20 we need to do, we feel like we've already done, right? So,
21 we -- when we design our monitoring frequency, we do
22 frontload stuff, we put like the big changes are right at
23 license issuance, so we put monitoring to really focus on
24 the first maybe up to 8 or 10 years of the population
25 species.

1 Then we stretched that -- start stretching it out
2 and then at the end of the license term, we typically try to
3 ask for additional monitoring in preparation for the next
4 relicensing process because we would like to have more than
5 one year's data when we go into those processes.

6 And so, I mean we've also talked with some
7 licensees. Some licensees are open and talking generically
8 now, not about PG&E. Some are open to including reference
9 sites and goal sites, things that help you discern whether
10 you have you know, really a project effect or it's some
11 trend that's happening throughout the watershed or the, you
12 know, the region.

13 So, I mean I think we try to get that stuff in.
14 We try to do what you're talking about by really focusing on
15 this is where the change is occurring, right at license
16 issuance, and then it's okay to kind of you know, spread out
17 the frequency later in the license.

18 And so, I mean maybe it's just that we're not
19 making a very clear rationale, or providing a very clear
20 rationale for why the frequency is that way, why the sites
21 we have chosen are these sites, you know, why we may have a
22 reference site or not have a reference site.

23 But, I mean it seems like we're saying the same
24 -- that everyone is saying that these are the things you
25 want in monitoring plans, we think we're putting those

1 things in there but then somehow we're not making the case
2 enough to FERC it sounds like that you've got those things
3 covered in the segue.

4 Like, I think we could go back and forth on this
5 all day, but I still think it would be super helpful to have
6 some sort of workshop. I think even that exercise of going
7 through some plans together, at a workshop, would be really
8 helpful for everyone. Here's the things that, you know, are
9 good about this plan. Here's where you kind of met what
10 FERC staff needs to see, here's places -- and they would be
11 things that are already decided, but it would help us going
12 forward into the next relicensing process.

13 MR. HASTREITER: I think it might be an
14 institutional issue maybe, you know. FERC looks at
15 relicensing, FERC management in particular, is a discreet
16 process that happens every so often. And that's how they
17 look at it. I don't think they look at it that the
18 licensee -- that the Commission would expect a licensee to
19 prepare for relicensing over the 40 years of their license.
20 And I think that's maybe part of the issue that we're trying
21 to deal with here.

22 It's just, you know, the FERC licensing process
23 is, you know, in a statute, and this is how it works. And I
24 understand why you want the information over a longer period
25 of time, you know, in the anticipation of what's going to

1 happen in the future, but given the FERC institution and the
2 licensing regulations, it's going to be a tough sell, I
3 think.

4 CHAIR MITCHNICK: You know, I did find a
5 discussion of adaptive management and one of the
6 inter-agency task force reports they were doing in 2001. I
7 believe the one on -- which one, the license articles I
8 believe? I forget now, but one of the inter-agency task
9 force reports does cover adaptive management. The
10 inter-agency task force would be developed by Commerce,
11 Interior, Agriculture and others and the Commission, and it
12 outlines the steps in an effective adaptive management plan
13 that the Agency has agreed to, so that might be something
14 worth looking at.

15 I forget which point it was. It could have been
16 studies, there's only -- it wasn't NEPA. I think it was
17 studies, but it could have been license conditions, so that
18 might be a place to look, you know. But certainly, adaptive
19 management generally is that the Commission -- that anything
20 that comes out of adaptive management becomes a license
21 requirement so that the Commission could enforce it, so I
22 think that was one of the concerns that was addressed
23 through that report.

24 You know, I know we didn't resolve anything
25 today. I don't know that I expected to resolve anything. I

1 mean the only thing I can do is have some more discussions
2 internally to let people know that you're still concerned
3 that the issue didn't go away, and you are passionately
4 concerned, and that it would make sense to have some sort of
5 discussion, you know.

6 Something that would you know, wouldn't be too
7 much of a burden on the Commission. That's about all I can
8 do, and you know, we'll see if we could sort of resurrect
9 that idea a bit.

10 MR. PRATT: Thanks Alan, just as we are moving
11 into the last part of the time you have set aside, I'd just
12 like to remind people the city would be interested in
13 knowing whether the agencies here have any comments or
14 concerns, requests for information and clarification on the
15 CEQA, related to the CEQA work that we need to do, so.

16 Please forward them to me, or except if there are
17 those, let us know. Or, if there's other issues other than
18 monitoring that we should hear about.

19 MS. LAWSON: So, I just have one question. We
20 were having a conversation the other day, and someone
21 mentioned the need to consider climate change in CEQA, I
22 think. Will there be climate change monitoring and how
23 would you do that in this?

24 MR. PRATT: So, climate change is required to be
25 considered under CEQA.

1 MS. LAWSON: Right.

2 MR. PRATT: One of the special provisions that is
3 in there -- reservoirs, hydro, reservoirs, can release
4 greenhouse gases, but typically that occurs when reservoirs
5 are younger and with this reservoirs at the age they are,
6 our expectation right now is that we would find them pretty
7 close to the baseline and gases that would be released by
8 the industry system, but we would look at that.

9 I don't know that the situation requires for
10 detailed monitoring, but there's new tools that have been
11 developed by Unesta, and they have over the last 16 years,
12 G-res, that could be used if we needed to do that.

13 MS. LAWSON: Okay, the guidance on the CEQA needs
14 in terms of the project contribution to climate change or
15 how the project resources will change as a result of climate
16 change, I guess --

17 MR. PRATT: The project's contribution.

18 MR. HASTREITER: The greenhouse gas and also the
19 --

20 MR. PRATT: So, that's going to change the new
21 CEQA, over the last couple of years.

22 CHAIR MITCHNICK: Thanks for the questions.

23 MS. LAWSON: I kind of thought it would be under
24 direction, I didn't understand it.

25 CHAIR MITCHNICK: Patricia, do you want to add

1 anything on that?

2 MS. SUSSMAN: No, yeah, I can see the interest
3 and you know, the climate change analysis from a research
4 perspective, that's in CEQA.

5 CHAIR MITCHNICK: I did fail to mention two
6 issues in the DEIS that we modified. I was so anxious to
7 get to monitoring I forgot. We are recommending a ground
8 management plan, apparently, I understand it's being
9 developed as we speak at this time. And we also recommended
10 a modification to the project boundary to include a -- what
11 they show on the trail, some additional measures that we
12 included in the DEIS.

13 MS. EFIRD: Alan?

14 CHAIR MITCHNICK: Yes?

15 MS. EFIRD: This is Carol Efird. I believe the
16 DA had said something to the effect that he couldn't find a
17 map, or it didn't show where that trail was supposed to be
18 going for the project boundary.

19 CHAIR MITCHNICK: Yeah.

20 MS. EFIRD: Was that an accurate -- when
21 characterizing that? And so, I just want to point to the
22 recreation management plan which has the conceptual drawings
23 in it and includes the project boundary on it. Yeah, I
24 think this is -- that plan.

25 CHAIR MITCHNICK: Okay, are there any other

1 questions, comments?

2 MS. LOSE: A quick CEQA question too. There is a
3 cumulative impact analysis that you analyzed, the age of the
4 reservoir to repair, can you talk about that?

5 MS. SUSSMAN: We haven't initiated the CEQA
6 analysis yet and I don't know to what extent that was
7 analyzed and the record thus far, but cumulative impacts are
8 required to be analyzed under CEQA, so if that's something
9 to look at, we will.

10 MS. LOSE: Great, thank you.

11 CHAIR MITCHNICK: Absent any other questions I
12 will thank you for attending the meeting today. Sorry some
13 of you had to sit through the monitoring's, but I understand
14 that it shouldn't go away for a while, it's important and
15 we'll see what we can do about that.

16 Okay, this meeting is adjourned, thank you.

17 (Whereupon the meeting adjourned at 11:36 a.m.)

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1 CERTIFICATE OF OFFICIAL REPORTER

2

3 This is to certify that the attached proceeding

4 before the FEDERAL ENERGY REGULATORY COMMISSION in the

5 Matter of:

6 Name of Proceeding:

7 Bucks Creek Hydroelectric Project

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15 Docket No.: P-619-164

16 Place: Oroville, CA

17 Date: Thursday, August 1, 2019

18 were held as herein appears, and that this is the original

19 transcript thereof for the file of the Federal Energy

20 Regulatory Commission, and is a full correct transcription

21 of the proceedings.

22

23

24 Larry Flowers

25 Official Reporter