

PUBLIC SCOPING MEETING
STATE OF CALIFORNIA
WATER RESOURCES CONTROL BOARD

In the Matter of:)
)
LONG-TERM MODIFICATION AND INTERIM)
OPERATION OF THE KLAMATH)
HYDROELECTRIC PROJECT, AND CONTINUED)
LONG-TERM OPERATION OF ALL OR PART)
OF THE KLAMATH HYDROELECTRIC)
PROJECT, TO MEET CONDITIONS OF WATER)
QUALITY CERTIFICATION AND TO)
CONFORM WITH WATER QUALITY STANDARDS)
_____)

SIX RIVERS NATIONAL FOREST
1330 BAYSHORE WAY
EUREKA, CALIFORNIA

MONDAY, OCTOBER 20, 2008

1:30 P.M.

REPORTED BY:
DEBORAH BAKER

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

1 APPEARANCES

2 Gita Kapahi, Facilitator
3 State Water Resources Control Board

4 Marianna Aue, Staff Counsel
5 State Water Resources Control Board

6 Jennifer Watts, Ph.D., Environmental Scientist
7 State Water Resources Control Board

8 Daniel R. Tormey, Ph.D.,
9 Entrix, Inc.

10

11 PUBLIC SPEAKERS

12 Jim Clark

13 Charles Edwards, Native Springs Foundation

14 Michael McLaughlin

15 Sam King

16 Adriana Guzman

17 Josh Brown

18 Dave Bitts, Pacific Coast Federation of Fishermen's
19 Associations

20 Jay Wright

21 Dania R. Colegrove

22 Ali Freedlund

23 Greg King, Northcoast Environmental Center

24 Ken Miller

25 Vivian Helliwell, Pacific Coast Federation of Fishermen's
Associations, Institute for Fisheries Resources

Thomas Dunklin

Craig Tucker, Karuk Tribe

1 APPEARANCES (Continued)

2 Frances Ferguson

3 Shaye Harty

4 Larry Hourany

5 Geronimo Garcia

6 Will Newman

7 Joyce King

8 Marlon Sherman

9 Jeremy Mills

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

2 FACILITATOR KAPAHI: Okay. Good afternoon.

3 Welcome. This is the first of four CEQA scoping meetings
4 for the Klamath Hydroelectric Project 401 Water Quality
5 Certification.

6 Sorry? I'm not mic-ed? Okay. I'm sorry. Is
7 that better? You know what, I'll hold it. Is that
8 better? Okay. Sorry about that. I'm very short, and
9 it's not reaching me. Okay.

10 My name is Gita Kapahi. I am the ombudsman for
11 the State Water Resources Control Board. I am the
12 facilitator for the meeting this afternoon. I will be
13 directing traffic, giving you some of the logistics. And
14 because of the number of people here and the limited time,
15 we do have to vacate the room approximately 3:30, so I'm
16 trying to keep us on task here.

17 We have a presentation. We will be allowing
18 questions after that or comments and questions after that
19 presentation, but we do need to be out of here
20 approximately two hours from now, so about 3:40 We have
21 to reassemble the room and get on to the next scoping
22 meeting. There is a meeting this evening at 6:00 p.m.

23 Let me see. If you could, please, if you have
24 not already done so, sign in on the sign-in sheet. Check
25 the speaker box if you would like to speak.

1 I will reserve the right to limit the comment
2 time, depending on how much time we have and how many
3 people wish to speak, just because of, you know, the large
4 number of people here and the limited time that we have.
5 Please speak into the microphones so that your comments
6 may be correctly transcribed. Please identify yourself
7 and spell your name for the courtesy of the court reporter
8 that we have here. And if you have a card, please give it
9 to her. Written comments will also be accepted. They
10 will be accepted until November the 17th.

11 Bathrooms are located just outside to the left of
12 the main doors. There are emergency exits; one at the
13 back and one to my right. If you do leave out of the back
14 door, you can't get back in that door. So in case of
15 emergency, come back in through the front.

16 With us today we have Dr. Dan Tormey, the project
17 manager for Entrix, the contractor working for the State
18 Board. He is a geologist, a geochemist and a civil
19 engineer. We have Dr. Jennifer Watts, who is our
20 environmental scientist in the Division of Water Rights,
21 Water Quality Certification Unit and the project lead for
22 the Klamath project. And Marianna Aue, the staff counsel
23 for the State Water Board.

24 Ground rules: Please turn off all your cell
25 phones. Recognize that we have a short time to receive a

1 lot of information. The time will be limited, depending
2 on the number of people who want to speak. In the event
3 that not everyone can speak at this meeting, there will be
4 an opportunity to provide written feedback or participate
5 in another meeting. As I had mentioned, there are four
6 meetings. There are -- the information for those meetings
7 is contained in the packet that's on the table.

8 Okay. Only one person can speak at a time.
9 Please respect the speaker and their views, even if you do
10 not agree with them. Keep it professional; focus on
11 issues and not on people. Be concise. And threats or
12 acts of violence or derogatory conduct will not be
13 tolerated.

14 So with those ground rules, I turn it over to
15 Dan. And I will be moderating and keeping the meeting on
16 task on and on time. So go ahead.

17 DR. TORMEY: Can people hear me out without the
18 other microphone? No. Okay.

19 I usually like to move around more and not stand
20 behind the podium, but I'll bow to your wishes here.

21 Okay. So today's meeting is about the State
22 Water Resources Control Board. We're initiating an
23 Environmental Impact Report, an environmental review of
24 the operations of the Klamath Hydroelectric Project. And
25 PacifiCorp owns and operates that. And the kind of

1 grayed-out portions of the facility, the East Side, West
2 Side, Keno, J.C. Boyle, those are located in Oregon; and
3 so although our review will encompass those, our focus
4 will be on the dams that are in California, Copco 1 and 2,
5 Iron Gate and Fall Creek.

6 In November of 2007, for those of you who have
7 been following this process through the years, the FERC,
8 the Federal Energy Regulatory Commission, completed their
9 Environmental Impact Statement, a process similar to this
10 one but the federal version. And the State conducts their
11 own Environmental Impact Report before they can issue any
12 sorts of decisions on a project. And the stage it's now
13 in is the project is now awaiting the water quality
14 certification. That's part of the Clean Water Act; it's
15 Section 401 of the Clean Water Act. And both the State of
16 Oregon and the State of Washington, their water boards
17 need to make the appropriate review before rendering a
18 decision. And the Act, CEQA, is the act under which our
19 environmental review is conducted.

20 Okay. This is just a location map. Here's the
21 California border. And you can see Copco 1 and 2, Fall
22 Creek and Iron Gate. The scope of our review is going to
23 encompass the down-river stretches.

24 As I told you, I like to move around, it's
25 difficult to nail me.

1 Next slide.

2 So our objectives for today are really to solicit
3 your input on the scope and the level of effort of our
4 environmental review. So as part of the presentation
5 portion of today's meeting, I'll briefly describe the
6 process that we're going to be conducting and identify
7 specifically where there's opportunities for public input,
8 this being the first of those.

9 And then either through your comments presented
10 publicly here or presented in written form or both, we
11 would specifically like to ask you your opinion on the
12 adequacy of FERC's -- of the FERC's Environmental Impact
13 Statement, the range of alternatives that you hear that we
14 will describe today that will be part of our review.
15 These are also in the Notice of Preparation as well that's
16 up at the front desk.

17 Any impacts that you thought were not addressed
18 in the Environmental Impact Statement that the FERC did
19 but should have been, we'd be interested in hearing about
20 that. Any potential mitigation measures, measures that
21 would improve the environmental conditions that were not
22 brought up in the previous FERC process, we'd like to hear
23 about that.

24 And in addition to the longer-term measures that
25 were part of the alternatives both in the previous

1 environmental review that the FERC did and the one that
2 we're doing, those are fairly long-term, and we're
3 proposing some interim measures in the shorter term or at
4 least evaluating them. And so any suggestions about that
5 is something that we would also be seeking your input on.

6 Okay. The next two slides briefly display the
7 California Environmental Quality Act, CEQA process that
8 we'll be doing. The first step is the applicant files
9 their application with the State Board. And the most
10 recent one was September 26th, 2008; so that formally
11 starts our process.

12 Now we're in the second box, that's where we are
13 today. We've issued our Notice of Preparation, and we're
14 now conducting the scoping meetings. And this is public
15 input, as I've described at the early stages, when we sort
16 of tell you what we're doing, and then you tell us if
17 we're missing something so that we can incorporate it in
18 our review.

19 Then after this step we'll conduct our
20 environmental analysis and we'll prepare what's called a
21 Draft Environmental Impact Report, a DEIR. And that will
22 be issued for public comment. And so that's the next
23 significant opportunity for your input. In that case,
24 it's going to be a little different.

25 There we will have issued a document that you

1 will have the opportunity to review before we come talk to
2 you about it. And so you'll have an opportunity to
3 specifically look at how well we responded to the issues
4 that you brought up during the scoping process. And so at
5 that point of public input, we're asking you how well did
6 we do, because we've got one more chance to adequately
7 describe the impacts or the measures that you would like
8 reviewed.

9 And then once we get your comments, after that
10 public -- series of public meetings, we'll prepare what's
11 called the Final Environmental Impact Report, and that
12 will be presented to the State Water Resources Control
13 Board, and they will use it in guiding their decision
14 whether to issue a water quality certification for the
15 project or not.

16 It's a really significant point that the
17 environmental review that we're doing now and that will go
18 to the Board to help them in their decision is not -- our
19 document won't say, you know, yes, no, this is the way it
20 should be; our document is what's called a disclosure
21 document. So the Environmental Impact Report does its job
22 when it presents the environmental impacts that would
23 occur as a result of the project or a series of
24 alternatives that we'll look at, and then we'll need to
25 disclose the range of views that are there.

1 And in controversial projects there can be kind
2 of a disappointment if the document doesn't say, okay,
3 this side wins, that side doesn't. If there's a
4 disagreement among experts, it's the job of the
5 Environmental Impact Report to fully disclose that, fully
6 disclose the basis for each side. And then when the State
7 Board makes their decision, it will be informed by that
8 document. So that's one of the most significant things to
9 realize in this process that we're going through and in
10 the document that we're preparing.

11 Okay. This is the last of these little bubble
12 slides. And this one is meant to illustrate how our
13 process that we're embarked on now fits within the larger
14 relicensing of all of the dams, both in Oregon and in
15 California, that the application to the FERC initiated.
16 So in the first bubble, that describes that the applicant
17 applied to the FERC for their new license and they applied
18 to the states for water quality certification.

19 The second bubble represents the review that the
20 FERC conducted that culminated in their November 2007
21 Environmental Impact Statement. In the third bubble, the
22 Environmental Impact Statement that the FERC issued and
23 their relicensing review was specific to the jurisdiction
24 of the FERC, that is, the operation and maintenance of the
25 dams.

1 Other resource agencies, National Marine Fishery
2 Service, Bureau of Reclamation, Bureau of Land Management,
3 California Department of Fish and Game, et cetera, have
4 their own independent permitting authority, and some of
5 those processes are ongoing, some of them have been
6 completed. Specifically, the federal agencies, National
7 Marine Fishery Service, Bureau of Reclamation, and Bureau
8 of Land Management, issued their permits and included what
9 are called mandatory conditions on those permits. And
10 that occurred after the FERC completed their review.

11 So now that we're taking up our process, we've
12 got what the FERC reviewed and what the FERC recommended
13 plus what these other agencies that have their own
14 permitting authority, what conditions they placed upon it,
15 now we're starting. So that's kind of where we come in.
16 And we're in that fourth bullet where we're evaluating the
17 401. And then the final bubble, I'm sorry, on the top is
18 the point where we issue our decision.

19 And if Oregon and California both issue water
20 quality certifications for the project, then the FERC
21 would issue a long-term license to the facility. So the
22 FERC's final approval is pending the actions that are
23 going on now in Oregon and in California.

24 Okay. So I'm mindful that you guys want to talk
25 too, and so I think the most important thing for me to

1 tell you is what the process is and where we are in that
2 process.

3 And so the next slides are summarizing what the
4 project is that we have before us, what the alternatives
5 are that we are currently considering, and briefly what
6 issues we see as the ones that will be the primary
7 component of our document. And so I'll try to go through
8 these a little quickly so that you guys will have more
9 time to talk.

10 The Notice of Preparation will be -- describes
11 what I have here too; so if you didn't hear something or
12 didn't quite understand something, you can see it in
13 writing in the Notice of Preparation. And if you didn't
14 pick up a copy, I encourage you to. There's one at the
15 front.

16 So our project is the long-term operation and
17 modifications as the FERC and the permitting agencies
18 required and interim operation of the Klamath
19 Hydroelectric Project to meet the conditions of the water
20 quality certification and to conform with water quality
21 standards. So that in a nutshell is the project.

22 And then the objectives frame what alternatives
23 we will consider. So in order to be a valid alternative,
24 it must substantially meet these project objectives. The
25 first objective is to continue to generate power from a

1 renewable resource to serve the applicant's customers as
2 compatible with water quality standards and mandatory
3 conditions established as part of the FERC licensing
4 process, which includes the actions of these other
5 agencies like National Marine Fisheries and the Bureau of
6 Reclamation.

7 The second objective is to modify the Klamath
8 Hydroelectric Project so as to comply with the water
9 quality standards.

10 Okay. So if you do read our Draft Environmental
11 Impact Report when it comes out, the first part is a
12 description of the existing environment. And even though
13 we're very early in our process, there's been enough
14 information generated during the previous process that we
15 know that there are impaired water quality conditions in
16 the Klamath River right now, specifically temperature,
17 nutrients, dissolved oxygen and microcystin toxins.

18 We know that fish populations have declined, that
19 National Marine Fishery Service has listed the Coho is
20 threatened, and those are connected, that the water
21 quality impairments lead to the -- are connected to the
22 reduced fish populations, and those are connected to
23 impacts to the tribes, to local communities, and to
24 commercial, recreational, and subsistence level fishing.

25 Okay. So the next part of the Environmental

1 Impact Report will be an analysis of the impacts of the
2 continued operation of the Klamath Hydroelectric Project
3 as modified by the FERC review and the mandatory
4 conditions. Our approach is to take the FERC EIS as our
5 starting point. They did an extensive process, a document
6 that in general adequately describes the impacts,
7 according to our initial review, but our Environmental
8 Impact Report has to differ from that in several
9 substantial ways.

10 One is that it clearly has to reflect our
11 independent judgment, that of the State Water Resources
12 Control Board. There's ongoing processes that have led to
13 additional information that was not available to the FERC
14 when they conducted their review, and it's possible during
15 this meeting you'll tell us about other things.

16 Let's see. The CEQA requires us to look at some
17 additional environmental resource categories that weren't
18 addressed by the FERC. And then the range of conditions,
19 the range of alternatives is going to be a little
20 different; and I'll explain that a little later on in the
21 presentation. And then we'll be looking at the downstream
22 effects. CEQA requires a more cumulative review than
23 simply the effects of the project itself. It needs to be
24 considered within the totality of other projects and other
25 actions that are going on within the project area.

1 Okay. So the color scheme here is that the
2 darker colors were the alternatives that were considered
3 in the FERC's Environmental Impact Statement. And the
4 green are new alternatives that are going to be considered
5 as part of our Environmental Impact Report.

6 So the first one, the NEPA, no action doesn't
7 have relevance. It's framed differently than the CEQA no
8 project, which we'll be considering.

9 MS. AUE: Dan?

10 DR. TORMEY: Yeah.

11 MS. AUE: Can you all tell the different colors
12 on this projection, or should I get up and point that out?

13 (Conversation among the audience.)

14 MS. AUE: So the NEPA no action alternative,
15 PacifiCorp's proposal for how to run the dams, the FERC
16 staff alternative, these are all things -- these are all
17 things that the -- the NEPA document looked at that our
18 document won't. Those are actually faded out in gray.
19 The green I think shows up well. Those are things we're
20 adding in the CEQA document.

21 And then the dark black, the FERC staff
22 alternative, the retirement of Copco 1 and Iron Gate and
23 the four dam removal alternative -- oh, I'm sorry, the
24 four dam removal alternative we are not going to look at
25 being it's outside of our authority. These two are things

1 that the FERC looked at and that we'll look at.

2 Sorry to jump in.

3 DR. TORMEY: No, that's good. Thank you;
4 appreciate that. I don't always see the color quite so
5 well.

6 (Conversation among the audience.)

7 DR. TORMEY: That's sort of the last one where
8 color is an important part of it.

9 Okay. So, you know, the main idea is that as a
10 result of the process that occurred with the FERC and the
11 subsequent actions by the other permitting agencies, some
12 alternatives that were analyzed before are no longer
13 relevant, and as part of our review we have added two.

14 Okay. And then I mentioned that also we would be
15 considering implementing some nearer-term actions that
16 might be put in place before some of the longer-term ones.
17 For example, some of the mandatory conditions require fish
18 passage facilities to be installed, and those take several
19 years to actually be installed. And so based on our
20 review, we're thinking that the interim actions might be a
21 recommended thing to do.

22 So we're going to look at PacifiCorp's original
23 proposal that went to the FERC that had a number of
24 short-term actions that could form the basis of interim
25 actions. The FERC staff alternative took those 41 things

1 that PacifiCorp had recommended and added 25 to them; so
2 we'll be looking at that for potential interim actions.

3 And then there are settlement negotiations that
4 are going on within the basin that could turn up
5 additional interim actions.

6 So this shows the environmental categories that
7 were looked at by the FERC -- and again, this is in your
8 Notice of Preparation -- and then this, those additional
9 ones that are required to be looked at by CEQA that were
10 not addressed in the Environmental Impact Statement.

11 Okay. So now we're coming to the point where
12 I'll sit down and you guys can start talking. And we
13 are -- I don't want to make light of the fact, actually,
14 that your input at this part of the process is essential
15 to the process working the way it should. If we hear
16 concerns now, then we have the entire period under which
17 we're conducting our environmental review to address them.
18 If you wait until the Draft Environmental Impact Report is
19 put out to have substantive comments, then you've really
20 limited our ability to address them adequately.

21 And so just to summarize what I had said earlier,
22 we're interested in hearing what you have to say as part
23 of our environmental review. There are some specific
24 questions that if they could be framed in this way, it
25 would fit easier in our process. And the first is, you

1 know, does the Environmental Impact Statement address
2 comments that you might have had on the draft? So as part
3 of that process, did you feel that your voice was not
4 adequately heard? The next thing is the range of
5 alternatives; I briefly described them.

6 If you would like to submit written comments and
7 perhaps think about it some more beyond what we have timed
8 for today, that would be great. Written comments are
9 actually even easier for us to handle, but we give equal
10 weight to spoken comments.

11 Impacts not addressed in the Environmental Impact
12 Statement, mitigation measures, and again, these other
13 interim measures are all things that we would really find
14 very helpful to hear from you about today.

15 And for written comments, that is the address to
16 send them to. You can either send them by email or by
17 letter, by post; and that, again, is in the Notice of
18 Preparation.

19 Thank you.

20 FACILITATOR KAPAHI: For those of you that may
21 have come in a little bit late, please make sure that you
22 are signed up on our sign-up sheets at the front of the
23 room.

24 Of all the folks that have signed up, I have
25 about 17 that have indicated they wish to speak. If you

1 did not indicate on the -- maybe I could take a show of
2 hands. If you wish to speak today, please raise your
3 hand.

4 Can somebody count for me?

5 Still about 17. Okay. Given the time that we
6 have left, I will allow five minutes per speaker. At the
7 end of the speakers, I will -- if there are members of the
8 audience that have questions for -- regarding the
9 presentation, you can ask those at that time, and then
10 we'll do a short wrap-up.

11 And then if someone speaks and you haven't said
12 that you wish to speak, there may be a little bit of
13 wiggle room where you can still get an opportunity.

14 So with that, I will call you up in order of sign
15 in. And if you could please speak into the microphone,
16 identify yourself by spelling your name for the purposes
17 of our court reporter.

18 And with that, I call up -- and I apologize in
19 advance if I botch your name -- Jim Clark, please.

20 Yes, if you could all come up to the podium, we
21 do need to get you to speak into this microphone. The
22 other one has to be a few feet away for the purpose of the
23 court reporter. So here you go.

24 MR. CLARK: Thank you. My name is Jim Clark.
25 I've been a resident of Eureka and Elk River Watershed for

1 28 years. And during that time I worked for Humboldt
2 County to protect water quality by regulating on-site
3 sewer disposal systems and underground storage tanks,
4 including the tanks that have leaked.

5 Can you hear me now? Thank you.

6 I've worked for 28 years for Humboldt County to
7 protect water quality by regulating underground tanks and
8 on-site sewage disposal systems. And my concern is with
9 the interim operational objectives, because right now the
10 clock is ticking on the Klamath, and we don't have years
11 to correct what is now an impaired water body.

12 In the local oversight project that I worked in,
13 which corrects leaks from underground storage tanks, there
14 is an interim remedial action alternative which is done
15 when there is a severe problem that can be taken care of
16 quickly or needs to be taken care of to protect water
17 quality. And I would really urge that we set water
18 quality objectives for the Klamath and institute measures
19 to take care of them as soon as possible in any interim
20 operational plan.

21 Thank you.

22 FACILITATOR KAPAHI: Okay. The next speaker will
23 be Mr. Charles Edwards, followed by Michael McLaughlin,
24 followed by Sam King.

25 MR. EDWARDS: Ladies and gentlemen of the Board

1 and guests here today, folks and citizens of Humboldt
2 County, my name is Charles Edwards, and I'm the public
3 information officer for the Native Springs Foundation, a
4 nonprofit organization whose sole express goal is to raise
5 public awareness surrounding the Klamath River and the
6 negative impact of PacifiCorp dams they have had and
7 continue to have in the regions of the indigenous fishes.

8 We oppose the relicensing of the dam. Even
9 though we have -- there have been efforts to truck
10 spawning fish around the dams, this practice has not
11 proven effective in maintaining fish populations necessary
12 to ensure propagation. Moreover, the quality of the river
13 itself has been and continues to be seriously damaged from
14 the growth of blue-green algae as a result of low water
15 levels of the dams. What was once a mighty flowing river
16 has now become nothing more than a cesspool, and we
17 encourage the Board to consider the following facts as you
18 deliberate whether or not to grant PacifiCorp a new
19 license.

20 Before the dams, the Klamath River was the third
21 largest producer of salmon and steelhead on the west
22 coast. Now this natural salmon nursery has become a grave
23 site. Today the Klamath River salmon are on the brink of
24 extinction and victims of a century of mismanagement and
25 abuse.

1 Before the dams, the river, the Klamath River was
2 the third largest producer of salmon in the continental
3 United States closely behind the Colombia and Sacramento
4 rivers. Today Coho salmon in the Klamath River are
5 federally protected under the Endangered Species Act. The
6 largest west coast fish kill of over 70,000 adult salmon
7 returning to the Klamath River to spawn died in this river
8 in September of 2002. Low flows drove salmon to cluster
9 together in a few spots where tributaries brought cold
10 water, and the salmon fell prey to pathogens that rapidly
11 swept through their numbers.

12 The river flows were largely the result of dams
13 on the river and upstream diversions of water to the
14 corporate farmers on the Klamath valley. In subsequent
15 years, commercial fish seasons have been canceled, and
16 fish counts continue to be extremely low, reported to be
17 as much as 75 percent what they once were before. At
18 least 80 percent of the historic Klamath basin wetlands,
19 nearly 280,000 acres have been lost.

20 The Klamath Basin National Wildlife Refuge in the
21 upper Klamath basin are still home to millions of
22 migratory water fowl, though only a small fraction of what
23 once inhabited the upper basin. These refuges have lost
24 90 percent of all their migratory birds that use the
25 Pacific flyway.

1 The Klamath River is vital to Native Americans in
2 the region, the Klamath, the Karuk, and Yurok down river,
3 the Hoopa tribes in the Klamath basin have cultures that
4 are deeply connected to the land, and today these tribes
5 and other nature-dependent people in the region are
6 suffering from the loss of land and the fisheries and the
7 loss of traditional diet, which also affects the cultural
8 activities.

9 Moreover, the United States government signed a
10 treaty with the various Klamath River coastal tribes in
11 1864 guaranteeing in perpetuity access to the Klamath
12 basin fish forever. In 1864 the treaty provided that the
13 tribes would have secured to them the exclusive right of
14 taking fish for the river, streams and lakes, including
15 the said reservation on the gathering of edible roots,
16 seeds and berries within its limits.

17 We oppose the relicensing of the dam, and we
18 thank you for the opportunity to address this today and
19 that you deny PacifiCorp's application for licensing and,
20 moreover, ensure the sufficient water flow to sustain life
21 on the mighty Klamath River.

22 FACILITATOR KAPAHI: Okay. Mr. Michael
23 McLaughlin followed by Sam King followed by Adriana
24 Guzman.

25 MR. McLAUGHLIN: Thank you. My name is Michael

1 McLaughlin. That's M-c L-a-u-g-h-l-i-n. I'm a resident of
2 Eureka. And I first want to thank the Water Resources
3 Control Board for their ongoing work on California water
4 quality.

5 And here we go. This impairment of the Klamath
6 is clearly the result of the multiple empowerments. While
7 some of the sources are outside of California, Water
8 Resources Control Board cannot issue a 401 permit until
9 water quality successfully improved California standards,
10 whether PacifiCorp impairs outside or inside the State's
11 territory. Now, since the impaired water quality is
12 precipitating an extinction event, and make no mistake,
13 it's a multiple extinction event and has a profound
14 economic effect, as the former speaker has pointed out,
15 that is not strongly enough addressed and stressed in the
16 former Environmental Impact Statement. CWRCB should not
17 allow interim permissions but must use its regulatory
18 powers to reverse the process of this extinction event and
19 the massive economic fallout that results.

20 Now, previous studies, of course, have shown that
21 fish ladders are inadequate mitigation. They often --
22 they don't work. Air bubblers don't address the thermal
23 pollution. And I'm not certain that they would address
24 the toxic algae situation to a sufficient extent either,
25 but I'm not a scientist and I don't know of any previous

1 studies on that. The mitigations offered, however,
2 outside dam removal itself, are scientifically unsound and
3 insufficient, and we all can see that.

4 Well, the Water Resources Control Board has
5 studied the science, the evidence of the oxygen effects,
6 whether anoxia or too high in nutrient load toxins
7 produced by algae, thermal pollution, and the river
8 blockage itself causing extinction of anadromous fish and
9 other organisms. And as you know, ecologically, the
10 extinction event will cascade, a domino effect of
11 extinctions and ecological change, swift and catastrophic
12 occurrence. And this is a huge proportion of their ranges
13 that we're concerned with.

14 We know, some of us know, the tribes know the
15 dire economic effects which extend beyond the watershed to
16 the Pacific fisheries, and the fishermen know this from
17 Morro Bay to Colombia, the poisoning of the water, the
18 effects on the entire ecosystem, the food webs essential
19 to humans and other organisms. You know of the violations
20 of treaty agreements now, the continuance of this
21 unbelievable injustice to Native Americans. You perhaps
22 cannot yourselves comprehend the extent of the tragic loss
23 to these families and the world, and the world which fails
24 yet to understand and value the lives of these people
25 where there's a culture and as individuals.

1 PacifiCorp has not, will not, cannot successfully
2 mitigate the ongoing environmental and economic
3 catastrophe of these dams. These dams have been a massive
4 crime for 90 years poisoning ecosystems and lives, and we
5 really ask you to deny the 401 permit.

6 Thank you.

7 FACILITATOR KAPAHI: Thank you. Sam King
8 followed by Adriana Guzman, Josh Brown, Dave Bitts.

9 MR. KING: Well, mine's going to be very brief
10 today. I'm going to endorse and advance Greg King's
11 comments from the National -- you can't hear me? Sorry.

12 I'm going to endorse and advance Greg King's
13 comments from -- that will be made later from the North
14 Coast Environmental Center on this issue.

15 I'd like to see all the dams removed, the Klamath
16 brought back to its healthy state. It will provide fish
17 for the Indian populations upstream or downstream of the
18 dams and also restore the commercial fisheries downstream.

19 Thank you.

20 FACILITATOR KAPAHI: Adriana Guzman.

21 MS. GUZMAN: Hello. Can you hear me okay? Speak
22 up? Okay. How's that?

23 Hi. Good afternoon. My name is Adriana Guzman,
24 A-d-r-i-a-n-a G-u-z-m-a-n, and I'm a graduate student at
25 Humboldt State University. I've lived in Eureka for

1 about -- over eight years. And I'm just speaking as a
2 concerned citizen.

3 I feel that the State Board should really look at
4 the impacts that this -- the dams are causing to the
5 river. It's obvious from the amount of studies out there,
6 the low salmon numbers, the health effects, definitely the
7 toxic algae. I don't see how a clean water permit could
8 be issued with the dams still standing. I just don't see
9 that happening. And so I hope that, you know, what they
10 come up with will -- that they'll be able to see that.
11 And I just feel that it's going to, you know, impact just
12 the people that use the river, the tribes, the
13 recreationists that are out there, the people using the
14 water. And I just feel that there definitely needs to
15 be -- it needs to be looked at closely.

16 And so I would support a -- the alternative to
17 remove the dams. And that's the only way that I can see
18 that the water would be of good quality.

19 Thank you very much.

20 FACILITATOR KAPAHI: Josh Brown followed by Dave
21 Bitts and Jay Wright.

22 MR. BROWN: I too will keep it brief. My name is
23 Josh Brown, J-o-s-h B-r-o-w-n. I live in Arcata, and I'm
24 a 13-year resident of Humboldt County.

25 I'm here today to urge you, the State Water

1 Resources Board, to please deny PacifiCorp a renewal of
2 their Section 401 permit that is needed to continue the
3 operation of their four Klamath -- lower Klamath River
4 dams. I guess it's three that's in your jurisdiction. So
5 I definitely support the three dam removal alternative
6 that you guys are looking at.

7 You know, I've spent a lot of time on the
8 Klamath. And one of the things a lot of us on the coast
9 here do in the summertime is we go to the rivers to go
10 swimming. That's really my connection. Occasionally I've
11 gone rafting. But, you know, obviously the Klamath is the
12 one place that is avoided at all cost. People just don't
13 go in that river spring, summer, especially in the fall
14 because of the water quality. And just as a
15 recreationist, that's my one relationship; but obviously
16 there are native peoples there who have been on that river
17 for time untold who have a very special relationship with
18 the river and the salmon and the sustenance it's provided.
19 And that's an amazing thing; and, really, we'd like to see
20 that relationship continue.

21 Yeah, I could go on and on, but bottom line is it
22 seems like the evidence is overwhelming that only dam
23 removal will restore water quality at the Klamath River.
24 And again, I urge you to do that, take the strong stand
25 and make it happen.

1 Thank you.

2 FACILITATOR KAPAHI: Let's see, Jay Wright
3 followed by Dania Colegrove.

4 Did I skip one? I'm sorry. Dave Bitts. Sorry
5 about that. I got ahead of myself.

6 And for those of you who are sitting, I do
7 apologize, I do thank the forest service for the room, I
8 realize that we've got a capacity crowd here. There are a
9 couple of empty seats, I believe they've been vacated.
10 There's three up front. And I would offer that one there
11 as well.

12 Anyways, with that, Mr. Bitts. Sorry.

13 MR. BITTS: No harm.

14 My name is Dave Bitts. That's B-i-t-t-s. Can
15 you hear me? Okay. I'm a salmon -- commercial salmon and
16 crab fisherman based in Eureka, live in McKinleyville.
17 Been fishing for over 30 years. I'm also the president of
18 the Pacific Coast Federation of Fishermen's Associations,
19 which represents salmon fishermen all along the California
20 coast down as far as Santa Barbara.

21 PCFFA has been participating in the settlement
22 talks, the 28 party settlement talks that have gone on for
23 a couple of years. We support that settlement process,
24 and we are strongly hoping that we'll be able to sign on
25 soon to a final agreement that includes an agreement to

1 remove the four dams up to and including J.C. Boyle.

2 As salmon fishermen we know that most of the fish
3 we catch come not from the Klamath but from the Sacramento
4 River. That's true throughout California and Oregon and
5 even up to Washington to some extent. However, our access
6 to those usually abundant -- not this year -- but usually
7 abundant Sacramento fish is constrained by the abundance
8 of Klamath fish.

9 If the Klamath is producing well, we actually
10 have an opportunity to catch a substantial amount of those
11 Sacramento fish and it's okay; it's not wonderful, but
12 it's okay. If the Klamath is not producing well, we can
13 be shut down all the way from Cape Falcon in Oregon, which
14 is just below the Colombia River, all the way down to
15 Point Sur, California. And if it's somewhere in between,
16 we get to fish in the outer portions of that range closer
17 to Cape Falcon and Point Sur, but not so much in the
18 middle. So we totally depend on consistent, abundant
19 stocks of Klamath fish in the ocean in order to go catch
20 the Sacramento fish that are our bread and butter.

21 The dams present -- I'm going to talk about two
22 problems that the dams present in the context of the
23 scoping that's going on here today. There are more, but
24 I'm just going to talk about two of them.

25 And the first one is the effect of the dams on

1 the water quality in the Klamath. And as you know, that
2 water comes into that reservoir with a very high nutrient
3 load, and the company claims that they don't pollute
4 because they don't add anything to the water. Well, by
5 stopping the water in those high desert reservoirs, they
6 do add heat and light to nutrient-laden water, and the
7 result is on display in a five-gallon jug over here.
8 Somebody brought that jug. And I hope that whoever
9 brought it is going to -- are you going to talk about it,
10 Dania? Can you put it up here when you do so people can
11 see it? Great. I'll let you do that.

12 Anyway, Dania's going to show you the results of
13 adding heat and light to nutrient-rich water. It's not
14 pretty.

15 The second problem is one that I haven't seen get
16 a lot of attention, and that is that a properly
17 functioning river during the high flows in the river
18 carries quite a bit of gravel and sand and sediment with
19 it downstream and all that rock in various sizes scours
20 the river bottom, cleans it right up. Well, when you put
21 this series of reservoirs and the water stops in the
22 reservoir, all that stuff falls out. And the water coming
23 out of Iron Gate dam doesn't have its proper scouring
24 agents.

25 Oh, I just had an image of the little scrubbing

1 bubbles in my head. That's not what they are.

2 But anyways, it doesn't have those, and it can't
3 do the job it needs to do in scouring the algae from the
4 river bottom. And that's of critical importance because
5 the algae, which grows very abundantly on the bottom of
6 the Klamath River and doesn't get scoured, is home to the
7 little worm in which -- the little worm is the co-host for
8 the parasite, which when it isn't in the worm, it's out in
9 the river looking for salmon to infect and kill. And in
10 four of the last six years that parasite, *Ceratomyxa*
11 *shasta* has killed up to 90 percent of the juvenile salmon
12 trying to get out of the Klamath River down to the ocean
13 so they can grow big and fat and I can catch them and you
14 can catch them when they come back to the river. If they
15 don't live to get out of the river, they ain't gonna come
16 back big and fat.

17 So I hope the Water Board will be able to
18 consider the role of the dams in impeding and interrupting
19 the proper scouring action of the river, which there may
20 be an interim solution involving human importation of
21 gravel to the river, I don't know, I'd like to see that
22 idea examined, but it's outside probably the purview of
23 the Water Board. So that's it.

24 I don't see how we can possibly have adequate
25 water quality, proper scouring of the river, consistent,

1 abundant production. We know that river is still capable
2 of producing robust runs of salmon if everything works
3 right; in abundant water years we have a chance. That's
4 not good enough, because that's maybe one year out of
5 three or four or five. We need consistent production of
6 salmon for all fisheries, and dam removal is the way to
7 get there.

8 Thank you.

9 FACILITATOR KAPAHI: Jay Wright followed by
10 Dania, followed by Ali Freedlund and Greg King.

11 MR. WRIGHT: Hi. My name is Jay Wright,
12 W-r-i-g-h-t. I'm a resident of Arcata. I'm not a water
13 quality expert. I'd like to comment on the vision of a
14 six year old.

15 A six year old, you can take him up in an
16 airplane and fly them over a clear-cut, and they will
17 intuitively know that something is wrong. You can do the
18 same thing with the reservoirs and the Klamath. You can
19 fly them overhead, and they can look down, and they will
20 intuitively know that something is wrong. You could do
21 the same thing. You could take them swimming in the
22 reservoirs -- I wouldn't recommend that -- they would feel
23 how warm the water is and how polluted it is, and they
24 would intuitively know something is wrong.

25 I've been up to the reservoirs in the summer.

1 Although I live in the lower basin, I wanted to take a
2 trip to see what the situation was firsthand. I've heard
3 it described locally as a pea soup. Wouldn't agree with
4 that; it looks more like radiator water to me.

5 PacifiCorp in their application for
6 certification, their position is that the Klamath hydro
7 project actually improves water quality by slowing down
8 the transit time and allowing the water to settle and
9 clarify. I think that stands logic completely on its head
10 and the Water Board should reject that position.

11 When I went up to the reservoirs, noticed that
12 Jenny Creek, a tributary above Iron Gate, has clean,
13 clear, cold water. That water would be flowing in and
14 providing cold water refugia for fish migration in the
15 event that the dam's removed.

16 Furthermore, the FERC has shown a complete
17 inability to act in the public trust in dam relicensings.
18 It's up to the Water Board to act in the public trust.
19 This is an easy task in my opinion because all they have
20 to do is listen to the vision of a six year old who would
21 intuitively know what to do in this situation. I urge the
22 Water Board to deny the water quality certification for
23 PacifiCorp.

24 Regarding the comment on interim measures, I
25 recommend that the certification is for operation of the

1 hydro project in a run-of-the-river condition until the
2 dams are removed. Other interim measures, PacifiCorp has
3 put in their request that they would put gravel in the
4 first several miles below Iron Gate to improve habitat.
5 That is such a ridiculously small concession for them to
6 make as a corporation; to put a few miles of gravel is a
7 slap in the face. I urge you to reject that and put dam
8 removal firmly on the table.

9 The only other interim measure I can think of is
10 to divert their power and refrigerate the water to a
11 temperature that's adequate for salmon health.

12 Thank you.

13 MS. COLEGROVE: Hello. My name is Dania
14 Colegrove from -- I'm a tribal member from the Hoopa
15 Valley Tribe, but I'm actually Yurok too.

16 This is what I got yesterday from the Iron Gate
17 dam, went to visit. This is the big sign. I just wanted
18 to make the Water Board aware of what's really going on.
19 I wonder if any of you guys ever visited there. How long
20 are you guys going to let this go on? That's my -- that's
21 what I want to know. We can't swim in it; we can't eat
22 it; can't drink it.

23 You guys got to do something. You guys have the
24 ability to make the change, the change for good for
25 everybody here, for the west coast. You guys got to think

1 about that, not only the energy that somebody else is
2 paying for. You got to think about the livelihood of the
3 whole west coast, not only the Indian but the white man
4 too. That's about all I have to say.

5 MS. FREEDLUND: Thank you. My name is Ali
6 Freedlund, F-r-e-e-d-l-u-n-d.

7 What did the salmon say when it hit a cement
8 wall? Dam.

9 I'm a resident of both the Mattole watershed and
10 the City of Arcata. I've work for the Mattole Restoration
11 Council for over 12 years working for salmonid recovery
12 and forest land protection. My comments here today are my
13 own.

14 I'm here to urge you to deny the 401 permit or
15 licensing for the PacifiCorp dams along the Klamath River.
16 There is ample scientific research that shows the dams are
17 helping to exterminate populations of salmon in this
18 critically important watershed. Time after time state and
19 federal agencies have not acted quickly enough or
20 decisively enough for the protections needed for our
21 imperiled salmon on the north coast. We have lost our
22 commercial fishery, and many watersheds have completely
23 lost their salmon runs. Please, move forward to protect
24 the runs on the Klamath by denying these permits.

25 In addition, I urge you to use your authority

1 under the Clean Water Act to demand that the Iron Gate,
2 Copco 1 and 2 dams be removed as quickly as is safe. This
3 is your opportunity to give the fish a chance, so please
4 take it. Removing the dams will help the salmon, the
5 tribes, the commercial salmon fishery, and, therefore, our
6 economy. There is never a more important time to make the
7 changes necessary to support sustainable livelihoods by
8 protecting our salmon so that generations into the future
9 we can honor them and eat them and in that process become
10 again a vibrant part of the cycle of where we live.

11 Thank you all, everybody who's already talked.
12 And thank you for my opportunity to give you my comments.

13 FACILITATOR KAPAHI: Okay. Greg King followed by
14 Ken Miller, Vivian Helliwell, Thomas Dunklin.

15 MR. KING: Thank you. One of the videographers
16 just asked me to stall so he could change the tapes, so I
17 thought I'd sing a little bit.

18 FACILITATOR KAPAHI: Let me take that.

19 MR. KING: You don't want me to sing?

20 FACILITATOR KAPAHI: No, no, you can sing if
21 you'd like. I just wanted to point out I was looking at
22 the sheets and some of you have asked to be put on our
23 mailing list, but it's hard to read your names or your
24 email addresses. If you could, please double check to
25 make sure they're legible so we can get information to you

1 or put you on our mailing lists. Thank you.

2 MR. KING: Thank you very much. A lot of people
3 have said pretty much what I have in my legal comments
4 here. I will read some of them. I also have some photos,
5 which I wish that I'd had them blown up, but you can
6 probably see from the back of the room how green the water
7 is. That is not a joke in that jug there. And that was
8 in September of this year. And it's ugly, but it's really
9 ugly chemically too. 4,000 times higher, the Microcystis
10 levels in these reservoirs, than the World Health
11 Organization considers to be a moderate health risk.
12 4,000 times higher. Water like this cannot be allowed to
13 stand, if you will.

14 I want to thank the Water Resources Control Board
15 for taking kind of a firm role with PacifiCorp in
16 insisting that the 401 application be resubmitted.
17 PacifiCorp is playing some pretty severe games with the
18 life of one of the world's greatest rivers, and that
19 cannot be allowed to stand. We know that PacifiCorp has
20 attempted to extort a terrible amount of money out of a
21 settlement group recently, a little over a year ago, for
22 these dams. Huge amount of money. I'm bound by a
23 confidentiality agreement that I cannot tell you how much
24 it was, but they would hold this river hostage and the
25 life of the salmon hostage, and this cannot be allowed to

1 stand.

2 We have a moment in time here where we can save a
3 species, not just any species, but the salmon on the
4 Klamath River. Chum salmon and pink salmon are already
5 extinct on the Salmon River. Coho salmon runs are at two
6 percent of what they once were on the Salmon River.
7 They're very close to extinction.

8 A wealthy man like Warren Buffet, who now owns
9 PacifiCorp and these dams, could snap his fingers and get
10 these dams out. And that really is the only solution,
11 it's the only legal solution as my comments point out and
12 so many others point out, and it's the only moral
13 solution. How can we as a people allow this to happen?
14 It's the only choice we have is to remove these dams.

15 4,000 times higher than the World Health
16 Organization considers a moderate health risk. And they
17 say that they have no impact on water quality, that they
18 clean water quality; this is hubris. Eli Asarian and
19 Patrick Higgins of Kier Associates -- and I'm glad to see
20 Bill Kier here tonight -- today, excuse me, who knows what
21 time of day it is in this room -- in their May 30th, 2007,
22 memorandum report, "Comments on Klamath River Nutrient,
23 Dissolved Oxygen, and Temperature TMDL Implementation Plan
24 Workplan Outline for California," blah, blah, blah, says,
25 "The evidence showing links between Klamath hydro power

1 project reservoirs and incidence of fish disease
2 epidemics, toxic algae blooms and nutrient pollution is
3 very substantial." And they cite three recent studies
4 that show this.

5 The State of California has a legal obligation to
6 insist that these dams be removed, a legal obligation to
7 the people of California whom the State represents. The
8 State also needs to address J.C. Boyle dam and the impacts
9 to water quality that occur in California due to this
10 Oregon-based dam. That cannot be overlooked. It should
11 be a four-dam option. Frankly, you could go all the way
12 up to Keno, which is anoxic six to eight weeks out of the
13 year and has fish kills every year, and Keno affects water
14 quality in California. That should be on the table as
15 well.

16 So I thank you very much for holding these
17 hearings. I hope to see you at at least a couple of them,
18 and I hope to see you all in the audience there too, if
19 you can. And many thanks. And we'll keep up the fight
20 for the Klamath River.

21 I forgot to identify myself. I'm the Executive
22 Director of the Northcoast Environmental Center. I'm also
23 a property owner on the Klamath.

24 FACILITATOR KAPAHI: Ken Miller, you indicated if
25 time. Would you like to speak? We do have time.

1 Vivian Helliwell, Thomas Dunklin, Margaret Diane
2 I believe it is, and Angela Panaccione.

3 MR. MILLER: Thank you. I want to -- my name is
4 Ken Miller, K-e-n M-i-l-l-e-r.

5 One thing I want to point out in the handout from
6 your Board is that you've said here that based on a belief
7 that the no project alternative basically is the same as
8 NEPA and wouldn't have any short-term impacts. And I want
9 to encourage people not to take that seriously. This
10 belief by the State Water Board should be held in a very
11 cynical fashion, because if this EIR comes out as it
12 should, we will gain a lot of leverage. And part of that
13 leverage ought to be that the State Water Board has a lot
14 of other tools here as well.

15 In terms of this permit, it's hard to imagine any
16 beneficial use that is not adversely influenced by these
17 dams. I'm sure that people will try to parse it out and
18 say, well, this is influenced by this, and this is -- you
19 know, there's urban development, there's this and this;
20 but the dams, although they're not 100 percent of the
21 cause, they're 100 percent influential in every
22 degradation. I also understand that the beneficial uses
23 protect all resident fish, all the native populations, not
24 just the ones that are threatened. And that needs to be
25 seriously considered.

1 The dams are not clean by any standard. We've
2 already heard many -- one of them is the greenhouse gas
3 that they tout, it's free of greenhouse gas production.
4 That's just not true. Having lived through the headwaters
5 deal and the aftermath of that, we came to realize that
6 sometimes there's only one sort of immediate fix. The
7 State Water Board and the regional board spent a lot of
8 money coming to this determination. No matter how many
9 mistakes you've made in the past, sometimes you come down
10 and there's only one immediate fix. And that immediate
11 fix, of course, is removing the dams.

12 Thank you very much for the opportunity.

13 MS. HELLIWELL: Hi. I'm Vivian Helliwell,
14 Watershed Conservation Director of the Pacific Coast
15 Federation of Fishermen's Associations and Institute for
16 Fisheries Resources. My name is spelled V-i-v-i-a-n
17 H-e-l-l-i-w-e-l-l.

18 And it's our understanding that the State cannot
19 issue a Section 401 certificate because the Klamath
20 Hydroelectric Project has demonstrated it cannot operate
21 in a manner that protects the most sensitive beneficial
22 use, which, of course, is the Klamath River salmon.

23 That said, the State Water Resource Control Board
24 EIR should capture the excellent information contained in
25 the North Coast Regional Water Control Board's emerging

1 mainstem Klamath River TMDL. And inasmuch as PacifiCorp
2 has steadfastly refused to address the without project
3 alternative, and FERC did not do so in its EIS. This 401
4 EIR must address a without project alternative of dam
5 removal.

6 And we also want to ask that the baseline for
7 analysis should be pre-dam conditions, not current
8 conditions. So it seems the operation cannot meet
9 conditions of water quality or conform to water quality
10 standards for the State. We support the comments of Greg
11 King and the Northcoast Environment Center as well.

12 I want to read a statement from my husband, David
13 Helliwell, who is working at the King Salmon Power Plant.

14 "Dear Water Board, I have been and continue
15 to be a commercial salmon fisherman for 40 years.
16 I'm glad you're meeting in Eureka about Klamath
17 water quality and dam removal issues that have
18 profoundly affected this area for 30 years.

19 Unfortunately, an afternoon meeting time has been
20 chosen precluding attendance by many interested
21 parties who work during the day.

22 "In addition to the abundance of water
23 quality and fish habitat reasons for dam removal,
24 I would like to offer the following for your
25 consideration: The fish ladders required for

1 continued operation of the dams are estimated to
2 cost \$240 million. The current power production
3 of the dams on a good day is 160 megawatts. A
4 brand new 166 megawatt dual fuel Wartsila Power
5 Plant installed, ready to generate, costs \$250
6 million. This is the cost and production
7 capability of the plant in the process of being
8 installed here in Eureka to replace the
9 50-year-old worn-out power plant at King Salmon
10 that uses sea water to cool it.

11 "The obvious conclusion is that for the cost
12 of one component, \$240 million fish ladders
13 required for continued operation of these
14 inefficient, fish-killing, water-polluting dams,
15 a water and watershed neutral alternative exists
16 that is reliable and more productive.

17 "Thank you, David Helliwell, Fishing Vessel
18 Corregidor."

19 And so we urge you to, the Water Board, to please
20 consider dam removal as the only alternative that will
21 improve water quality and restore these fish runs that our
22 coastal fisheries and communities rely on.

23 Thank you.

24 FACILITATOR KAPAHI: Okay. Thomas Dunklin,
25 Margaret Draper I believe it is, I can't read it, and

1 Angela.

2 MR. DUNKLIN: All right. My name is Thomas
3 Dunklin. I'm a 22-year resident of Humboldt County. I
4 have over 19 years of experience in watershed restoration
5 starting in the Mattole Rivers going to the Klamath River,
6 going to the Smith River. What my work has brought me to
7 do is go diving in the rivers to film under water to show
8 the conditions of salmon, to show the conditions of water
9 clarity. As an underwater videographer, water clarity is
10 everything.

11 In the Klamath I cannot film; and the times that
12 I have filmed, I have come away with severe ear
13 infections. So I want to get up here and not only remind
14 people that this health advisory is real, but just to
15 testify that I have been personally injured by the
16 Klamath.

17 These signs go all the way from Copco all the way
18 down to the mouth of the river. The fact that they are at
19 the mouth of the river should be a shocking wake-up call
20 for everybody, but I want to remind people that the water
21 coming out of the Copco dam, the water coming out of the
22 Iron Gate dam that is neon green, that green toxic algae,
23 it flows out of the top of the dam, it's a top spill
24 release. That just channels all of that water down into
25 the lower mainstem. At some times in July and in August,

1 the whole lower mainstem is neon green. Okay. So that is
2 a water quality issue.

3 We have a 12,000 square mile basin that's blocked
4 by dams 6,000 square miles up. More than half of the
5 Klamath River is blocked by dams. So there's a whole slew
6 of issues surrounding these dams that have to do with fish
7 passage, that have to do with economics, that have to do
8 with energy; but you're faced with a water quality issue.
9 And from my experience with my own ear infection, the
10 Klamath River is not fishable and swimmable, which is a
11 requirement under the Clean Water Act.

12 If we do not follow our simple laws and our
13 simple rules, we will be plagued by toxic algae, by
14 disease, by health conditions that are bad for fish, that
15 are bad for native people, especially because native
16 people are reliant on these fish more than we are. You
17 know, we have a lot of different options. But if you go
18 to the Yurok reservation, the Hoopa reservation or into
19 Karuk lands, you don't see a lot of options for people.

20 So the water quality situation is your
21 responsibility now. When I hear about what your
22 objectives are, the objectives to continue to generate --
23 the objectives of the EIR to continue to generate power
24 from a renewable resource to serve applicant's customers,
25 that should not be the objective of this EIR. The

1 objective of this EIR is to determine if the dams are
2 responsible for the water quality impairments and if
3 something can be done about them. There's no question.

4 Part of my video work over the last three years
5 has been to interview experts on water quality, interview
6 experts on geomorphology, on dams, on energy policy. I
7 interviewed Dr. Bob Gearhart from HSU. He's a
8 world-renowned water quality expert. He refers to these
9 dams, and this is a great buzz word, as nutrient reactors.
10 Okay? They are like a nuclear reactor, but they're
11 nutrient reactors. They take the nutrient-rich water
12 coming from multiple sources upstream and they run it
13 through one cycle of algaefication, through a second cycle
14 of algaefication, through a third cycle and move it all
15 downstream. So without the reservoirs, we don't have
16 those bioreactors. Okay.

17 It's simple. It's very, very, very simple.
18 We're in a complex context with PacifiCorp, giant power
19 structure, able to drive the boat. The boat FERC is
20 riding on is driven by PacifiCorp and by corporate
21 interests. We know that. Please don't be part of that
22 because we need your help. We need the truth to come out,
23 we need the water quality issues to be dealt with in a
24 real way. Okay.

25 So please reevaluate this objective. Maybe I

1 don't understand the CEQA process well enough to know that
2 that's how these objectives need to be written, but the
3 objective should be determine the impacts of the Klamath
4 dams on water quality all the way from Copco to the mouth,
5 the lips.

6 I wish to thank you, thank you for this
7 opportunity, and, please, step up.

8 FACILITATOR KAPAHI: Margaret -- is it Draper?

9 UNIDENTIFIED SPEAKER: I think she left.

10 FACILITATOR KAPAHI: Okay. Angela Panoccione,
11 Craig Tucker, Frances Ferguson and Shaye Harty. That's
12 the order. So next would be Craig.

13 MR. TUCKER: Hi. I won't threaten you with my
14 singing like Greg did either. My name is Craig Tucker.
15 I'm the Klamath coordinator for the Karuk tribe, and I do
16 appreciate this opportunity.

17 I do think it's worth pointing out that it did
18 take a lot of initiative from the staff and the folks of
19 the Water Board to get here because PacifiCorp has really
20 been fighting this process getting started. They applied
21 for a clean water permit and withdrawn it at least twice,
22 and the last time was sort of at the 11th hour on a Friday
23 afternoon in an attempt to delay this process.

24 And I think the Water Board really went to the
25 limits of its authority to force this process forward and

1 give us this opportunity, and I'm very appreciative of the
2 Water Board for doing that. And I do want to suggest or
3 encourage folks to really give these guys what they need,
4 because I think if the Water Board is really going to be
5 able to enforce the Clean Water Act, they need our help in
6 identifying the problems with the application and the
7 shortcomings of the FERC EIS.

8 And so I just want to go through some bullet
9 points. And we'll have very detailed comments filed,
10 written, but I want to go through some of the bullet
11 points. I know there's a lot of expertise in this room on
12 some of these issues, and I hope folks will take time to
13 write comments to address some of these issues.

14 But the biggest I think shortcoming of the FERC
15 EIS was how it described the environmental justice impacts
16 of the project. I know the Karuk tribe and the other
17 tribes in the basin, their most important ceremonies,
18 world renewal ceremonies are going on usually in
19 September, and that's when the algae bloom is at its
20 zenith. You know, and you have medicine men, to fulfill
21 their religious obligations, bathing in a river next to
22 these signs of don't touch the water because it's toxic.
23 So it's really denied access to religion. And a better
24 understanding of that and a better description of that in
25 the EJ section of the EIR would be great.

1 Also, I know there's basket weavers in the room
2 here, and there will be basket weavers at the meetings
3 tonight and Orleans tomorrow, but I've seen basket makers
4 pull willows out of the sand bar and use their teeth to
5 strip the bark. So there should be an evaluation. Are
6 those folks at a different risk, a different health risk
7 for exposure to microcystin toxin because to practice
8 their craft they actually have to put these young shoots
9 of willow in their mouths next to a river that's green and
10 toxic?

11 I think the Klamath basin is a very unique place
12 in terms of the amount of subsistence fishing and
13 gathering that's going on. I think there needs to be a
14 full evaluation on the people who live on the river.
15 Putting food on the table, if you're a Karuk tribal member
16 living in Orleans, can sometimes mean did you catch fish
17 today. And that really needs to be evaluated. The
18 socioeconomic impacts of access to subsistence fish is
19 really important.

20 And then the last piece is power. They built
21 these dams to generate electricity. Well, who got the
22 native impacts? The downstream tribes and the upstream
23 tribes. Who doesn't have electricity, the Yurok
24 reservation. I mean Pekwan doesn't have electricity.
25 There are communities in the upper Salmon River that don't

1 have electricity. So, you know, you put the impact and
2 the burden on a group of people and provide them none of
3 the benefits. And I don't know if that's -- what else can
4 you say about it; that's an environmental injustice,
5 that's pretty much the textbook definition.

6 There needs to be a thorough evaluation of the
7 relationships between fish diseases and the dams. If you
8 look where the hot spots for these disease-causing
9 parasites are, it's between Iron Gate dam and the Shasta
10 River. So to me that suggests the hypothesis that the
11 dams have a fundamental relationship with fish disease.

12 As you establish the baseline conditions for the
13 analysis, we need to make sure that we acknowledge and
14 clearly articulate that in our current conditions they do
15 not comply with clean water standards in California for
16 temperature dissolved oxygen nutrients or the new listing
17 for toxic algae.

18 I would encourage you guys to consider having
19 scoping meetings and meetings from the EIR further. As
20 Bitts described, Dave Bitts described, there are fishing
21 communities from Point Sur into Oregon that are affected
22 by the Klamath River's fish runs and the Klamath River's
23 water quality. And so folks in San Francisco and
24 Mendocino County and these other fishing communities need
25 to have a good opportunity to make comments as well.

1 And I want to speak up for the species in the
2 river that don't always get enough attention: muscles,
3 lamprey and sturgeon. Fresh water muscles are a
4 traditional food source for the tribes in the basin, and
5 we're now starting to show that this microcystin toxin is
6 concentrating in muscles. So what does that mean? And
7 how does that relate to the dams?

8 Lamprey doesn't get a lot of face time. I mean,
9 lamprey doesn't really qualify as charismatic mega-fawna;
10 they're kind of like blood suckers. But lamprey are very
11 important for native people, and I'd say, and I think some
12 people would even say just as important as salmon. I
13 mean, Karuk people harvest lamprey and smoke them just
14 like they do salmon. So what are the impacts of the
15 project on lamprey? And finally, what are the impacts on
16 sturgeon whose numbers are also in decline?

17 And in the final comment I'd make, maybe it's a
18 question, but can we do this process in such a manner that
19 when the decision to remove all four dams is made we don't
20 have to go through another CEQA 401 process? Can we have
21 a full panel of alternatives analyzed in such a manner
22 that once the action is decided, the -- you know, the
23 hay's in the barn or the salmon's in the smoke house would
24 probably be a better way of putting that. So I don't know
25 the answer to that. But it's something I'd like to talk

1 to you guys more about because, you know, if we're going
2 to spend a couple of years probably going through this
3 process, if we make the decision to remove those dams, all
4 four dams, will there have to be another 401 permitting
5 process before they go forward, because it would be nice
6 to find at least one shortcut in all this.

7 And besides that, I really appreciate the
8 opportunity to address you guys.

9 FACILITATOR KAPAHI: Frances Ferguson and
10 Shaye Harty.

11 MS. FERGUSON: Hello. My name is Frances
12 Ferguson. Am I holding this correctly? The name is
13 spelled F-e-r-g-u-s-o-n. The California north coast has
14 been my home for about 40 years, and I appreciate this
15 opportunity to speak.

16 I urge you to deny a 401 clean water
17 certification to PacifiCorp. Levels of toxic blue-green
18 algae in the warm, shallow reservoirs behind the Klamath
19 dams have been documented at 4,000 times higher than
20 levels considered by the World Health Organization to be
21 moderate -- a moderate risk to human health. Scientific
22 studies have linked the toxic algae blooms with fish
23 epidemics and the decline of salmon.

24 By creating toxic conditions, the dams have
25 imperiled the health of children who play in Klamath

1 waters, the survival of anadromous fish, the health of
2 north coast fisheries, and the continuation of
3 salmon-based Indian cultures in the Klamath watershed. I
4 submit that all of these are far more important than any
5 PacifiCorp profits.

6 My message is simple; it is time to tear down the
7 dams.

8 Thank you.

9 MS. HARTY: Good afternoon, everyone. My name is
10 Shaye Harty, it's S-h-a-y-e H-a-r-t-y, Humboldt County
11 resident and also part of the County Council of the
12 Humboldt Green Party. I'm not necessarily speaking on
13 behalf of them officially, but as part of the green party,
14 this is something that we and myself need to speak out
15 about.

16 Please, Water Board, do not relicense
17 PacifiCorp's grip on the Klamath River. These dams are
18 exactly that, they are damaging. It should be a
19 no-brainer. We shouldn't ask for current conditions to be
20 met once they're taken down, these should be pre-dam
21 conditions. It's their fault that we put these dams up.

22 And we talk about hydroelectric; it's renewable,
23 right? Is it really renewable when our water looks like
24 that jug? I guess it's green. Bad joke, I know, but
25 that's what we're dealing with. What is green? I'm

1 confused. I thought green was supposed to be good. I'm
2 part of the green party, but that is not good.

3 There's so many things that are happening to our
4 water, and it just -- the point I really wanted to make to
5 the Water Board, you guys, about water quality, well,
6 water is a precious resource, and they turned that into
7 sludge. So many people are suffering because of it. And
8 I highly urge you not to go with the capitalist corporate
9 grip that they're holding on us. Warren Buffet said he's
10 going to keep investing in the stock market. All right.
11 Well, let him make more profits so we can take down the
12 dams.

13 Really, that was the points that I really wanted
14 to make, that water is a precious resource, and when you
15 dam it, there's so many damaging effects.

16 We heard from all of you wonderful people out
17 here, thank you for coming out. This is just an amazing
18 uplifting of what we need to do as our local government,
19 as our local community to speak out and do what we need to
20 do as citizens.

21 So, Water Board, please hear our words and take
22 into account what we have to say.

23 Thank you.

24 FACILITATOR KAPAHI: Larry Hourany followed by
25 Geronimo Garcia and Will Newman.

1 And if anyone else wants to add their name to the
2 list, if they could please see us up at the front. Thank
3 you.

4 MR. HOURANY: My name's Larry Hourany,
5 H-o-u-r-a-n-y, and I'm -- I come a little late to this
6 issue, so I apologize for my ignorance, but there is
7 something that bothers me as a scientist, that we have an
8 expert who changed the model that he used, which he
9 considered too conservative, and now has turned from being
10 against some of the concerns that would bring down the dam
11 to saying that, well, the flows are adequate.

12 Well, two things about the flows really bother
13 me. One is they're not consistent, they're averaged; so
14 that if at a given time the flow happens to be low for a
15 given hatchling group, that hatchling group is gone. We
16 are now getting closer and closer to five percent.
17 Anything under five percent, and somebody said today that
18 we're already at two percent at times, that is an
19 unsustainable level for species. And that means that that
20 species is on the verge of disappearing.

21 And this is all compounded by the fact that at
22 this point, according to a newspaper article just a month
23 or two ago, we've reached a 30-year low in flow. So you
24 combine all these issues, we are already at a point where
25 it may be too late. Three or four years of this level of

1 flow would mean the demise of at least one or two species
2 that are already at that level. And I think those dams
3 need to come down.

4 MR. GARCIA: Thank you. My name is Geronimo
5 Garcia, and I come from Arcata. I first came to Arcata in
6 1982 as a Humboldt State student of environmental studies.
7 After the orientation I road my bike up the coast, the
8 inland, up to the Umpqua River and came back down, but I
9 did see the Klamath River. I passed through Hoopa and
10 Weitchpec, and I haven't back there all these years since
11 1982.

12 So and then whenever I'm downtown -- I'm a
13 houseless person, but Arcata is my home, I'm just an
14 outdoors more person -- and whenever I see people flicking
15 cigarette butts and they land on the sidewalk and down
16 into the gutters or if I look under a car, you know, where
17 the car's parked and there's a big oil spot in the litter,
18 and I think, well, it's affecting the fish.

19 The other day I was at the -- over here in
20 Eureka, and I saw all these birds. They must have been
21 Cormorants. And they're all flying back and forth along
22 the bay eating fish, and they looked so happy. And I
23 became happy. And a lot of times I try to begin my
24 stories with what happened here, over here, you know, when
25 they had the massacre; and a lot of people say, oh, well,

1 forget that, don't talk about that. But back then the
2 people had a lot of abundance, and ever since then it's
3 been degrading. And since I've come back here a lot of
4 animal species have been a reduction in numbers.

5 So if I can just -- if Warren Buffet's going to
6 hear any of this, or if yourself is going to communicate
7 to Warren Buffet, as a houseless person who considers my
8 local environment my home, please tell him that it's not
9 worth it. There's nothing worth the destruction of all
10 these animal species that are dependent on the healthy
11 rivers. So please remove the dams.

12 And there's going to be a lot of jobs to remove
13 the dams. A lot of truck drivers are going to be hauling
14 a lot of cement back down the hill.

15 Thank you.

16 MR. NEWMAN: Hi. My name's Will. And I don't
17 know what I get to say to get you to take the dams down.
18 I think that I -- I feel like there must be some kind of a
19 problem that the people on the Board have that they
20 already haven't made the decision to take them down
21 because it would seem like it would be a no-brainer to do
22 that; but I'm sure that when you go to places where people
23 get the water, they're all wanting the water, so I guess
24 you have to deal with that. But I would hope that you'd
25 have the deep ecology perspective that everybody on the

1 earth should have about the relative value of something
2 like the fish.

3 And I think about how when I was young I was
4 lucky enough to see on twilight on all the waters that
5 there would be a lot of little circles at the surface of
6 the water where the fish would be feeding on bugs, and
7 they'd be jumping out of the water. And it was fairly
8 thick with that. And, you know, what are my daughters now
9 going to see? You know, it's like I've spent a lot of
10 time on the south fork of the Eel where they told us five
11 years ago you can't even bring your kids or your dogs down
12 to the water's edge. And I own land in the south fork of
13 the Trinity; it's a little bit nicer there. It would be
14 nice to see if the dam would come down.

15 I feel like the comments thing, you know, it's
16 like one comment that I always really liked, the written
17 comment, was when Henry Hudson wrote in his journal in
18 1609 after he went into -- sail his little boat, the Half
19 Moon, into New York Harbor, he wrote in his journal that
20 all they had to do was throw a bucket over the side and
21 pull it back up and it was filled with fish. And, of
22 course, that's the same everywhere else.

23 The only thing, I really think that there --
24 you've got to think of it like your mother just got hit by
25 a school bus and you're standing there and it's like she

1 might live actually, she's still alive, and you'd be
2 wanting the ambulance to show up like right away, you
3 know. And you'd be thinking, at least in the back of our
4 mind, she'd be going to the emergency room, you know. And
5 so it's like that, you know, for the fish.

6 You have to do everything in your power. You
7 know, I think that, you know, if you people have some
8 power, if you're not using every bit of your power to do
9 every conceivable thing to help the fish and considering
10 like water rights for farming to be a very, very distant
11 second or not even in the picture, you guys are criminals,
12 you know, you're doing like criminal negligence, you know,
13 because there's not going to be any fish in the future if
14 you guys don't take some rapid emergency action right now.

15 Thank you.

16 FACILITATOR KAPAHI: Is there anyone else in the
17 audience that wishes to speak today? Please identify
18 yourself.

19 MS. KING: Hi. My name is Joyce King, and I'm
20 from McKinleyville. I was hoping I wouldn't have to speak
21 today. With all these people in the audience, I thought
22 there would be more than enough people to fill all this
23 time.

24 Just out of curiosity, how many are hoping that
25 the dams will go? Oh, good. Okay.

1 (Conversation among the audience members.)

2 MS. KING: I'm not going to go through all the
3 things here that I had to say because a lot of it's --
4 most of it's been said already.

5 Of the 22 existing beneficial uses identified for
6 the Klamath River that this Board is supposed to protect,
7 I think agriculture, hydropower, and possibly industrial
8 service supply are the only ones that would benefit from
9 the dams staying. And the rest I believe are all impacted
10 adversely.

11 And just to name a few, and I know a lot of them
12 have already been named, municipal water supply; contact
13 and non-contact water recreation; commercial and sport
14 fishing; warm and cold water fish habitat; wildlife
15 habitat; rare, threatened or endangered species; marine
16 habitat; migration of aquatic organisms; spawning,
17 reproduction and development; shellfish harvesting;
18 estuarian habitat; agriculture; and Native American
19 cultures. There are others than those, but I thought I
20 would pick out the ones that seemed the most important.

21 And then I haven't had a chance to look further
22 at the FERC EIS, but during the draft process, they -- the
23 DEIS recognized that the flows from Iron Gate Reservoir
24 and others were warmer in the fall and cooler in the
25 spring than normal conditions and both alterations had

1 harmful effects on salmon. The DEIS acknowledged that
2 high nutrient levels, temperatures, et cetera, algae, were
3 having adverse effects. And the DEIS admitted that the
4 reservoir removal would decrease the incidence of disease
5 in the lower Klamath salmon by improving water quality and
6 reducing the algae, reducing epidemics suspected of
7 killing more than half of each year's Klamath River
8 juvenile salmon crop.

9 Another thing I'm not sure has been brought up --
10 I'm sorry, I came in a little late -- is that Iron Gate
11 Fish Hatchery has also an adverse effect on salmon
12 exceeding levels -- and this is from a Riverkeeper lawsuit
13 against PacifiCorp -- exceeding levels for total suspended
14 solids, pH, polluting from drugs and disinfectants, and
15 that there was a lack of monitoring for other types of
16 pollution from that hatchery.

17 Anyway, there are others things, but I hope that
18 this is not going to be another politically-motivated
19 decision to put immediate vested economic interests ahead
20 of the long-term good of the resources our future
21 generations are depending on.

22 Thank you.

23 FACILITATOR KAPAHI: Okay. We did pretty well in
24 terms of time. Is there anybody else that wishes to
25 speak? Okay.

1 Come on up. And then following your comment, we
2 do have a few more minutes. And I offer that if any of
3 you have questions, you may come up and ask them.

4 If you could identify yourself, please, sir.
5 Thank you.

6 MR. SHERMAN: Marlon Sherman, M-a-r-l-o-n
7 S-h-e-r-m-a-n. I am a Native American studies professor
8 at Humboldt State. I hadn't intended to talk today, I
9 wanted to kind of listen to some comments and see what
10 happened, but since there's time, I was looking at some of
11 these criteria that the Board is going to be looking at.

12 Among them are things like geology and soils,
13 water resources, aquatic resources, you know; and it's
14 very obvious that the water's -- a green Klamath is not a
15 healthy Klamath, it's very obvious. And there's a lot of
16 science that says that that's a sick river.

17 There's also -- there also have been a lot of
18 testimony about the economic impacts on the fisheries and
19 the down-river economies and in comparing them with the
20 upper-river economies.

21 I think what the Board -- this is a suggestion
22 obviously -- there's some mention as to the socioeconomic
23 impacts and the cultural impacts of the project. And
24 culture is such an innocuous word. It doesn't take into
25 account the strong -- not just the beliefs, the connection

1 that indigenous peoples on these rivers have with the
2 salmon and with the water. If the salmon die, so do the
3 people. It's that strong a connection.

4 This will be -- if the salmon die, it will be
5 exactly like the United Nations characterized a genocide.
6 The Yurok, the Karuk and the Hoopa peoples will cease to
7 exist as a culture, that innocuous little word, they will
8 cease to exist. This will be a cultural genocide. And in
9 time it might even become a physical genocide as well,
10 because without the salmon, the people get sick. It's
11 been proven in the past.

12 Some studies have been done by the Karuk tribe
13 and is currently being done by the Yurok tribes on the
14 river. Salmon and health go hand in hand with the native
15 peoples. Our DNA, our genetic makeup is not friendly
16 toward things like wheat and pork and beef.

17 So I'm urging the Board to look at something a
18 little bit deeper because there are only a couple of laws,
19 and they're very, very weak laws, they don't have any
20 teeth, federal laws that cover Native Americans'
21 spirituality that protect native spiritual practices. And
22 so I'm hoping that the Board can -- can maybe look -- put
23 a little bit more emphasis on the spiritual or the
24 innocuous word, the cultural impacts of losing the salmon,
25 of the toxicity of the river, so that they don't become

1 participants to another genocide here in the
2 United States.

3 Thank you very much.

4 FACILITATOR KAPAHI: Thank you. With that, if
5 anyone has any questions of the Water Board folks or the
6 contractor, I'll ask that you come up to the microphone
7 one at a time. Thank you. And please identify yourself
8 for the purposes of the court reporter.

9 MR. MILLS: Good afternoon. My name is Jeremy
10 Mills. I'm curious about the relationship between the
11 Water Board and the neighboring entities, how the Water
12 Board is going to interact with the Department of Water
13 Quality on the Oregon side of the border and also how the
14 Water Board is going to act with tribes. I believe some
15 of the tribes in this watershed have delegated
16 responsibility under Clean Water Act. And how it's going
17 to interact with the tribes. So the certification also
18 deals with tribal issues. And I'm curious about how the
19 Water Board's not going to look at just the Clean Water
20 Act but also the Porter-Cologne Act and how the
21 interaction between those two laws will be looked at.

22 Thank you.

23 MS. AUE: Hi. I'm Marianna Aue. I'm staff
24 counsel at the State Water Resources Control Board. And
25 you just lobbed a bunch of the questions that I spend most

1 of my day thinking about.

2 So in terms of interaction with other agencies in
3 the state and the federal system, we consult with other
4 agencies throughout our process. We are, you know, going
5 to them as well in these scoping sessions as well as to
6 the general public. And we, you know, definitely read the
7 comments that they send, we read the comments that
8 throughout the participation in the larger FERC
9 relicensing process, we keep in touch with both public
10 comments from that and the comments from other agencies.

11 In terms of the federal agencies with mandatory
12 conditioning authority, we are assuming that those
13 mandatory conditions will be part of the project. And
14 that's something that's new in this CEQA document. The
15 FERC environmental document did not in their staff
16 recommendation see those as mandatory. We're taking that
17 into account starting from our project definition.

18 So in terms of meeting tribal water quality
19 standards, as a state agency with 401 water quality
20 certification authority, we are required to meet the water
21 quality standards for all downstream authorities that have
22 401 water quality certification authority as well, and
23 that includes the Hoopa tribe whose water quality
24 standards were recently approved, an updated version of
25 the standard was recently approved by the U.S. EPA and has

1 gone into effect.

2 So as was up here on some of the slides, I'm not
3 sure that we read over it today, but one of the purposes
4 of our CEQA document is to examine the different
5 alternatives in terms of their impact on waters in terms
6 of meeting tribal water quality standards as well.

7 And I think there were a few other questions in
8 there as well that I have forgotten.

9 Porter-Cologne Act. So these -- the water
10 quality standards for the State are what we need to be
11 able to certify the project as meeting in order to issue a
12 401 water quality certification. Those water quality
13 standards are set under the Clean Water Act and under the
14 Porter-Cologne Act. And so that is the body of standards
15 out there that we will be looking at and applying as we
16 evaluate PacifiCorp's application.

17 MS. HELLIWELL: Will the Water Quality Board be
18 addressing the water quality effects of Keno dam
19 separately or in relation to this permitting process?

20 And while I'm up here, I notice there's a big box
21 of tissues here. This is for all the tears for how sad it
22 is if we lose the fishing, the fish, the tribal health and
23 the health of the river and these salmon species because
24 it would be very sad for the future.

25 DR. TORMEY: Yeah, as part of the environmental

1 review that we're conducting, even though the jurisdiction
2 is over California, the review is required to consider
3 what's known as a cumulative impact analysis. So as part
4 of that, the operations of the dams in Oregon as well as
5 other projects within the analysis area have to be -- have
6 to be considered.

7 MR. McLAUGHLIN: I have a question on the interim
8 permitting process. It may be a question for the legal
9 department.

10 But we know that you issue interim permissions.
11 But under what circumstances would you be required to
12 refuse interim permissions, and if any. And I'll leave it
13 at that for this question.

14 MS. AUE: So we actually do not have any interim
15 authority over the dams. FERC, the Federal Environmental
16 Regulatory Commission, issues annual licenses.

17 (Conversation among the audience members.)

18 MS. AUE: I'm sorry. Freudian slip there.

19 So FERC issues annual licenses after the
20 expiration of a hydroelectric power's long-term license.
21 The 401 water quality certification process, which is the
22 process in which we're currently engaged, does not apply
23 to annually licensed, you know, the short-term licenses.
24 That was something that was litigated several years ago.
25 And so the State Board does not have interim authority, we

1 only have authority in relationship to the long-term
2 license.

3 The reason our -- you may have been confused
4 somewhat because our CEQA document breaks down interim
5 conditions and long-term modifications. This is because
6 the only alternatives that the State Board is considering
7 require large infrastructural changes. And for those to
8 happen, the dams will be in place and will be operating
9 without those modifications for a certain period of time.

10 In order to have more flexibility in our
11 alternatives, we took a slightly different tack than FERC
12 did in their environmental document, and we've separated
13 out what are the types of things that could happen in an
14 interim period, in the next five years, in the next ten
15 years to deal with some of the more immediate impacts as
16 some of these longer-term modifications are ongoing.

17 MS. FREEDLUND: So stay up here. Let me get this
18 straight. Doesn't the State Water Board have the
19 authority under the Clean Water Act to absolutely say that
20 the dams should come out?

21 FACILITATOR KAPAHI: I'm sorry, could you please
22 identify yourself again for the record.

23 MS. FREEDLUND: Sure. Ali Freedlund,
24 F-r-e-e-d-l-u-n-d.

25 FACILITATOR KAPAHI: Thanks.

1 MS. AUE: The State Water Board's authority over
2 FERC-licensed hydropower projects is extremely limited.
3 So -- sorry, I'm trying to figure out how to not launch
4 into a long, legal discussion that will put everyone here
5 to sleep.

6 But the Federal Power Act gives to FERC authority
7 over all of the operations of federally-licensed
8 hydropower projects except at the time of relicensing,
9 initial licensing, or a significant license alteration.
10 At that point Section 401 of the Clean Water Act says that
11 the State can certify that the project meets water quality
12 standards. And if the State does not certify that the
13 project can meet water quality standards, then the project
14 cannot get a long-term license.

15 So the State Water Board also has -- you're
16 shaking your head, I'm clearly not -- I'm talking like a
17 lawyer. Okay. This is why usually I don't stand up here
18 with the microphone.

19 So at 401 certification, if the State Board
20 denies water quality certification, then FERC may not
21 issue a long-term license for the project. The State
22 Water Board also has the authority to condition
23 certification on a great number of things and including,
24 it is our belief, dam removal, although I -- that is not
25 something that has been tested thus far in the courts.

1 FACILITATOR KAPAHI: I'm sorry, this will have to
2 be the last question, because then we'll do a wrap-up and
3 we need to put the room back together and get to our next
4 meeting. Thank you.

5 MR. BITTS: Thank you. Dave Bitts from PCFFA.

6 So I just -- I want to get the clearest possible
7 explanation. You were very clear on the long-term
8 relicensing; but do I correctly understand that if the
9 State Water Board were to deny the 401 certification, that
10 PacifiCorp could continue to get one-year license
11 extensions from FERC indefinitely?

12 Thank you.

13 MS. AUE: I actually artfully dodged that
14 question up here earlier.

15 So the project can continue to run under annual
16 licenses after -- if the State Board were to deny
17 certification, it could continue to run under annual
18 licenses after that. The length of time under which it
19 could continue to run under annual licenses is unclear.
20 There's never been a decision that clarifies this
21 particular aspect and it's not addressed in statute.

22 (Unidentified person speaking beyond the range of
23 the microphone.)

24 MS. AUE: I'm sorry, we can't hear this for the
25 record, so -- and we have a time limit.

1 But I can quickly say that during that time
2 period, during any time period in which FERC is issuing
3 annual licenses, the State does not have authority over
4 the hydroelectric projects.

5 FACILITATOR KAPAHI: Okay. I thank you all for
6 coming today. I thank Fish and Wildlife Service for the
7 room.

8 This is, once again, the first of four scoping
9 meetings. The second one will be this evening at six
10 o'clock. The location is in the NOP.

11 Written comments, if you wish to submit them, are
12 due November the 17th. Information as to where you can
13 submit those are in that document as well.

14 I thank you all for coming.

15 (Thereupon, the October 20, 2008,
16 California State Water Resources Control Board
17 Public Scoping Meeting
18 was adjourned at 3:30 p.m.)

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CERTIFICATE OF REPORTER

I, DEBORAH BAKER, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California State Water Resources Control Board Public Scoping Meeting; that thereafter the recording was transcribed.

I further certify that I am not counsel or attorney for any of the parties to said Public Scoping Meeting, or in any way interested in the outcome of said Public Scoping Meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of November, 2008.

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