

BEFORE THE STATE OF WASHINGTON
ENERGY FACILITY SITE EVALUATION COUNCIL

In the matter of)
Application No. 2009-01) Hearing Volume VII
WHISTLING RIDGE ENERGY, LLC.) Pages 928-1088
WHISTLING RIDGE ENERGY PROJECT)
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A hearing in the above matter was held on Friday, January 7, 2011, at 8:00 a.m., at the Skamania Lodge, 1131 Southwest Skamania Lodge Way, in Stevenson, Washington, before the Energy Facility Site Evaluation Council with C. Robert Wallis, Administrative Law Judge, presiding.

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WHISTLING RIDGE ENERGY, LLC, Tim McMahan, Attorney at Law, Stoel Rives, LLP, 900 Southwest Fifth Avenue, Suite 2600, Portland, Oregon 97204; Darrel Peeples, Attorney at Law, 325 Washington Street Northeast, No. 440, Olympia, Washington 98506

COUNSEL FOR THE ENVIRONMENT, H. Bruce Marvin, Assistant Attorney General, Office of the Attorney General, P.O. Box 40100, Olympia, Washington 98504

REPORTED BY:

Tami Lynn Vondran, CCR
CCR No. 2157

1 APPEARANCES (Cont'd):

2 DEPARTMENT OF COMMERCE, Dorothy H. Jaffe, Assistant
3 Attorney General, Office of the Attorney General, P.O. Box
4 40109, Olympia, Washington 98504

5 FRIENDS OF THE COLUMBIA GORGE, Gary K. Kahn, Attorney
6 at Law, Reeves, Kahn & Hennessy, P.O. Box 86100, Portland,
7 Oregon 97286; Nathan Baker, Staff Attorney, 522 Southwest
8 Fifth Avenue, Suite 720, Portland, Oregon 97204

9 SAVE OUR SCENIC AREA (SOSA), J. Richard Aramburu,
10 Attorney at Law, Aramburu & Eustis, LLP, 720 Third Avenue,
11 Suite 2112, Seattle, Washington 98104

12 SEATTLE AUDUBON SOCIETY, Shawn Cantrell, Director of
13 Conservation, 8050 35th Avenue Northeast, Seattle,
14 Washington 98115

15 PORT OF SKAMANIA COUNTY and SKAMANIA COUNTY ECONOMIC
16 DEVELOPMENT COUNCIL, Bradley W. Andersen, Attorney at Law,
17 Schwabe, Williamson & Wyatt, PC, 700 Washington Street,
18 Suite 701, Vancouver, Washington 98660

19 SKAMANIA COUNTY and KLICKITAT COUNTY PUBLIC ECONOMIC
20 DEVELOPMENT AUTHORITY, Susan Drummond, Attorney at Law, Law
21 Offices of Susan Elizabeth Drummond, PLLC, 1200 Fifth
22 Avenue, Suite 1650, Seattle, Washington 98101

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24 (Whereupon, the proceedings went on the
25 record at 8:03 a.m.)

1 JUDGE WALLIS: Let's be on the record, please.
2 This is a session of the Energy Facility Site Evaluation
3 Council, and it is being held in Stevenson, Washington.
4 This is our Friday session and the end of the first week of
5 hearings.

6 At this time Mr. Spadaro has been recalled to the
7 stand. Mr. Spadaro, I will remind you that you have been
8 previously sworn under oath. And with that the proceedings
9 may begin.

10 Mr. McMahan, is there anything additional in your
11 direct for this witness?

12 (Mr. Spadaro takes the stand.)

13 MR. MCMAHAN: No. I don't recall if we introduced
14 and put into the record his rebuttal testimony, 1.01. We
15 can forgo the formalities and have people stipulate to that
16 if you want.

17 JUDGE WALLIS: My recollection is that was
18 accomplished. And with a surfeit of care let me ask, again,
19 if there is any objection to the rebuttal testimony? Let
20 the record show there's no response and that is received.

21 (Exhibit No. 1.01R offered and
22 admitted.)

23 MR. MCMAHAN: Two preliminary matters. Yesterday,
24 I think it was yesterday, it's a big blur to me, I think the
25 siting Council asked for some clarity on the location of the

1 swamp and other features on the site as it related to other
2 testimony. It's up to you how you would like to do that.
3 If you want him to start out doing that to put some of this
4 all into context. We are very has been happy to handle it
5 that way.

6 Second thing, I just want to just doublecheck with
7 everyone in the room that he was available for full
8 cross-examination on his general testimony on Monday. This
9 testimony is, within its four corners, related to the
10 rebuttal exhibit which relates principally to the efforts to
11 minimize and mitigate the impacts of the project. Just want
12 to make sure we all understand that.

13 JUDGE WALLIS: Mr. Cantrell.

14 MR. CANTRELL: I guess don't understand that. I
15 don't expect going radically beyond, but I thought that any
16 questions about avian-related issues were appropriate today.

17 MR. MCMAHAN: Your Honor, I think that's fair game
18 to the extent it has some vary on mitigation, obviously
19 there's some linkage to that, Shawn. So I'm not go jump
20 down your throat unless you go crazy on him. He's not a
21 biologist. So that's my basic understanding here.

22 MR. CANTRELL: I'll stay within his expertise, but
23 it may relate to habitat conditions. It's not specifically
24 about mitigation and other related things.

25 MR. MCMAHAN: I'm more concerned about things like

1 land use and energy and whatever else that we've been
2 through.

3 MR. CANTRELL: I'll touch a little bit on visuals,
4 okay.

5 MR. MCMAHAN: All right. Thank you, Your Honor.

6 JUDGE WALLIS: I hear no other concerns addressed
7 to that proposition, and we will take it as fact. Very
8 well. Mr. McMahan.

9 MR. MCMAHAN: So I have no questions of this
10 witness. Obviously, he's offered for cross-examination.
11 Tell us what you want to do about the site issues and we'll
12 proceed.

13 JUDGE WALLIS: You said you had additional
14 information about the site?

15 MR. MCMAHAN: Yes. So the question is would you
16 like us to do that now?

17 JUDGE WALLIS: Yes, please.

18 MR. MCMAHAN: Great. Just a few direct questions
19 to set that up and then, frankly, I'll let Mr. Spadaro talk.
20 He will do better than I will leading through that.

21 (Jason Spadaro previously sworn in on
22 1-3-11, the first day of hearings.)

23 DIRECT EXAMINATION

24 BY MR. MCMAHAN:

25 Q. Mr. Spadaro, you have come here with the

1 information that the siting Council had asked of concerning
2 the location of the Cedar Swamp area, I think, is the name
3 of it, and it's proximity to potential turbine corridors; is
4 that true?

5 A. Yes.

6 Q. Are you able to assist the Council with, I think
7 we're going to use exhibit -- what is that thing 1.11, the
8 big map?

9 JUDGE WALLIS: Yes.

10 BY MR. MCMAHAN:

11 Q. So referencing Exhibit 1.11. And you will need to
12 in some detail so a future reviewer can understand where you
13 are, really describe in narrative not just in pointing what
14 you're talking about so everybody understands for the
15 record, can you do that?

16 A. Yes, I can.

17 MR. MCMAHAN: I'm going to let Mr. Spadaro go
18 then. Thank you.

19 JUDGE WALLIS: Mr. Spadaro.

20 THE WITNESS: Your Honor, Members of the Council,
21 in response to a question yesterday regarding location of
22 the Cedar Swamp area and any of the proposed turbine
23 strings, both of the primary turbine strings, the leading
24 ridge and then a secondary ridge are on ridge lines. In the
25 valley between the two ridge lines about in the center of

1 the project there is a spring here, and in mid 1940s an
2 earthen dam was created here to --

3 JUDGE WALLIS: Excuse me, Mr. Spadaro, I need to
4 interrupt and emphasize what Mr. McMahan asked you to do.
5 And that is as you use the pointer to illustrate what you
6 are describing, for the benefit of those of us who are in
7 the audience, if you would clearly identify the features
8 that you're addressing, such as the two main turbine
9 strings, if you could describe them in words so someone
10 looking at Exhibit 1.11 would be able to understand
11 instantly what you're referring to.

12 THE WITNESS: Yes, Your Honor, I'm sorry. Thank
13 you for the reminder.

14 So backing up a little bit. The leading ridge of
15 A and B-string turbines is on a ridge line. Turbine
16 corridors C and D are on a secondary ridge line to the east
17 of the leading ridge. And in between is somewhat of a
18 valley, a shallow valley. In that valley toward the
19 northern end of the project area there is a spring, and that
20 spring flows to the northeast, or excuse me, southeast
21 through the project area, exiting the project area somewhere
22 between the C and D-string.

23 That spring was -- the flow of that stream that
24 carries away from that spring was dammed in sometime in
25 mid-1940s to create a fire pond. And that's somewhere in

1 that area is when the Cedar Swamp name was given to that
2 area.

3 This is germane to the topic I believe in that the
4 swamp and the forested wetland that is there is not a
5 natural feature. And in some of our forest practice
6 applications we've had discussion with the Department of
7 Fish and Wildlife about removing that dam and restoring it
8 to a natural riparian condition, which is a stream rather
9 than a forested wetland.

10 But nonetheless, in response to the question, the
11 C-string is C-1 through 4 as shown on this map, that
12 corridor is to the east of the Cedar Swamp area. I've
13 scaled it on a USGS topographic map, and the scale shows
14 that it's roughly 300 feet, more than 300 feet to the Cedar
15 Swamp. The Eastern edge of the Cedar Swamp area is roughly
16 300 feet to the west of the western most portion of the C-1
17 through 4 corridor.

18 JUDGE WALLIS: Are those horizontal feet or
19 vertical feet?

20 A. That's horizontal feet. And then vertical feet
21 based on topographic contours on the USGS map it is 200 feet
22 from the base elevation of the C-1 through C-4 corridor to
23 the swamp level. So then the turbine-swept diameters will
24 be another 100 feet above that. So approximately 300 feet
25 in vertical distance as well.

1 Is that responsive to the Council's questions.

2 JUDGE WALLIS: Are there any questions from
3 Council Members? Mr. Tayler, would you kindly grab that
4 microphone?

5 MR. TAYLER: Yes, Your Honor.

6 JUDGE WALLIS: Thank you.

7

8 CROSS-EXAMINATION

9 BY MR. TAYLER:

10 Q. Mr. Spadaro, you mentioned how far the Cedar Swamp
11 was from the C-string. It looks like it's sitting between
12 the C-string and the B-string. Is it halfway in between or
13 how far is it from the B-string?

14 A. No, it is a much greater distance from the
15 B-string. I brought a scale if you would like me to
16 approximate it?

17 Q. That's okay. It's more though?

18 A. Yeah. If I could use the laser pointer to depict
19 that the Cedar Swamp area is much closer to the C-string
20 than it is to the B-string.

21 JUDGE WALLIS: Thank you.

22 MR. MCMAHAN: So, Your Honor, if the Council is
23 satisfied with that information I think he's available for
24 cross-examination. Thank you.

25 JUDGE WALLIS: Very well. Mr. Kahn.

1 MR. KAHN: We'll defer to Mr. Cantrell because he
2 seems to be doing such a great job, and we'll follow up
3 after him.

4 JUDGE WALLIS: Mr. Cantrell.

5

6 CROSS-EXAMINATION

7 BY MR. CANTRELL:

8 Q. Okay. Good morning, Mr. Spadaro.

9 A. Good morning, Mr. Cantrell.

10 Q. I will start with your direct testimony, page 7,
11 line 9, you have that in front of you?

12 A. Yes, I do.

13 Q. You state there that there will be approximately
14 54 acres would be the total permitted impact of the project.
15 Where does that number come from?

16 A. I testified to this earlier in the week. The
17 estimate of permanent, for the life of the project, impact
18 was based on a 50-foot -- well --

19 Q. I'm sorry, maybe I can make the question easier
20 for you. Is there a place in the application that it
21 delineates all those details?

22 A. Yes, there is. I believe there's a table
23 somewhere in the application that does that.

24 Q. On page 2.1-3, of the application I'm assuming
25 that's the table that you're talking about. For those

1 looking it's page 2.1-3 and it's Table 2.1-1?

2 A. Yes, I see it. Yes, that is the table I'm
3 referring to.

4 Q. Could I draw your attention to the Permanent
5 Impact column there. And the second to the bottom number is
6 the 54.25 total areas to be developed within the project
7 site. So that's the basis of your testimony there; right?

8 A. Yes.

9 Q. So I call your attention to the number directly
10 below that, the 6.1 which is the total impact area outside
11 of the project area. So you're proposing to not deal with
12 the permanent impacted habitat that falls outside of the
13 project area? If you add those two together it comes up to
14 60.35. So it's not a huge difference but it is more than
15 10 percent more. I'm wondering if 60.35 is a more accurate
16 number than 54?

17 A. I don't believe so because -- I don't believe
18 that's accurate. I guess I'm probably not the best to
19 testify on this, but my belief is that's inaccurate because
20 the road that serves the site is already built.

21 Q. But, again, it's -- it would be improving those
22 roads, and in the process of that that will be -- again, if
23 you read the footnote I believe it will tell you that you're
24 going to be widening the road, you're going to be doing a
25 variety of things that are going to, you know, cause

1 permanent habitat impacts, and that's why that number is
2 there.

3 Again, if your application is not accurate on
4 that, I'm sure the Council would appreciate a further
5 amendment. But based upon the calculations that you or your
6 consultants did on this I think 60 is a better number, and
7 I'm just wondering if there's a reason for us to not use 60
8 instead of 54?

9 A. I don't know that I agree that 60 is a better
10 number, but I can't answer the question right now. I'm not
11 the best to testify as to how that was calculated.

12 Q. Okay. While we're on this table, if you look at
13 the next column to the right there, the Temporary Impact
14 column?

15 A. Yes.

16 Q. If you could share for the record what the total
17 amount of habitat impacted would be temporarily there,
18 what's listed?

19 A. Is there a footnote? I believe there's a footnote
20 somewhere in the application that describes what temporary
21 impact is. But my rough understanding is that those are
22 areas that will be replanted, impacted temporarily during
23 the construction and then replanted to forest and allowed to
24 come back into some form of habitat condition.

25 Q. That's my understanding as well. I guess I'm

1 just -- I'll just say it, I was hoping you would say it.
2 But 52.1 acres would be temporarily impacted, is that
3 correct? As I read the chart here, again--right next to the
4 54.25 permanently impacted--within the area there's 52.1
5 acres would be temporarily impacted; correct?

6 A. That is correct. However, I think you have to
7 take into context that the habitat has already been
8 impacted. That if the habitat has been harvested by forest
9 practices activities or some other activities you begin to
10 question what is the habitat impact associated with this
11 project. We have wanted to document here both temporary and
12 permanent impacts.

13 Q. I agree that these lands, you know, may not be
14 pristine habitat at the moment and, you know, whatever
15 condition they are in now they may return at some point in
16 the future. But there is a temporary impact as defined by
17 your own document, and also as referenced in the Wind Power
18 Guidelines, there is a category called Temporary Impacted
19 Project Lands and the correct number for this project, to
20 the best of your knowledge anyway, is 52.1 acres; correct?

21 A. Temporary impact, yes.

22 Q. So then I want to shift to the Wind Power
23 Guidelines, I don't know if you have that document in front
24 of you?

25 A. I do.

1 Q. So I will find the precise page.

2 JUDGE WALLIS: Can we identify that document for
3 the record, please?

4 MR. CANTRELL: This is the Washington Department
5 of Fish and Wildlife Wind Power Guidelines dated April 2009.

6 JUDGE WALLIS: And that was?

7 MR. CANTRELL: Exhibit, I don't know the exhibit
8 number.

9 MR. KAHN: 6.09.

10 JUDGE WALLIS: Thank you.

11 BY MR. CANTRELL:

12 Q. If you look it's back, I believe on page -- here
13 we go, starting on page 11 and also on page 12. There's a
14 paragraph that describes mitigation for temporary impacts to
15 habitat. Do you see that?

16 A. Yes.

17 Q. So by the Wind Power Guidelines they do call for
18 mitigation for temporary impacts as well. And I'm wondering
19 in either your direct or rebuttal testimony if you address
20 the impacts to the temporary impacts to the habitat, the
21 52.1 acres, if there's anything in your application or in
22 any of your testimony that addresses that issue?

23 A. Well, I'd answer that by calling your attention to
24 Item A, Letter A under 5.3 Mitigation For Temporary Impacts
25 to Habitat. It states, "No mitigation required for impacts

1 to cropland, pasture, developed or disturbed areas." And so
2 if we -- the guidelines state that there is -- it's
3 questionable whether there is -- well, it's not
4 questionable, it says there is no mitigation required.

5 Q. I'm sorry, it says no mitigation required for
6 what?

7 A. No mitigation required for impacts to cropland,
8 pasture, developed or disturbed areas.

9 Q. Okay. And your -- which of those categories are
10 you saying that the temporary impacted lands -- I'm assuming
11 they're not pasture, cropland or developed. So you're
12 assuming that they are disturbed areas?

13 A. Yes.

14 Q. Could I have you then page forward or page further
15 on, that's page 11, we'll probably come back to it, but
16 page 19 in the Wind Power Guidelines, same document, there's
17 a chart there.

18 A. Yes.

19 Q. So the bottom category listed on that page is
20 forestry?

21 A. Yes.

22 Q. So forestry is called out separately from
23 disturbed areas. So you're saying that where they say
24 disturbed areas your forestry lands are not in this
25 category, that your forestry lands are in disturbed, not in

1 any of these categories?

2 A. I think forestry lands can be disturbed.

3 Q. They can be. But here within the Wind Power
4 Guidelines commercial forestlands have their own specific
5 category that is distinct from disturbed lands is my
6 understanding in reading of the Wind Power Guidelines. Are
7 you testifying there's some -- you have a different
8 interpretation?

9 A. I have a different understanding. I guess, Your
10 Honor and the Council, we endeavored to not have a debate
11 with the Department of Fish and Wildlife regarding what
12 ratio of mitigation would be required. We endeavored to
13 offer a mitigation proposal to the Department that didn't
14 get into this debate of what is disturbed, whether
15 forestland is disturbed or not. We wanted to consult with
16 the Department, come up with something that met the priority
17 habitats and needs of the Department and something that we
18 were capable to provide as mitigation.

19 So I think you point out a discussion that we had
20 earlier on and it has to do with what ratio -- if you were
21 to consider the temporary impacts there it calls for, and
22 consider our lands to be Class III habitated, it would call
23 for the ratio at .1 to 1. If you were to consider the
24 permitted impacts as -- I guess that part is not defined by
25 ratios, I guess that would be more by consultation as the

1 class table states. But by providing 100 acres of
2 mitigation we attempted to give something of significant
3 value to the Department of Wildlife's interest.

4 Q. I appreciate that. And I think I understand that.
5 I guess where I'm trying to get at with this line of
6 questioning right now is in your consultation with the
7 Department of Fish and Wildlife did you in fact have any
8 discussions, not just about the 54 acres that's permanently
9 impacted by your lands, but also the additional six acres
10 that would be permanently impacted that are outside the
11 project lands but still on your land and the 52, I believe
12 it is, 52.1 acres that would be temporarily impacted, did
13 you discuss all of those or did you just focus on the 54
14 that your testimony talks about?

15 A. We discussed all of them.

16 Q. Okay. And so is it appropriate to say that your
17 testimony on page 7 where I started there could in fact be
18 expanded upon to say that there may be 54 acres in the
19 project area, but there are other impacts both temporary and
20 permanent, that you would not disagree with that statement,
21 the other habitat impacts beyond the 54 that your testimony
22 specifically says?

23 A. You would have to restate that for me. The
24 statement in my direct testimony is that the total permanent
25 impact of the project would be approximately 54 acres. That

1 is an accurate statement. If you're asking me whether I
2 agree with another statement regarding -- please restate it.

3 Q. Sure. In addition to the 54 acres that you state
4 of habitat that would be permanently impacted that you say
5 there on page 7, do you agree that there are additional
6 habitat impacts beyond those 54 that directly impacts of
7 this project on habitat either temporary or permanent beyond
8 54 acres?

9 A. Yes.

10 Q. Okay. You just didn't mention that anywhere in
11 your testimony so I just wanted to make sure that you do
12 agree I'm not out there in fantasy land, there are other
13 habitat impacts. So the 54 is a core number, but there is
14 additional habitat impacts?

15 A. Yes, the ASC documents those additional impacts.

16 Q. Great. Thanks. So, finally, somebody who can
17 talk about the pretty pictures. So have you visited the
18 land depicted in Exhibit 1.03R, the proposed habitat
19 mitigation site?

20 A. Yes, I have.

21 Q. Are you familiar with the general habitat
22 conditions of that parcel?

23 A. Yes, I am.

24 Q. Okay. Would you say that that is like-kind
25 habitat to the project area?

1 A. On page 9 of the Wind Power Guidelines -- you're
2 using like-kind in the context of the guidelines, I assume?

3 Q. Yes.

4 A. Okay. Page 9, Criteria for Mitigation by
5 Acquisition of Replacement Habitat. I'd like to read some
6 of this. The first bullet under that section says
7 "Like-kind, example, shrub-steppe for shrub-steppe; forested
8 for forested, grassland for grassland." I consider an Oak
9 forest and a Douglas-fir forest to both be forests. I
10 considered these to be, under the definitions of the
11 guidelines, to be like-kind habitat. They're different
12 types of forest and different types of habitat for different
13 species.

14 And I think to serve the Council, again, we
15 endeavored to consult early with the Department of Fish and
16 Wildlife and asked them early in our consultation process
17 what would be important habitats and species in this area
18 that if we could find mitigation, find a parcel for
19 mitigation what would be the characteristics of it. Once --

20 Q. Jason, I'm sorry to interrupt you, but I thought I
21 asked you a yes or no question. And that's a very long
22 answer. And it may have some good information that
23 hopefully I'll get to it --

24 A. I'll try to answer it differently.

25 Q. Mr. McMahan hopefully will give you a chance to

1 share additional things on redirect. If I don't give you
2 the opportunity I'm sure you will get it. I'm just trying
3 to consolidate my time. So was that a yes, they are
4 like-kind in your opinion or no, they are not?

5 A. Yes.

6 Q. They are like-kind. So in the Wind Power
7 Guidelines starting on page 13 and going on for multiple
8 pages through I believe page 17, through the end of 16
9 there's a broad category 6.0 and 6.1 talks about habitat
10 types?

11 A. Yes.

12 Q. In your opinion, as a forester, the project lands
13 where you have the, you know, that's depicted on all the
14 various maps where your wind power project would be sited
15 and the proposed mitigation parcel, you're suggesting they
16 would in fact fit in the same habitat types as delineated
17 here by the Department of Fish and Wildlife in their Wind
18 Power Guidelines, you're saying that they're both in the
19 same category of habitat?

20 A. Yeah. As I reviewed these last night they're both
21 east--on page 14--they're both eastside interior mixed
22 conifer forest habitats. The Oak woodland is not -- it
23 doesn't meet grassland, shrub-steppe, any of the other
24 eastside forest definitions. So there's a lot, as you well
25 know, there's a lot of variability in forest conditions in

1 Klickitat County from pure Douglas-fir forests to just a few
2 miles away pure Oak stands and then into shrub-steppe. And
3 this is in the same eco-type, it's in the same region and
4 they are both forested habitat.

5 Q. So your testimony is that they're really pretty
6 interchangeable habitats? That the species that one would
7 see on the project lands would be highly comparable, again,
8 talking about habitat, so the species whether they be
9 animals or plants are going to be roughly the same between
10 the two?

11 A. No, I did not testify to that.

12 Q. Okay. So I guess I'm struggling to understand,
13 because my concept of like-kind and my read of the different
14 habitat types here that those two parcels, while they may be
15 extraordinarily valuable in their own ways, are very
16 distinct habitats. And I'm struggling to understand.

17 MR. MCMAHAN: I'm just going to object to this
18 line of questioning. Mr. Cantrell in effect is doing the
19 job of a lawyer here, lawyers are deferring to him. I think
20 it's time for him to act like a lawyer if he's going to do
21 it. There's an assumption made here that the Wildlife
22 guidelines require direct like-kind habitat. That is not
23 what they say. Mr. Spadaro is trying to explain them to
24 siting Council. This line of questioning is based upon an
25 assumption not in evidence and is not related at all to WDFW

1 guideline requirements. If you want Mr. Spadaro to explain
2 that he can.

3 MR. CANTRELL: So what do you want me to do or not
4 do?

5 MR. MCMAHAN: I'm disturbed by the presumption
6 that exact like-kind is required by the guidelines. That's
7 not what's required by the guidelines.

8 MR. CANTRELL: If you look as your client said on
9 page 9 it's right there in the guidelines, says like-kind,
10 and I'm not sure why you're saying it's not.

11 MR. MCMAHAN: That is not a complete reading of
12 that paragraph or that section. Mr. Spadaro is prepared to
13 set the record straight in that regard, Mr. Cantrell.

14 BY MR. CANTRELL:

15 Q. So why is like-kind not required, Mr. Spadaro?

16 A. I'm looking for the -- there's a reference here
17 somewhere. I guess in general -- I can't find the exact
18 reference. But somewhere in the Wind Power Guidelines there
19 is a discussion about priority habitats of the Department of
20 Fish and Wildlife and the -- so let's read the start of
21 section B on page 9. "In each of the mitigation categories
22 listed below, the criteria indicate that the replacement
23 habitat should be negotiated in consultation with WDFW and
24 the permitting authority and include the following
25 considerations." So these are considerations that should be

1 considered. Like-kind, legal protection--I'm
2 paraphrasing/summarizing these--protection from degradation,
3 including development, in the same geographic region, and
4 that some risk of development or habitat degradation.

5 I think, as I tried to explain earlier, I asked
6 the Department of Fish and Wildlife what are important
7 habitats and species in Klickitat County, Skamania County,
8 the geographic region where we are. Oregon White Oak
9 habitat was listed to me as one of the priority habitats for
10 the Department of Fish and Wildlife. When we sought a
11 mitigation parcel we wanted to satisfy the desires of the
12 Department of Fish and Wildlife in providing some
13 conservation benefit for Oregon White Oak habitat and the
14 associated species.

15 You've asked me if that is directly equivalent
16 habitat to the project site, and the answer is certainly no.
17 This is a Douglas-fir forest that has been harvested and, as
18 I've testified earlier, of questionable habitat value
19 currently. So we're trying to provide something that is of
20 greater value than the site that we are impacting, and we
21 think we've done that.

22 Q. Okay. But like-kind is a consideration, you
23 agreed with that, that the guidelines say that like-kind is
24 a consideration? It's not the end all and be all of all
25 considerations, but it is specifically suppose to be one of

1 them; correct?

2 A. With the caveat of forested for forested, exactly
3 what the guidelines say.

4 Q. So let me shift gears here then. In the course of
5 your business do you get requests from other entities to
6 potentially ask you to protect habitat, to purchase habitat
7 from you for protection purposes or any other, you know,
8 entities either private entities, governmental entities that
9 approach your business about the opportunities that might be
10 presented by your lands for habitat protection?

11 A. Yes.

12 Q. In the course of business in the last several
13 years have you been approached about habitat protection
14 opportunities on any of the parcels of land that you own
15 that are more comparable to the forest that are proposed for
16 the project site than the lands that you have identified for
17 potential habitat mitigation? Has anybody ever said, hey,
18 you have a nice piece of land here, this is beautiful
19 forest, before you cut that I would like to buy it, I would
20 like to buy a conservation easement, I suggest that you
21 donate it. Whether or not it makes any business sense for
22 it, do you get approached by entities, either governmental
23 or others, or do you unilaterally approach other entities
24 and say, would you be interested in acquiring this, you
25 know, for the right conditions for habitat? Is that

1 something that --

2 A. Yes.

3 Q. Are there such parcels that more closely
4 approximate the type of forest that the project lands are
5 that either you have approached other entities or other
6 entities have approached you about that type of discussion
7 that more closely resemble the project lands than the
8 100-acre parcel that are depicted in these pictures?

9 A. Yes.

10 Q. Is there a reason why you aren't using any of
11 those lands since those would be more closely comparable for
12 mitigation purposes?

13 A. I guess, you know, just because we're a landowner
14 I think -- I don't think that allows the reviewing agency,
15 or in your case as an interested group, to shop from our
16 lands what you would like to see as habitat. If we meet the
17 intent and law and stated requirement of the guidelines and
18 we offer something that's satisfactory and desired by the
19 Department of Fish and Wildlife, whether it's a Douglas-fir
20 forest or an Oak forest or nearer to the project or farther
21 from the project, I think it's our choice as the landowner
22 and as the project Applicant to negotiate a mitigation
23 agreement with the Department. And we have done that, and
24 the Department has accepted it.

25 So, yes, there may be -- we may have had some

1 discussion about conserving other parcels of our ownership
2 in the recent past, but we have decided not to enter into
3 those conservation agreements. I think you and I both know
4 what we're talking about. And that's for an entirely
5 different purpose.

6 Q. I understand. But just as you have a choice as a
7 landowner of which parcels you think make most business
8 sense, the Council, the government agencies, the nonprofit
9 entities all have an opportunity --

10 MR. MCMAHAN: Your Honor, is this a question or is
11 this a speech?

12 MR. CANTRELL: This will be a question.

13 MR. KAHN: Let him finish.

14 BY MR. CANTRELL:

15 Q. If you're saying that you have the authority to
16 make that decision, I guess my question for you is does the
17 Council and the government agencies and the nonprofit
18 entities or other interested parties have the responsibility
19 and the opportunity to also comment on the activities that
20 you're proposing?

21 A. The activities, that being the mitigation parcel?

22 Q. Yes.

23 A. Certainly. You can comment on the mitigation, the
24 appropriateness of the mitigation parcel.

25 Q. So when you're saying that, you know, that when --

1 I'll go in a different direction.

2 Let me have you look at Figure 2.3-3 which is from
3 your application. It's a thing that I've used some before.
4 It's, again, a map that shows the various parcels of land,
5 the Harvesting Schedule is the title of the exhibit, again,
6 it's in the application.

7 A. What page, Shawn?

8 Q. I took it out of the application, I don't have the
9 full thing. There's not a page number on it, but it's
10 Figure 2.3-3. It's on the screen as well for those in the
11 room.

12 JUDGE WALLIS: It appears to be following page
13 2.3-9.

14 A. Yes, I have it.

15 BY MR. CANTRELL:

16 Q. So there was testimony in cross-exam yesterday
17 about a number of parcels in the project area. And I
18 believe that it was suggested that you would be a good
19 person to identify which of those parcels in the project
20 area along the northern most edge that have dates of 1957,
21 '43, 1940, '36, etc., along the northern edge of the parcel,
22 whether or not those are still forested or if they have in
23 fact been harvested?

24 A. Yes, some of them have in fact been harvested.

25 Q. So if you have a pointer if you could identify any

1 that have not been harvested?

2 JUDGE WALLIS: And also a line number.

3 A. Yeah. So if I could first state the purpose of
4 this map is not a binding harvest schedule that we follow
5 every year exactly. These are -- this shows birthdate of
6 forest stands. And that gives you some approximation of
7 when it reaches maturity and when it would be scheduled for
8 harvest and replant and starting of another forest crop. So
9 this -- some of these stands have, like that 1950 -- stand
10 in the northwest quarter of section 6, which it doesn't show
11 up very well on this. Let's say the northwest corner of the
12 project area there's a stand that is 1955 birthdate. So
13 that was a 55-year-old stand in this current year.

14 MR. ARAMBURU: I put that section of the map on
15 the screen if you want to refer to it, Mr. Spadaro.

16 BY MR. CANTRELL:

17 Q. Am I pointing to the correct one that says 1955,
18 that's the one you were referring to?

19 A. Yes.

20 Q. You were saying that parcel has been harvested?

21 A. Some of that parcel has been harvested. Some of
22 the 1943 birthdate parcel has been harvested. And then also
23 to the east some of those parcels have been harvested.
24 Farther to the north and south and east and west on all of
25 our other lands other parcels have been harvested as well.

1 Q. So, in your opinion, the parcels immediately along
2 the DNR land where, again, if you were here for the
3 testimony yesterday about, you know, for Mr. Reams regarding
4 the Northern Spotted Owl detections that were not on this
5 map, not depicted on this map, they're further north along
6 the edge. But the habitat on your land most closely
7 touching that DNR land where the owls were detected there's
8 a mix of older forest as well as recently harvested; is that
9 correct?

10 A. Yeah. I would also though, as you well know, age
11 of a forest stand is not always indicative of habitat
12 suitability and habitat quality. But you're -- there is a
13 mixture -- I agree with you, there's a mixture of ages along
14 the northern boundary. Most of it is younger, very young.

15 Q. So just as you're looking at the potential for
16 habitat mitigation for this project, one of the key species
17 that has been indicated that may be impacted, not heavily
18 either by other agencies' estimations or by any testimony,
19 but one that that potentially impacts is the Spotted Owl;
20 correct?

21 A. Yes.

22 Q. So what's your opinion as to the opportunities for
23 providing for additional mitigation specifically for the
24 Spotted Owl? Is any of your mitigation package that you
25 proposed, or any activities beyond the habitat mitigation

1 parcel that is proposed, provide benefits for potential
2 Spotted Owl habitat or owls directly?

3 A. No, I would say that it may be in an indirect
4 sense, but the habitat that -- the priority habitat, the Oak
5 woodland and it has patches of conifer forest mixed with
6 that 100 acres, but it's probably -- I'm not a habitat
7 biologist, but it's not typical of Spotted Owl habitat I
8 would say.

9 But I would also tell you that as we consulted
10 with Department of Fish and Wildlife we also consulted with
11 U.S. Fish and Wildlife Service, and based upon the analysis
12 of habitat suitability for the two site centers to the north
13 of the project area, the U.S. Fish and Wildlife Service
14 concluded there was--even though those circles have been
15 occupied for many years by barred owls--there is more than
16 the required habitat existing in those two circles. And so
17 there was no need for mitigation or we could remove
18 additional habitat, which is what we have by those
19 harvest -- we have been harvesting surplus habitat. And any
20 additional harvest associated with this project would not
21 drop the habitat threshold in those circles below the
22 40 percent minimum. So there's no need for a mitigation for
23 the Northern Spotted Owl as I believe the U.S. Fish and
24 Wildlife Service consultation letter stated.

25 Q. Let's talk about the Fish and Wildlife

1 consultation letter, if you could pull that up in front of
2 you that would be great. That is, I believe, exhibit
3 number -- let me find it and I can tell you. It will be
4 just a moment.

5 MR. KAHN: Shawn, are you referring to the
6 July 19th letter that was part of the packet of information
7 submitted by Ms. Anderson yesterday?

8 MR. CANTRELL: Yes.

9 MR. KAHN: It's Exhibit 6.10.

10 MR. CANTRELL: Thank you. I'm sorry. Yes, that's
11 the exhibit, thanks. So Exhibit 6.10?

12 MR. KAHN: Yes.

13 BY MR. CANTRELL:

14 Q. The July 19th letter, do you have that one, Jason?

15 A. Yes, I do.

16 Q. Were you here yesterday when I was asking
17 Mr. Reams about this letter?

18 A. Yes.

19 Q. So you heard my question to him about whether or
20 not this is a good representation of the actual on the
21 ground facts and activities that took place in their --
22 during their survey activities particularly on page 3,
23 paragraph 2, Effects From Construction?

24 A. And I've read that. And your question?

25 Q. Is that do you agree that this is quality work by

1 the Fish and Wildlife Service?

2 A. Quality work by the...

3 Q. I mean part of my --

4 A. I can't testify to that.

5 Q. You testified that the representations by the Fish
6 and Wildlife Service saying that there's no owl impacts,
7 that this project would not have an adverse impact on the
8 owl, etc., that you just referenced saying that was part of
9 the basis for not doing any owl mitigation, you know, not
10 looking at owl habitat or potential owl habitat for
11 mitigation if I understood your testimony, you were relying
12 on Fish and Wildlife Service saying, yeah, there's no need
13 to do that, is that a fair representation of what you just
14 said?

15 A. I guess I think -- what I think the U.S. Fish and
16 Wildlife Service letter says is that there is 40 percent
17 habitat. There are two circles to the north, historic site
18 centers, that once were occupied by Spotted Owls that are
19 now occupied by barred owls. Regardless of that fact there
20 is still 40 percent habitat threshold in both of those
21 circles before and after the project. So they're saying
22 that the habitat for those site centers will be maintained.
23 I don't know that I see they say there's no mitigation
24 required for it. I don't know that I -- if I stated it that
25 way that the wind -- the mitigation parcel that we proposed

1 is intended to mitigate for all species, then if I stated
2 that then that really is inaccurate. I would correct that
3 statement.

4 The intent is based on this information this
5 project poses very little risk to Spotted Owls because the
6 habitat would still remain to the north of the project area.
7 And we wanted to mitigate for all wildlife impacts with our
8 mitigation proposal, and we have acceptance from the
9 Department of Fish and Wildlife that we do have that.

10 Q. So, again, do you feel that the overall review of
11 this project by the Fish and Wildlife Service, you're
12 stating that that is -- that you feel they've done an
13 adequate job in their analysis and review of the project?

14 A. I really -- you know, I'm relying on the agencies
15 to do their job, whether their job is adequate, inadequate,
16 I'm not a biologist.

17 Q. So not being a biologist, but if they said there
18 was only 20 percent habitat in that circle you would say
19 they had done an inadequate job?

20 A. I know from DNR records and WDFW records -- I have
21 the DNR habitat mapping that we used in our discussions with
22 U.S. Fish and Wildlife Service and the habitat numbers, the
23 percentage of habitat for each of those circles that was
24 provided by DNR to me under a public disclosure request, we
25 have agreements with the DNR to share this type of data.

1 This was the data that we provided to the U.S. Fish and
2 Wildlife Service. And, I believe, I'm assuming, this is
3 part of what lead to their decision and statement that it
4 would not remove suitable Spotted Owl habitat below the
5 40 percent threshold in the territories that we're talking
6 about.

7 And it shows that -- the data shows that there's
8 54 percent habitat in one of the circles and 49 in the
9 other. The map shows the quality of the habitat both on our
10 lands at the time this data was calculated and on the DNR
11 lands to the north.

12 MR. MCMAHAN: Mr. Cantrell, do you want that in
13 the record, that information? Would it be helpful to the
14 decision-makers to have that information in the record?

15 MR. CANTRELL: I think there's a value. I don't
16 object to it being entered if that's your question.

17 MR. MCMAHAN: I would look to the Council if the
18 Council would like the publicly available information
19 concerning the habitat types Mr. Cantrell is requesting. It
20 is available and we can provide it to the Council.

21 MR. TAYLER: I don't know what the point is. I'm
22 trying to determine, Your Honor, the point of the habitat
23 data. Is Mr. Cantrell's point that the habitat is suppose
24 to be mitigation? It's going to be converted by the
25 project.

1 Your Honor, I'm trying to figure out the relevance
2 of the 40 percent issue, whether that's intended to be
3 pointed at the mitigation opportunities?

4 MR. CANTRELL: It's not my point at this point
5 right now. Mr. Spadaro is talking about it, and I don't
6 object to it coming into the record. It's not really
7 directly on point for what I'm getting at. I'm getting at a
8 different issue. But it may be of value to the Council. I
9 leave it to the Council to decide.

10 MR. MCMAHAN: Your Honor, I don't know what the
11 point of any of this is quite frankly in terms of the
12 mitigation parcel and Spotted Owls. I don't know where this
13 line of questioning is leading. I'm just saying if there's
14 relevance and somehow understanding what the effect is to
15 the 40 percent ratio, which is a regulatory threshold that
16 U.S. Fish and Wildlife Service values, I believe it's not
17 relevant, but if it's relevant for mitigation, fine.
18 There's a lot of data available. Again, I think this line
19 of questioning is irrelevant.

20 JUDGE WALLIS: I don't see that any Council Member
21 desires that it be in the record nor counsel. So I suggest
22 we move on.

23 MR. CANTRELL: Great. So let me shift to exhibit,
24 the email trails. I don't know if maybe SOSA, you guys have
25 these entered if you could tell me, or Friends, what exhibit

1 number this is?

2 MR. KAHN: Which email trails?

3 MR. CANTRELL: The WDFW.

4 MR. BAKER: They're numbered one through three?

5 MR. MCMAHAN: You're talking about those internal
6 email correspondence again?

7 MR. CANTRELL: Yes, I am.

8 MR. BAKER: There's exchange numbers one, two and
9 three in the top right-hand corner.

10 MR. CANTRELL: Okay. So I will probably reference
11 one at a time, they're in numeric order. I guess,
12 Mr. McMahan, just to respond, no, I'm not talking about it
13 again, I'm talking about it for the first time. I haven't
14 had a chance to discuss this at all.

15 MR. MCMAHAN: I stand corrected.

16 MR. MOSS: Can we get an exhibit number? But also
17 I wanted to point out with respect to the examination we
18 just had insofar as it touched on examination of witness
19 Reams, the letter of July 19th from the United States
20 Department of the Interior that was referred to during that
21 testimony is actually Exhibit 5.4, not Exhibit 6.10,
22 although the two documents in point of fact are the same.
23 But in terms of our record, it needs to be clear that if we
24 go back and look at the transcript from Mr. Reams'
25 examination the discussion will not be about 6.10, it will

1 be about a 5.04.

2 MR. CANTRELL: Thank you.

3 JUDGE WALLIS: Can we have those documents, the
4 documents that you are now referring to identified?

5 MR. CANTRELL: Yes. It is the email exchange
6 that --

7 JUDGE WALLIS: In terms of an exhibit number.

8 MR. CANTRELL: Okay. Mr. Baker, could you?

9 MR. BAKER: For the record, this is Nathan Baker.
10 The three exhibits are 1.13C, which is the email exchange
11 number two, 1.12C, which is the email exchange number one.

12 MR. ARAMBURU: Mr. Baker, which one is that, the
13 one that starts out with Ritter?

14 JUDGE WALLIS: Let's be off the record until we
15 get this straightened out.

16 (Brief discussion held off the record.)

17 JUDGE WALLIS: Let's be back on the record. So
18 can you tell us exactly what exhibits you're referring to?

19 MR. CANTRELL: Yes. I'm talking about Exhibits
20 1.13C, and I believe if I understood Mr. Baker right, 6.08C;
21 is that right? And there's an additional one but I'm not
22 referencing it.

23 BY MR. CANTRELL:

24 Q. So there's two, so Exhibit 6.08C and Exhibit
25 1.13C, those are the two I want.

1 A. Could you tell me who the email is from and who
2 it's to?

3 Q. Yes. Susan Van Lueven to Carol Turcotte,
4 something like that, the other one is from Michael Ritter
5 also to Carol.

6 A. I have them.

7 Q. Okay. So, again, you heard testimony yesterday, I
8 think you had a chance to look at these hopefully before
9 this very moment. I'm just wondering the concerns that are
10 raised. While I heard and I understand and agree with the
11 testimony yesterday that ultimately said that the official
12 position of the Department is different than what was
13 expressed in here, I'm wondering the concerns that they
14 raised about the potential -- and I think there was
15 testimony yesterday around this for development in this area
16 in general, whether or not the DNR lands would stay, the
17 whole series of questions and issues are raised here. Do
18 you have any response to those that you could share with us
19 at this point of our -- do you need me to ask more probing
20 questions then that?

21 A. If you'll grant me latitude I think I can respond
22 to where you're going with it. On the second page of 1.12
23 there's a correspondence between David Anderson and Travis
24 Nelson. And the statement is "My only question on this site
25 is the fact that SDS chose it for us versus asking about

1 options of sites we might be interested in." And that's one
2 of the concerns expressed by Mr. Anderson. And I -- going
3 on he says, "They have lots of prime habitat closer to
4 either our wildlife area or the project site." It's another
5 concern. "It is close to DNR land, but anything we get
6 would be managed by our wildlife area and it would be good
7 to consult the manager..."

8 I think as I've testified earlier, we did -- David
9 Anderson was not part of the early consultation that we
10 engaged with the Department of Fish and Wildlife, so he was
11 not aware of the length of our efforts and the content of
12 those discussions regarding what is appropriate, what is
13 important mitigation habitat in this area. So he wasn't
14 aware that early on Department of Fish and Wildlife told us
15 that priority habitats are Oak woodlands in this area.
16 Priority species are the species that are related cavity
17 nestors, Western Gray Squirrels, things related to Oak
18 woodland. That was a desirable habitat to have protected.

19 JUDGE WALLIS: I'm not sure that we're really
20 adding a lot to the record that the Council is permitted to
21 consider here. The decision has been made by another agency
22 that Council has no authority to second-guess that or to
23 reverse it. And this is a matter that appears to be
24 unrelated to that decision. So perhaps, Mr. Cantrell, you
25 can explain what it is that this will add to the record?

1 MR. CANTRELL: Is there the opportunity for the
2 Council in your recommendations to the Governor to require
3 additional or different mitigation beyond what has been
4 proposed by the Applicant or are you bound only by what the
5 Applicant and the Department of Fish and Wildlife have?

6 JUDGE WALLIS: The Council does have some
7 discretion to examine overall mitigation for the project.

8 MR. CANTRELL: So that's where I'm going.

9 JUDGE WALLIS: Very well.

10 BY MR. CANTRELL:

11 Q. So, Mr. Spadaro, again, trying to be more precise
12 here, where I'm asking you to respond to is the concerns or
13 questions that are raised in this email. You know, whether
14 or not they're the final position or whether or not
15 Mr. Anderson was part of the discussions, the fact that DNR
16 lands may be traded out, the fact that there would be
17 challenges in preserving this as a permanent habitat that's
18 not going to become just an isolated island, have you --
19 where I'm trying to get at is, you know, long-term permanent
20 mitigation is best served if it provides actual mitigation
21 and concern that this --

22 MR. MCMAHAN: Could you put that --

23 BY MR. CANTRELL:

24 Q. -- become an isolated island. There was testimony
25 to that, and I'm hoping that you can address that. I can go

1 through a series of yes or no questions. I'm trying to get
2 you to help us understand whether or not those concerns are
3 valid in your mind.

4 A. I'll try to be economical, Your Honor. I think
5 these are early discussions -- excuse me, these are early
6 correspondence or correspondence within the Department of
7 Fish and Wildlife between parties that were not fully aware
8 of all of the discussions and all of the -- and, yes,
9 conditions may change over time related to neighboring land
10 uses, but the fact still remains that we have offered a
11 mitigation parcel that is compliant with the Wind Power
12 Guidelines that the Department of Fish and Wildlife has said
13 is a valuable habitat, contains valuable species to the
14 state of Washington. We've offered it as mitigation for the
15 project and it has been accepted. Regardless of what may
16 change in time on neighboring lands or around it it's still
17 appropriate mitigation for this project.

18 Q. Okay. Let me find the precise place so I can
19 reference it for you, but there was one other question. I'm
20 not finding what I was wanting to do, so I will move on.

21 The other question that I wanted to talk a little
22 bit about is the wetland that you talked about. And, again,
23 referring to exhibit, I think it's 1.11 that's up on the
24 foam board there, there's also a -- actually there's also --
25 I don't know which exhibit number that's on the screen

1 there. Mr. Aramburu, do you know the exhibit number there?

2 MR. ARAMBURU: What's on the screen is from the
3 application at Figure 2.3-2 following page 2.3-7.

4 BY MR. CANTRELL:

5 Q. This is, again, as people are looking for it, it's
6 a map of current forest types in the area. And what's of
7 particular use on this one is the blue spot on that map I
8 believe is that the wetlands you were describing earlier for
9 the Council? It's identified on this map as riparian in the
10 key. I was wondering if that blue area is the broader
11 wetland area or if that's something different?

12 A. Well, this is -- this map is called Current Forest
13 Types. So this is a forest-type map. That does not -- if
14 you're suggesting that that blue area defines the wetland
15 boundary that is not the case.

16 MR. MCMAHAN: Mr. Cantrell, you might look more
17 specifically at Figure 3.5-1 if you really want to know what
18 the application says about project site wetlands.

19 MR. CANTRELL: That is where it says the little
20 box that says Freshwater Pond there in Figure 3.5-1, is that
21 the figure you're talking about?

22 MR. MCMAHAN: Yes.

23 BY MR. CANTRELL:

24 Q. So, again, if people then would look instead and
25 find that. Thank you, Mr. McMahan, that's helpful. On the

1 page in the application it's Figure 3.5-1 Project Site
2 Wetlands which is immediately following page 3.5-1. You
3 have that, Mr. Spadaro?

4 A. Yes, I do.

5 Q. So in that map immediately to the west of turbine
6 string C-1 through C-4 there's a freshwater pond identified,
7 that's the wetland you were describing earlier today?

8 A. Yes.

9 Q. In the area surrounding that is there potential
10 mitigation that you could expand the buffer there that would
11 provide habitat that's already in -- some of it's already
12 protected or not being harvested because of the aquatic
13 wetland values, are there other areas in that area, other
14 parcels that could serve as potential mitigation for overall
15 project impacts that would be of good habitat value?

16 A. There's not that are not already protected by
17 forested wetland requirements under the Forest Practices
18 Act. But we did have some -- I will relate to you some
19 discussions we had with Department of Fish and Wildlife in
20 consultation early on. Some of the discussion related to
21 where is it appropriate to provide mitigation habitat.

22 And I had the sense from the Department of Fish
23 and Wildlife that it would be more appropriate not to
24 provide the mitigation habitat in the same vicinity as the
25 project or the same immediate vicinity, because you in

1 theory have a habitat impact at the project site, and it
2 doesn't make sense to provide your mitigation habitat at the
3 same place you're having the impact. It's better to find
4 something in the same, of course under the guidelines, in
5 the same geographic area, you know, meeting all the intent
6 of the guidelines. But it was not -- the sense I had is it
7 was not desirable to look at something such as that. But
8 specific to your question there's nothing available that
9 would be there to mitigate.

10 Q. Okay. So that's helpful. So just to recap then
11 that in that area around wetland there's not, you know,
12 something that good habitat that is easily transferable
13 that's not already generally protected, is that what you're
14 saying? There's this additional piece about finding
15 something a little bit more removed?

16 A. I'm not a habitat biologist.

17 Q. Understand.

18 A. But the wetland is protected already.

19 Q. That's helpful, thank you. So referring back
20 again, and this is Exhibit No. 1.12C, this email back and
21 forth, the one that has Michael Ritter at the top to Carol
22 dated October 21?

23 A. Yes, I have it.

24 Q. Okay. So on the second page there's a paragraph
25 where Mr. Anderson is talking to Mr. Nelson and Watson and

1 the, I guess it's the fourth line says, "They have lots of
2 prime habitat closer to either our wildlife area or the
3 project site." You know what wildlife area he was referring
4 to, do you know?

5 A. Klickitat Wildlife Area.

6 Q. And how close or far is that from either the
7 project site or the proposed habitat?

8 A. Klickitat Wildlife Area is quite a ways farther
9 away from the project site than the mitigation parcel. And
10 it's more kind of on the -- up near Centerville and up in
11 the east, little bit west of Goldendale.

12 Q. So habitat type, would that be forest for forest,
13 would that be --

14 A. It would be -- it's pine and some shrub-steppe,
15 kind of open savanna-type habitat in the Klickitat Wildlife
16 Refuge. So it is also forestland. We also don't own land
17 near the Klickitat Wildlife Refuge.

18 Q. So while it may be useful you don't have lands so
19 you would have to purchase some land in order to do that?

20 A. Right.

21 MR. CANTRELL: Okay. I think that's all that I
22 have at this point.

23 MR. KAHN: Thank you, Your Honor. Gary Kahn,
24 Friends of the Columbia Gorge. First of all, there were
25 questions by Mr. Cantrell on Exhibits 1.12C and 1.13C. I

1 would ask that those be admitted, I don't think they have
2 been yet into the record.

3 (Exhibit Nos. 1.12C and 1.13C offered.)

4 JUDGE WALLIS: I'm going to reserve ruling on
5 that.

6 MR. KAHN: May I ask why?

7 JUDGE WALLIS: I would like to check the record
8 and see what the status is. And if there is an issue I will
9 offer an opportunity to argue.

10

11 CROSS-EXAMINATION

12 BY MR. KAHN:

13 Q. Okay. Mr. Spadaro, could you turn to Exhibit 6.1,
14 please, that's these letters that were introduced by your
15 counsel yesterday.

16 A. Is that the --

17 Q. Specifically it's the December 20th letter
18 addressed to Al Wright from Travis Nelson.

19 A. Yes.

20 Q. You have that?

21 A. Yes, I do.

22 Q. In the second paragraph about five lines down does
23 this letter discuss what DFW contends to be the extent of
24 the temporary and permanent impact to the habitat from the
25 project?

1 A. Yes.

2 Q. And doesn't it indicate that the permanent impact
3 is 61 acres?

4 A. Yes, it does say that.

5 Q. That's different than what you've contended as 55
6 acres or 54 acres; is that correct?

7 A. I think they have -- I think there is a
8 typographical error, he has reversed -- wasn't the temporary
9 impact 61 acres and the permanent 54?

10 Q. Well, earlier Mr. Cantrell, I don't know where it
11 is now, but showed you a chart out of the application which
12 had 54 acres and then it had the next line of six acres from
13 the road. If you add those together that's 61, so I don't
14 think it's a typo.

15 MR. MCMAHAN: Your Honor, we would stipulate to
16 the fact that it may be 54 plus these acres involved in
17 improving roads. I don't believe this has any materiality
18 to the issues. So if we could get beyond the math issues.

19 MR. KAHN: If they're stipulating to that that's
20 fine.

21 BY MR. KAHN:

22 Q. It's true that SDS selected this parcel rather
23 than WDFW; is that correct, as the parcel to be offered for
24 mitigation?

25 A. We sought a parcel that met the desires of the

1 Department of Fish and Wildlife.

2 Q. But you chose the parcel not based on a request
3 from WDFW; is that correct?

4 A. I think it's our obligation to propose a
5 mitigation package to the Department of Fish and Wildlife,
6 so inherently we would be selecting something that we think
7 meets those intents.

8 Q. In Exhibit 1.12C, which is email string number
9 one, email exchange number one?

10 A. Yes.

11 Q. On the second page Mr. Anderson writes, "My only
12 question on this site is the fact that SDS chose it for us
13 versus asking about options of sites we might be interested
14 in"; correct?

15 A. We did discuss options of sites that WDFW might be
16 interested in, I'm not sure your point.

17 Q. The mitigation parcel is approximately 12 miles
18 east of the project?

19 A. I believe that's -- I don't know the exact number,
20 but I believe that's about right.

21 Q. Okay. It's in a completely different drainage; is
22 that true?

23 A. Yes.

24 Q. And you've acknowledged that SDS owns other lands
25 closer to the project with habitat that would be more

1 similar to the project site than the mitigation parcel?

2 A. Yes.

3 Q. At some point if this process did SDS offer to
4 actually convey the 100-acre mitigation parcel to WDFW?

5 A. Yes.

6 Q. They said no; correct, they didn't accept the
7 conveyance?

8 A. No, that is not exactly accurate. The Department
9 of Wildlife -- Travis Nelson wanted the Department to accept
10 it. There was a considerable issue regarding the approval
11 process for the Department -- in order for the Department to
12 accept it. So an acceptable outcome was that we grant a
13 conservation easement to some other entity. In this case
14 it's become Klickitat County.

15 Q. Has Klickitat County accepted or agreed to accept
16 the conveyance of a conservation easement for this parcel?

17 A. We have a letter that was attached in my testimony
18 that the Department -- or the Klickitat County Board of
19 Commissioners have accepted it tentative to some further
20 discussion.

21 Q. And you're referring to Exhibit 1.05R; is that
22 correct?

23 A. Yes, that's correct.

24 Q. And if you have that in front of you, if you could
25 look at the third paragraph, doesn't it indicate that the

1 letter is a nonbinding statement of intent to enter into
2 discussions regarding the development of a conservation
3 easement agreement?

4 A. Yes.

5 Q. So do you have any further documentation from
6 Klickitat County wherein they've indicated they will accept
7 a conservation easement on this parcel?

8 A. We're in continued discussions with Klickitat
9 County Board of Commissions. In fact, they're reviewing it
10 further, you know, this week. The nonbinding intent was to
11 protect both parties. If for some reason we're not required
12 to offer mitigation we're not wanting to be bound to provide
13 it as mitigation to Klickitat County.

14 Q. In response to Mr. Cantrell's questions you
15 indicated that there are lands closer to the project with
16 which you had discussions with DFW as possible mitigation
17 parcels; is that correct?

18 A. No.

19 Q. Did it misunderstand?

20 A. I have not had discussions with the Department of
21 Fish and Wildlife nearer to the project regarding mitigation
22 parcels.

23 Q. Did you have those discussions with any other
24 government agencies?

25 A. Not related to -- are you speaking mitigation of

1 this project?

2 Q. Yes.

3 A. No.

4 Q. Whatever acreage we're talking about that would be
5 permanently impacted, whether it's 54, 56 or 61, that's
6 fragmented throughout the entire 1,152-acre project site; is
7 that correct, as opposed to being in one dense cluster? Let
8 me rephrase it.

9 Part of the calculations that resulted in your
10 conclusion of the number of acreage involved an area around
11 each of the turbines; is that correct?

12 A. Yes.

13 Q. So the acreage is not 56 contiguous acres, it's
14 spread out through the entire project?

15 A. Yes.

16 Q. As a little bit of variation on a question a
17 couple questions ago, you have indicated that SDS owns
18 forested habitat closer to the project site that some
19 government agencies have expressed interest in having for
20 conservation purposes, not necessarily mitigation for this
21 project but in general; is that correct?

22 A. Yes.

23 Q. How close are some of those parcels to the project
24 site?

25 A. We have a number of them that range from miles, a

1 few miles to tens and 20 miles away.

2 Q. Anything closer than a few miles?

3 A. No.

4 MR. KAHN: I believe that's all I have. But I
5 reiterate my motion to admit Exhibits 1.12C and 1.13C.

6 JUDGE WALLIS: Thank you. Are there other
7 questions of the witness, Mr. Marvin?

8 MR. MARVIN: Yes.

9

10 CROSS-EXAMINATION

11 BY MR. MARVIN:

12 Q. Mr. Spadaro, you are familiar with the Department
13 of Fish and Wildlife Wind Power Guidelines?

14 A. Yes, I am.

15 Q. And would you agree that one provision within
16 those guidelines is that, "Mitigation packages should be
17 negotiated in consultation with Fish and Wildlife and the
18 permitting authority"? I'm just reading this straight out
19 of guidelines, that would be page 8, top of the page, fifth
20 or sixth bullet point.

21 A. I'm sorry. Say that again, Mr. Marvin, please
22 cite the sentence.

23 Q. Again, are you on page 8?

24 A. I am.

25 Q. It's bullet point, the fifth bullet point down at

1 the top of the page, it says, "Mitigation packages should be
2 negotiated in consultation with WDFW and the permitting
3 authority"; correct?

4 A. Yes.

5 Q. And what is your understanding as to who the
6 permitting authority is here?

7 A. It is EFSEC, site Council.

8 Q. So would it be fair to say EFSEC does have an
9 authority and indeed an obligation to consider and approve
10 mitigation packages with regard to wind power projects?

11 A. I believe EFSEC has some kind of arrangement with
12 WDFW, don't they to --

13 MR. MCMAHAN: Mr. Spadaro, if you know.

14 A. It's outside of my expertise.

15 BY MR. MARVIN:

16 Q. It's not your area of expertise. I don't know if
17 they do. I would be curious to see the document. Maybe I
18 could make a request from EFSEC to get clarification
19 regarding its relationship with Fish and Wildlife in that
20 regard.

21 Turning to your testimony. It is my understanding
22 that there's been some concerted effort within the last four
23 or five months to bring this issue of mitigation package to
24 closure to some degree or another, get a commitment on a
25 mitigation package?

1 A. Yes.

2 Q. And why is that?

3 A. Well, the hearings are -- we want to have the
4 mitigation agreement with the Department of Fish and
5 Wildlife defined so that we can present for the hearings,
6 all parties can be aware of what the impacts are and what
7 the mitigation proposed is. I don't understand the
8 question.

9 Q. I guess are you aware -- well, first of all, you
10 are aware this is an unprecedented project, we don't have
11 wind power projects sited in Western Coniferous Forests;
12 correct?

13 A. Yes.

14 Q. Therefore, there is somewhat of an open question
15 as to what the actual impact will be when this -- if this
16 project is constructed; correct?

17 A. I think we've attempted to use the best available
18 methods and define the best available science for our site
19 to define what those impacts are.

20 Q. But in fact the reasons you're resorting to the
21 best available science nomenclature is due to the fact that
22 you don't have an actual on-the-ground project you can look
23 to as a comparison?

24 A. Well, I'm confused. We have surveyed and we have
25 taken -- we've known from the beginning that this project is

1 the first project in a forested environment in Washington
2 state. Because of that we have endeavored to provide more
3 wildlife study than any other project in the state. There's
4 no other project that's done three years of bat surveys. No
5 other project that's put bat sensors at wind-swept,
6 rotor-swept diameters. There's no other project that has
7 more data --

8 Q. Thank you, I understand that. I think we covered
9 that territory in our previous testimony. All I'm saying is
10 that this is a nonprecedented project, and you agreed with
11 that, and that we don't have an example of an operating wind
12 turbine plan in a Western Coniferous Forest at this time?

13 MR. ANDERSEN: Objection, asked and answered.

14 JUDGE WALLIS: Mr. Marvin, is that any different
15 from your prior question?

16 MR. MARVIN: I'm just following up. So I'm
17 assuming that his answer was yes. I need my recollection
18 refreshed in terms of what his answer was since he went off
19 on such a kind of frolicking detour.

20 JUDGE WALLIS: Mr. Spadaro.

21 A. You asked, again, about the use of the term best
22 available science, is that what you're asking?

23 BY MR. MARVIN:

24 Q. I asked you about the term best available science,
25 and I understand from your previous testimony, which I

1 believe you were here, the reason the best available science
2 issue had come to a head in this proceeding was because
3 there was in fact no actual wind power, wind turbine project
4 constructed in a Western Coniferous Forest --

5 MR. MCMAHAN: Your Honor, I'm going to object to
6 this. This is not a question, it's testimony. Moreover,
7 there was clear discussion yesterday about best available
8 science. The guidelines require best available science.
9 This isn't a novel application of a novel concept of best
10 available science because there's no data. That is an
11 utterly inaccurate representation of the record and the
12 testimony or in fact the guidelines.

13 JUDGE WALLIS: Mr. Marvin, why don't we move on.

14 BY MR. MARVIN:

15 Q. In any event, it would be fair to say that there
16 are unknowns with regard to the impact that your project
17 will have on the site, the biological diversity on the site?

18 A. I think with any project there are unknowns, yes.

19 Q. In this one there are more unknowns with this one
20 compared to a project that would be set on shrub-steppe in
21 Kittitas County?

22 A. I can't make that comparison.

23 Q. But there are more wind power projects in Eastern
24 Washington; correct, then there are in the Gorge?

25 A. Yes.

1 Q. And, in fact, there aren't any in the Gorge in
2 this habitat that we're talking about; correct?

3 A. Yes.

4 Q. You are aware that mitigation for permanent
5 impacts can be dealt with in both a -- through both a
6 mitigation parcel and also through payment of a fee;
7 correct?

8 A. Yes.

9 Q. And your company has chosen not to pursue the fee
10 approach?

11 A. I believe that's at the option of the developer.

12 Q. In your testimony on page 4 you indicate that,
13 it's line 15, states, "We were unable to conclude
14 discussions with conservation organizations prior to the
15 EFSEC hearing, and aligning the conservation parcels with
16 other local properties owned" --

17 A. Mr. Marvin, what document are you referring to?

18 Q. This is your rebuttal testimony, page 4.

19 MR. MCMAHAN: Lines?

20 MR. MARVIN: Line 15.

21 A. Yes, I'm there.

22 BY MR. MARVIN:

23 Q. Okay. And, again, I'll just read this section
24 here and ask some questions. "We were unable to conclude
25 discussions with conservation organizations prior to the

1 EFSEC hearing, and aligning the conservation parcel with
2 other local properties owned or controlled, and managed for
3 the defined conservation objectives of competent, proven
4 conservation organizations proved somewhat challenging."
5 What conservation organizations did you discuss this
6 proposal with?

7 A. Columbia Land Trust owns land in the vicinity. We
8 also had some discussion with the Nature Conservancy and
9 others that I don't -- I mean those are the two main.

10 Q. When you say the land trust, in the vicinity of
11 the mitigation parcel?

12 A. Columbia Land Trust owns land in the Klickitat
13 River drainage in the general vicinity of the mitigation
14 parcel.

15 Q. And what was the nature of your discussions with
16 the land trust?

17 A. We inquired if they would -- as the guidelines
18 state and as we had committed to the Department of Fish and
19 Wildlife to offer the land to the Department of Fish and
20 Wildlife first or a competent environmental organization or
21 land trust that was acceptable to the Department of Fish and
22 Wildlife. Columbia Land Trust was one that the Department
23 of Fish and Wildlife had identified was they felt confident
24 in managing and accepting the conservation easement. So we
25 had discussions with them. They decided that this was --

1 accepting mitigation parcels was outside of the scope of
2 their purpose. And this parcel was not directly related to
3 any of their other holdings so they declined to be the
4 recipient of the conservation easement.

5 Q. Okay. I'm sorry, the second organization you
6 mentioned?

7 A. Nature Conservancy.

8 Q. And the same question, what was the nature of your
9 discussions?

10 A. It was only a brief inquiry, and I don't know that
11 I even had any type of a response.

12 Q. And does Nature Conservancy have lands adjacent to
13 or in the vicinity of the proposed parcel?

14 A. No.

15 Q. From your statement it suggests that perhaps the
16 decision-making process was sort of rushed along due to the
17 pending hearing here. Do you think there may have been a
18 possibility of working something out with the Columbia Land
19 Trust if there had been additional time to do so?

20 A. I disagree with your read into the intent of that
21 statement. It was not rushed along and if we had -- we had
22 a conclusive answer from Columbia Land Trust. And the offer
23 we -- as long as we put a conservation easement on the
24 property that meets the guidelines. The recipient, the
25 Klickitat County as a qualified recipient, the Department of

1 Fish and Wildlife has accepted Klickitat County as a
2 responsible party to receive the conservation easement.

3 Q. Well, I guess I'm just trying to clarify. It
4 says, "We were unable to conclude discussions with
5 conservation organizations." So it sounds to me like -- is
6 it fair to say from your testimony today that you did
7 conclude your discussions with the Columbia Land Trust with
8 regard to this mitigation parcel?

9 A. Yes.

10 Q. And with the Nature Conservancy it sounds like
11 perhaps you never even -- perhaps the conversation never got
12 off the ground; is that fair to say?

13 A. I think my -- the initial reaction that I heard in
14 response to the inquiry is that it was nothing -- nowhere
15 near anything that Nature Conservancy has, so it didn't go
16 any farther than that.

17 Q. Okay. At this point in time there would be no --
18 if you hadn't reached an agreement with the Klickitat County
19 organization you wouldn't have ongoing discussions with
20 either the Columbia Land Trust or the Nature Conservancy
21 regarding this mitigation package?

22 A. If we hadn't reached with Klickitat County I would
23 have attempted further with the Nature Conservancy or some
24 other environmental organization.

25 Q. Is there another environmental organization that

1 comes to mind?

2 A. None that own land in the area of Klickitat
3 County.

4 Q. Did you contact DNR regarding its ownership?

5 A. No, I did not.

6 Q. And why not?

7 A. I felt for the same reasons that WDFW that the
8 challenge of accepting the parcel to some kind of ownership
9 would be -- you know, could prove to be a difficult
10 challenge so we decided -- and, again, granting -- we've met
11 the guidelines. Granting conservation easement on a parcel
12 that serves as mitigation is what we tried to do.

13 Q. I think as your counsel noted earlier, these are
14 guidelines; correct?

15 A. Yes.

16 Q. Okay.

17 A. I think, Mr. Marvin, and, Your Honor, and the
18 Council, I think we really -- I don't know that I really
19 care who it goes to. We want to mitigate the wildlife
20 impacts of the project.

21 Q. And we appreciate that. And I think the reason
22 we're going along this line of questioning is as to whether
23 or not what we have on the ground at this point actually
24 serves that purpose. And I don't ask these questions as a
25 means of questioning your sincerity, your desire to do that.

1 I think we need to just get to the bottom as to whether this
2 is an appropriate package or not.

3 Let's turn back to the guidelines. I know you're
4 not a wildlife biologist, has the Applicant retained the
5 assistance of a wildlife biologist to make an assessment of
6 this property?

7 A. No.

8 Q. There are representations in the application
9 regarding the suite of animals that are found on the site.
10 Do you know how that list was developed?

11 A. We, you know, as you saw in the letter that we
12 sent to Department of Fish and Wildlife there were
13 observations on the Department or identifications on the
14 Department of Fish and Wildlife priority habitat and species
15 maps. So that plus just the knowledge of the property. It
16 has a fish-bearing stream going through it that is a
17 tributary to the Klickitat River. We have seen Western Gray
18 Squirrels on the property. It is in the vicinity of known
19 other Western Gray Squirrel sites. It's in the vicinity of
20 priority area to the western gray squirrel recovery plan.
21 All of those are known facts. We presented that to the
22 Department of Fish and Wildlife, and they've done their own
23 evaluation from there.

24 MR. MCMAHAN: I think it's on page 5 of the
25 rebuttal testimony that you're referring to; is that

1 correct?

2 MR. MARVIN: I'm sure it probably is. Yes.

3 BY MR. MARVIN:

4 Q. With regard to the Western Gray Squirrel, do we
5 know whether there are any Western Gray Squirrels within
6 this habitat?

7 A. I've personally --

8 Q. Let me rephrase that, I apologize for asking, that
9 was a poorly-phrased question.

10 With regard to the parcel do we know if there are
11 in fact any Western Gray Squirrel presence on that parcel?

12 A. The parcel, it's not been surveyed for Western
13 Gray Squirrel nests.

14 Q. So we really have no idea as to whether or not
15 there's a viable population of Western Gray Squirrels
16 utilizing this property?

17 A. As shown in the information submitted to DFW there
18 are documented Western Gray Squirrel nest sites on
19 surrounding properties. And it's shown in the Western Gray
20 Squirrel recovery plan as being in an area of a bunch of
21 concentrated concentrations in Klickitat County of Western
22 Gray Squirrel nest sites. I've personally seen a Western
23 Gray Squirrel on the property. I'm not a biologist, so it
24 could have been an Eastern Gray.

25 MR. MCMAHAN: It was gray.

1 BY MR. MARVIN:

2 Q. Is was gray, that's correct. Is the project, the
3 project site, a Western Gray Squirrel habitat?

4 A. I believe it is, but I caveat that, again, I'm not
5 a habitat biologist.

6 MR. MCMAHAN: Just a second. Are you talking
7 about the project, the Whistling Ridge project site is a
8 Western Gray Squirrel habitat, is that your question or are
9 you talking about the mitigation?

10 BY MR. MARVIN:

11 Q. No, I'm asking is the project site a Western Gray
12 Squirrel habitat?

13 A. So, yeah, I misspoke then. I misunderstood your
14 question. The last response, my last answer was not
15 correct. We surveyed the project site for Western Gray
16 Squirrels because it contains some aspects of Western Gray
17 Squirrel habitat. But my understanding is that it's not
18 typical Western Gray Squirrel habitat.

19 Q. You were present for Mr. McIvor's direct and
20 redirect testimony yesterday?

21 A. Yes, I was.

22 Q. And during that testimony he identified a number
23 of species of concern that your biologist had identified at
24 the site; correct?

25 A. Yes.

1 Q. One of those species was the Pileated Woodpecker,
2 and I can refer you to page 9 of Exhibit 31, direct
3 testimony of Don McIvor, I don't think you really need to
4 look at it, I think this is going to be --

5 A. I don't have that testimony.

6 Q. Anyway, the Pileated Woodpecker is one of the
7 species of concern that is listed on that that he identified
8 during his testimony?

9 A. Uh-huh.

10 Q. And based on your knowledge of the mitigation
11 package, mitigation site, is this mitigation package habitat
12 for the Pileated Woodpecker?

13 A. Again, I'm not a habitat biologist, but I know
14 that Pileated Woodpeckers produce cavities in trees to nest
15 in. And there's a mixture of Oak and conifer habitat on
16 this mitigation parcel. From my experience as a forester it
17 is possible and likely that it's Pileated Woodpecker
18 habitat.

19 Q. Okay. Let's go back to page 5 of your rebuttal
20 testimony.

21 A. Yes.

22 Q. And I guess the point I'm making is that you have
23 on the very bottom there you have a number of bulleted
24 species which is information that you gathered from the Fish
25 and Wildlife priority habitat and species database; correct?

1 A. Partly, and part of it is the next sentence, the
2 second sentence of that paragraph says, "These documented
3 sites," that is referring to the priority habitat and
4 species database, "along with other upland wildlife species
5 that we have been," there's a typographical error there,
6 that have -- it should say "that have been observed on or
7 near the proposed mitigation parcel include the following:"
8 list.

9 Q. Okay. And the Pileated Woodpecker does not appear
10 on that list?

11 A. No.

12 Q. And similarly the Vaux's Swift does not appear on
13 that list?

14 A. No. They've not been observed nor have they been
15 surveyed for by us, by SDS Lumbar, on the proposed
16 mitigation parcel.

17 Q. And the Olive-sided Flycatcher does not appear on
18 that list?

19 A. Again, they have not been surveyed for on the
20 mitigation parcel by us. It does not mean they don't exist.

21 Q. I understand. Obviously, your response is
22 conditioned upon the limits of the data that you reviewed or
23 of the data set you have currently available. I'm just
24 trying to establish, you know, as best we can at this time,
25 you know, what this site is mitigating, what the potential

1 is for this site for mitigation based on the best
2 information that we have currently available in front of us.

3 With regard to Northern Goshawks, is Northern
4 Goshawks identified in the bullet pointed list of species
5 that you set forth on page 5 of your prefilled rebuttal
6 testimony?

7 A. No, it is not.

8 Q. And Bald Eagles, I believe are; correct?

9 A. Yes.

10 Q. And Golden Eagles.

11 A. Yes.

12 Q. In all fairness, I believe the Western bluebird
13 appears on the project site, and that's also been identified
14 on your list on page 5; is that correct?

15 A. Yes.

16 Q. Has there been any -- are you familiar with what
17 kind of -- as to whether or not this site is bat habitat?

18 A. I'm not -- I don't know.

19 Q. Okay. I assume that you're not a biologist,
20 you're not prepared to express an opinion one way or the
21 other as to the types of bats that might be found on the
22 site?

23 A. That's correct.

24 Q. I see on your page 8, section 13 it indicates, "We
25 are continuing discussions with Klickitat County, including

1 refining the conservation purpose (including resolving
2 whether any grazing should be permitted, along with any
3 active or passive recreation, including trails." With
4 regard to grazing, is the property currently subject to
5 grazing?

6 A. No.

7 Q. Who has raised this issue with regard to grazing?

8 A. Klickitat County.

9 Q. Are you aware of any individuals who are
10 interested in grazing or any entities that are interested in
11 grazing cattle on this property?

12 A. No. And I -- if you'll indulge me I will give
13 more information to the Council?

14 Q. Certainly.

15 A. Your Honor, Members of the Council, the cattle
16 industry is still a large presence in Klickitat County, and
17 there's a number of sensitive issues. One of which is
18 taking private property off of county tax rolls by deeding
19 this to a conservation organization. So we have agreed with
20 Klickitat County that we retain ownership and pay taxes on
21 the property when and if we grant the conservation easement.

22 The second issue is removing land and labeling it
23 as completely off limits to grazing because grazing is bad
24 for the environment in some ways. We're willing to enter
25 into agreement with the Department of Fish and Wildlife

1 because we will retain ownership of the parcel. If we grant
2 conservation easement to the County we will enter into a
3 separate agreement that we will never lease the property for
4 grazing or grazing purposes.

5 Q. At is point do we have any study or information
6 that would suggest that grazing would be good or bad for a
7 mitigation parcel of this nature?

8 A. We don't.

9 Q. And --

10 A. And maybe it's desirable for it to be grazed, I
11 don't know.

12 Q. I don't know either. And who would you look to
13 for the clarification with regard to this grazing issue?

14 A. We would have to discuss it with the Department of
15 Fish and Wildlife as to the suitability of the conservation
16 easement and the purpose of the property.

17 Q. The thing I wanted to point out, and you already
18 made reference to this that SDS, on page 8, line 16 and 17,
19 you stated that, "SDS will be solely responsible for all
20 ongoing costs of meeting and enforcing the conservation
21 objectives of the mitigation parcel."

22 A. You are on which document?

23 Q. I'm sorry, it's your rebuttal testimony on page 8,
24 line 16.

25 A. Of page what?

1 Q. Page 8.

2 A. Yes, we state, "We will continue to collaborate
3 with the Department of Fish and Wildlife in formulating the
4 conservation provisions of the conservation easement, and
5 welcome EFSEC's input as well. SDS will be solely
6 responsible for all ongoing costs of meeting and enforcing
7 the conservation objectives of the mitigation parcel."

8 Q. And with regard to that final sentence there, if
9 there was a different parcel or an additional parcel
10 identified would SDS be prepared to make a similar
11 commitment with regard to the ongoing costs of meeting and
12 enforcing the conservation objectives if there was a
13 different or additional parcel identified?

14 A. I think -- I can't speculate. That's a
15 hypothetical, I can't answer the question.

16 Q. I understand. I think the last issue that I
17 wanted to touch on was the composition of the TAC. I
18 understand if we turn to page 2 and 3 of your rebuttal
19 testimony starting at line 24 operational monitoring?

20 A. You say page 3?

21 Q. Page 2 and 3 but starting at the bottom of page 2
22 obviously.

23 A. Yes, I'm there.

24 Q. And you've indicated that in this section that
25 Whistling Ridge is prepared to have the formation of a TAC

1 and to have the composition, the members of that TAC, the
2 stakeholders as recommended under the Wind Power Guidelines;
3 is that correct?

4 A. Yes.

5 Q. And under that Wind Power Guidelines it indicates
6 there should be -- I can dig it out for you, but it does say
7 there should be community representatives on the TAC?

8 A. Yes.

9 Q. And do you have any objections or concerns
10 regarding the organization, potential organizations that
11 might be appointed in that position?

12 A. I think it's -- it would depend on the
13 organization whether I would have any concerns or not. I
14 think the guidelines are clear, the intended participants in
15 the TAC, and we would like to work with EFSEC and have a
16 discussion about fulfilling those requirements.

17 Q. Are there intervenors who you would oppose to
18 being in this action, whose representatives you would oppose
19 to having membership on the TAC?

20 MR. MCMAHAN: Your Honor, I'm going to object to
21 that. This is within the sound discretion of siting
22 Council. His opinion on this frankly has very little to do
23 with how this TAC membership is resolved, because it is
24 abundantly clear to the siting Council in history that
25 having people who want to destroy your project on TACs isn't

1 a great idea.

2 JUDGE WALLIS: Mr. Marvin.

3 MR. MARVIN: I think with Tim's final testimony
4 there I think we can let that go.

5 BY MR. MARVIN:

6 Q. Again, I just wanted to ascertain that you were on
7 board with the guidelines and the statements regarding
8 stakeholders within the guidelines?

9 A. Yes.

10 MR. MARVIN: I have nothing further.

11 JUDGE WALLIS: Mr. Andersen, do you have any
12 questions?

13 MR. ANDERSEN: I don't, Your Honor.

14 THE WITNESS: Your Honor, I realize I may have
15 misspoken in response to a question. I just wanted to
16 clarify for the record. Mr. Kahn asked me if we've had any
17 discussions with any entity regarding some kind of a habitat
18 conser -- you know, conservation of habitat within several
19 miles of the project, and I think I answered no.

20 And as I was looking at that and scaling off of
21 that map I think the answer maybe is yes. We had some
22 discussions regarding some property in the Little White
23 Salmon area that is within a few miles of the project area,
24 but it was an entirely unrelated discussion to this project
25 for an unrelated purpose. I just want to be clear.

1 MR. ARAMBURU: Judge Wallis, I have a couple
2 questions for the witness.

3 JUDGE WALLIS: Mr. Aramburu.
4

5 CROSS-EXAMINATION

6 BY MR. ARAMBURU:

7 Q. Mr. Spadaro, I want to go back to Cedar Swamp,
8 that was the first part of your testimony some time ago.
9 But I wanted to ask a question about the location and size
10 of Cedar Swamp if I could. And I'm looking at page 3.3-1 of
11 the application, and under the second paragraph under
12 Existing Surface Water Conditions?

13 A. Yes.

14 Q. You see that? That paragraph says that, "USGS
15 review identified one delineated wetland occurring outside
16 the impacted area, west of turbine E-3. This wetland is
17 labeled as Cedar Swamp on the USGS topographic map"; is that
18 incorrect?

19 A. I think that should state "C," you know, the
20 approximate location of what we -- for these evaluations
21 we've labels sites. I think it should be C-3, not E-3.

22 MR. MCMAHAN: So it's a typo.

23 A. I think it's a typographical error, yes. E-3 does
24 not exist.

25

1 BY MR. ARAMBURU:

2 Q. There we go. Now, I put up on the board the
3 forest types map from the application, and I've sort of
4 zeroed in the area of Cedar Swamp, and we're in the north
5 part of the project area.

6 JUDGE WALLIS: Can you identify that by its
7 designation in the application, please.

8 MR. MCMAHAN: You're using the type map, not the
9 delineation map; is that correct?

10 MR. ARAMBURU: I'm at Figure 2.3-2.

11 MR. MCMAHAN: Which is not the delineation map?

12 MR. ARAMBURU: It's not the delineation map.
13 That's absolutely right.

14 MR. ANDERSEN: What's the exhibit number.

15 MR. ARAMBURU: 2.3-2.

16 A. It's page 2.3-8. I'm there.

17 BY MR. ARAMBURU:

18 Q. Okay. Good. On that drawing there is an area
19 identified as a riparian forest, you see that in the blue?

20 A. Yes, I do.

21 Q. And we have that up on the board as well. What
22 are the types of forests or types of trees that are found in
23 the riparian forest?

24 A. Western Red Cedar, Black Cottonwood, Red Alder,
25 those types of tree species typically exist in riparian

1 environment.

2 Q. What makes this into a riparian forest? Why is it
3 a riparian forest even though none of the other areas around
4 it are?

5 A. It is a different forest-type because of its, you
6 know, the amount of moisture in the soil, the soil types
7 themselves, the unique characteristics of that allow
8 different species to grow there as compared to something
9 more upland.

10 Q. Is this a relatively rare type of trees to be
11 found in this locale?

12 A. No.

13 Q. The Western Red Cedar found?

14 A. Yes, the next drainage over, and then to the east,
15 the next drainage over to the west all have these same
16 species.

17 Q. And how large is Cedar Swamp, I never heard the
18 answer to that?

19 A. It's not very large. I mean it depends what
20 you're calling Cedar Swamp. Are you talking about the
21 delineated wetland?

22 Q. Yeah.

23 A. I don't know the exact. I think that's in the
24 application materials, but I don't know the answer to that.
25 It's not very large.

1 Q. But has it ever been delineated and given a size
2 by a certified wetland biologist?

3 A. I would have to refer -- I would refer that
4 question to our wetlands surveyor, that's out of my
5 expertise.

6 Q. The section in the application here says it's
7 undelineated. I don't see anything in the application that
8 indicates its size. I'm looking at section 3.3.

9 A. Yeah, I didn't author this section, I frankly
10 haven't reviewed it, and I don't know the answer to that.

11 Q. And you indicated in your testimony that C-1
12 through 4 turbine string is 300 feet from the swamp?

13 A. I was responding to a question from the Council.
14 I did -- I grabbed a topographical, USGS topographical map
15 and approximated the scale. I suppose it would require more
16 exact measurement in the field to be precise. But that's
17 what I said earlier, and that's roughly accurate.

18 Q. When you're scaling this 300 feet, that's been
19 scaled, it's not been actually measured?

20 A. That's correct.

21 Q. And is that from the edge of your, what you call
22 your 650 feet turbine corridor or is that from the
23 identified line of turbines found in C-1 through 4?

24 MR. MCMAHAN: Your Honor, again, this is apples
25 and oranges to trip up a witness. This is a habitat-type

1 map not the wetland delineation map. The description was
2 from the wetland or swamp or whatever one calls it--fire
3 pond--itself not this blue blob on the map you have in front
4 of you.

5 BY MR. ARAMBURU:

6 Q. I'm not asking you about the blue blob on the map.
7 I'm asking if that's been measured.

8 A. It is an estimation based on what I can determine
9 from the edge of the corridor that we're permitting to the
10 edge of what's shown on the USGS Northwestern Lake
11 quadrangle map.

12 Q. Has the area of the forested, the riparian
13 forested-type that's on the map on the screen, has that been
14 harvested?

15 A. There's been some partial harvesting occur there,
16 partial cutting. Because it's a riparian forest it has a
17 little different requirements of the forest practices act
18 and we're allowed to do some partial cutting.

19 Q. Okay. When was that harvesting done?

20 A. In the last year, probably in 2010.

21 Q. Okay. And so that I understand, you made a
22 revised proposal here on Monday, we still have four turbines
23 on C-string?

24 A. I don't know that. We have not micro-sited the
25 project. Again, I don't want to rehash that.

1 Q. Okay. But you haven't changed the number of
2 turbines then?

3 MR. MCMAHAN: Your Honor, again, there was
4 never -- we have been through this ad nauseam. There was
5 never a number of turbines there, there's no change in the
6 proposal. I really object to this line of questioning, we
7 have been over it and over it.

8 JUDGE WALLIS: I'll sustain that objection.

9 BY MR. ARAMBURU:

10 Q. Is the Cedar Swamp area at the toe of a steep
11 slope?

12 A. Say that again.

13 Q. Is it at the toe of a steep slope?

14 A. The toe of a steep slope. The slope is going up
15 to the ridge of C, that's the southern part of the C-string
16 is not excessively steep. I would say it's no more than
17 50 percent, percent not degrees, 50 percent slope.

18 Q. And that would be a landslide hazard area
19 immediately above that?

20 MR. MCMAHAN: If you know within your expertise.

21 A. Yeah, I was just going to say that I can't answer
22 that.

23 BY MR. ARAMBURU:

24 Q. Would you look at, do you have the geological
25 report?

1 MR. MCMAHAN: Your Honor, Mr. Spadaro is not an
2 expert in geology. If Mr. Aramburu wants to ask Mr. Meyer
3 about geology let's do it on Monday.

4 MR. ARAMBURU: I'm just trying to identify the
5 potential impacts to Cedar Swamp.

6 MR. MCMAHAN: Well then do it on Monday with the
7 expert. Mr. Spadaro isn't even up to speed on that report.
8 I doubt he even remembers it, it's probably a year ago that
9 he even looked at it.

10 BY MR. ARAMBURU:

11 Q. Has your counsel represented what you remember?

12 A. I have not read the geology report in a long time.

13 Q. There were some questions to you about the
14 harvesting dates on your property, particularly on the north
15 end of the property. When was the DNR property last
16 harvested?

17 A. There was a timber sale, there's a timber sale
18 currently active. There's been a number of timber sales to
19 the north of the project area on DNR property. In fact, SDS
20 Lumbar bid on several on them. So there's harvesting been
21 going on for the last two or three years, and there's still
22 harvesting yet to be done in the next few years.

23 Q. In your testimony at -- in your rebuttal
24 testimony, page 6, you characterize the mitigation parcel as
25 one that is at substantial risk of development. If you

1 would like to look at that section of your testimony you
2 can. And I wanted to ask you a couple of questions about
3 that. Has there been a development application made by the
4 property owner or anyone else on the mitigation parcel?

5 A. Well, we are, SDS Lumber is the property owner,
6 and, no, we have not submitted an application. The property
7 though is zoned five-acre zoning. And we could submit a
8 short plat or subdivision at any time.

9 Q. Would the short plat or subdivision have to go
10 through an established process to Kittitas County?

11 A. Klickitat County, yes.

12 Q. Excuse me. And did the prior property owner
13 submit any development applications?

14 A. We have owned the property for many, many years.
15 And I don't know what the prior property owner was. The
16 point is shown in the exhibit map is that there's
17 development to the east and to the west of the property.

18 Q. When was the last subdivision of that area?

19 A. I can't answer that. They're ongoing all the
20 time.

21 Q. But you can't identify a time?

22 A. No.

23 MR. ARAMBURU: No further questions.

24 JUDGE WALLIS: Very well.

25 MR. MCMAHAN: Yes, I do have some redirect.

1 JUDGE WALLIS: Mr. McMahan.

2

3

REDIRECT-EXAMINATION

4 BY MR. MCMAHAN:

5 Q. On the last point, Mr. Spadaro, the DNR harvesting
6 on the property to the north, I would like to be more
7 specific about that. Is that DNR parcel to the north of the
8 project site the property that Mr. Reams was discussing
9 yesterday which is within the so-called owl circle?

10 A. Yes.

11 Q. So is it your testimony that -- well, tell the
12 Council what the harvesting activity is within that owl
13 circle on DNR-owned property?

14 A. Well, we as a private landowner have to follow the
15 forest practice rules that require 40 percent of any median
16 home range for Spotted Owls. 40 percent of that median home
17 range needs to be in habitat. DNR under their -- they have
18 a separate agreement, they don't have to follow that rule
19 because they have a habitat conservation plan. So they
20 don't need to worry about individual circles. And under
21 their habitat conservation plan this is one -- this area
22 just north of the project boundary is one of the areas where
23 they can concentrate harvest under the habitat conservation
24 plan. That's what they have been doing, and that's what
25 they will be doing.

1 Q. So that harvesting is ongoing even now within this
2 owl circle?

3 A. Yes.

4 Q. Backing up a little bit further, going back for
5 the moment and then I will go forward. This Cedar Swamp
6 that has been very, very heavily discussed here, it is I
7 believe -- was it your testimony that it is the preference
8 of the Washington Department of Fish and Wildlife not to
9 buffer or protect and make it some permanent feature but to
10 drain it?

11 A. No, that's not my testimony. That was the
12 preference of the Department of Fish and Wildlife. When we
13 did put in a Forest Practice Application to harvest in that
14 vicinity there was some discussion about that that the
15 Department of Fish and Wildlife couldn't come to a
16 conclusive answer that that would be the best thing to do.
17 The weighing was leave it as is and not do any further
18 disturbance versus trying to restore it to a native
19 condition. And we never had a conclusive answer to that.
20 But there was -- it was being weighed.

21 Q. So there are interests in the Washington State
22 Department of Fish and Wildlife that would like to have it
23 restored to its native condition; is that right?

24 A. There is an effort through the Forest Practices
25 Act and the DFW's review of Forest Practice Applications to

1 restore riparian conditions to native and natural
2 conditions.

3 Q. So I suppose if we prowled through selective
4 emails we might find that correspondence within WDFW staff?

5 A. Yes.

6 Q. And to restore it to its native condition what
7 does that mean?

8 A. To remove the earthen dam that dammed the stream
9 and allow it to flow freely. And then it would drain the
10 swamp and we would probably have to plant or agree to
11 planting riparian trees along the stream bank to stabilize
12 it and restore it to its native condition.

13 Q. So backing up just a little bit on this like-kind
14 habitat question, and just to take the little blinders off
15 of the way people are reading the guidelines. You, I
16 believe, heard Mr. Johnson's testimony about like-kind
17 and/or equal or higher habitat value, do you remember that
18 testimony from yesterday?

19 A. Yes.

20 Q. And is that reflected on page 9-B, bullet 1, which
21 Mr. Cantrell has been rather selectively reading. I'm
22 referring to Fish and Wildlife guidelines, I'm sorry, I
23 forget the Exhibit No. 6.01?

24 A. That is what I was trying to find earlier. What
25 page are you referring to?

1 Q. Nine.

2 A. Page 9.

3 Q. 5.2 --

4 MR. MARVIN: Can I insert an objection here with
5 regard to the sort of ongoing commentary regarding the
6 questioning. I believe the witness is here to testify and
7 not the attorney.

8 JUDGE WALLIS: Yes. We understand, Mr. Marvin.
9 And --

10 MR. MCMAHAN: I'll try to behave myself better,
11 Your Honor, thank you. It's been a long morning for me.

12 BY MR. MCMAHAN:

13 Q. So again sub B, bullet 1.

14 A. Yes.

15 Q. So you were trying to explain that language and
16 what your intent was in fulfilling that language. Now that
17 you have that opportunity to do so would you please do so?

18 A. Yes, bullet 1 under sub B states like-kind -- I'll
19 back up. "In each of the mitigation categories below, the
20 criteria indicate that the replacement habitat should be
21 negotiated in consultation with WDFW and the permitting
22 authority and include the following considerations:
23 Like-kind (and that being shrub-steppe for shrub-steppe;
24 forested for forested, grassland for grassland) and/or of
25 equal or higher habitat value than the impacted area." And

1 that's what we tried to accomplish was to provide higher
2 quality habitat than the impacted area which is a clear-cut.

3 Q. And in your discussions with the Washington State
4 Department of Fish and Wildlife can you describe the
5 guidance you received from them on what they would want you
6 to look for in this vicinity to provide that like-kind
7 and/or higher or equal habitat value, what characteristics
8 they were looking for in the parcel?

9 A. As I testified earlier, the first reaction from
10 the Department of Fish and Wildlife was the highest priority
11 habitat and species in this geographic area are related to
12 Oak Woodlands and the Oak Woodland dependent species. So
13 that's what we sought in response to that.

14 Q. Okay. So there was some understanding with Fish
15 and Wildlife that that would in fact further their own
16 conservation goals within the Klickitat Skamania County
17 area?

18 A. Yes.

19 Q. Have you in your mitigation efforts tried to do
20 the absolute minimum possible mitigation proposal? Can you
21 just give the Council some context of what your intent,
22 spirit was in trying to provide this to the Council in a
23 site certificate?

24 A. Again, as I attempted to state earlier, we know
25 this is in a forested environment. We know this is

1 something unique and new. We did not want to argue or
2 debate with anybody whether what the guidelines say with
3 regard to harvested forestlands and whether they're a
4 disturbed habitat or not and whether they need to be
5 mitigated or not. We wanted to provide something that was
6 valuable and advanced the interest of the Department of Fish
7 and Wildlife and appropriately mitigated for the project.
8 We carried that intent and spirit through everything we have
9 done in the project from wildlife surveys to the mitigation
10 parcel trying to go above and beyond.

11 Q. Really one final question or topic here. You were
12 here for Mr. McIvor's testimony yesterday; is that right?

13 A. Yes.

14 Q. All right. And you heard his testimony concerning
15 sort of indicative species or species that are likely to be
16 found in forested environments and his discussion about the
17 mitigation parcel, do you recall that?

18 A. Yes.

19 Q. One of those indicative species of a habitat that
20 has value similar to your project site was indeed the
21 Western Bluebird; is that right?

22 A. Yes.

23 Q. So that was indicative perhaps of other species
24 that aren't specifically on your list?

25 A. Yes.

1 MR. MCMAHAN: I have nothing further, Your Honor.

2 JUDGE WALLIS: Are there any follow-up questions?

3 MR. CANTRELL: I have just, I think, three
4 hopefully quick ones in response to some of the comments or
5 responses to Mr. McMahan's questions.

6

7 RE-CROSS-EXAMINATION

8 BY MR. CANTRELL:

9 Q. First off, under one of your last points I
10 appreciate your intent to avoid getting into a debate about
11 exact ratios and all that. I think that your approach is a
12 better one to avoid that, so I appreciate that. Having said
13 that I do want to ask you, again, without belaboring points
14 before the difference between 54 acres or over 60 acres,
15 that is a 10 percent difference. So if I understood that
16 your counsel stipulated that you would agree to the 60
17 acres; is that correct?

18 MR. MCMAHAN: My stipulation, Counsel, is that it
19 doesn't matter. My stipulation is it's regardless to us if
20 it's 54 or 61 point whatever. The guidelines for this
21 habitat require consultation, not a specific ratio. This is
22 not Class II habitat. It's not subject to the two to one
23 ratio. Whether it's 50, 60, 100 acres is quite irrelevant
24 to these proceedings.

25 MR. KAHN: That's testimony, Mr. Chair.

1 MR. MCMAHAN: He asked for a response.

2 MR. KAHN: He asked if you stipulated to
3 something, not for a speech.

4 JUDGE WALLIS: Mr. Cantrell, I think we have
5 really gone through this area in your earlier questioning.

6 BY MR. CANTRELL:

7 Q. The question I have then specifically on it is
8 that as you came up with this package you had in mind the 54
9 acre, not looking at ratios or any of that, that you were
10 envisioning 54 acres of what you were trying to mitigate
11 for; is that correct?

12 A. I'll again state we did not -- it was not the
13 intent to define a number of acres and a specific ratio that
14 needed to be mitigated. We intended --

15 Q. I'm not asking about a ratio. I agree with
16 Mr. McMahan and you that we don't need to get into a precise
17 ratio. I'm wondering --

18 A. And I'm saying --

19 JUDGE WALLIS: Excuse me, excuse me, I think we're
20 really recirculating questions and answers that are very
21 repetitive. And let's move on to the next topic.

22 MR. CANTRELL: Okay. Two last things.

23 BY MR. CANTRELL:

24 Q. Mr. McMahan had you reference in Exhibit 6.01, the
25 Wind Power Guidelines, section B. I wanted to bring your

1 attention to that again.

2 A. Yes.

3 Q. The sentence there before the bullets, where it
4 says, "should be negotiated in consultation with WDFW and
5 the permitting authority." I'm just wondering if you are
6 willing to negotiate with EFSEC on the mitigation parcel?

7 A. I think we're open to whatever EFSEC desires.

8 Q. So that if there's modifications to what you
9 propose EFSEC wants to propose you're open to that?

10 A. Yes.

11 Q. Great. Thanks. Then the last I want to call your
12 attention to is Exhibit 1.19C which is the DNR letter dated
13 July 19th to EFSEC, do you have that?

14 A. I don't believe I have that one. I think I gave
15 it to Jeff Reams or someone.

16 MR. MCMAHAN: Which letter? I missed it.

17 MR. CANTRELL: It's the letter from DNR to EFSEC
18 dated July 19th. It's Exhibit 1.19C.

19 MR. MOSS: That can't be correct.

20 MR. CANTRELL: I'm sorry, 1.09C, sorry.

21 A. I gave my -- that was DNR comments on --

22 BY MR. CANTRELL:

23 Q. Yes.

24 A. -- the Applicants? I gave that copy to one of our
25 other witnesses yesterday. Maybe you can ask the question,

1 I'll tell you if I need it.

2 Q. Yeah. There's one paragraph on page 3, the same
3 one I was asking Mr. Reams about yesterday.

4 JUDGE WALLIS: Is this repetitive of your earlier
5 questioning, Mr. Cantrell?

6 MR. CANTRELL: No. This is in response to where
7 Mr. McMahan asked Mr. Spadaro about the activities on the
8 DNR lands to the north of the project site. I wanted to
9 follow up on what Mr. McMahan had raised around harvest and
10 activities on that DNR land.

11 JUDGE WALLIS: Briefly then, please.

12 MR. MOSS: Your Honor, at the risk of seeing more
13 of our valuable time slowly hemorrhaged away, this is not
14 Exhibit 1.09C either, this is a map.

15 JUDGE WALLIS: I believe it's 1.20C.

16 MR. CANTRELL: I apologize, I thought I had
17 written down the exhibit number right, apparently I didn't.
18 This is a DNR letter dated July 19th. It was accepted in
19 yesterday when I was questioning Mr. Reams.

20 MR. MOSS: Your Honor, the letter can be found at
21 Exhibit 5.04.

22 JUDGE WALLIS: Thank you.

23 MR. CANTRELL: Not even close, sorry.

24 MR. MOSS: The United States Department of the
25 Interior letter?

1 MR. CANTRELL: No, that's a different letter.
2 This is a letter from the Department of Natural Resources.
3 Again, it was one where there was an objection from
4 Mr. McMahan and it was -- I was allowed to --

5 JUDGE WALLIS: Let's be off the record.
6 (Discussion held off the record.)

7 JUDGE WALLIS: Back on the record.

8 MR. BAKER: Your Honor, I have the Exhibit
9 No. 1.16C. It would have been in the blue binders
10 redistributed on Tuesday, but it may have been moved to a
11 different binder.

12 JUDGE WALLIS: Thank you.

13 MR. CANTRELL: 1.16C.

14 JUDGE WALLIS: Let's proceed with the question,
15 please.

16 BY MR. CANTRELL:

17 Q. Okay. In that comment letter the Department of
18 Natural Resources states, "This project may interfere with a
19 Spotted Owl's ability to disperse from the DNR HCP
20 conservation area to other areas in the vicinity." I'm just
21 asking based on your comments about the harvest that's going
22 on both on your land and on the DNR land to the north if you
23 agree or disagree that this project as proposed without any
24 additional or different mitigation may interfere with the
25 Spotted Owl's ability to disperse?

1 A. I'm not a habitat biologist for Spotted Owls.
2 From my limited knowledge of Spotted Owls I know that they
3 typically don't or may not -- they may follow riparian
4 corridors or drainages and not spend a lot of time on
5 wind-swept ridges, but I'm not a biologist.

6 Q. I think I can finish this by redirecting or
7 rephrasing the question. I'm not asking you to make a
8 biological assessment, I apologize for that.

9 You were testifying in response to Mr. McMahan's
10 questions regarding forest practices and timber harvest
11 activities on the DNR land. And DNR does operate those
12 lands for the benefit of Spotted Owls; is that your
13 understanding, the two circles, the land immediately north
14 of your property?

15 A. No, that's not my understanding that they operate
16 or manage those lands for the benefit of Spotted Owls. I
17 think they have multiple objectives in complying with
18 habitat conservation plans.

19 MR. ANDERSEN: Your Honor, I'm going to object.
20 This is outside the scope of redirect.

21 MR. CANTRELL: I'm trying to get to, Your Honor,
22 specifically about -- there was testimony just earlier this
23 morning by Mr. Spadaro about timber harvest in that area
24 with the inference of how it wasn't going to be a problem or
25 the impacts of owls and --

1 JUDGE WALLIS: I'm going to sustained the
2 objection. We've been going through this at great length.

3 MR. CANTRELL: Nothing further then.

4 JUDGE WALLIS: Very well. Are there further
5 questions of the witness? Very well.

6 MR. KAHN: Your Honor, now that Mr. Spadaro has
7 concluded his testimony can we get a ruling on the
8 admissibility of Exhibits 1.12C and 1.13C?

9 JUDGE WALLIS: I'm reserving that. Okay. Let's
10 take our morning recess at this time and we will -- yes,
11 Mr. Andersen.

12 MR. ANDERSEN: Your Honor, I know I'm new. You
13 guys covered a lot of ground. But I think I heard you say
14 if possible you wanted to have local witnesses come and
15 testify today?

16 JUDGE WALLIS: What I would like to do is when we
17 go off the record talk a little bit about scheduling and ask
18 counsel during recess to explore options here. So with that
19 let's be off the record.

20 (Break taken from 10:41 to 10:59 a.m.)

21 JUDGE WALLIS: Let's be back on the record
22 following our morning recess. Howard Schwartz has come
23 forward to the stand to present his testimony.

24 Mr. Schwartz, raise your right hand.

25 ///

1 HOWARD SCHWARTZ,
2 having been first duly sworn on oath,
3 testified as follows:
4

5 DIRECT EXAMINATION

6 BY MS. JAFFE:

7 Q. Thank you. Mr. Schwartz, have you filed prefiled
8 testimony in this matter?

9 A. Yes.

10 Q. Do you have a copy of that in front of you today?

11 A. Yes.

12 Q. Is it marked as Exhibit 35 and 35R for the
13 rebuttal?

14 A. Yes.

15 Q. Along with those are there also attachments 35.01
16 through 35.11?

17 A. Yes.

18 Q. If I asked you the same questions today as were
19 asked of you in the prefiled testimony would your answers be
20 the same?

21 A. Yes.

22 Q. Do you have any substantive changes to that
23 testimony?

24 A. No.

25 MS. JAFFE: At this time, Your Honor, I would like

1 to move for admission of Exhibits 35.00 through 35.11 as
2 well as 35R.

3 (Exhibit Nos. 35.00, 35.01, 35.02,
4 35.03, 35.04, 35.05, 35.06, 35.07, 35.08,
5 35.09, 35.10, 35.11 & 35.00R offered.)

6 JUDGE WALLIS: Any there any objections?

7 MR. KAHN: No objection.

8 MR. ARAMBURU: No objection.

9 JUDGE WALLIS: The exhibits are received.

10 (Exhibit Nos. 35.00, 35.01, 35.02,
11 35.03, 35.04, 35.05, 35.06, 35.07, 35.08,
12 35.09, 35.10, 35.11 & 35.00R admitted.)

13 MS. JAFFE: Thank you. Nothing further.

14 JUDGE WALLIS: Very well. Cross-examination.

15

16

CROSS-EXAMINATION

17 BY MR. ARAMBURU:

18 Q. Mr. Schwartz, I'm Rick Aramburu, I'm representing
19 one of the intervenors here, we just had an opportunity to
20 meet. Good morning.

21 I went over your testimony in some detail and
22 looked at it carefully. And I just had a couple of general
23 questions for you. First of all, are you here today
24 advocating that the EFSEC Council approve the Whistling
25 Ridge project?

1 A. More accurately I'm here to say that there is no
2 reason why questions regarding the integration of the wind
3 output from the project should be an obstacle to the
4 approval of the project.

5 Q. Okay. But Commerce, at least from your
6 testimony --

7 A. Yes.

8 Q. -- today is not advocating that this Council
9 approve the project?

10 A. You know, I'm part of the Commerce team, Commerce
11 is supporting it. So in that sense my testimony is in
12 support of the project.

13 Q. Have you reviewed all of the environmental --

14 A. No.

15 Q. -- scenic --

16 A. No.

17 Q. -- biological --

18 A. No.

19 Q. We're going to need to have me ask the question
20 and then you answer. If we talk over each other it gets
21 very confusing. Okay, thank you.

22 So you haven't studied all these environmental
23 visual other issues that are here to suggest that the
24 Council approve this then?

25 A. No.

1 Q. Okay. Now, I've reviewed your testimony and you
2 have a number of exhibits here. As I read this all of these
3 exhibits are exhibits that you've gathered from BPA or
4 another source; is that right?

5 A. Yes.

6 Q. None of these exhibits represent your own work; is
7 that correct?

8 A. Right.

9 Q. And any of the conclusions in the testimony
10 represent your own conclusions?

11 A. Yes, in that they are my evaluation or analysis of
12 the work that Bonneville Power has done in terms of what it
13 says it's planning to do to integrate wind resources in the
14 future.

15 Q. And I understand from your testimony that you are
16 an energy policy analyst that assists the Washington members
17 of the Northwest Power Planning Council; is that right?

18 A. That's part of my job. My other part is, and why
19 I'm here, is to assist policy makers in Washington state
20 regarding the making and implementing of the State Energy
21 Policy.

22 Q. Okay. In that part of your job, being an energy
23 policy analyst with Northwest Power Planning Council what do
24 you do?

25 A. Well, I -- my -- you know, this is the kind of

1 question my friends and children have always asked. So what
2 the answer is is to read documents, go to meetings, do
3 research, question people of all kinds who are involved in
4 these policies of trying to draw conclusions and then
5 provide advice to Washington officials for whom I work.

6 Q. And are you responsible for any components or
7 parts of the Sixth Pacific Northwest Power Plan?

8 A. Well, I provided advice to the council members. I
9 drafted parts of it. I harmonized or I worked on language
10 to harmonize the language in the power plan about I-937 in
11 Washington with my best understanding of how I-937 works.
12 Because one of my major responsibilities for Washington
13 state is to help the implementation of I-937. I was
14 responsible for finishing up the rule-making on that. And I
15 do a lot of work advising developers and utilities about
16 what that means.

17 Q. Okay. Your Exhibit 35.02 is a portion of the
18 sixth Pacific Northwest Conservation and Power Plan I think
19 is the official title. Did you have any hand in writing the
20 section 35.02 of the --

21 A. No.

22 Q. That was done by staff and counsel?

23 A. Right.

24 Q. The fourth paragraph on the first page of Exhibit
25 35.02 says, "The plan finds enough conservation to be

1 available and cost-effective to meet 85 percent of the
2 region's load growth for the next 20 years." Is that a
3 statement you concur with?

4 A. Yes.

5 Q. Now, you seem to be the 937 guru here, so I wanted
6 to ask you a couple questions about how we're doing with 937
7 at this point. As I understand Initiative 937 certain
8 utilities have to have a certain amount of renewable energy
9 sold to their customers over certain dates. Have I got that
10 right or correct me if I'm wrong?

11 A. That's pretty much it. I mean there's a portfolio
12 of resources they use to sell to their customers to have
13 certain percentages of renewables by certain dates.

14 Q. And this is power delivered, this isn't what's in
15 their inventory of possible power, this is actually kilowatt
16 hours delivered to customers; right?

17 A. Yes.

18 Q. So as I recall 937 was approved in 2006?

19 A. Yes.

20 Q. How are we doing, how are we doing on meeting
21 these goals?

22 A. Well, we don't track that in a very detailed way.
23 We won't know for sure until the utilities file their first
24 reports in 2012. But my understanding is that pretty much
25 all of them are on track to meet their three percent target

1 for 2012.

2 Q. Okay. And what's the biggest utility in
3 Washington, the subject of I-937?

4 A. Puget Sound Energy.

5 Q. How are they doing?

6 A. Well, all I know is how to total it if they have
7 more resources than need for 2012. Because we don't have
8 any authority or responsibility in regard to invest in
9 utilities, that's the purview of the Utilities &
10 Transportation Commission.

11 Q. Okay. But as I understand it PSE, Puget Sound
12 Energy, has developed a number of wind farms; correct?

13 A. Uh-huh.

14 Q. And so several utilities as I understand it,
15 subject to 937, which would include PSE, Seattle City Light,
16 Tacoma, what other large utilities in the state?

17 A. I think you've -- Vista, Clark County PUD.

18 Q. So that's the big folks?

19 A. Well, no. You know, since my testimony wasn't on
20 this topic I don't have any of the detailed data in terms of
21 exactly which of the list, you know.

22 Q. Okay. Well, let me ask this questions, in terms
23 of renewable energy how much renewable energy are Washington
24 utilities going to need to meet their goals in the year
25 2020?

1 MS. JAFFE: Your Honor, I'm going to object on
2 this line of questioning regarding the continued questions
3 of I-937. That's not the scope of Mr. Schwartz' testimony.
4 He's here to talk about wind integration.

5 MR. ARAMBURU: That's certainly part of this. He
6 has numerous pieces of information in his exhibits here
7 regarding the subject matter of I-937. He is the I-937
8 guru. He's talking about the amount of wind energy that
9 needs to be integrated, how much wind energy we actually
10 need. It seems to be a relevant point to these proceedings.

11 MS. JAFFE: I would disagree that it's relevant
12 for purposes of Mr. Schwartz' testimony. I mean his
13 testimony is limited to integration into the electricity
14 grid, it's not to discuss the ins and outs and the progress
15 of Initiative 937 as of today.

16 JUDGE WALLIS: I'm going to sustain the objection.

17 BY MR. ARAMBURU:

18 Q. Do you know how much wind power is operated
19 currently in the state of Washington?

20 A. No.

21 Q. Can you tell me within a thousand megawatts?

22 A. Probably two to 3,000 installed capacity, I would
23 think, but I'm not positive because there's a lot on
24 Oregon/Washington border and, you know, so.

25 Q. I put up on the screen page -- let's see, it's

1 page 13 of Exhibit 35.03, it's one of your exhibits. Can
2 you tell me what this exhibit shows?

3 A. Let me get to the context of it. It looks like --
4 is that from the draft resource program?

5 Q. It's Exhibit 35.03. That's the Integrating
6 Renewable Resources into the Electric Grid.

7 A. Okay. Okay. I'm going to have to get to the
8 context of it.

9 Q. We're at page 13 there.

10 A. Okay.

11 Q. And I've got it up on the board for us here, can
12 you tell us what that is?

13 A. What this is is a chart that BPA prepared to show
14 how wind as it is generated does not follow BPA's loads
15 which is one of the biggest problems in integrating wind
16 into the system for utilities, you know, whose resource have
17 to follow load and for who Bonneville has to supply power to
18 them. They need to be able to increase and decrease the
19 amount of power they have available as customer's loads go
20 up or down. Thermal resources and hydro is able to follow
21 load. Wind on a whole can't because it's available when the
22 wind blows. So you have to have a system to integrate the
23 variable resources that winds have with the dispatchable
24 resources that utilities also have. So what they do is as
25 wind comes up they reduce their other resources. And this

1 shows an example of how wind and the other resources vary at
2 various points in time.

3 Q. And at least from this vantage point I think you
4 swallowed the word, wind generation cannot follow load; is
5 that correct?

6 A. On a whole, no.

7 Q. Okay. Now, looking at that --

8 JUDGE WALLIS: For clarity, you're agreeing with
9 the statement of counsel?

10 A. Well, the answer is for the most part it can't but
11 there are times when it can. If wind is blowing fairly
12 constantly and it is possible to ask wind operators to
13 reduce their generation if other generation has a higher
14 priority. So in that sense you can reduce wind. You can't
15 generally increase wind the same way you can rapidly
16 increase hydro or thermal.

17 BY MR. ARAMBURU:

18 Q. Okay. So in the drawing in your exhibit for
19 October 20 and 21 if there was load that it was being
20 generated in the Northwest at that time there was
21 essentially no wind being generated; is that right?

22 A. Right.

23 Q. So it didn't follow load that day?

24 A. Right, at that time.

25 Q. Can you tell me, today's Friday, we will be back

1 here on Monday, can you tell me whether the wind generation
2 on Monday will follow the load?

3 A. No. But if I had access to all the wind
4 forecasting tools that everyone who operates the system had
5 I might be able to tell you to what extent it could, but I
6 don't.

7 Q. Okay. Have you been told by anyone how much power
8 the Whistling Ridge project will produce?

9 A. I've been told its capacity is 75 megawatts,
10 that's all I know.

11 Q. Can you tell me how much energy it would produce
12 on an annual basis?

13 A. Well, probably no more than 25 megawatts because
14 that's roughly what the capacity factor for Columbia Gorge
15 wind is, maybe a little bit less.

16 Q. Okay. So on this drawing in your exhibit it says
17 that the installed wind capacity was 3,011 megawatts; is
18 that correct? I'm running my little hand on my computer on
19 this line. Can you see it on the drawing? Actually, I have
20 it on the screen up here.

21 A. Yeah, I can't read it from here. Yeah, so I
22 don't -- what's your question?

23 Q. Is the amount of installed wind capacity in the
24 Northwest 3,011 according to BPA?

25 A. As of that time, yes.

1 Q. Okay. And let me ask you a question about the
2 wind energy outputs. Is it likely in the future that wind
3 energy outputs will need to be balanced by other more
4 dispatchable sources of energy such as gas turbines?

5 A. Well, if I can parse that a little bit. Gas
6 turbines are not more dispatchable than hydro necessarily.
7 But it is true that at some point Bonneville will exhaust
8 the capacity of the hydro system to integrate wind and other
9 resources to integrate wind will be needed.

10 Q. And would those most likely be gas turbines or
11 some other fossil fuel burning plant?

12 A. As of now the primary candidate is natural gas.
13 We're seeing the development of a fair amount of biomass
14 plants in Washington which might be able to integrate wind
15 as well.

16 Q. Biomass or fossil fuel burning plants; do I have
17 that right?

18 A. No, it's wind -- it's wood waste and the like
19 which are all considered to be renewable and not fossil
20 fuel.

21 Q. And how many megawatts of that type of energy are
22 online?

23 A. Oh, about probably, again, I haven't thought this
24 through, but a few hundred are online now, and a few hundred
25 more on probably likely possible.

1 Q. Okay. You've indicated that there is a finite
2 limit at which BPA can use its hydro resources to balance
3 off wind generation, do you have a number for that?

4 A. No, and Bonneville doesn't. I don't know that
5 anyone does. Bonneville is working, as I think I mentioned
6 in my testimony, with all the stakeholders through its wind
7 integration team to develop as many policies, both financial
8 and -- well, not both, financial, technical and operational
9 to maximize the amount of wind that the hydro system can
10 integrate. And depending on how all those work out it could
11 be more or less and depends on what other technological
12 breakthroughs happen. If there's a breakthrough in storage
13 and wind can be stored for future use then the need to
14 provide integration services would be less. So the fact is
15 that we don't know.

16 Q. And right now is there any commercially feasible
17 methods to store electricity in our state?

18 A. The only -- there is a few compressed air storage
19 systems. And they're being tested now to see if they'll
20 work for wind. But as of now the answer is no. But there's
21 a lot of people -- well, the other answer is pumped hydro
22 which successfully works in many places where power is used
23 during the night to pump water up to a reservoir where it's
24 released during the day to generate power. So in effect you
25 move the power from the low load hours to high load hours

1 and have in effect stored the power from the times that it's
2 not needed to the times it is.

3 Q. How many pump storage -- you call these pump
4 storage sites?

5 A. Yeah.

6 Q. How many pump storage sites are currently
7 operational in Washington?

8 A. One, that's the Banks Lake project that the Corps
9 of Engineers and Bureau of Reclamation and Bonneville.

10 Q. How long has Banks Lake been around?

11 A. Oh, 30, 40 years.

12 Q. Wasn't Banks Lake developed primarily to serve
13 irrigation needs?

14 A. Yes.

15 Q. Any other pump storage proposals that are
16 currently requesting permits from any local state agencies?

17 A. Well, that's an interesting question. I know that
18 a lot of people have filed speculative permit applications
19 with FERC. I don't know how many of them have been put
20 through. Many of the utilities that have hydro generation
21 of their own are looking very seriously at more pump storage
22 and Bonneville is as well.

23 Q. Can you point me to a project that has currently
24 active approval process?

25 A. I would say no. We haven't gotten that far yet.

1 Q. So let's suppose that -- and I understand BPA is
2 working really hard to try to get this integration business
3 improved. But if these other things don't work out do you
4 have in mind what the maximum amount of wind energy so that
5 BPA can integrate with its hydro resources?

6 A. No.

7 Q. Moving back to page 12--now on the screen--of that
8 Exhibit 35.03, that you provided, that's a BPA document as I
9 understand it?

10 A. Uh-huh.

11 Q. Did you have any hand in preparing it --

12 JUDGE WALLIS: Mr. Schwartz, I'm going to ask you
13 to say yes or no rather than give other indication of your
14 response.

15 THE WITNESS: Sorry.

16 BY MR. ARAMBURU:

17 Q. Did you have a hand in preparing the materials
18 found on page 12 of 35.03?

19 A. No.

20 Q. What does it show?

21 A. Well, what it shows is the location of electricity
22 loads being served by winds, electricity generated within
23 Bonneville's balancing authority.

24 Q. Okay. So I gather from looking at this chart that
25 in the year 2012 there will be just about 6,000 megawatts of

1 wind generation within the BPA balancing authority?

2 A. That's what they expect according to this chart.

3 Q. And how much of that will be actually used in the
4 Northwest?

5 A. About half.

6 Q. About half; is that right?

7 A. (Witness nods his head.)

8 THE COURT REPORTER: I need you to say yes or no.

9 A. Yes.

10 BY MR. ARAMBURU:

11 Q. Please give a nice clear verbal response to my
12 answers if you would, please?

13 A. Yeah, no -- sorry, this is a case because I said
14 half then I thought I was done and then you asked again, I
15 didn't realize I had to reaffirm that.

16 Q. So in 2012 then more than half of the wind energy
17 will be destined for California is that what this draft,
18 this chart shows?

19 A. Yes, that's what Bonneville's guess is assuming
20 there's 33 percent RPS in California and the California
21 utilities start building for that. But I just might note
22 that this is dependent on various policy decisions that
23 California has yet to make. And so if they require more
24 power to be generated in California rather than allow power
25 to be imported then it might be less, you know. So this is

1 Bonneville's guess, you know, and it's a forecast but it
2 can't be counted on for sure.

3 Q. I gather what you're saying there is some
4 indication in California that Californians might want to
5 have all of this renewable energy generated in California
6 rather than having it imported to California; is that a fair
7 statement?

8 A. Right. There are some within California who would
9 like that, yes.

10 Q. But that's not the current state of affairs?

11 A. No.

12 Q. And then in 2020 according to drawing, or to your
13 chart, at that time there will be 9,800 megawatts of wind
14 generation in the Northwest within the BPA balancing
15 authority. Shows here that only 2,900 of which will be used
16 within the Northwest area; is that right?

17 A. That's what the chart shows.

18 Q. And over on the far right there's a chart for
19 unknown customer, who are these people?

20 A. I would assume they're unknown.

21 Q. Who might these people be, would these be other
22 utilities, would these be private customers, private
23 industry?

24 A. I think, you know -- and, you know, since I didn't
25 prepare this and I have not been at a meeting where this

1 subject was much, you know, cross-examination as it is here,
2 that Bonneville -- this is a guess that there is that much
3 wind that is potentially developable. It probably would be
4 developed because there will be customers for it. Depending
5 on what California's policies are it might go there, but it
6 might go somewhere else, and they don't know.

7 Q. Okay. I understand you had a chance to read
8 Mr. Michaels' testimony?

9 A. Yes.

10 Q. Do you recall that Mr. Michaels provided an
11 exhibit to his testimony that listed the number of the
12 installed wind capacity in the Northwest, you remember that
13 exhibit?

14 JUDGE WALLIS: Could you identify that
15 specifically for the record, please, Mr. Aramburu?

16 BY MR. ARAMBURU:

17 Q. I have it on the screen now. It's Exhibit 30.08.
18 Did you get a chance to review this document?

19 A. I probably did at some point, but I haven't
20 recently, and I don't have it with me.

21 Q. Okay. That's one of the reasons I put it up on
22 the screen for you. This exhibit lists the amount of wind
23 energy that is currently either operating under construction
24 or approved in the state of Washington?

25 A. Okay.

1 Q. And that number comes to 4,868 megawatts, do you
2 have any reason to disagree with that number?

3 A. No. But I would ask, what's the source of that
4 just out of curiosity?

5 Q. It was prepared by Mr. Michaels for -- I'm
6 actually the one answering questions -- or asking questions,
7 but I'm happy to say that was prepared under his direction.

8 MR. MCMAHAN: Where is it in the record, what is
9 the exhibit?

10 JUDGE WALLIS: 30.08.

11 MR. PEEPLES: Is that a cross-examination exhibit?

12 MR. ARAMBURU: It's an exhibit in the record.

13 MR. PEEPLES: Is it a cross-examination exhibit?
14 I just want to know so we can find it.

15 MR. MCMAHAN: Your Honor, I would also say that
16 something that's attached to Mr. Michaels' testimony is not
17 an exhibit in the record yet, that testimony hasn't been
18 admitted by stipulation.

19 I would also just like--and I'm not going to do
20 this more than one time, I'm just going to do it right
21 now--I would also like to be clear to a standing objection
22 the Applicant has to the relevance of this entire subject
23 area. This testimony by this witness is offered in rebuttal
24 to testimony that we believe in general to be irrelevant to
25 the preceding of Mr. Michaels' testimony. Just to

1 understand we have a standing objection to this entire scope
2 of witness testimony that's being offered here. And, again,
3 we and this gentleman have been -- it has been necessitated
4 that we rebut things that have been put into testimony that
5 we believe to be irrelevant.

6 BY MR. ARAMBURU:

7 Q. Let me ask you this question, when you prepared
8 your original testimony did you have Mr. Michaels'
9 testimony?

10 A. No.

11 Q. So you did this on your own?

12 A. Yes.

13 Q. Okay. So you thought it was important for the
14 Council to have this information; is that correct?

15 A. Yes.

16 Q. Okay. Now, there's a lot of -- I guess pretty
17 much everything in your testimony including the exhibits
18 comes from BPA; is that right?

19 A. Mostly.

20 Q. Did you ask somebody from BPA to come and testify
21 here on behalf of Commerce so we could get it straight from
22 the horse's mouth?

23 A. That was not my decision to make.

24 Q. But there are people at BPA that know this better
25 than you? I don't mean to demean your qualifications or

1 background.

2 A. Oh, yes.

3 Q. But it is true that there are people at BPA that
4 know this much better than you?

5 A. Yes.

6 Q. Your testimony beginning on page 6, I'm talking
7 about your first set of testimony, talks about a number of
8 things, I want to make sure you have it in front of you?

9 A. Yeah.

10 Q. This is your prefiled testimony, Exhibit 35.00.

11 A. Okay.

12 Q. I'm particularly at page 6, beginning of page 6
13 onto page 7 and indeed on page 8 you have identified several
14 things that BPA is either now doing or contemplating to
15 provide a better integration of wind resources into the
16 grid; is that right?

17 A. Yes.

18 Q. Can you provide us with the expected amount of
19 balancing or energy that would be developed from each one of
20 these?

21 A. No.

22 Q. To your knowledge you're the energy policy analyst
23 here, has anyone given any numbers behind any of these, the
24 DSO 210 -- or 216 rather wind forecasting, all these other
25 things? Anyone have any numbers behind those?

1 A. I don't know.

2 Q. Okay. Now, has BPA made any recent decisions
3 concerning -- strike that question.

4 Do you know what environmental redispatch is?

5 A. Yes.

6 Q. What is it?

7 A. That Bonneville has proposed that in the case
8 where there is overgeneration in the system and it threatens
9 the fish operation towards the operations of the Columbia
10 River system for fish that Bonneville will redispatch power
11 within its balancing authority to mitigate the effect of
12 fish operations.

13 Q. And as a practical matter does that mean that
14 Bonneville may refuse to accept wind generation?

15 A. What the proposal says is that in some cases it
16 might, yes.

17 Q. Okay. And is that a direct response to the
18 problems that BPA had last summer when there was the
19 overgeneration as a result of high stream flows?

20 A. Yes.

21 Q. And has Bonneville made a statement about this,
22 about its environmental redispatch?

23 A. It has put out -- it's written a paper and it has
24 a proposal which will be subject to all sorts of meetings
25 and process.

1 Q. That was just in the month of December?

2 A. I think so.

3 Q. So the truth of the matter, isn't it,
4 Mr. Schwartz, that right now we have a glut of wind power in
5 the Northwest?

6 A. So the question is, do we have a lot of wind power
7 in the Northwest?

8 Q. Actually, what I said was my characterization,
9 you're free to change it.

10 A. Oh.

11 Q. I said, don't we have a glut of wind power in the
12 Northwest currently?

13 A. I don't know what a glut means in this context.

14 Q. Okay. I was trying to be too clever. Is there an
15 increasing surplus of wind energy overload in the Northwest?

16 A. I don't think the -- I don't think that's a
17 meaningful question in the context of understanding the
18 resource portfolio of energy resources. If --

19 Q. Let me stop you. You can ask your counsel to
20 clarify that question if you like. But my question to you
21 is, aren't we at this present time finding that the growth
22 of wind energy in the Northwest is exceeding load growth in
23 the Northwest?

24 A. Yes.

25 Q. Okay. And how long is that expected to continue?

1 A. Well, depends on when load growth resumes. And
2 because of the recession loads have decreased. They're
3 expected to resume again. And it depends on, you know, on
4 how fast loads resume. But I would think -- it also depends
5 on what the pace of conservation is. But we expect that
6 because of the addition of various generation resources,
7 including wind, that we'll have more power than need for
8 sometime.

9 Q. Sometime being ten years?

10 A. Probably.

11 Q. More than ten?

12 A. I don't know.

13 Q. And is it the case that most of the new wind
14 generation in the Northwest, let's say Northwest, is
15 actually being purchased and used by California utilities?

16 A. What do you mean by most? I mean I hate to --

17 Q. More than 50 percent. If you have a number --

18 A. Yeah, yeah.

19 Q. We were talking over each other.

20 A. More than 50 percent of the most recent build-out
21 of wind is destined to California.

22 Q. And you expect as time goes on that the percentage
23 of wind energy that's going to California is going to
24 increase or decrease?

25 MS. JAFFE: I'm going to object to this line of

1 questioning, Your Honor. I don't see what the relevancy is
2 to Mr. Schwartz' testimony as to whether or not the wind
3 power may or may not end up going to California at some time
4 in the future.

5 MR. ARAMBURU: It's a key issue with respect to
6 grid integration. All of the things that this witness has
7 testified about regarding the integration of wind into the
8 system has to do with California. It was the subject of
9 part of the exhibit that was here as well. So I think it's
10 a relevant question to deal with this question of
11 integration of wind.

12 JUDGE WALLIS: It appears that the question goes
13 more to the balancing issue -- or need for power than the
14 need for balancing issue. So I have some concerns about
15 that, Mr. Aramburu.

16 MR. ARAMBURU: Is it not the case as more wind
17 energy is put onto the grid that would be sent to California
18 that the problems of balancing by BPA or other utilities
19 become more severe.

20 JUDGE WALLIS: The witness may respond.

21 A. The answer is it all depends. You know, it
22 depends on what policies California has, whether Bonneville
23 is able to influence those policies, whether more
24 transmission to California is built, whether if California
25 says yes, we are, we will allow imports and we're perfectly

1 willing to build the transmission we need for them and on
2 and on and on.

3 So what's going on is, yes, wind power is
4 increasing. And as wind power increases the people who are
5 involved in the utility and electricity systems are
6 responding to that and working on ways to deal with the
7 increase in wind power. You know, it's like anything else,
8 you know, a policy is made, everyone tries to carry out the
9 policy in good faith, and that's what's going on now.

10 BY MR. ARAMBURU:

11 Q. I want to look at page 9 of your testimony,
12 please. Excuse me, I meant to say page 8 here of your
13 testimony.

14 A. Page 8?

15 Q. Of your testimony, yes, please. After this list
16 of the six items that you indicated that we were working on
17 to better integrate the wind generation of the system, you
18 have a paragraph that says that BPA expects these options,
19 if not all of them, when fine-tuned will allow them to
20 integrate significant amounts of wind that is currently on
21 the system upwards of that amount, 6,000 megawatts, and
22 expects to be able to do that in three years.

23 So is the result of all of these implementation
24 measures for integration that BPA will be able to integrate
25 6,000 megawatts of wind energy?

1 A. Well, they are expecting that they will need to do
2 that in the next few years, and that's what all their
3 current efforts are devoted to.

4 Q. And so that's after all of these measures that you
5 talked about have been implemented; is that right?

6 A. Yes, and whatever else they find they could also
7 do.

8 Q. Okay. Page 9 of your testimony you're talking
9 about wind patterns in the project vicinity towards the
10 bottom of the page, you see that testimony?

11 A. Yep.

12 Q. And there you're talking about the diverse
13 location of this project with other wind energy projects.
14 You're citing here to the DEIS. Do you have any independent
15 information of your own that indicates that this distance
16 between the Whistling Ridge project and other projects has
17 any meaningful impact?

18 A. No.

19 Q. Okay. So you're just pulling this out of the
20 DEIS?

21 A. Yes.

22 Q. So why did you put it in, I guess?

23 A. Well, because to the extent that you have a
24 diversity of -- you have a geographic diversity of wind
25 resources and you have different wind patterns and the wind

1 blows at greater or less at different times than it does at
2 other places. It means that it's more likely that there
3 will be a more level amount of wind on the system. And in
4 general there is a desire by energy planners to have as
5 great of a geographic diversity of wind as we possibly can.

6 Q. As I'm looking at the maps of wind energy, and I
7 know you have looked at them as well, we have some projects
8 over in Kittitas County that are up and running now. We
9 have some projects down in Klickitat County area if we go
10 over to the projects in Columbia and Garfield Counties,
11 that's a pretty big geographic diversification, isn't it?

12 A. Well, it's not as great -- it's helpful in the
13 same small way that this is. But what we would really like
14 is a greater diversity than that. But as of now we'll take
15 whatever diversity we can get.

16 Q. So ideally you would like to have some in Western
17 Washington to take advantage of those winds out in those
18 areas?

19 A. Yeah.

20 Q. But there are times when even these diverse
21 geographic locations don't produce any power at all?

22 A. Right.

23 Q. And that was on the drawing we had?

24 A. Right.

25 Q. You check this week to see how much wind energy is

1 being developed for this week?

2 A. Excuse me.

3 Q. Have you taken a look to see how much wind energy
4 is being developed this week for integration into the grid?

5 A. No.

6 Q. If the output of this project is sold to a
7 California utility will that help meet the State RPS
8 standard?

9 A. It will help meet the California RPS standards.

10 Q. That wasn't my question. My question was whether
11 it's going to meet the state of Washington RPS requirements?

12 A. No.

13 Q. Is it the situation these days that if the
14 Washington utility wishes to purchase energy, renewable
15 energy, it is probably going to have to outbid those
16 California utilities?

17 A. Well, that's a complex question. It may build the
18 resources on its own in which case, you know, it's -- I mean
19 where it finds them -- you know, if it were in the market
20 just for power and another California utility was in the
21 market for power then the answer is yes. But, you know, but
22 that all -- yeah, so if they're going -- if they're
23 competing head to head then the answer is yes.

24 Q. That the Californians would likely outbid
25 Washington utilities?

1 A. I don't know why. I don't know.

2 Q. But the California loads and California RPS are
3 much greater than we have in the state of Washington, are
4 they not?

5 A. Yeah.

6 Q. Thirty-three percent?

7 A. It's not formally 33 percent yet, it's still
8 technically 20. But they're thinking about -- or they're
9 trying to raise it to 33.

10 Q. But presently California Air Resources forecasts
11 requirements for 33 percent which is being followed in
12 California; is that correct?

13 MS. JAFFE: Objection, Your Honor. I think we
14 have asked and answered this already.

15 MR. ARAMBURU: No, we haven't answered that
16 question.

17 MS. JAFFE: Just a different variation of the same
18 question.

19 MR. ARAMBURU: No, his response to my question was
20 that the California utilities, there may be some changes
21 there, and he said it hasn't been formally adopted. My
22 follow-up question to that is what is the current status of
23 that requirement in California.

24 JUDGE WALLIS: The witness may respond.

25 A. Okay. My best understanding of this is that the

1 California Air Resources Board has passed a rule that is the
2 equivalent of 33 percent renewable portfolio standard.
3 However, there is considerable doubt of its legal standing
4 because the statutes dealing with renewable portfolio
5 standards say 20 percent, and it's not clear whether the
6 air -- the California Air Resources Board in responding to
7 the Governor's executive order exceeded its authority in
8 promulgating that standard.

9 So there is, as I understand it, an attempt in the
10 legislature to go and to actually enact the 33 percent
11 standard, and that would, based on all of the previous
12 legislative attempts on this, involve also trying to come to
13 a resolution on the question of RECs and imports and
14 domestic production in all of the RECs. So my point is
15 33 percent standard is not settled yet.

16 BY MR. ARAMBURU:

17 Q. Okay. It looks like an area where there's going
18 to be lots of lawyers and litigation in California and the
19 state legislature may act. But currently the California
20 utilities understand that they must meet the 33 percent
21 requirement?

22 A. I don't know.

23 Q. Okay. On page 8 and 9 of your testimony you
24 answered some questions about the BPA managing this extreme
25 high water event that occurred in June of 2010; is that

1 correct?

2 A. Yes.

3 Q. You say that BPA managed the event successfully.
4 Why do you say they managed it successfully?

5 A. Well, they managed it successfully in the sense
6 that they didn't violate their fish constraints and they
7 dispatched all the power that was -- I mean they managed to
8 redispatch power in a way to keep the wind generators whole
9 and to keep the -- to avoid any reliability problems.

10 Q. But as I understand it, BPA sells the power from
11 the federal system?

12 A. Right.

13 Q. And was it not the case, and you say they managed
14 it successfully, but was it not the case in June they had to
15 give away a substantial amount of power for nothing?

16 A. Yes. Well -- yes.

17 Q. You had some testimony about one of the ways out
18 of the wind integration problems is to consolidate balancing
19 authorities; is that correct?

20 A. Yes.

21 JUDGE WALLIS: Where is that, Mr. Aramburu?

22 MR. ARAMBURU: Well, it's actually in one of his
23 exhibits, but I just -- let me ask a question about that.

24 MR. MCMAHAN: Which exhibit?

25

1 BY MR. ARAMBURU:

2 Q. Is there currently any proposals to do this
3 consolidation balancing authorities?

4 A. There are -- what is being proposed is to
5 gradually move towards that from an operational perspective
6 by having the balancing authorities make agreements among
7 themselves to agree to changes in their operation so they
8 can act as if they had consolidated. They could do this by
9 sharing the reserves agreeing to dispatch power according to
10 predetermined procedures, and discussions are underway to
11 try to do that.

12 Q. Okay. At page 11 of your testimony you say that
13 if BPA faces unexpected difficulties in integrating wind
14 resources, the small size of this project, the 75 megawatts,
15 would make it easier to integrate than other projects. My
16 question about that is to your knowledge does BPA have any
17 policy in place that gives a priority to keeping small
18 producers online as opposed to big producers?

19 A. No.

20 Q. So if the environmental redispatch that you were
21 talking about before occurs BPA is going to shut down wind
22 resources as they care to?

23 A. Well, it will depend on how they finally implement
24 it if they do, because it's merely a proposal as of now.
25 And what they're proposing to do is to, I think, do it in

1 terms of which -- to start with the wind farms that have
2 less financial stake in terms of whether or not they're
3 getting renewable tax credits, have sold RECs and the like.
4 So all that depends on the economics of the individual wind
5 farm and development. So I don't know anything about the
6 specifics of the business model of this project.

7 Q. You have Exhibit 35.12 in your hands there?

8 A. Which one is that?

9 Q. That would be one of the rebuttal exhibits.

10 A. What?

11 Q. One of the rebuttal exhibits.

12 MR. ANDERSEN: Your Honor, can I ask, we're really
13 close to the noon hour, I don't know how much longer counsel
14 has. I can't hear myself because Ms. Miller's stomach is
15 growling so loud.

16 JUDGE WALLIS: Let's be off the record.

17 (Break taken from 11:59 to 12:15 p.m.)

18 JUDGE WALLIS: Let's go back on the record. While
19 we were off the record the Council consulted regarding
20 appearance of Mr. Lang. And the only reason offered was
21 child care as to why he could not appear on Monday. And
22 Council's strong preference would be that because all of us
23 have been in a situation where we've made other arrangements
24 that Mr. Lang appear on Monday afternoon instead of Tuesday
25 afternoon.

1 MR. KAHN: Your Honor, given the number of other
2 witnesses on Monday I'm not even sure that we would even be
3 able to fit him in. That would be -- if we could we could
4 certainly talk to him and see if that could be resolved, but
5 we have one, two, three, four, five and possibly a sixth
6 witness on Monday without him. So I'm not sure we would be
7 able to address that anyway.

8 JUDGE WALLIS: We do have that number of witnesses
9 scheduled; however, the estimated length of time even
10 allowing for optimism in those estimates is relatively
11 short. And if Mr. Lang is moved from Tuesday, and if the
12 witnesses otherwise schedule have flexibility in their
13 schedules then we could hear them on Tuesday. It's also
14 possible we could run an evening session on Monday.

15 MR. KAHN: I have another suggestion that might be
16 possible. At this point the only two witnesses scheduled
17 for Tuesday afternoon are Mr. Pearce and Mr. Lang. If
18 Mr. Pearce is available on Monday then that would just leave
19 us Mr. Lang on Tuesday and we would be able to get out of
20 here by a reasonable hour on Tuesday afternoon if you were
21 able to start at 1:30.

22 MR. BAKER: Ms. Drummond has offered to check with
23 Mr. Pearce about doing exactly that.

24 MS. DRUMMOND: Your Honor, I'm checking on that,
25 originally he was not but I'm confirming.

1 MR. BAKER: Your Honor, for what it's worth I know
2 there were other conflicts, I don't know what they are for
3 Michael Lang. I could check in with him and we could
4 reconvene in a few minutes.

5 JUDGE WALLIS: The Council understands that. As
6 with the other witnesses his testimony is sought and parties
7 feel that it is significant, and we want to insure that his
8 examination is concluded and we're able to deal with the
9 facilities issues.

10 So I am going to ask that you pursue his
11 availability on Monday, and then we'll look at other issues
12 that are involved in juggling the schedule. And we do
13 appreciate the parties' willingness to engage in that. We
14 are aiming for the ultimate economy in pursuing this.

15 MR. KAHN: Since I'm not involved in this witness'
16 testimony I'll get ahold of Mr. Lang and see what the other
17 issues are and when he might be available.

18 JUDGE WALLIS: Very well, thank you.
19 Mr. Aramburu, you were going to review your questions for
20 the witness and see if you could engage in a relatively
21 speedy conclusion of your examination. Were you able to do
22 that?

23 MR. ARAMBURU: I have. I am able to do that.

24 BY MR. ARAMBURU:

25 Q. Mr. Schwartz, we placed before you Exhibit 35.12C.

1 Do you have that document in front of you?

2 A. I have some documents but they don't have numbers.

3 Q. Okay. The 35.12C is the estimates of Windy Land
4 Area and Wind Energy Potential by Areas. That's the one.
5 Are you familiar with the NREL estimates of wind potential
6 of various areas?

7 MS. JAFFE: Your Honor, I'm going to object to
8 asking questions of Mr. Schwartz regarding Exhibit 35.12C.
9 I don't see what the relevance is to Mr. Schwartz' prefiled
10 direct testimony or his rebuttal testimony. None of that
11 testimony covered the quantity of wind potential, and it
12 certainly didn't cover any of the wind potential in the 48
13 other states.

14 JUDGE WALLIS: Mr. Aramburu.

15 MR. ARAMBURU: The witness' testimony has to do
16 with whether or not large quantities of wind energy can be
17 integrated into the grid. This exhibit--and I'm not asking
18 for consideration by the Council of anything other than the
19 Northwestern states--indicates what the wind potential of
20 the various states would be. It's done by NREL, and it's
21 otherwise -- at the bottom of the document it indicates what
22 NREL believes to be the wind energy potential of the various
23 states. That would have a direct correlation to the amount
24 of energy that may have to be integrated into the grid.

25 MS. JAFFE: I'm going to disagree, Your Honor. I

1 believe that Mr. Schwartz' testimony is regarding whether or
2 not this particular project can be integrated into the
3 system, not with respect to the entire state of Washington
4 and what the potential wind energy is.

5 JUDGE WALLIS: The objection is sustained.

6 MR. ARAMBURU: Okay. Well then we'll make an
7 offer of proof as to Exhibit 35.12C. And that offer of
8 proof is if this document was admitted and this witness was
9 asked questions concerning the document the witness would
10 testify and the document would show that the state of
11 Washington has a wind energy potential of 18,478.5 installed
12 megawatts of wind energy, that the state of Oregon has
13 27,100.3 installed capacities of -- or potential installed
14 capacity of wind energies. So that will be our offer of
15 proof. We would ask that this be submitted for the record.

16 (Exhibit No. 35.12C offered.)

17 JUDGE WALLIS: It is on the record.

18 BY MR. ARAMBURU:

19 Q. I've also put in front of the witness proposed
20 Exhibit 35.13C. And I'd ask the witness if he can identify
21 that document?

22 A. Yes.

23 Q. And what is it?

24 A. It's the statement on Environmental Redispatch and
25 Negative Pricing, December 3, 2010, from the Bonneville

1 Power Administration.

2 MR. ARAMBURU: Okay. The witness has previously
3 testified in response to my question regarding environmental
4 redispatch. This is the document that was -- what he
5 referred to in these proceedings. Instead of just having
6 his testimony I think Council would benefit from having the
7 document itself in front of it. This is a very recent
8 document, only about a month old, and it's just come to our
9 attention.

10 So we ask that proposed Exhibit 35.13, which is a
11 Bonneville Power Administration statement on Environmental
12 Redispatch and Negative Pricing dated December 3, 2010, be
13 admitted.

14 (Exhibit No. 35.13C offered.)

15 MS. JAFFE: Commerce would object to the
16 introduction of this exhibit at this time. I mean any
17 cross-examination exhibits were due on Monday. The date of
18 this document is December 3, 2010, which was over a month
19 ago. Had Mr. Aramburu wanted to cross-examine Mr. Schwartz
20 on this document he could have done his own independent
21 research to determine that the document was issued by BPA on
22 the environmental redispatch issues. And Mr. Schwartz'
23 testimony was pretty minimal with respect to his knowledge
24 about this document that was issued regarding environmental
25 redispatch regarding the June 2010 environmental incident

1 that did occur.

2 MR. MOSS: Judge Wallis, I suppose it is the
3 explanation perhaps that Ms. Jaffe just offered explains why
4 we don't seem to have that in our books that was
5 distributed.

6 MR. ARAMBURU: You do not have it in your books;
7 that's correct.

8 JUDGE WALLIS: So in other words, it was not
9 timely distributed?

10 MR. ARAMBURU: It was distributed this morning,
11 yes.

12 MR. PEEPLES: Your Honor, we just got it
13 approximately five minutes ago. The Applicant joins in this
14 objection. We haven't had time to read it. As far as I'm
15 concerned they may have pulled one document, went out and
16 cherry-picked it to put it in, and we're not ready to
17 respond to this document at this time, Your Honor.

18 JUDGE WALLIS: Very well. Under the circumstances
19 the objection is sustained.

20 (Exhibit No. 35.13C rejected)

21 MR. ARAMBURU: Okay. No further questions.

22 JUDGE WALLIS: Very well. Other questions of the
23 witness?

24 MR. PEEPLES: Your Honor, the Applicant has a
25 couple of questions, and I'll try to be brief. I just want

1 to point out a couple of things for the record. I know
2 there's people up in front of me that have a lot more
3 knowledge than I do on this very subject matter, but I
4 wanted to go through a couple of things. I'll go through it
5 real quick.

6

7

CROSS-EXAMINATION

8

BY MR. PEEPLES:

9 Q. Mr. Schwartz, you've been kind of led down a path
10 on a certain scenario by Mr. Aramburu. Is there another
11 potential scenario with regard to, you know, what the future
12 might portend, especially with regard to the future and
13 coming EPA regulations of CO2?

14 A. Well, you know, there are many possible futures.
15 One of them would be a low carbon future where there is a
16 significant amount of carbon -- of regulation of carbon
17 dioxide emissions which would require probably the closing
18 of some number of coal plants and, you know, an attempt to
19 achieve the certain target levels of CO2 emissions.

20 Q. Okay. With regard to the, you know, the BPA
21 document that you had in there, I believe the first exhibit
22 that you have there after your resume, what did that take
23 into consideration, was that a snapshot as of the day that
24 report came out in essence?

25 A. Are you referring to the Sixth Power Plan?

1 Q. Yes.

2 A. The Sixth Power Plan assumed a certain level,
3 assumed certain current policies. It had a number of
4 scenarios involving different levels of carbon regulation.
5 And it is based on a high carbon regular -- or high carbon
6 price there would be probably the closure of some coal
7 plants in the future.

8 Q. In fact after that report came out isn't it true
9 that the Boardman plant which is 800 plus change megawatts
10 will be shutting down?

11 A. That's what I've heard, yes.

12 Q. Okay. Is it likely that the TransAlta coal plant
13 will also be shutting down?

14 A. I'm not in a position to assign probabilities but
15 discussions are underway.

16 Q. What about the fish effect on the hydro and
17 relicensing of the plant, is that possibly reduced megawatts
18 on our system?

19 A. It's possible.

20 MR. ARAMBURU: I don't know what plant you're
21 referring to, Counsel?

22 MR. PEEPLES: Hydro.

23 MR. ARAMBURU: Hydro in general or specific --

24 MR. PEEPLES: Relicensing of dams, excuse me, I
25 meant that. I misspoke that. I meant relicensing of dams.

1 A. Well, there are a number of dams that are built
2 for relicensing. It is possible there would be reduced
3 generation as a result of them.

4 BY MR. PEEPLES:

5 Q. Does that -- would that plan take into effect any
6 future robust construction of transmission lines?

7 A. You need to clarify that question.

8 Q. This took into account the existing transmission
9 system; correct?

10 A. Right.

11 Q. Okay. Is there any plans to improve the
12 transmission system?

13 A. You mean independently of the power plan?

14 Q. Yes.

15 A. Oh, yes, there are constant discussions and
16 planning processes underway to try to assess future
17 transmission needs and to try to figure out how to build
18 whatever new transmission might be needed.

19 Q. Mr. Aramburu made a big deal about an incident
20 where there was some giveaway of wind power; is that
21 correct, or BPA giveaway, hydro giveaway?

22 A. Bonneville was forced to provide power for free,
23 you know.

24 Q. Yeah.

25 A. Yes.

1 Q. Due to the wind; right?

2 A. Well, due to the overgeneration which took place.
3 And that meant that all at that given point the wind and the
4 hydro together after -- and all the other -- and the thermal
5 units that were on the system exceeded loads. So Bonneville
6 had to ask the other generators to turn their power off.
7 And what it did was supply hydro to them to give to their
8 customers, to sell to their customers in lei of them
9 generating the power themselves.

10 Q. Is that the first time that's ever happened?

11 A. No, it's happened several times in the past.

12 Q. Way before the wind energy developed?

13 A. Yes.

14 Q. Would it be fair to say that what we witnessed
15 right now with regard to BPA integration is growing pains?

16 A. Yes.

17 Q. And is BPA right now rushing for solutions to the
18 problems?

19 A. I think that's fair to say.

20 Q. Are there rapidly evolving technologies that may
21 come in in the future that may help this problem?

22 A. Yes.

23 MR. PEEPLES: Okay. No further questions.

24 MR. KAHN: I have none.

25 MR. ARAMBURU: Just a couple follow-up if I may.

1 JUDGE WALLIS: You have follow-up questions,
2 Mr. Aramburu?

3

4 RE CROSS-EXAMINATION

5 BY MR. ARAMBURU:

6 Q. The high carbon pricing that you were asked about,
7 is that with coal or is that natural gas or what is that,
8 what are you talking about there?

9 A. Well, what power planners do is run various, run
10 their models and they model different levels of carbon
11 penalties which would be in increments of say \$10 per
12 million tons of carbon emitted. So as you increase in the
13 modeling the carbon penalty you will see a reduction in
14 power generated from carbon dioxide emitting resources. So
15 it could be either coal or natural gas. Since coal emits
16 more carbon dioxide per kilowatt hour or megawatt hour
17 produced coal generally is forced off the system first as
18 you start to get high levels of carbon dioxide penalties.

19 Q. Okay. Now, are these penalties in effect now?

20 A. No.

21 Q. Are they proposed at the federal level?

22 A. Some variations have been proposed.

23 Q. But no law is in effect that currently penalize a
24 producer of electricity for carbon?

25 A. Only in California.

1 Q. Only in California. Okay. You were asked about
2 the Boardman situation. Is wind energy going to replace
3 Boardman?

4 A. (Witness indicates with his hands.) I don't know
5 what's planned.

6 Q. Boardman is a base load coal plant, is it not?

7 A. Yes.

8 Q. But wind energy doesn't -- that doesn't provide
9 base load resources; is that correct?

10 A. Right.

11 Q. Okay. There was talk about relicensing of hydro
12 projects, and is it the case that FERC licenses projects for
13 a finite period of time?

14 A. Yes.

15 Q. That's usually 50 years?

16 A. Yes.

17 Q. And so those come up regularly?

18 A. Yes.

19 Q. How many hydro projects in the state of Washington
20 have not been relicensed by FERC?

21 A. I don't know off the top of my head.

22 Q. Do you know of any?

23 A. Well, I mean, you know, if you want to start going
24 down that rabbit hole we can spend all afternoon on it. But
25 I mean we have the whole Cushman saga which took 30 years to

1 resolve, and then we have a number of hydro projects that
2 have been closed or decommissioned, they're fairly small,
3 rather than go through a relicensing project.

4 Then we have relicensing projects that have
5 resulted in increased production. We have some that have
6 resulted in decrease depending on whatever criteria were
7 used. So, you know, like anything else, you know, the
8 regulatory outcomes are uncertain.

9 Q. But I understand your testimony that the projects
10 that were either not relicensed or the applicants decided
11 not to apply for relicensing, presumably because of
12 financial reasons, that's a very, very small percentage of
13 power in the Northwest; is that correct?

14 A. Yeah.

15 Q. Okay. And projects like Rocky Ridge and
16 Bonneville and all these others, if they defer license
17 they're probably not going to get denied that license ever?

18 A. You know, I hesitate to get into the U.S. owned
19 hydro projects because I'm not sure what the process for
20 licensing them is and how that works.

21 Q. Okay. Let's leave that alone.

22 And the Sixth Northwest Power Plan, that just came
23 out when? That was a matter of months ago?

24 A. About a year ago.

25 Q. About a year ago. And the next one is due when?

1 A. Five years from then, so 2015, I guess.

2 Q. Okay. And there was discussion of the
3 circumstances which lead BPA to essentially dump its power
4 in June of 2010 because of the overgeneration. Was that
5 overgeneration made significantly worse by the amount of
6 wind energy that was connected to the system?

7 A. I would say yes.

8 MR. ARAMBURU: Okay. Thank you, no further
9 questions.

10 MR. PEEPLES: I have just a couple follow-up,
11 excuse me, to make sure I didn't misspeak.

12

13

RECROSS-EXAMINATION

14 BY MR. PEEPLES:

15 Q. The U.S. Supreme Court has ruled CO2 is a
16 pollutant, you're aware of that?

17 A. Yes.

18 Q. Air pollutant. And you're aware that EPA is
19 presently in the process of developing regulations for CO2;
20 correct?

21 A. Right.

22 Q. Okay. And with the relicensing effect a dam may
23 be relicensed but it may have its output decreased for fish
24 purposes; is that correct?

25 A. Yes.

1 MR. PEEPLES: Okay. Nothing further.

2 JUDGE WALLIS: Ms. Jaffe.

3 MS. JAFFE: I have no redirect.

4 JUDGE WALLIS: Very well. Mr. Schwartz, thank you
5 for your testimony, you're excused from the stand at this
6 time.

7 Ms. Jaffe, my recollection of your -- at the
8 opening of Mr. Schwartz' testimony you moved for the
9 admission of Exhibit 35 and 35R. I don't recall if you
10 specifically moved for the admission of 35.01 through 11.

11 MS. JAFFE: It was my recollection I did, but if I
12 failed to do so then I move for the admission of the
13 attachments to both the prefiled direct testimony, 35.01
14 through 35.11.

15 JUDGE WALLIS: Let me verify that there is no
16 objection to that. It appears there is none. And those
17 documents are received in evidence.

18 MR. ARAMBURU: Let me ask a question about the
19 Exhibits 35.10, 35.11, were single pieces of paper, I
20 believe. We're able to cite --

21 JUDGE WALLIS: Could you speak into the
22 microphone, Mr. Aramburu.

23 MR. ARAMBURU: Exhibits 35.10 and 11 involved
24 rather lengthy studies. Are we permitted to cite to the
25 entirety of those documents?

1 MS. JAFFE: The entirety of the document has been
2 submitted as part of Mr. Schwartz' testimony.

3 JUDGE WALLIS: The answer is yes. Very well. We
4 have one more witness we are meeting on the schedule today.
5 Let's be off the record while Ms. Bryan Miller steps
6 forward.

7 (Brief discussion held off the record.)

8 JUDGE WALLIS: Let's be back on the record.
9 Would the witness raise her right hand.

10 (Peggy Bryan Miller sworn on oath.)

11 JUDGE WALLIS: Mr. Andersen.

12

13 PEGGY BRYAN MILLER,
14 having been first duly sworn on oath,
15 testified as follows:

16

17 DIRECT EXAMINATION

18 BY MR. ANDERSEN:

19 Q. Ms. Bryan, could you go ahead and state your name
20 spelling your last for the record.

21 A. Peggy Miller, M-i-l-l-e-r.

22 Q. You retired from the Skamania County EDC on
23 November 1, 2010?

24 A. Correct.

25 Q. And prior to that how long were you employed as

1 the executive director for Skamania County EDC?

2 MR. KAHN: Excuse me, Your Honor, in the interest
3 of time I believe all of this is in her testimony.

4 MR. ANDERSEN: I'll be so short you will blink and
5 I will be done.

6 A. I was with the Skamania County Economic
7 Development Council for 23 years, 15 of those years was in
8 the capacity as economic development director.

9 BY MR. ANDERSEN:

10 Q. How long have you lived in the Columbia River
11 Gorge?

12 A. I hate to admit this, 51 years, and I wasn't born
13 here.

14 Q. Just to summarize, you believe that the Whistling
15 Ridge project will have positive economic impacts with the
16 Columbia River Gorge and in particular Skamania County?

17 A. Yes, I do.

18 Q. You provided both direct testimony, which is
19 Exhibit 41, and rebuttal testimony, which is Exhibit 41.01R,
20 did you have a chance to review those, and if so are they
21 generally accurate?

22 A. Yes, they are generally accurate. I probably
23 would have worded things a little bit differently, so there
24 may be some clarification, but yes.

25 Q. And one of the clarifications that was pointed out

1 to us is the number of acres of scenic lands that are in
2 Skamania County. I think you indicated it's 300,000; is
3 that correct?

4 A. That is not correct, it's about 292,000, so
5 roughly 300,000 in the Columbia River Gorge region. In
6 Skamania County it's approximately 80,000 acres.

7 MR. ANDERSEN: Your Honor, at this time I move to
8 introduce Ms. Miller's testimony, which is Exhibit 41 and
9 her rebuttal testimony, which is Exhibit 41.01, and I'll
10 hand her over for cross-examination.

11 JUDGE WALLIS: Is there objection to the exhibits?

12 MR. MOSS: Your Honor, I have these exhibits
13 marked as 42, so we probably should clarify for the record
14 which it is. I believe Eric D. Hovee is indicated on my
15 witness list as being 41.

16 MR. KAHN: I have mine marked as 42 as well.

17 JUDGE WALLIS: Let's be off the record for a
18 moment.

19 (Brief discussion held off the record.)

20 JUDGE WALLIS: Let's be back on the record,
21 please. Thank you for the opportunity to correct the
22 numbering. The numbering of these documents is the direct
23 testimony is 42.00, rebuttal 42.01R. And those are the
24 exhibits of this witness.

25 (Exhibit Nos. 42.00 & 42.01R offered.)

1 JUDGE WALLIS: There is no objection to receiving
2 those and they are received in evidence.

3 (Exhibit Nos. 42.00 & 42.01R admitted.)

4 MR. ANDERSEN: Thank you, Your Honor.

5 JUDGE WALLIS: Cross-examination.

6 MR. KAHN: I have a couple of very brief
7 questions.

8 JUDGE WALLIS: Mr. Kahn.

9

10 CROSS-EXAMINATION

11 BY MR. KAHN:

12 Q. Ms. Bryan Miller, along the lines of the
13 correction you made about the acreage, on page 5, line 19,
14 of your rebuttal testimony, I just want to make sure we're
15 all clear, you're not contending that there's 300,000 acres
16 of land within the National Scenic Area within Skamania
17 County that has been restricted in terms of development;
18 correct?

19 A. Correct.

20 Q. And then similarly on page 7, line 22, the
21 reference to the 300,000 acres again was not intended to
22 mean 300,000 acres within Skamania County; correct?

23 A. That is correct.

24 MR. KAHN: With that I have nothing further.

25 JUDGE WALLIS: Very well. Mr. Aramburu.

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2

CROSS-EXAMINATION

3 BY MR. ARAMBURU:

4 Q. Ms. Miller, I understand your principle point in
5 appearing here today is that the project will produce a
6 number of construction and permanent jobs; is that correct?

7 A. Yes, and also tax base for Skamania County.

8 Q. Okay. Do you agree that 65 to 70 percent of
9 construction workers are likely to come from locations
10 outside the county?

11 A. I really can't speak to that because the economic
12 analysis that was done was done by Eric Hovee, but I believe
13 there will be a significant amount of those construction
14 workers coming from Skamania County, and certainly in the
15 Gorge region which addresses the second purpose of the fact
16 which is to support the economy of the entire Gorge.

17 Q. But have you developed your own estimate of the
18 number of construction workers that are actually going to
19 come from outside the county?

20 A. I have not developed my own estimate.

21 Q. Okay. Page 4 of your testimony indicates a
22 concern with respect to revenue leakage from local workers
23 traveling outside of the county, what do you mean by that?

24 A. Trade leakage happens when you have a commuting
25 work force, and those workers that do leave the county for

1 employment generally spend money to buy gas and groceries
2 and other items, household items, away from the area where
3 they live. So it creates trade leakage in the community.

4 Q. If 65 to 70 percent of the construction workers on
5 this Whistling Ridge site, if it gets built, are from
6 outside the county will there be similar leakage --

7 MR. ANDERSEN: Object to the form.

8 BY MR. ARAMBURU:

9 Q. -- outside the county --

10 MR. ANDERSEN: Objection to the form of the
11 question, assuming facts not in evidence. She said she
12 didn't know what that percentage would be. So move to
13 strike this question.

14 MR. ARAMBURU: It's in the record that it's 65 to
15 70 percent.

16 BY MR. ARAMBURU:

17 Q. But let me ask the question, for any workers that
18 would be -- any construction workers that would be working
19 on this project that live outside of Skamania County would
20 similarly there be leakage from revenue or from wages given
21 to those workers, that is that they would be working -- they
22 would be spending their money in their local jurisdictions
23 rather than Skamania County?

24 A. I'm not really sure I understand what you're
25 asking me.

1 Q. If the people who are going to work on this
2 project live in Vancouver or Portland, would it be your
3 observation that those people would be spending their money
4 for groceries and rent and cigarettes and various other
5 things they would buy in those, in their home jurisdiction
6 rather than Skamania County?

7 A. I believe there would be a split. I believe that
8 some of those workers would come and buy gas and lunch and
9 cigarettes and those sorts of things while they were working
10 in the county on their way to work, on their way back,
11 during their lunch break. So I think there would be a net
12 gain in retail trade. But I think they still would probably
13 do most of their shopping in their place of residence.

14 Q. Okay. Now I understand you would consider the
15 sort of home jurisdiction here for workers working on this
16 project as being Skamania, Klickitat and Hood River
17 Counties?

18 A. Could you repeat that question?

19 Q. The workers that would be local workers would be
20 not only in Skamania County but in Hood River County and
21 Klickitat County?

22 A. That's probably correct.

23 Q. Okay. Is one of the cause of leakage of wages
24 gained by individuals in Skamania County the fact that they
25 go across the Columbia River into Oregon to buy goods where

1 they don't have to pay sales tax?

2 A. I need to understand if you're talking about the
3 construction workers now or the jobs, the people that would
4 actually work on an ongoing basis?

5 Q. Well, the permanent workers.

6 A. And the question about the permanent workers is?

7 Q. Wouldn't there be significant leakage of income
8 that would be derived or would be given or paid to those
9 workers from Skamania County because they go across the
10 river to Hood River County where they didn't have to pay
11 Washington State sales tax?

12 A. So those workers would be residents of those other
13 areas is what you're asking?

14 Q. No. I would assume they would be residents of
15 Skamania County, but for various goods that they would
16 purchase, groceries, hard items like this computer or your
17 computer or someone else's computer or other products that
18 they would likely go to Hood River in the state of Oregon to
19 avoid the Washington State sales tax applicable in Skamania
20 County?

21 A. Because of the nature of the restriction of
22 development in our county we do not have a lot of the goods
23 and services that residents would need, so, yes, some of
24 those would be bought outside of Skamania County.

25 Q. But as the director of the Economic Development

1 Council do you see leakage over to Oregon just because you
2 don't have to pay sales tax?

3 A. Are you speaking about the employees at the
4 project or in general?

5 Q. Yes.

6 MR. ANDERSEN: I think he's asking --

7 A. I really can't answer that, I don't know where
8 they're going to shop. But I believe that some people do go
9 to Oregon to shop to save sales tax.

10 BY MR. ARAMBURU:

11 Q. Fine. Thank you.

12 A. I do.

13 Q. You do yourself?

14 A. I do. I do. Only for things I can't buy in
15 Skamania County.

16 MR. ANDERSEN: The witness would like to exercise
17 her Fifth Amendment.

18 JUDGE WALLIS: Only since she retired.

19 THE WITNESS: Yeah.

20 BY MR. ARAMBURU:

21 Q. Ms. Miller, would you look please at the four
22 exhibits that we provided to you as cross-examination
23 exhibits, do you have those in front of you? Those would be
24 Exhibits 42.02, 03, 04 and 05.

25 A. I don't see those.

1 JUDGE WALLIS: Let's be off the record for a
2 moment.

3 (Brief discussion held off the record.)

4 JUDGE WALLIS: Back on the record.

5 BY MR. ARAMBURU:

6 Q. Let me see if we can go through and get this down.
7 42.02C is a document from the Economic Development Council
8 of Skamania County, are you familiar with this document?

9 A. I am familiar with the document. They have
10 updated the website recently, so I haven't had a chance to
11 actually review all of it. Some of this I have not had a
12 chance to review all of it.

13 Q. But this is a document that was produced by the
14 Skamania County Economic Development Council during your
15 tenure as executive director?

16 A. Correct.

17 Q. Does the document state that construction wages in
18 Skamania County on average as average annual wages for
19 construction workers in 2005 be \$21,987; is that correct?

20 A. Yes, it does state that.

21 Q. And let me ask you about Exhibit 42.03. 42.03 and
22 42.04 and 42.05 are Census data we took from the Census
23 Bureau's website for facts regarding Skamania, Klickitat and
24 Hood River Counties. And I wanted to ask you a couple of
25 questions about these exhibits.

1 First of all, 42.03 says that the population
2 growth in Skamania County from April of 2000 to July of 2009
3 was 10.4 percent. Would you consider that to be an accurate
4 number?

5 A. I do not use the Census Quick Facts website. We
6 are directly given data from the State of Washington's
7 Employment Security Market Research branch. And the Census
8 is only taken once every ten years, and it is not updated on
9 a regular basis. And we have found this information to not
10 be accurate, so we use the information provided to us by the
11 State of Washington when we do our economic analysis and
12 when we present our figures.

13 Q. Okay. The Census Bureau says population growth
14 was 10.4 in those nine years. You have figures that
15 indicate that's incorrect?

16 A. I don't have those figures in front of me, but
17 this is not the data that I would use, so I really can't
18 answer that.

19 Q. Okay. But you've reviewed data like this before;
20 right?

21 A. I've reviewed it?

22 Q. Yes, reviewed Census data.

23 A. I have reviewed the Census data but it is not
24 updated on a regular basis so I found it to be incorrect and
25 so we do not use it.

1 Q. The Census Bureau indicates that private non-farm
2 employment percentage change from 2000 to 2007 was 35.6
3 percent?

4 MR. ANDERSEN: Your Honor, objection. She
5 indicated she's not familiar with this document. It's off
6 of some webpage, and she said she doesn't rely upon it.
7 He's just asking her questions off of some webpage produced
8 by some agency that she doesn't rely upon. So I don't think
9 she has the competency to answer questions about this
10 document.

11 MR. ARAMBURU: Let me see if we can cut this a
12 little short, because I said we were going to try to be done
13 by 1:00.

14 MR. ANDERSEN: No objection to that.

15 MR. ARAMBURU: Ms. Miller has indicated there is
16 information regarding the state of the economy and
17 employment and various other things in Skamania County. To
18 test that information we have gone to the Census Bureau data
19 from Bureau Census to provide what would be objective
20 information regarding the --

21 MR. PEEPLES: Your Honor, we don't have a
22 microphone, but we object to this. Counsel is now
23 testifying.

24 JUDGE WALLIS: Well, we're listening to the
25 preface or request to use the data as I understand it.

1 Mr. Aramburu, can you summarize your proposal?

2 MR. ARAMBURU: My proposal is that we -- I'll get
3 back to 42.02 in a minute, that the Council receive into
4 evidence Exhibits 42.03, 42.04 and 42.05 as information from
5 the Census Bureau indicating circumstances in Skamania,
6 Klickitat and Hood River County as done by the Census Bureau
7 as rebuttal to the testimony of Ms. Miller regarding
8 financial, excuse me, economic circumstances in those
9 counties.

10 (Exhibit Nos. 42.03C, 42.04C & 42.05C
11 offered.)

12 JUDGE WALLIS: Mr. Anderson, you would oppose that
13 on the basis that your prior objection was made in the
14 statements of the witness that she is not familiar with the
15 data and doesn't use that data?

16 MR. ANDERSEN: Yeah, lack of foundation, Your
17 Honor.

18 JUDGE WALLIS: Very well.

19 MR. ARAMBURU: I think the data is Census data,
20 it's reasonably reliable and done from a competent source.
21 Business records rules would allow this to come in and to
22 indicate a set of economic circumstances and other
23 circumstances that exist in the county. So I think it's
24 reasonably reliable to be given to Council.

25 JUDGE WALLIS: In this situation we have doubt

1 cast on that based on the testimony of the witness that her
2 experience with that data is that it is not accurate for the
3 purposes of her agency and the purposes of her testimony.
4 And on that basis I will allow the objection and rule that
5 the documents are not admissible in this situation.

6 (Exhibit Nos. 42.03C, 42.04C & 42.05C
7 rejected.)

8 MR. ARAMBURU: Okay. We'd also move for the
9 admission of the 42.02C which is the Economic Development
10 Council's indication of wage rates within the county. There
11 has been testimony regarding the wages that have been paid
12 to construction workers within the county. This is a
13 document prepared by the Economic Development Council that
14 indicates -- the exhibit indicates both what wage and
15 salaries were for Skamania County workers in 2005. We would
16 ask that that be admitted.

17 (Exhibit No. 42.02C offered.)

18 MR. ANDERSEN: Your Honor, no objection because
19 Ms. Miller indicated it came off their webpage. But I don't
20 think she said anything that the information was necessarily
21 true. But, obviously, the document came in and it's off the
22 Skamania County's EDC webpage, so for that limited purpose
23 we have no objection to the document coming in.

24 JUDGE WALLIS: Very well. For that purpose the
25 document is admitted.

1 (Exhibit No. 42.02C admitted.)

2 MR. ARAMBURU: No further questions.

3 JUDGE WALLIS: Very well. Is there anything
4 further of the witness? Do Council Members have any
5 questions? Let the record show that there's no response.
6 And, consequently, Ms. Miller, thank you for your appearance
7 today. You're excused from the stand.

8 And this day's session is concluded. We have some
9 administrative matters to attend to, and we'll go off the
10 record for purposes of exploring those issues.

11 (Whereupon, the proceedings concluded
12 at 1:00 p.m.)

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1	I N D E X		
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E X H I B I T S

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NO.	DESCRIPTION	ID	OF	AD	REJ
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3

1.01R	Rebuttal testimony of Jason		930	930	
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Spadaro

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1.12C	WDFW email exchange No. 1		973		
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1.13C	WDFW email exchange No. 2		973		
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35.00	Direct testimony of Howard		1022	1022	
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Schwartz

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35.00R	Rebuttal testimony of Howard		1022	1022	
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Schwartz

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35.01	Resume of Howard Schwartz		1022	1022	
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35.02	Sixth NW Conservation & Electric		1022	1022	
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Power Plan by Howard Schwartz

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35.03	BPA Integrating Renewables		1022	1022	
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35.04	BPA Wind Integration Team		1022	1022	
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Initiatives

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35.05	BPA Integrating Wind Power to		1022	1022	
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the Grid

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35.06	BPA Final Testimony of Elliot		1022	1022	
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Mainzer

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35.07	Customer Supplied Generation		1022	1022	
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Imbalance Pilot

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35.08	BPA Columbia River High Water		1022	1022	
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Operations

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E X H I B I T S

NO.	DESCRIPTION	ID	OF	AD	REJ
35.09	Whistling Ridge DEIS Section 3.0	1022	1022		
35.10	Western Wind & Solar Integration Study	1022	1022		
35.11	Solving the Wind Integration Puzzle	1022	1022		
35.12C	NREL/AWS Truewind Estimates of Windy Land Area and Wind Energy Potential by State for Areas	1058			
35.13C	BPA Statement on Environmental Redispatch and Negative Pricing	1059			1060
42.00	Direct testimony of Peggy Bryan-Miller	1072	1073		
42.01R	Rebuttal testimony of Peggy Bryan-Miller	1072	1073		
42.02C	Skamania County Economic Development Average Wages for Construction Workers for 2005	1083	1084		
42.03C	Quick Facts from US Census Bureau, Skamania County	1082			1083
42.04C	Quick Facts from US Census Bureau, Klickitat County	1082			1083
42.05C	Quick Facts from US Census Bureau, Hood River	1082			1083

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In re: Whistling Ridge Energy Project

A F F I D A V I T

I, Tami Lynn Vondran, CCR, do hereby certify that the foregoing transcript prepared under my direction is a full and complete transcript of proceedings held on January 7, 2011, in Stevenson, Washington.

TAMI LYNN VONDRAN, CCR 2157