

PUBLIC HEARING BY THE PIERCE COUNTY HEARING EXAMINER

In Re:)
)
Administrative Appeal: AA16-07)
Taylor Resources, Inc.)
)

Transcript of Proceeding
Before Terrence F. McCarthy
Friday, December 14, 2007

APPEARANCES

For the Appellant: **SAMUEL W. PLAUCHE, IV**
TADAS KISIELIUS
GordonDerr
2025 First Avenue, Suite 500
Seattle, Washington 98121

For Pierce County: **JILL GUERNSEY**
Office of the Pierce County
Prosecutor
955 Tacoma Avenue South, Suite
301
Tacoma, Washington 98402

For the Intervener Coalition to Preserve Puget Sound Habitat:
DAVID A. BRICKLIN
Bricklin Newman Dold, LLP
1001 4th Avenue, Suite 3303
Seattle, Washington 98154

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APPEARANCES - (continuing)

For the Intervener North Bay Partners:

**JERRY R. KIMBALL
Attorney at Law
1200 Fifth Avenue, Suite 2020
Seattle, Washington 98154**

Also present: Sherry Cox, Clerk

**Reported by: Linda M. Grotefendt, CCR
License No. 3013**

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1 **BE IT REMEMBERED** that the continuation of the
2 Hearing of Administrative Appeal AA16-07 was held on
3 Friday, December 14, 2007, at 8:57 a.m., at Pierce County
4 Public Services Building, Public Meeting Room, 2401 South
5 35th Street, Tacoma, Washington, before Linda M.
6 Grotefendt, Notary Public in and for the State of
7 Washington.

8
9 **THE HEARING EXAMINER:** The hearing on Taylor
10 Shellfish Farms, AA16-07, is hereby reconvened. Mr.
11 Plauche, I understand you have a witness to present.

12 **MR. PLAUCHE:** I do. I'd like to call David Troutt,
13 please.

14
15 **DAVID TROUTT,** having been first duly sworn
16 upon oath by the Hearing Examiner, testified as follows:

17
18 **THE HEARING EXAMINER:** would you state your name
19 for the record?

20 **MR. TROUTT:** My name is David Troutt, T-r-o-u-t-t.

21 **THE HEARING EXAMINER:** Please proceed.

22 **MR. PLAUCHE:** And I would move to admit Exhibit
23 Number 146, which is Mr. Troutt's curriculum vitae.

24 **THE HEARING EXAMINER:** It will be admitted into
25 evidence.

1

DIRECT EXAMINATION

2 BY MR. PLAUCHE:

3 Q Mr. Troutt, where are you currently employed?

4 A I am currently employed, and have been for the last 20
5 years, as the natural resources director for the Nisqually
6 Indian Tribe.

7 Q And can you describe some of your responsibilities as the
8 natural resources director for the Nisqually Tribe?

9 A Certainly. The Nisqually Tribe is a sovereign government,
10 and we work as employees of the sovereign government. We
11 have a natural resources program that provides technical
12 guidance for elected officials there. It's a diverse
13 program with 30 employees. I have 16 professionals and two
14 attorneys on staff.

15 Q And in that capacity, do you deal with issues involving
16 Puget Sound salmon stock?

17 A Very much so. I'm a biologist by trade. I have a degree
18 from the University of Washington and deal, quite heavily,
19 in salmon and shellfish and other resource issues.

20 Q And can you talk briefly about, kind of, your experience
21 with those issues?

22 A Well, there's multiple levels of experience dealing with
23 the resource issues.

24 Q In particular, salmon.

25 A With the salmon in particular, I've been appointed by the

1 Governor to serve on the salmon-recovery funding board,
2 which, we met yesterday and allocated \$100 million for a
3 project, statewide, for salmon recovery. It was a rather
4 long -- long day.

5 But I deal with salmon from the Nisqually watershed in
6 our recovery efforts that we do there and been involved in
7 shared strategy in other regional and statewide processes
8 in salmon-recovery efforts for the last 20 years.

9 Q Okay. And I understand, later today, you'll be heading to
10 a Puget Sound Partnership meeting. Can you describe your
11 role in that?

12 A I've been appointed by the Governor to serve on the
13 ecosystem coordination board, which will be providing
14 guidance to the Puget Sound Partnership as they develop a
15 recovery plan for the Puget Sound.

16 Q Now, as I understand it, there was a settlement reached in
17 some treaty-rights litigation, earlier this year, involving
18 shellfish. Can you describe, briefly, the context of that
19 settlement and sort of the outcome of that settlement?

20 A Sure. That is correct. The tribes recently reached a
21 settlement with the shellfish growers in the Puget Sound
22 area, the treaty tribes here.

23 In 1995, Judge Rafitti (phonetic) ruled that the
24 tribes had -- their treaty rights should be observed for
25 shellfish as it was for salmon and entitled to 50-percent

1 harvest of shellfish on tidelands. One of the unresolved
2 questions was access to private lands and growers' lands.
3 And rather than take it to trial, the growers and tribes
4 settled on the issue. And the tribes received some funds
5 to set up trust funds within their area to develop
6 shellfish opportunities for the tribal members in the
7 future, in return for giving up access to these commercial
8 beds.

9 Q So these funds will be used to set up tribal shellfish-
10 cultivation operations? Is that the intent?

11 A It will vary from region to region. In the South Sound,
12 our funds will be used exclusively to enhance and develop
13 aquaculture opportunities for the three tribes that operate
14 down here: The Puyallup, the Squaxin, and the Nisqually.

15 Q And so, as resources director at the Nisqually Tribe, do
16 you have to balance those sometimes-competing interests
17 between shellfish and salmon?

18 A We do. It's an issue that is regularly brought up by our
19 elected officials. We have very much an integrated
20 program. The fundamental principle of our program, the
21 reason why we're there, is to help the tribe implement and
22 exercise its treaty rights. And it's a broad-ranging --
23 from gathering medicinal materials on Mt. Rainier to
24 gathering geoduck in subtidal areas of Puget Sound. And
25 our department, our agency, is entrusted with the

1 responsibility of being sure that whatever actions we take
2 are consistent with and move that agenda forward. So we
3 look at implications of shellfish issues on salmon issues
4 and vice versa.

5 Q Okay. Now, as you know, this hearing is about geoduck
6 cultivation. I want to just talk, for a moment, about
7 that. Based on your experience with salmon, what do you
8 think the interactions are between geoduck and salmon,
9 either the positive, negative -- the overall interactions
10 between geoduck cultivation and salmon?

11 A One of my experiences in the salmon-recovery business is
12 that we helped develop one of the models that is being used
13 to determine the survival of chinook in Puget Sound for
14 recovery purposes. It's a model called the Ecosystem
15 Diagnosis and Treatment, EDT, and it's a model that looks
16 at geographically specific reaches of fresh water systems
17 and marine systems and looks at the factors in those
18 systems that are affecting fish survival.

19 We went through 43 separate geographic regions within
20 the Nisqually, looking at 45 different environmental
21 factors that are affecting fish. And we also looked at
22 marine nearshore habitat and assessed various impacts on
23 salmon survival, of which we concluded that shellfish
24 aquaculture was not one of those impacts that needed to be
25 modeled.

1 There are lots of other issues that are affecting the
2 salmon survival in the marine environment, but shellfish
3 aquaculture is not one of them.

4 Q And overall, do you have an opinion as to whether geoduck
5 culture or shellfish culture, in general, is positive,
6 negative, with regard to effects on salmon fisheries?

7 A I think that, if properly managed in the proper areas and
8 they avoid areas that are critical for bait fish or other
9 natural-occurring features that are important for natural
10 processes within beaches or for survival of fish, that
11 there can be some positive aspects from geoduck and
12 shellfish aquaculture.

13 Salmon ultimately feed on things that feed on the
14 materials that are reproduced by shellfish and other
15 animals. So their gametes go up into the water column and
16 effectively produce the zooplankton. And these things are
17 fed on by things that ultimately feed fish. So by having
18 more of that primary production in Puget Sound, it could
19 be, potentially, a positive thing.

20 Q Okay. Now I want to shift gears just a little bit and talk
21 about the Tribe's experience with the wild geoduck fishery.
22 We had testimony yesterday that the density of geoduck at
23 the Foss farm ranges from 1.1 pounds per square foot to 1.3
24 pounds per square foot.

25 Is that consistent with the ranges that you've seen in

1 your wild geoduck fishery?

2 A That is very much consistent with a lot of the survey work
3 that we've done on our geoduck tracts. We harvest around
4 280,000 pounds a year on a number of tracts throughout
5 Puget Sound, and we'll see ranges from less than a half a
6 pound per square foot to over four pounds per square foot.

7 Q Okay. Now I want to shift for just a moment and talk about
8 the geoduck in intertidal areas. Has your tribe had
9 experience with, sort of, the historic density of geoduck
10 in intertidal areas?

11 A Very much so. One of the tasks of our program is to be
12 sure that we're moving to forward the agenda of our elders.
13 And our elders tell stories about how they used to go out
14 on the beaches and dig geoduck and harvest flounders and
15 crabs in areas that they can't do anymore. They just don't
16 exist, for various reasons.

17 One of our tribal elders, Billy Frank, and his brother
18 -- his brother turned 86 last week, and they were having
19 lunch, and they just started reminiscing about things when
20 they were kids; you know, catching crab and geoduck. And
21 Billy lives on Puget Sound and talks about how he used to
22 be able to just walk the beaches in his area and get
23 geoduck, and they're not there anymore.

24 And he turned to me, as his biologist, and asked why.
25 And my conclusion was that the habitat has been so altered

1 from the areas that he's talking about. Basically, from
2 his house--which is, more or less, Johnson Point--to
3 Everett, the entire shoreline has been modified. Almost 85
4 percent of it has been modified. And that's affected the
5 ability of these beaches to sustain natural populations of
6 geoduck, and other animals as well.

7 Q And when you talk about shoreline modification, what types
8 of things are you talking about?

9 A Principally, bulkheads and piers and docks and those kinds
10 of things that are permanent placements that affect the
11 shoreline. They affect the slopes of the shores and the
12 speed of sediment transport off the beaches. They affect
13 the slope of the beaches. They ultimately change the
14 habitat in a way that isn't conducive to some of these
15 native species existing.

16 And there's other issues as well, but that seems to be
17 the primary one. And if you look from the mouth of the
18 Nisqually to Everett, it's hard to find a natural shoreline
19 that exists anymore there.

20 MR. PLAUCHE: I have nothing further for this
21 witness.

22

23

CROSS-EXAMINATION

24 BY MR. BRICKLIN:

25 Q Mr. Troutt, good morning. My name is Dave Bricklin.

1 THE CLERK: You need to pick up the microphone.

2 MR. BRICKLIN: Sorry. Thank you.

3 Q Mr. Troutt, good morning. My name is Dave Bricklin. You
4 said that the geoduck aquaculture can be potentially
5 positive if properly managed, right? Is that your
6 testimony?

7 A It is my testimony.

8 Q All right. And a Shoreline Permit would be a mechanism by
9 which the County could make sure that the aquaculture
10 activities were properly managed, right?

11 A That's well beyond my level of expertise. I'm a biologist
12 and a resource director for the Tribe. I'm not involved
13 that heavily in what the mechanism should be for the County
14 in properly managing these kind of activities.

15 Q So you're not testifying about whether these activities
16 should be regulated via the shorelines permit or not?

17 A I am not testifying on that issue.

18 Q All right. And you're not testifying about whether geoduck
19 aquaculture constitutes substantial development as that
20 term is used in the Shorelines Act, correct?

21 A I'm not testifying on that either.

22 Q All right. And it is your opinion that concerns raised by
23 various groups regarding the adverse impacts associated
24 with geoduck harvesting are valid, right?

25 A That's not my opinion, no.

1 Q That's not your opinion?

2 A That is not my opinion, yes.

3 Q Let me hand you what's been identified in these proceedings
4 as Exhibit 72, a memorandum from Dave Risvald (phonetic).
5 Is he on your -- oh, excuse me. He's not on your staff, is
6 he?

7 A No.

8 Q I'm sorry. I was a little misdirected here.

9 MR. PLAUCHE: Unintentional.

10 MR. BRICKLIN: Yes. All right. Never mind.

11 Q You testified that the density, if you will, measured in
12 pounds of geoducks, in the subtidal harvest areas are in
13 the range that encompassed the 1.2, I think it was,
14 pounds-per-square-foot density that's been estimated for
15 the Foss site in the intertidal area, right?

16 A That is correct. We've seen those densities quite commonly
17 in the subtidal areas.

18 Q All right. Outside of areas that are being planted in the
19 intertidal areas, do you see geoduck densities of that
20 range?

21 A Well, I can only speak to what we've seen historically,
22 through elders' testimony, that they had opportunities for
23 what we could consider a commercial harvest of geoduck in
24 the past that just doesn't exist anymore. So assuming that
25 they would invest a certain amount of energy if the

1 resource were there, I'm assuming that the resource was
2 there and that we did see, probably, historically,
3 intensities that exceeded that in the intertidal areas.

4 Q So this is not based on any studies or reports? This is
5 just the elders' oral histories, as it were?

6 A Correct. I think that I also stated, earlier, that the
7 current status of intertidal geoduck isn't what it used to
8 be. For various reasons, the population is substantially
9 suppressed, and so we're not seeing what we used to see.

10 Q Did the elders tell you anything about the density of the
11 geoducks in the old days?

12 A Density?

13 Q In the intertidal area.

14 A "Density" is not a Nisqually word. But "geoduck" is a
15 Nisqually word. They harvested geoduck substantially, as
16 children, and their parents and grandparents. And they
17 would do it in a way that they could sustain their families
18 that they can't do now. There is a difference.

19 Q Right. would they be able to equate the ability to sustain
20 their families with a density of geoducks, in the old days,
21 in the intertidal area?

22 A Well, that is an issue that was raised in the discussions
23 around the settlement with the growers. It was an issue
24 that we avoided through settlement, and it's not an issue
25 that we've really been able to reach an agreement in our

1 understanding. The Tribe perspective is that density at
2 far less than 1.4 pounds per square foot would sustain a
3 tribal digger.

4 MR. BRICKLIN: All right. And I guess that's it.
5 Thank you very much.

6 MR. PLAUCHE: I have no redirect.

7 THE HEARING EXAMINER: May this gentleman be
8 excused? Thank you.

9 THE WITNESS: Thank you.

10 THE HEARING EXAMINER: I appreciate your coming
11 forward.

12 MR. PLAUCHE: That completes our rebuttal case. I
13 don't know if Mr. Kimball has anything on rebuttal, but that
14 completes our case.

15 THE HEARING EXAMINER: I have a few questions.
16 Probably, Mr. Phipps can answer them.

17 MR. PLAUCHE: would you like him to retake the
18 stand?

19 THE HEARING EXAMINER: would you, please?

20 MR. KIMBALL: And I do have one very short witness.

21 THE HEARING EXAMINER: Okay. How short is it?

22 MR. BRICKLIN: About five-two.

23 (Laughter.)

24 MR. KIMBALL: Five-seven.

25 THE HEARING EXAMINER: You've been previously sworn

1 in.

2 MR. PHIPPS: Yes, sir, I have.

3

4 VOIR DIRE EXAMINATION

5 BY THE HEARING EXAMINER:

6 Q Now, at this Foss site, there is an estimate here that you
7 put 10,000 tubes in this last year and took 10,000 out. Is
8 that correct?

9 A No. I believe it was 50,000 in and 50,000 out.

10 Q Okay. And each planting has about 50,000 tubes; is that
11 correct?

12 A No. It depends on the harvest size. When we first
13 started, I believe we put in 100,000 on the 2002. And
14 then, in 2003, it was roughly an acre, which is 50,000.
15 And then, when we replanted the 2002 in 2004, it was the
16 100,000 again. And 2005, I believe, without looking at my
17 records, was 60- or 70,000 in that area, and then the 2006
18 planting was in roughly the same area: 60,000, 70,000.

19 Q 60,000. And that's what you plan on -- that's your
20 estimate, is to plant about 60,000 a year?

21 A Actually, if we had seed, it would go up. I mean, if we
22 had two acres, which is about 70,000 tubes. So yeah, that
23 is correct.

24 Q Two acres is about 70,000?

25 A Tubes, yes.

1 Q Tubes. And one acre is 50,000; is that right?

2 A 35,000 tubes. We put our tubes -- we try to space them --
3 we have rope. We have our little gauges on there. We try
4 to space our tubes between 1.2 and 1.4 per square foot --
5 or in a square foot, so one tube every 1.4 square feet.

6 Q And how many tubes do you have on site now?

7 A There's just the 2006 planting. I believe it's 60,000; 50-
8 to 60,000.

9 Q And how many geoducks are on site right now?

10 A I planted -- I don't have my paperwork with me.

11 Q Roughly.

12 A I planted 900,000, and I try to get -- not every piece is
13 the same. I believe -- I couldn't tell you without looking
14 at my -- if I have -- I could get you the numbers, if you
15 want. I can't --

16 Q It would be interesting if I could have that.

17 A Okay. I'll get it for you. I can get you the numbers of
18 ducks.

19 Q And if I understand things correctly, you wait about five
20 years, and then the geoducks weigh about two pounds on an
21 average. Is that correct?

22 A Correct.

23 Q And so, if you have 900,000 geoduck on site, you have
24 probably 18 -- 1,800,000 pounds of geoducks?

25 A Planted ducks -- planted ducks doesn't mean that's what we

1 get to survive. In my 2002 planting, I lost everything
2 except for one spot, right here (indicating), that we
3 harvested. So just because we put it in, it doesn't mean
4 -- there's a lot of freshwater seepage. Geoducks don't
5 like fresh water.

6 Q They don't?

7 A No, they don't. This last rainfall -- I'm already seeing a
8 kill from this last big rainfall. Is what I'd like to get
9 is anywhere from 50- to 60-percent survival.

10 MR. PLAUCHE: I'm going to hand Mr. Phipps -- we
11 had the chart that he's referring to. I had to tear all
12 that other stuff out. I think this is what you were
13 referencing.

14 THE WITNESS: Number of ducks. It doesn't have the
15 number of ducks.

16 MR. PLAUCHE: Oh, okay. But it has the survival
17 calculation. He was assuming it was 900,000 ducks, and, I'm
18 sorry, I was looking at this and didn't hear you testify.

19 THE HEARING EXAMINER: He did say "900,000."

20 THE WITNESS: That's what I planted. I did say
21 900,000 planted.

22 MR. PLAUCHE: But what I was handing him is --
23 there's a percent survival on that 900,000. So the actual
24 number of ducks on the site, I think Mr. Phipps will testify
25 to, is somewhat lower than 900,000.

1 THE WITNESS: Yes.

2 Q And how long does it take you to plant 50,000 tubes?

3 A Oh, we can plant 20 -- that's 150,000 ducks, and we can
4 plant 20,000 -- five days, with a, probably, six- or
5 eight-man crew.

6 Q Six- to eight-man crews?

7 A Yes.

8 Q And is that typically what you use: six- to eight-man
9 crews?

10 A Yes.

11 Q And so it's about five days for putting the tubes in?

12 A No. That's just the planting. It's not putting in tubes.
13 There's a different crew that puts the tubes in.

14 Q Okay. How many plant?

15 A Plant? The seed, or the tube?

16 Q How do you plant the seed?

17 A The seed -- you have your tubes in a row.

18 Q Okay. First of all, you go out and put the tubes down.

19 A Right. You bring the tubes in on the barge. You roll them
20 off the barge, you put them in a straight row with a rope.

21 Q Okay. How long does it take you to put the tubes in?

22 A Oh, about 10,000 a day, so five days.

23 Q And that's a crew of six to eight?

24 A Yeah. Yes.

25 Q And then a crew of six to eight -- in about five days, you

1 can do --

2 A 50,000. we'll stomp 50,000 tubes.

3 Q 50,000 tubes?

4 A Yes.

5 Q Okay. And then, after you put the tubes in, another crew

6 comes in--

7 A And plants the seed.

8 Q --and plants the seed. And that takes about five days too?

9 A Yes, sir.

10 Q And so, when do you typically do this?

11 A During the summer. From--

12 Q During the summer?

13 A --April until the end of September is the best planting

14 season.

15 Q So any one farm, then, would have workmen on it, during the

16 summer, maybe 10 days?

17 A To plant that much. Then we actually maintain the farm the

18 rest of the summer. He'll go back and check.

19 Q How do you maintain the farm? what do you do? well, how

20 frequently do you maintain it? what do you do?

21 A I go out myself, just to make sure everything is in order.

22 And then I have three crew managers -- or three managers

23 that will go and seed-sample and check on the tubes.

24 Q How do you seed-sample?

25 A Is what we'll do -- we have a little screener. It's a

1 circle. And you'll take a shovel and dig the tube out, the
2 whole core. And then you'll sift that sand, and then the
3 geoduck will stay in your screener, and then you count it;
4 and it will give me a percentage of survival for each
5 plant.

6 Q And then you replant?

7 A Well, yeah. We'll put them back in the tube, yes. So
8 we'll do that 20 or 30 times over an acre.

9 Q Now, when you plant the geoduck in the tube, do you put
10 anything on top of the geoduck?

11 A Yes. The large overlay, the -- over the total -- the large
12 net.

13 Q But you don't put any substance over the geoduck itself,
14 like sand or anything?

15 A No. No. We actually -- on the larger seed -- we have the
16 nursery system. We grow our seed from two to three
17 millimeters up to 10 to 12. And some get a little larger
18 than that. But you'll take -- you'll poke your finger in
19 the sand, and then you'll put the geoduck actually in that
20 little hole. So it kind of gets them started so they can
21 just dig down. If you lay them on top, if the water gets
22 too hot, it will bake them and kill them, so they won't dig
23 in.

24 Q So basically, during the spring and summer, April to
25 September, how frequently would you have somebody onsite?

1 A If you're planting the two acres, you'll have them there
2 the 10 days -- each crew there for that amount of time.
3 And then I'll go out a couple times a month. And then the
4 other managers will go out a couple times a month.

5 And we usually access from the upland. We'll drive
6 down and walk out. And then -- I don't know. It depends
7 on -- it depends. I mean, we usually try to get out there
8 a couple, three or four times a run, you know, just to
9 check and make sure everything is there.

10 If you're planting, it's -- you're out there more. If
11 you're pulling net, you're out there more.

12 Q Okay. We should go back to that, because, after you put
13 the tubes in, then you spread a net across the tubes,
14 correct?

15 A Yes.

16 Q And after you put the tubes in and you plant it, then you
17 spread the net across it.

18 A Yes, sir.

19 Q And does that take additional time, additional few days?

20 A No.

21 Q So take an idea of how frequently you're onsite.

22 A Well, the net is put over on the same day that you plant.

23 Q You plant, okay.

24 A Yes.

25 Q Very good. Now, from April to September, how often do you

1 harvest?

2 A On this piece, I believe we have 60,000 pounds that we have
3 inventory, 68,000 pounds. And we can dig an average of
4 3,000 pounds a day. So 20 days, 25 days.

5 Q Okay. And dig an average of 3,000 pounds a day. How many
6 workers?

7 A Three.

8 Q Three.

9 A Two harvesters and one bander.

10 Q So how often do you schedule a harvest? You have to have
11 low tide?

12 A Yes.

13 Q So during the summertime, you're out there, typically,
14 during the daytime, harvesting; is that correct?

15 A During the summer, yes, it is.

16 Q And how much are you harvesting, on this site, from the
17 time period April through September?

18 A We would be there the 25 days. It depends on the tide. If
19 the tide would let me go out, in September, four days or --
20 say, September, I would go out the four days in September,
21 if the piece wasn't already harvested, because we harvest
22 about 600,000 pounds a year.

23 Or if the Foss farm is only 70,000 pounds, if I can
24 get it done in a month, I'll get it done in a month, and
25 I'll be done. If I can't, I'll do what the tide allows me

1 Q --Taylor Shellfish produces 600 (sic) pounds altogether?

2 A 600,000 pounds a year.

3 Q Okay. So, on this site, they would produce how much?

4 A 70,000 pounds. 68 -- 68,000 is what I inventoried for this
5 year.

6 Q That helps quite a bit. Do you use boats at all?

7 A Yes.

8 Q Do you use them to clean up? Is that correct?

9 A We use them to clean up. We use them to harvest.

10 Q Are your boats marked?

11 A Yes. They have VIN numbers and -- the WN VIN number and
12 license.

13 Q But nothing saying "Taylor Shellfish" or anything?

14 A No, sir. The WN number is the State registration number.

15 Q My notes don't reflect this, but what's the survival rate?

16 A It varies. The first year -- 2002 was zero, or just a
17 little above zero. We got a few thousand pounds we dug.
18 And then, my last planting I surveyed for this, then it was
19 86 percent survival on the last planting. It varies. It
20 depends on the weather. It depends on the seed size.

21 Q But I imagine, if you have heavy rains and flooding, it
22 would go down.

23 A It would be worse. Yes, heavy rains and flooding, it will
24 be worse. 2003, I had 21 percent. 2004, I had 45 percent.
25 2004, 45 percent. 2005, 85 percent. And 2006, 85 percent.

1 Q why so low? 45 percent. why is that?

2 A well, the 2004 area is in this wet drainage area, lots of
3 freshwater seepage, and so they don't like it, and so they
4 don't survive as well. My best survival is out here
5 (indicating), on the point, where it's a little drier, and
6 you're able to get the seed down.

7 And the other thing we did in 2005 and 2006 is planted
8 larger seed. Previously, we would plant our seed direct
9 from the hatchery, the two to three millimeter, and it
10 didn't do very good at all. Especially when you get heavy
11 rains and all this freshwater seepage coming down through.

12 Q So do you keep a crew on full-time?

13 A Yes. We have three crews full-time.

14 Q Three crews, full-time?

15 A Yes.

16 Q And a crew is how many?

17 A The harvest crew is -- I think there's five, six harvesters
18 and two banders and a manager.

19 Q And two what?

20 A Banders. They put the rubber bands around the geoduck
21 belly, for shipping.

22 Q Okay.

23 A So we call them banders.

24 Q So when you remove a geoduck from the tube, then you place
25 it in a box; is that correct?

1 A we pull the tube after anywheres from 14 months to 24
2 months.

3 Q Right.

4 A we leave them in the ground until they're five years old.

5 Q Okay.

6 A Then we come through and we harvest them. And as soon as
7 they're pulled out, we wash them and band them and put them
8 in a crate.

9 Q You put a band around each one of them?

10 A Each one, yes, sir.

11 Q Okay. It's a rubber band, or what?

12 A Yes. That keeps the shell closed, because, what happens
13 is, if you don't do that, the shell will open, and the
14 little membrane along the side will open up and it will
15 kill them.

16 Q It will kill it. Okay.

17 A Yeah.

18 Q Is it a rubber-band type arrangement?

19 A Yes.

20 Q what's the diameter, roughly, of it?

21 A I know the number. I don't know -- it's Number 64.

22 (Laughter.)

23 Q That helps a lot.

24 (Laughter.)

25 THE WITNESS: Two and a half inches?

1 Q You don't know?

2 A No. I know the number of it, because I order quite a few.

3 So I do know the number. I don't know the diameter.

4 Q So now you use tubes, nets, and, sometimes, small net.

5 A No small nets anymore, sir.

6 Q No small nets anymore at all?

7 A No small nets anymore, sir, no.

8 Q You do use them, though, if you are in an area where there
9 are eagles; is that correct?

10 A That's what we were asked to do by the Interveners. If
11 there was an eagle nest and there was a fledgling, we were
12 asked to use the individual nets, yes, sir.

13 Q Are you doing that?

14 A Yes. If -- if there's an eagle and if we're planting on
15 that beach, yes, I would do that.

16 Q Do you have any eagles in the area of this site?

17 A I have not noticed a nest. There is a nest on the
18 Hartstene Island side that we do know that it's there. But
19 on this side, I'm not sure.

20 Q Hartstene Island -- is that in Kitsap, or Mason, or --

21 A It's in Mason.

22 Q Mason. Thank you. That kind of helps me a little bit,
23 getting a better footing.

24 MR. KISIELIUS: Mr. Examiner, if I could just ask
25 one follow-up question.

1 THE HEARING EXAMINER: Any of you can follow up,
2 okay?

3

4

DIRECT EXAMINATION

5 BY MR. KISIELIUS:

6 Q The question about whether you can harvest everything in
7 the summer months, what would that do to your capacity to
8 supply the market demand?

9 A I think it would flood it. You -- you wouldn't be able to
10 -- I don't think you can do that. I don't think I could
11 keep up.

12 Q So the demand, in other words -- is it consistent
13 throughout the year?

14 A No, it isn't. It's slower in the summertime and there's
15 more demand in the wintertime.

16 Q Oh, I see.

17 A So when it's the holiday season, there's a higher demand.
18 In the summertime, you have the Native Americans digging.
19 You have the Canadians digging. You know, the people from
20 Alaska, Alaskantone (sic), they're digging. So we slow
21 down in the summertime because they're flooding the market.
22 Is that -- does that answer your question?

23 Q It does. Thank you.

24 THE WITNESS: I don't know if this is appropriate,
25 Your Honor, but our pump scow -- I know you're worried about

1 noise at night. We started with Honda pumps that were
2 pretty loud, and we've actually purchased -- I believe
3 they're \$25,000 pumps and put those houses around them. And
4 I believe, at 400 yards, the decibel is less -- there's less
5 noise off that pump than my voice. I have the decibel
6 readings if you'd like them.

7 THE HEARING EXAMINER: Voices, at nighttime on the
8 Sound, carry.

9 THE WITNESS: Everything carries on the Sound at
10 night.

11 THE HEARING EXAMINER: Yes. And it's all
12 magnified.

13 THE WITNESS: But I do have the decibel reader, so,
14 I mean, it --

15 THE HEARING EXAMINER: I'm just saying that, you
16 know, you're out there on the Sound in the middle of the
17 night. Someone is digging a hole and yelling, "Hey, Joe,"
18 something like that. That's going to carry for a long
19 distance. Would you agree?

20 THE WITNESS: It -- it doesn't show on the reader.

21 THE HEARING EXAMINER: But it does, doesn't it?

22 THE WITNESS: It does -- I have --

23 THE HEARING EXAMINER: I know it doesn't show on
24 the reader, but you do hear it long distances.

25 THE WITNESS: You do hear it, but it's less than a

1 whisper.

2 THE HEARING EXAMINER: Anyway -- I'm not giving you
3 a bad time.

4 THE WITNESS: It's okay. You earned the right.
5 (Laughter.)

6 THE HEARING EXAMINER: I live on the Sound.

7 THE WITNESS: It's okay.

8 THE HEARING EXAMINER: Not live on the Sound, but I
9 have a beach house, and the boats go by and I hear the
10 sounds from people talking on the boats. So anyway. Thank
11 you. Any other questions?

12 MR. KISIELIUS: None from us.

13 THE HEARING EXAMINER: Do you have a witness?

14 MR. KIMBALL: Mr. Examiner, I'd like to call Brynn
15 Rydell.

16 MR. BRICKLIN: Your Honor, I don't think this
17 witness was identified previously.

18 MR. KIMBALL: This is a rebuttal witness, and we
19 did not anticipate there would be --

20 THE CLERK: You're not being picked up. I'm sorry.

21 MR. KIMBALL: Excuse me.

22 THE HEARING EXAMINER: why don't you just take it
23 off the --

24 MR. KIMBALL: This is a rebuttal witness. we did
25 not anticipate that the testimony would be induced by the

1 Intervenors that has, and this is in short response to their
2 answers concerning the effects of the Nisqually earthquake
3 on that beach.

4 THE HEARING EXAMINER: I'm going to allow it. Come
5 forward, please. Raise your right hand.

6
7 BRYNN RYDELL, having been first duly sworn
8 upon oath by the Hearing Examiner, testified as follows:

9
10 THE HEARING EXAMINER: I just hope you're not
11 opening up a whole new area of inquiry.

12 MS. RYDELL: Me too.

13 THE HEARING EXAMINER: State your name for the
14 record, please.

15 MS. RYDELL: Oh, Brynn Rydell.

16 THE HEARING EXAMINER: would you spell your last
17 name?

18 MS. RYDELL: R-y-d-e-l-l.

19 THE HEARING EXAMINER: And how about your first
20 name, too?

21 MS. RYDELL: B-r-y-n-n.

22 Thank you. You may proceed.

23 ///

24 ///

25 ///

1

DIRECT EXAMINATION

2 BY MR. KIMBALL:

3 Q Your name prior to marriage?

4 A Foss; maiden name.

5 Q You are Leslie's --

6 A Sister.

7 Q I'm going to hand you four photographs, and would you
8 explain what those photographs are? Then we'll pass them
9 around.

10 A These photographs, I took the day after the Nisqually
11 quake. Our brush-picker was out on our road, and the road,
12 as this gets passed around, opened up in front of him. And
13 he immediately left the property and called and said, "You
14 can get down to the cabin, but you better go see the
15 damage." So my husband did. He didn't take a camera. The
16 next day, I went out and took these pictures.

17 THE HEARING EXAMINER: Are we going to mark these?

18 MR. KIMBALL: Yes.

19 Q And what is the next picture?

20 A This is --

21 THE HEARING EXAMINER: First of all, the first
22 picture you have referred to is Exhibit what?

23 THE CLERK: 156.

24 THE HEARING EXAMINER: 156. Okay. Go ahead.

25 THE WITNESS: And that was our access road down to

1 the cabin. The next picture is going -- oh, what direction?
2 South of the lagoon area.

3 Q And south of the lagoon area --

4 A This would be right in here somewhere (indicating to aerial
5 photo) -- is this picture of the sloughage. The banks
6 went.

7 Q when you say "the banks went"...?

8 A The banks -- the -- the banks at the beach all sloughed for
9 almost the entire length.

10 THE HEARING EXAMINER: Exhibit Number 157 will be
11 admitted into evidence. And, again, this is at the beach
12 level, right? The slough?

13 THE WITNESS: Yes. I'm standing on the beach. And
14 that's after a tide, obviously. What about the spit one?
15 That one (indicating). And this is walking--which we called
16 the spit--down towards the neighbors.

17 Q would you show, on that map, which one?

18 A This is the spit area.

19 THE CLERK: You have to hold the microphone,
20 please.

21 THE WITNESS: This is the spit area, here
22 (indicating), going towards the neighbors, and it's always
23 been -- which, we've called a hog's back. It's been a very
24 rounded spit, steep on both sides; more steep on the inside,
25 bank side, than the waterway side.

1 And we walked out and didn't notice anything. And then
2 I turned around, and I went, "The sand spit is totally
3 pancaked," and it had flattened completely.

4 Since then, this doesn't exist anymore. The spit is
5 turned and changed and taken a whole other direction. This
6 is standing on the --

7 MR. KIMBALL: Wait.

8 THE HEARING EXAMINER: Exhibit 158 will be admitted
9 into evidence.

10 Q what does the next picture show?

11 A This is standing where I was standing when I took that
12 picture and turned around and took the picture of the banks
13 towards the neighbors, which is here (indicating to aerial
14 photo).

15 Q So the bluff that is shown in the upper portion of that
16 exhibit?

17 A And it's all down.

18 Q Was that bank in that condition prior to the earthquake?

19 A No. No. You can see the fresh trees on the beach. And
20 that's just a close-up.

21 THE HEARING EXAMINER: Exhibit 159 will be admitted
22 into evidence.

23 Q What is the next picture?

24 A This is standing by the lagoon, here (indicating), taking a
25 photo that way.

1 THE HEARING EXAMINER: Is 159 in front of your
2 property?

3 THE WITNESS: That's on our property.

4 THE HEARING EXAMINER: That's your property. Okay.

5 THE WITNESS: Yes. They're called feeder banks for
6 a reason.

7 THE HEARING EXAMINER: Exhibit 160 will be admitted
8 into evidence.

9 Q How long have you been going to this beach?

10 A All my life.

11 Q Have you ever seen changes of that magnitude in a short
12 period of time?

13 A No. That was pretty dramatic. That was pretty dramatic.

14 MR. KIMBALL: I don't have any further questions.

15 THE HEARING EXAMINER: Anybody else?

16 MR. PLAUCHE: Just one question.

17

18 CROSS-EXAMINATION

19 BY MR. PLAUCHE:

20 Q what was the date of the Nisqually earthquake? Year. Just
21 a year.

22 A I believe -- 2001?

23 MS. GUERNSEY: Yes.

24 THE WITNESS: Thank you. I'm bad at dates.

25 MR. PLAUCHE: Thank you. That's all I have.

1 CROSS-EXAMINATION

2 BY MR. BRICKLIN:

3 Q Ms. Rydell, I'm Dave Bricklin. It's nice to meet you.
4 Sorry it's under these circumstances. You were pointing to
5 this exhibit, which is number -- anybody know? What is the
6 number?

7 MR. PLAUCHE: I believe it's 153, David.

8 Q 153. It's a series of colored aerial photographs with the
9 plantings superimposed on it. And you were looking at Page
10 C of the aerial photos, C of that set, and you were
11 identifying where the photographs that you were introducing
12 were in relation to this aerial.

13 THE HEARING EXAMINER: Excuse me, Counsel. I
14 believe it's 154.

15 MR. BRICKLIN: Thank you.

16 THE HEARING EXAMINER: And it's A through E, and
17 that's probably --

18 MR. BRICKLIN: C.

19 THE HEARING EXAMINER: C.

20 MR. BRICKLIN: This is C.

21 Q And I just wanted to -- you were saying "here" and "there,"
22 and, on the written record, that's not going to tell
23 somebody reading this where you were. So when you were
24 referring to the first photograph that you said was "down
25 here," I think you said south of the lagoon, would that

1 MR. BRICKLIN: Yeah. Thank you.

2 Q So this Photograph 158 -- so you're standing --

3 A I'm standing somewhere in here (indicating).

4 Q All right. And so, "in here" means -- on this C, there's
5 two areas marked "2006" that are more pink than purple and,
6 roughly, north/south, about even with the middle of those
7 areas.

8 A I could have been out here (indicating).

9 Q Right. All right. But, I mean, not up here (indicating),
10 the top of the map?

11 A No, no.

12 Q Not the area at the bottom of the map?

13 A No, no. I'm on the spit.

14 Q All right. And these other pictures -- were they taken
15 from that same --

16 A That's down in here (indicating).

17 Q All right. So 157 is down here, in the southeast corner of
18 the aerial?

19 A Correct.

20 Q All right.

21 THE CLERK: Mr. Bricklin, can you turn a little
22 bit?

23 MR. BRICKLIN: I'm sorry.

24 Q And how about this 159?

25 A I'm on the spit, and I turned around and took the picture

1 of the bank. So, you know, there (indicating).

2 Q So that's, again, about roughly the middle of the 2006
3 plantings; even with that?

4 A Correct.

5 Q Pointing east?

6 A Well, pointing that way (indicating).

7 Q Northeast?

8 A And on this, you can't see there's a bank under here that's
9 gone too.

10 Q So "under here," meaning --

11 A The tree canopy.

12 Q Right. And, again, about even with the 2006 planting?

13 A Approximately.

14 Q All right. So these banks that you're taking pictures of
15 in 159, are those the ones that are under that tree canopy,
16 then?

17 A Well, I would say it's this part, right here (indicating).

18 Q Farther north?

19 A Looking at this.

20 Q All right.

21 A I would imagine these were taken after the Nisqually quake.
22 Or were they taken before? When were these aerial photos
23 taken?

24 Q I don't know that that's been identified on the record.

25 Then this last one -- do you happen to know 157? Are you

1 able to --

2 A That's up here (indicating).

3 Q So 157 is down at the southeast corner?

4 A Yes.

5 Q All right. Thank you.

6 A But it went all the way down, all the way to the park.

7 Q Towards the State Park?

8 A Yeah. In fact, the day I was out taking those pictures,
9 there was a helicopter with a guy sitting in the open door
10 with a camera, taking pictures of the banks all along
11 there.

12 MR. BRICKLIN: Okay. Thank you. That's all I have
13 for this witness.

14 MR. PLAUCHE: We have nothing further. Thank you.

15 THE HEARING EXAMINER: May this witness be excused?
16 Thank you very much for coming forward.

17 MR. KIMBALL: North Bay has no further rebuttal
18 testimony.

19 THE HEARING EXAMINER: Anything else from anybody?

20 MR. PLAUCHE: I don't think so.

21 MR. BRICKLIN: Do you have anything?

22 MR. PLAUCHE: I don't.

23 MR. BRICKLIN: We alerted Counsel yesterday, we
24 have one surrebuttal witness we were going to recall.

25 MR. PLAUCHE: And we're going to object to that,

1 obviously. We kept our rebuttal case closely confined to
2 his case in chief. We've not gone outside the scope of
3 that. If he's going to put on a surrebuttal case, we're
4 going to then have to put on, potentially, a witness to
5 respond, so it's going to be --

6 THE HEARING EXAMINER: Give me a form of proof.

7 MR. BRICKLIN: We were going to -- there was
8 testimony yesterday, in the Applicant's rebuttal case, about
9 the soft area that had been described, on the beach, as
10 being the area inhabited by ghost shrimp.

11 THE HEARING EXAMINER: Uh-huh.

12 MR. BRICKLIN: And we were going to recall
13 Mr. McCormick in to have him testify that he knows where
14 that area is and that the area that he was describing as
15 being unusually soft was not that ghost shrimp area but
16 rather lower on the beach. It would be about three
17 questions.

18 THE HEARING EXAMINER: I'll allow it, on
19 surrebuttal. Just on that one area, nothing else.

20 MR. BRICKLIN: Mr. McCormick, will you retake the
21 stand, or the lectern, as it were?

22 THE HEARING EXAMINER: Mr. McCormick, you've been
23 sworn in. You're still under oath.

24 MR. MCCORMICK: Yes, sir.

25 THE HEARING EXAMINER: State your name for the

1 record, please.

2 MR. MCCORMICK: John McCormick.

3

4 DIRECT EXAMINATION

5 BY MR. BRICKLIN:

6 Q Mr. McCormick, yesterday, admitted into evidence was this
7 aerial photograph that we're looking at, which is Exhibit
8 154-C. And you can see your house here at the top of that?

9 A Yes.

10 Q All right. I wanted to represent to you that this, in
11 front of your house, on the beach -- this light-green area
12 was described, by the witness, as a ghost shrimp bed, all
13 right?

14 A Yes, sir.

15 Q Okay. And you previously testified as to an area of the
16 beach that you walked on that was unusually soft and was
17 not the hard beach that it had historically been and so
18 forth. Are you able to locate, for the Examiner, that area
19 that you were talking about in reference to this ghost
20 shrimp area? Is it the same area, or different?

21 A It's a different area. It's the area that they harvested.
22 And to answer this gentleman's question, yes, they
23 harvested on August 13th through the 21st of this year.
24 That's the area they harvested.

25 THE CLERK: Speak into the microphone, please.

1 THE WITNESS: That's the area they harvested August
2 13th through the 21st, in front of our place. That's the
3 area I'm speaking about.

4 MR. BRICKLIN: All right. Thank you. That's all I
5 have, Your Honor.

6
7 CROSS-EXAMINATION

8 BY MR. KISIELIUS:

9 Q Mr. McCormick, Tadas Kisielius, on behalf of Taylor. I
10 just have a few questions for you.

11 A Sure.

12 Q Were you present yesterday for Mr. Phipps' testimony?

13 A No, Partner. I'm not going to stay around.

14 Q And were you present yesterday for Dr. Fisher's testimony--

15 A No, sir.

16 Q --when they testified to the mechanism by which they had
17 indicated where these were and the tide lines?

18 A No, sir.

19 Q So you're looking, now, at a representation showing the
20 harvest areas, and you're not claiming to have been out
21 there. Is that the day that you took Dr. Parsons to the
22 site?

23 A The day we took Dr. Parsons to the site? You'll have to
24 explain to me which one that is. I hired geologists,
25 marine biologists.

1 THE CLERK: Speak up, please.

2 THE WITNESS: I've had three or four different
3 individuals out there, from marine biologists to geologists.
4 So you're going to have to explain to me which one he is.
5 We had to hire three or four different types of geologists.

6 Q Dr. Parsons is the expert witness that's appeared here,
7 that testified that you took him out and indicated where
8 the harvest area was. And he indicated --

9 A Okay. That would be the gentleman in the middle of the
10 night?

11 MR. BRICKLIN: Yes.

12 THE WITNESS: Okay. That's the gentleman we took
13 out here in the middle of the night. I brought down
14 generators and lighted up the whole area for him.

15 Q I believe Dr. Parsons' testimony was that he was brought
16 south onto the Foss property, during the daytime, at a plus
17 2 tide.

18 MR. BRICKLIN: He testified he came twice.

19 MR. KISIELIUS: Correct, but he testified that he
20 came south onto the Foss property only on the second time.
21 He only went north, along the residential property, at the
22 plus 3. Excuse me; at the minus 3.

23 THE WITNESS: That could be correct.

24 Q And so the testimony that Dr. Parsons had raised is that
25 you had taken him out and shown him the harvest site, and

1 it was an area that was inland, upward of the plus 2 tide.

2 MR. BRICKLIN: Whose testimony was that? Was that
3 Parsons?

4 MR. KISIELIUS: Dr. Parsons.

5 MR. BRICKLIN: I would object; mischaracterizes the
6 testimony.

7 MR. KISIELIUS: If it would help clarify the issue,
8 we have a transcript. We can have him read the transcript
9 if you can just give me a couple seconds.

10 THE HEARING EXAMINER: I really think it's just
11 incidental, gentlemen.

12 MR. KISIELIUS: Mr. Examiner, this witness is now
13 testifying what was previously -- the expert testified that
14 he -- an area that's in contention here as the potential
15 harvest area has been clarified now as being -- what they
16 were testifying to as north -- excuse me -- inward of the
17 plus 2 tide. And we have shown that there are no geoduck
18 beds inland of the plus 2 tide.

19 They're now changing that testimony to try to explain
20 that he was out there at a different time, and we'd like to
21 clarify that.

22 THE WITNESS: I'm not changing my testimony,
23 Partner. I'm just telling you this area that I saw
24 harvested on these dates. When this gentleman was out --
25 I'm sorry, you'll just have to show me the gentleman, and

1 then just tell me, but this is the area I took the
2 gentleman. This is the area I lit up.

3 Q I'm going to get to the --

4 MR. BRICKLIN: And just for the record, the area
5 that you were pointing to --

6 THE CLERK: I can't hear you. If you want it on
7 the record...

8 MR. BRICKLIN: And just for the record, the area
9 you were pointing to was that area in the light yellow, the
10 harvest area?

11 THE WITNESS: Yes, sir. Just adjacent to the
12 property.

13 MR. BRICKLIN: Thank you.

14 Q Where were you when you witnessed the harvesting?

15 A Sitting on our back deck.

16 Q So could you explain to us where your back deck is in
17 relation to that?

18 A Our back deck was right here (indicating).

19 Q And so you're up --

20 A Overlooking the --

21 Q Overlooking the -- are you at a higher elevation?

22 A Yes. We're 39 feet vertical.

23 Q Okay. And so how did you determine where the harvesting
24 was happening?

25 A I just walked to the edge of my lawn and was sitting there,

1 watching them do it.

2 Q So what was --

3 A There were six guys down there.

4 Q what was the distance that you had to look to identify that
5 location?

6 A Less than 100 yards.

7 Q Okay. So about 100 yards. were you able to mark or
8 identify that place?

9 A Yeah. You can't miss it. Even to this day, you can see
10 the harvest areas.

11 Q I guess there's contradictory testimony to that effect, so
12 I'm wondering what mechanism you used to identify that
13 spot. Did you use a GPS?

14 A No, Partner. I just sat there and watched them.

15 Q And so where they've identified it with a GPS, you're
16 contending, based on your observation, that you know where
17 it is better than they do?

18 A I'm just telling you I can walk you right to it from my
19 property, Partner.

20 MR. KISIELIUS: Okay. I've got no further
21 questions for this witness.

22 THE HEARING EXAMINER: Anything further from
23 anybody?

24 MR. BRICKLIN: Thank you, Mr. McCormick.

25 THE HEARING EXAMINER: You may be excused.

1 THE WITNESS: Can I have one second of your time?
2 I apologize, yesterday, for my seemingly not knowing my
3 dates. But, as I explained to y'all, I'm not against these
4 gentlemen making money on the beach. I'm just here trying
5 to protect my bluff. The gentleman, yesterday, referred to
6 it as a feeder bluff. It is not a feeder bluff. The
7 Nisqually quake didn't have anything to do -- we did not
8 lose any part of our property during this so-called
9 Nisqually quake.

10 All I want to do is keep the 850-foot buffer that Mr.
11 Taylor there gave us. And I prefer to -- you people, as
12 watching over our land, would also give us an 850-foot
13 buffer for anybody that owns 80-degree to 90-degree vertical
14 bluff, you know.

15 So I apologize for not knowing the dates yesterday, but,
16 like I told you, I'm retired, and I don't keep track of
17 dates, don't want to know dates. I just want our house
18 protected. That's all I'm asking.

19 THE HEARING EXAMINER: Thank you, Mr. McCormick. I
20 appreciate your coming forward.

21 MR. BRICKLIN: Thank you, Your Honor. Your Honor,
22 the only other thing I have is: Yesterday, there was a
23 scurrilous accusation made about --

24 THE HEARING EXAMINER: Scurrilous, huh?

25 MR. BRICKLIN: Yes. I don't think I've ever used

1 that word in a proceeding.

2 MR. PLAUCHE: I've heard you use that word before.

3 (Laughter.)

4 MR. BRICKLIN: I had to look it up this morning.

5 MR. KIMBALL: You've heard it used.

6 MR. BRICKLIN: You're right. About Ms. Luedtke not
7 having a fishing license, which is at the height of
8 extraneous issues. But I know Ms. Luedtke was deeply
9 offended by the accusation and has prepared a declaration,
10 complete with exhibits, to document that she's fully
11 licensed and has been fully licensed, and Ms. Luedtke would
12 like to have this declaration entered into the record.

13 MR. PLAUCHE: Just to clarify, there was a question
14 that was asked about an inquiry to Department of Fish and
15 wildlife. An objection was sustained. No information came
16 in. I don't think that there's any reason to supplement the
17 record on that. There's nothing in the record to
18 supplement.

19 THE HEARING EXAMINER: This is about as extraneous
20 as you can possibly get. No. I'm finished hearing that. I
21 wouldn't hear it to begin with, and I thought it was
22 irrelevant then; I think it's irrelevant now.

23 MR. BRICKLIN: And I agree.

24 THE HEARING EXAMINER: It's a desperation attempt.
25 So anyway...

1 MR. BRICKLIN: Thank you.

2 MR. PLAUCHE: Nothing further.

3 THE HEARING EXAMINER: Nothing further? Scheduling
4 for closing briefs.

5 MR. PLAUCHE: I believe we discussed that on our
6 conference call, last week, as January 15th, I think is the
7 day we set for closing briefs.

8 MR. BRICKLIN: Yes. The 15th.

9 MR. PLAUCHE: Does that still work for --

10 THE HEARING EXAMINER: That's still good. Now, you
11 all submit them on the same day and nobody wants to rebut
12 anything. That will be it. Is that correct?

13 Please understand something. I've got to go through all
14 this material. I can't do it in 14 days. To begin with,
15 I'll be out for four days. I won't be back in the area
16 until the 19th of January, so I probably will not be able to
17 get my decision completed before the middle of February. It
18 might be a little bit more.

19 You submitted this material, and it's important that I
20 review it before I make my decision, and I can't do it in an
21 orderly manner without having additional time. So you can
22 anticipate my decision sometime around the middle of
23 February.

24 MR. PLAUCHE: Thank you. That's good.

25 THE HEARING EXAMINER: The hearing is adjourned.

1 And I want to thank everyone. It was a very, very
2 professional presentation by all. Thank you for your work.

3 MR. BRICKLIN: Just keep the record open for one
4 second so I can confer with Counsel about the date. If the
5 Examiner is not here until the 19th, so you want to -- we're
6 just thinking, if you're not going to be here until the
7 19th, why don't we make that the due date of the --

8 MR. PLAUCHE: I think the 19th is a Saturday. It's
9 a holiday weekend. Is that not right?

10 THE HEARING EXAMINER: No, it's the next weekend
11 that's a holiday, I think.

12 MS. GUERNSEY: I thought the Monday, the 21st, was
13 a holiday.

14 THE HEARING EXAMINER: Maybe it is. Okay.

15 MS. GUERNSEY: So the 22nd is the first workday.

16 MR. BRICKLIN: Is that your first day back, that
17 Tuesday, then?

18 THE HEARING EXAMINER: Uh-huh.

19 MR. BRICKLIN: Can we make that the due date?

20 MR. PLAUCHE: Yeah, that sounds reasonable.

21 MS. GUERNSEY: That's fine. The 22nd.

22 THE HEARING EXAMINER: January 22nd. And then,
23 look for my decision sometime around -- towards the --
24 between the 20th or the 30th of February. Thank you.

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1 (The hearing concluded at 9:55 a.m.)
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