



**MARTIN-LAKE &
ASSOCIATES, INC.**

THE COURT REPORTERS

June 4, 2009

Gael Bissell
535 Lower Valley Road
Kalispell, MT 59901

Re: *Kleinhans Farms Estates, LLC vs. Flathead County*
Cause No. DV 08-614(B)

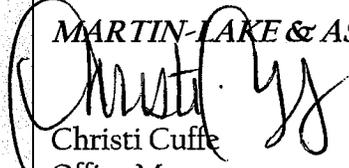
Dear Ms. Bissell:

Your deposition in the above-entitled cause is ready for reading and signing. Please read the enclosed copy of your deposition and make any corrections you may have on the enclosed Certificate of Witness page. After you have completed the reading and signing process, please sign the certificate page before a notary and return it to our office.

You have 30 days from the date of this correspondence in which to read and sign as outlined in the Montana Rules of Civil Procedure. If our office does not receive your executed certificate page within those 30 days, the original deposition will be sealed and forwarded to the ordering attorney without your signature.

Thank you for your attention to this matter and please call me with any questions you may have.

Sincerely,

MARTIN-LAKE & ASSOCIATES, INC.

Christi Cuffe
Office Manager

Enclosures

cc: Terance Perry, Esq.
Alan F. McCormick, Esq.

P.O. Box 7765
MISSOULA, MT 59807
(406) 543-6447
(800) 735-5498
FAX (406) 543-5014
mla@martin-lake.net

COPY

In The Matter Of:

*Kleinhans Farms Estates, LLC v.
Flathead County*

Gael Bissell

May 7 and 11, 2009

DV 08-614(B)

Martin-Lake & Associates, Inc.

P.O. Box 7765

Missoula, MT 59807-7765

406-543-6447 / fax: 406-543.5014

mla@martin-lake.net

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Attorney Notes

Page 1

1 IN THE DISTRICT COURT OF THE ELEVENTH JUDICIAL DISTRICT
 2 OF THE STATE OF MONTANA
 3 IN AND FOR THE COUNTY OF FLATHEAD
 4
 5 KLEINHANS FARMS ESTATES, LLC
 6 Montana Limited Liability
 7 Company,
 8 Plaintiff,
 9 vs.) No. DV-08-614(B)
 10 FLATHEAD COUNTY,
 11 Defendant.
 12
 13
 14 DEPOSITION OF
 15 GAEL BISSELL
 16
 17
 18 On May 7, 2009, beginning at 10:44 a.m., the
 19 deposition of GAEL BISSELL, appearing at the insistence
 20 of Plaintiff, was taken at Montana Fish, Wildlife &
 21 Parks, 490 North Meridian Road Kalispell, MT, pursuant
 22 to the Montana Rules of Civil Procedure, before Bambi A.
 23 Goodman, Registered Professional Reporter, Certified
 24 Realtime Reporter, Notary Public.
 25

Page 2

1
 2
 3
 4 A P P E A R A N C E S
 5
 6 Terance P. Perry, Esq.
 7 DATSOPOULOS, MACDONALD & LIND, P.C.
 8 201 West Main Street, Suite 201
 9 Missoula, MT 59802
 10 406-728-0810
 11 appeared on behalf of Plaintiff.
 12
 13 Alan F. McCormick, Esq.
 14 GARLINGTON, LOHN & ROBINSON
 15 P.O. Box 7909
 16 Missoula, MT 59807
 17 406-523-2595
 18 appeared on behalf of Defendant.
 19
 20
 21 Becky Jakes Dockter, Esq.
 22 MONTANA FISH, WILDLIFE & PARKS
 23 1420 E. Sixth Avenue
 24 Helena, MT 59620
 25 406-444-3312
 appeared on behalf of Fish, Wildlife & Parks.
 Also Present: James R. Satterfield; FWP
 Keith Simon, Sean Averill;
 Kleinhans Farms Estates

Page 3

1 I N D E X
 2 WITNESS: PAGE:
 3 GAEL BISSELL,
 4 Examination by Mr. Perry 5
 5 Examination by Mr. McCormick 316
 6 Examination by Mr. Perry 325
 7 EXHIBITS:
 8 Deposition Exhibit No. 20
 9 (Final Report Effects of Water Level
 10 Fluctuations on Aquatic Furbearer
 11 Distribution, Abundance and Habitat in
 12 the Northern Flathead Valley)
 13 marked for identification 30
 14 Deposition Exhibit No. 21
 15 (3/17/08 E-mail; Wood to Casey and
 16 3/21/08 E-mail; Casey to Wood &
 17 Bissell)
 18 marked for identification 131
 19 Deposition Exhibit No. 22
 20 (7/18/06 E-mail; Steinkraus to
 21 Bissell)
 22 marked for identification 143
 23 Deposition Exhibit No. 23
 24 (4/22/08 Letter; Burchett to
 25 Commissioners)
 marked for identification 182
 Deposition Exhibit No. 24
 (6/25 & 26/06 E-mails; Bissell to
 Rankosky to Bissell)
 marked for identification 194
 Deposition Exhibit No. 25
 (GB Notes)
 marked for identification 197
 Deposition Exhibit No. 26
 (5/16/07 E-mail; Wood to Averill &
 Simon)

Page 4

1 I N D E X
 2 EXHIBITS:
 3 Deposition Exhibit No. 27
 4 (Audubon Science Christmas Bird Count)
 5 marked for identification 302
 6 Deposition Exhibit No. 28
 7 (3/12/04 E-mail; Bissell to DuBois to
 8 Bissell)
 9 marked for identification 305
 10 Deposition Exhibit No. 29
 11 (Doris Fischer Handwritten Notes &
 12 E-mails)
 13 marked for identification 308
 14 Deposition Exhibit No. 30
 15 (3/23/08 Daily Inter Lake Article)
 16 marked for identification 309
 17 Deposition Exhibit No. 31
 18 (6/9/08 Letter; Zeller to Kleinhans
 19 Farms Estates, LLC)
 20 marked for identification 311
 21 Reporter's Certificate 333
 22 Certificate of Witness 334
 23
 24 * Denotes phonetic spelling
 25

1 GAEL BISSELL,
 2 having been first duly sworn to testify to the truth,
 3 the whole truth and nothing but the truth, testified
 4 upon her oath as follows:
 5 EXAMINATION
 6 BY MR. PERRY:
 7 Q Good morning, ma'am.
 8 A Good morning.
 9 Q My name's Terance Perry. I represent the
 10 Plaintiffs in the case against Flathead County, arising
 11 out of the denial of the subdivision application
 12 regarding the North Shore Ranch. You're aware of the
 13 nature of this case; right?
 14 A Uh-huh.
 15 Q Let me just give you a couple of ground rules.
 16 Have you ever been deposed before?
 17 A No, I haven't.
 18 Q Okay. Well, it's an exciting process.
 19 A Must be.
 20 Q In order for the court reporter to take down
 21 your testimony, you have to verbalize it. So --
 22 A No nodding.
 23 Q -- no nodding, no "uh-huh." "Yes" or "no" or
 24 however you want to answer it, you just have to
 25 verbalize it; okay?

1 Montana.
 2 Q And when did you graduate from high school,
 3 approximately?
 4 A 'Seventy-one.
 5 Q And did you immediately go to attend
 6 undergraduate?
 7 A Yes.
 8 Q And after you graduated from -- Ohio Westland;
 9 is that right?
 10 A Uh-huh.
 11 Q Yes?
 12 A Yes.
 13 Q Did you immediately go to graduate school?
 14 A No, I did not.
 15 Q Okay.
 16 A I did a couple years, year and a half, working
 17 for a private consulting firm in Buffalo, New York.
 18 Q And what type of work were you engaged in
 19 during that year and a half?
 20 A Environmental assessments.
 21 Q And this consulting firm, was it an
 22 environmental consulting firm?
 23 A Yes.
 24 Q And did you, during that year and a half, work
 25 exclusively for governmental agencies or private people,

1 A Uh-huh.
 2 Q If you don't understand --
 3 A Yes.
 4 Q If you don't understand one of my questions,
 5 just tell me and I'll be happy to rephrase it. If you
 6 need to take a break at any point in time to use the
 7 ladies' room or get a glass of water, we'll be happy to
 8 accommodate you. We just can't do it if there's a
 9 current question pending that you haven't answered;
 10 okay?
 11 A Yes.
 12 Q Can you please state your full name for the
 13 record.
 14 A Gael Bissell.
 15 Q And how do you spell your last name?
 16 A B, as in boy, i-s-s-e-l-l.
 17 Q And, ma'am, your current residential address?
 18 A 535 Lower Valley Road.
 19 Q In what town?
 20 A Kalispell.
 21 Q And, ma'am, can you tell me a little bit about
 22 your educational background, starting with high school?
 23 A School in Wilmington, Delaware. Grew up in
 24 Wilmington. Went to college, Ohio Westland, for
 25 undergrad, and graduate school at the University of

1 or was there any --
 2 A I think we worked for both government, cities,
 3 as well as -- I'm not even sure now. Highway -- I think
 4 we did consulting for one of the highway proposals, the
 5 Alaska pipeline, proposed developments in Texas and
 6 other parts of the world; so both private and public.
 7 Q Okay. So during that year and a half, it would
 8 be fair to say that you did some work, at least, on
 9 behalf of private landowners seeking to develop land?
 10 A Correct.
 11 Q Okay. And after that year and a half -- oh, by
 12 the way, what was the name of that company?
 13 A Environmental -- Ecology and Environment, Inc.
 14 Q And that was in Buffalo, New York?
 15 A Yes.
 16 Q And after you worked for them for a year and a
 17 half, you then went to grad school?
 18 A Correct.
 19 Q And that was at University of Montana.
 20 A Correct.
 21 Q And would that have been about 1973?
 22 A No. I graduated from college in 1975. I think
 23 I began grad school in '77 or '8.
 24 Q In through there.
 25 A Somewhere in there. I had the winter of '77 in

Page 9

1 Buffalo. It was a famous winter.
 2 Q I recall that winter.
 3 A Ten feet of snow.
 4 Q Yeah.
 5 A So I might have started at the university
 6 in '78.
 7 Q Okay. And after you graduated from grad
 8 school, did you immediately become employed?
 9 A I had several jobs both during and after
 10 graduate school. I worked again on -- did some
 11 consulting through the University of Montana, a federal
 12 agency, and did volunteer work in Alaska, other
 13 short-term contracts. And after completing my degree, I
 14 worked for the Fish and Wildlife Service. I'm trying to
 15 think. And then, I think, in '84 is when I began my
 16 work with Fish, Wildlife & Parks. So I think I got my
 17 degree in '82.
 18 Q So for a few years, would it be fair to say,
 19 for lack of a better term, you kind of freelanced?
 20 A Well, I took jobs when I could get them to pay
 21 for school.
 22 Q All right. And you worked during grad school?
 23 A Yes.
 24 Q And for whom did you work during grad --
 25 A University of Montana as a teaching assistant.

Page 10

1 And I did some of these soft-money contracts from the
 2 university; literature, research, field work, things
 3 like that.
 4 Q And what was the degree that you received from
 5 Ohio Westland?
 6 A Environmental studies.
 7 Q Any particular concentration in any particular
 8 area?
 9 A Wildlife. Wildlife, wildlife management,
 10 ecology.
 11 Q And same question with regard to University of
 12 Montana. What was the degree that you graduated with?
 13 A Ohio Westland or University of Montana?
 14 Q University of Montana.
 15 A Environmental Studies Degree, master's.
 16 Q So undergrad and graduate degrees both in
 17 environmental studies?
 18 A Undergraduate was a BS or BA in zoology.
 19 Q Zoology; okay, thank you. So when you
 20 graduated from the University of Montana with -- I'm
 21 sorry; what was your degree again?
 22 A UM was environmental studies.
 23 Q Environmental studies. And did you have any
 24 particular concentration in areas of study at the
 25 University of Montana?

Page 11

1 A Wildlife.
 2 Q And in a general sense, do you consider
 3 yourself to be an expert in any area of wildlife or
 4 wildlife habitat?
 5 A I'm a generalist.
 6 Q And can you kind of expound on that for me?
 7 What does that mean?
 8 A I have a broad background in soils, plants,
 9 ecology, zoology, the environmental law, natural
 10 resource management, wildlife management, everything
 11 that was interesting to me in college. I took a lot of
 12 courses. And I was interested in environmental impacts.
 13 My master's was on toxic chemicals and small
 14 mammals around the Anaconda copper smelter. That was an
 15 interest to me. So it's a broad background.
 16 Q Okay. And during your years at the University
 17 of Montana, did you participate in any research when you
 18 were at the university?
 19 A My personal research, yes.
 20 Q What would that have been?
 21 A The accumulation of metals, trace metals in
 22 small mammals around Anaconda. As an employee of the
 23 Forest Service, we looked at other bioindicators of
 24 pollution around Anaconda; soils, plants, material.
 25 That was part of someone else's study. I worked on

Page 12

1 fluoride -- a little bit of fluoride -- collection of
 2 materials for fluoride pollution around another facility
 3 near Butte. Worked on air quality around Colstrip, just
 4 contributed in a class, some field work there, with some
 5 ongoing research.
 6 Q Okay.
 7 A Those are things that come to mind.
 8 Q And during your graduate years of study, did
 9 you have any involvement in any research projects
 10 involving waterfowl?
 11 A No, just field courses, undergraduate.
 12 Q And the same question with regard to upland
 13 game birds.
 14 A Just bird management for both those -- you
 15 know, classes that focused on birds, ornithology in
 16 undergrad and bird management in graduate school.
 17 Q And in terms of your studies in graduate school
 18 with respect to avian species, did you take more than
 19 one course? Or can you just describe for me, in a
 20 general sense, what studies you undertook with regard to
 21 birds?
 22 A Those are the courses that come to mind.
 23 Q Those are the courses; okay. Two or three
 24 different courses; would that be fair to say?
 25 A There was a Rocky Mountain Birds and Mammals

1 course I took in undergrad out in Wyoming, would be a
2 third field course.

3 Q Okay. And just in terms of your graduate
4 studies, can you approximate for me how many courses
5 that you took that involved birds, in any respect?

6 A The Bird Management class comes to mind. That
7 was more of the post -- I had quite a few field classes
8 in undergrad, so in graduate school I just focused on
9 the management classes.

10 Q And since you've worked for FWP -- I believe
11 you testified in 1984; is that right you started?

12 A I began work in '84.

13 Q About twenty-five years ago?

14 A Yeah.

15 Q Time flies when you're having fun.

16 A I guess.

17 Q Since you've worked for FWP, have you
18 conducted, yourself, any field studies, scientific
19 studies regarding waterfowl?

20 A I have been involved in developing and
21 implementing the Loon Ecology Project for Montana since
22 1999.

23 Q Okay.

24 A And through grants, I've funded two grad
25 students and -- with both university campuses, MSU and

1 Tribes. They did a migration study. And we have
2 information on where our banded -- or our loons that
3 they trapped on Flathead Lake migrated to. We have band
4 data that has confirmed our wintering areas for common
5 loons on the central California coast, Oregon coast,
6 Washington. There's -- all that informing's available
7 in our Common Loon Conservation Plan which is under
8 internal review and just about ready to go to public.

9 Q And in a general sense, how are the loons doing
10 on Flathead Lake? Are they declining, are the --

11 A Well, Flathead Lake's a migratory -- it's a
12 staging. In Montana, since '99 where we have kept
13 pretty consistent annual survey records, we have a
14 pretty stable population. It fluctuates a little; 200
15 birds adults, maybe 30 to 40 young. An intensive
16 inter-agency and private effort to manage and protect
17 nesting areas has been ongoing since the mid-'80s. And
18 that is what we think is keeping the population stable.

19 Q Okay.

20 A Maintaining.

21 Q And I don't want to misstate your testimony,
22 but is it your testimony that the loon population,
23 although it has fluctuations, perhaps, year to year,
24 it's remained relatively stable over the past decade or
25 so on Flathead Lake?

1 UM. And those I was more or less the overseer or the
2 leader in the project. I helped conduct the research.
3 I paid graduate students to do the research. And they
4 published their theses at each of the schools.

5 Q Okay. Ma'am, would that study involving loons,
6 would that have been driven by grad students, in terms
7 of thesis topic?

8 A We had a contract under the State Wildlife
9 Grants Program. And there were goals and objectives for
10 each of those that I worked -- I worked on. And I
11 worked with the Common Loon Working Group, help set the
12 priorities. It's a state-wide collaborative
13 organization of private, state, and federal
14 organizations that guide common loon management, because
15 it is a species of special concern.

16 Q And do you recall, in a general sense, what, if
17 any, conclusions were reached as a result of that study
18 of loons?

19 A There's been numerous master's thesis. And in
20 addition to these student studies, there's conclusions
21 as to productivity factors that effect productivity.
22 There's conclusions to the -- I'm trying to think of the
23 words -- the ecological factors on which loons select
24 lakes for nesting. There were some studies -- we
25 cooperated with the Confederated Salish and Kootenai

1 A The nesting population is not on Flathead Lake.
2 It's on other lakes in the region. From Missoula,
3 roughly, over to Libby up to the Canadian border is the
4 population that we monitor. And the nesting lakes are
5 not Flathead Lake. Flathead Lake may have been a
6 nesting lake but not since Kerr Dam.

7 Q Not since Kerr Dam.

8 A It's a lake where individual adult loons may
9 stay all summer feeding but not breeding.

10 Q Okay.

11 A Or if they are breeding, we're not aware of it.

12 Q And during that ten years of study of the
13 common loon -- is that correct; the common loon?

14 A Uh-huh, common loon.

15 Q Have observations of that species been
16 documented on Flathead Lake?

17 A Yeah. The Confederated Salish and Kootenai
18 Tribes annually survey the lake.

19 Q And although they may nest elsewhere, the
20 population survey data from that general area, Flathead
21 Lake, has that remained relatively stable?

22 A I don't know. It's used seasonally. They
23 stage on the lake in the spring, presumably till the
24 lakes open up in the -- the smaller lakes where they
25 breed are ice-covered. They stage there. They stage on

1 the first lakes that open up. And then all summer there
2 may be individuals there. We don't monitor that lake
3 that closely. We do do some surveys in the bays with
4 the tribes, the south half of the lake, just to see what
5 we have for singles population.

6 Q Okay.

7 A We survey that area consistently but not all of
8 the lake.

9 Q In a general sense, in terms of western
10 Montana, to your knowledge, has the loon population
11 remained relatively stable?

12 A Yes.

13 Q Okay.

14 In terms of your work with FWP, have you ever
15 been involved in any scientific studies of amphibians?

16 A Scientific studies in terms of detail? I don't
17 know if that's what you mean.

18 Q Any study of any kind.

19 A Where there's a hypothesis and -- inventory,
20 surveying inventory, yes.

21 Q And you, personally, when was the last time
22 that you were involved in inventory projects, so to
23 speak, with respect to amphibians?

24 A I funded a small herp survey for leopard frogs
25 in Foy's Lake area and other surrounding wetlands. I was

1 the Swan Valley?

2 A No.

3 Q Is the leopard frog common commonly found in
4 northwestern Montana?

5 A It's not very common anymore.

6 Q Okay. And since you've worked for FWP since
7 approximately 1984, would that be true, during that time
8 period?

9 A I recollect leopard frogs in Egan Slough, one
10 of the areas we worked on early in our studies of
11 hydroelectric effects on habitat. I believe there were
12 leopard frogs in the slough, or the landowners let me
13 know there were leopard frogs in the slough. Somewhere
14 between that time and the '90s when the Heritage Program
15 may have begun some studies, I think they've no longer
16 found them in many places in the Flathead Valley that
17 they used to be.

18 Q In a general sense, do you have an
19 understanding as to when there was first demonstrated
20 any decline in leopard frog populations?

21 A I think it was the late '90s, after the
22 Heritage Program staff started reporting no new
23 observations.

24 Q And to your knowledge, since you've been at
25 FWP, has there ever been any causative link established

1 did not -- I was on vacation during that, but I
2 requested that they gave them the forms. The students
3 completed the survey. They went up to the Murphy Lake
4 district employed the surveys there and provided me all
5 the data.

6 Q And aside from that survey data, with respect
7 to amphibians, have you been involved in your
8 twenty-five years with FWP in any other project that in
9 any way entailed the evaluation of amphibians, whether
10 it be habitat or numbers?

11 A I did some work with the Swan Ecosystem Center
12 on herp day. We have done that once or twice, just out
13 for the day surveying with members of the community.

14 Q Okay; and that would have been with respect to
15 the Swan Lake region?

16 A Uh-huh, Swan Valley.

17 Q Swan Valley.

18 A Uh-huh.

19 Q And how long ago would that have been?

20 A Two thousand three, '4, somewhere in there.

21 Q And do you recall, in a general sense, what the
22 results of those surveys were?

23 A Presence/absence of individual species we were
24 looking for; I don't recall.

25 Q Okay. Is the leopard frog commonly found in

1 with respect to that decline?

2 A I'm not qualified to know what they've linked
3 and what they haven't. I don't know.

4 Q Well, have you come to learn of any hypotheses,
5 even, with respect to potential causative links to that
6 decline?

7 A I have heard that they suggest chytrid fungus,
8 predation by nonnative fish and bull frogs, concerns
9 about ultraviolet radiation. Those are the big ones, I
10 think, they've focused on.

11 Q Okay. And in your term -- your time with FWP,
12 have you ever been involved in any studies of any kind,
13 whether surveys or anything like that, with respect to
14 predatory animals in northwestern Montana?

15 A Could you repeat that?

16 Q Sure.

17 A Starting when?

18 Q In '84, when you began with FWP, since then,
19 have you been involved, you, personally, in any studies
20 involving predatory animals in northwestern Montana?

21 A A little bit. The Kerr studies included all
22 aquatic, semi-aquatic furbearers, and that included
23 river otter.

24 Q Okay. Any other predatory research or analysis
25 that you've conducted since you came to FWP in 1984,

Page 21

1 approximately?
2 A Not research, no.
3 Q Have you ever been involved in any surveying
4 efforts in the past twenty-five years with regard to
5 predatory animals in northwest Montana, aside from river
6 otters?
7 A Volunteered on annual Christmas bird counts
8 where you would get raptors. Helped do track surveys
9 for the grizzly bear crews at some point or another.
10 Track surveys for all forest carnivores on snowmobile
11 routes. I think that's about it.
12 Q Okay. To your knowledge, is the grizzly bear
13 count in northwestern Montana stable right now?
14 A I have no knowledge. I'm not qualified to
15 answer that.
16 Q Okay.
17 A I don't know.
18 Q How about the gray wolf? Do you have any
19 knowledge as to whether or not its counts are stable, so
20 to speak, in northwest Montana?
21 A From the e-mails, reports, I understand we've
22 had a steady increasing population of gray wolves in
23 northwest Montana.
24 Q How about with respect to bald eagles in the
25 last twenty-five years? To your knowledge, has the bald

Page 22

1 eagle population been stable or has it declined? Do you
2 have any knowledge about that?
3 A My knowledge from our nongame staff is that
4 bald eagles have steadily increased. And I don't know
5 if it's still increasing or stable.
6 Q And the bald eagle, today, has it been delisted
7 by the US Fish and Wildlife Service in terms of the
8 Endangered Species Act?
9 A I understand it is.
10 Q In the past twenty-five years, have you been
11 involved in any scientific studies of any kind, weather
12 surveys or anything like that, with regard to ungulates
13 in northwest Montana?
14 A I managed a check station recording harvest of
15 ungulates in northwest Montana for ten years.
16 Q And where would that check station have been?
17 A West of Kalispell. In addition, I did annual
18 spring surveys for white-tailed deer, some elk flights,
19 one moose flight, things like that; just typical
20 management duties.
21 Q And with respect to ungulates, in your
22 professional opinion, would five to 15 white-tail deer
23 per square mile be properly characterized as an
24 intensive number of white-tail, or how would you
25 characterize that?

Page 23

1 A Per square mile winter, per square mile year
2 round?
3 Q Let's take winter.
4 A I think our -- that would be average.
5 Q Okay.
6 A For winter.
7 Q How about summer?
8 A I don't know about summer.
9 Q Spring?
10 A We have higher concentrations in certain areas
11 during the spring than other times of the year. So that
12 would probably be -- it's -- that number, I have a hard
13 time relating to it. I don't really know what you mean
14 by it.
15 Q Well, I've seen it in some of the documents
16 from your agency that it's described with respect to the
17 North Shore Ranch property that five to 15 white-tailed
18 deer per square mile would be an appropriate anticipated
19 density.
20 A Oh, okay.
21 Q And my question is, in your opinion as a
22 professional, is that a lot of white-tailed deer? Is
23 that few? Can you characterize that?
24 A You know, it's probably right in the middle.
25 Q Okay.

Page 24

1 A I think that sounds to me like a typical valley
2 density where you have some cover and open fields. That
3 sounds about right.
4 Q And, ma'am, in terms of your college studies,
5 whether undergrad or graduate, did you ever take any
6 courses in hydrology?
7 A I took a luminology class at State University
8 of New York in Buffalo. Talk about something
9 twenty-five years ago.
10 Q I'm going to tax your memory today.
11 A Seems to me I have, but I can't recall a
12 hydrology class. It might be that I worked with so many
13 hydrologists when I was at the job that I learned quite
14 a bit from the job, but no, I don't think so.
15 Q Okay. And, you know, would it be true that you
16 don't hold yourself out as an expert in hydrology, do
17 you?
18 A No, by no means.
19 Q Okay.
20 Ma'am, I had occasion to read your final report
21 that you prepared in, I think it was, 1985 that you
22 discussed, I think, referenced earlier the effects of
23 water level fluctuations on aquatic furbearer
24 distribution. Do you recall that --
25 A Yes, I do.

1 Q -- that report, comprehensive report, I would
2 add. Do you recall, in a general sense, what your
3 conclusions were with regard to that report?

4 A Vaguely. We were tasked to look at the effects
5 of primarily Kerr Dam. We attempted to inventory what
6 was already -- you know, through sign and survey, such
7 as beaver lodges and beaver caches -- what the
8 population was in the river system in the lake.

9 We assessed comparison of muskrat populations
10 in Egan Slough and Church Slough. One fluctuated, one
11 did not. Found a significant difference there in
12 density of muskrats due to, we suspect, in part, due to
13 water level fluctuations and lack of cover.

14 There was a quantification of both habitat
15 alterations and losses due to inundation during the
16 summer of the lower river and quantified those acres of
17 what was once vegetated as mudflat and what was once
18 upland as, you know, maybe more wetland or whatever the
19 changes were in vegetation as a result of the
20 higher-level fluctuations, looking at old photographs
21 and more current photographs. And that was done, as
22 well, by this team on the lake. And attempted to look
23 at how many animals that may have -- I can't quite
24 remember -- how many animals we may have lost or gained
25 as a result of those changes; the habitat quality

1 changes as well as the actual acres impacted.

2 Q And would it be fair to say, in a general
3 sense, that by operation of the Hungry Horse Dam, I
4 think constructed in 1938 --

5 A Kerr Dam.

6 Q Kerr Dam; I'm sorry. Well, there's two dams,
7 right, on Flathead Lake?

8 A Hungry Horse as well, yes.

9 Q Hungry Horse and Kerr Dam; right?

10 A Uh-huh.

11 Q That's a "yes"?

12 A Yes.

13 Q Now, in a general sense, being a wildlife
14 biologist, would you agree with me that the lake
15 fluctuations caused by the interaction of those two dams
16 really hasn't been a good thing for wildlife habitat.

17 A I would have to agree.

18 Q And the fluctuating levels of the lake,
19 obviously, that's resulted in some habitat loss on the
20 lakeshore itself.

21 A Yes.

22 Q Okay. And the fluctuating levels of the lake,
23 to your knowledge, has it had any impact on bald eagle
24 nesting sites?

25 A I didn't study bald eagles.

1 Q And I know, having read your report, that you
2 obviously spent a fair amount of time out in the field
3 in preparing this report; fair to say?

4 A Yes.

5 Q And you're quite familiar, obviously, with
6 Flathead River.

7 A Yes.

8 Q And you'd agree with me that Flathead River
9 really provides a concentration of bald eagle nests in
10 that general region.

11 A In comparison to --

12 Q The lake itself, the lakeshore itself.

13 A I don't know. I don't know what you mean.

14 Q Probably a poorly phrased question.

15 A Uh-huh.

16 Q Let me rephrase it.

17 With regard to preferred bald eagle habitat, in
18 your opinion as a professional, would the lakeshore be
19 equally preferable to the river system and the sloughs
20 itself?

21 A Oh. I don't think there's a preference for one
22 or the other. Both areas are intensely used by eagles.

23 Q Okay.

24 A I think the other studies done at that time may
25 indicate some movement from the river to the lake for

1 foraging and foraging from the lake to the river,
2 depending on turbidity, for example, food availability.
3 I think nesting trees -- in terms of nesting habitat,
4 maybe nesting trees might be an important factor in how
5 many are where they are.

6 Q Okay. When you prepared this report -- and let
7 me correct the record. I believe it was -- a final
8 report was produced in August of 1987. Does that
9 seem appropriate?

10 A Correct.

11 Q Can you tell me, in a general sense -- and I
12 know you spent a long time preparing this report, you
13 and Robin Brown -- can you tell me how many days you
14 would have spent in the field in order to prepare this
15 report, get the data you needed, that type thing?

16 A I'm not positive on the number of even years I
17 spent on that, because we spent at least three days a
18 week for whatever length of time it was prior to writing
19 to do our survey protocol. So more than 50 percent of
20 the time I was in the field, maybe 70. I don't recall
21 exactly, but it was significant and it was year-round.

22 Q And was it for more than one year that you
23 conducted --

24 A I believe so. I think it was two years or the
25 better part of two years.

1 Q And would you have been in the field during all
2 seasons of those two years?
3 A Correct.
4 Q And approximately three days a week?
5 A Correct.
6 Q And during that whole time period when you were
7 out in the field, did you ever see a black tern?
8 A I don't know if I would have been looking
9 or -- I did not, that I know of.
10 Q Have you ever seen a black tern anywhere near
11 Flathead Lake?
12 A Batavia. That's Smith Valley.
13 Q Smith Valley. And how far -- your best
14 approximation, how far would that be from the north
15 shore of Flathead Lake?
16 A Ten miles, five miles.
17 Q Do you recall when you saw that black tern?
18 A Three, four, five years ago when interest in
19 black terns came to our attention in the region.
20 Q Would you agree with me that the occurrence of
21 black terns in the vicinity of Flathead Lake is rare, at
22 best?
23 A I would probably agree.
24 MR. PERRY: And why don't we mark your
25 report.

1 MR. MCCORMICK: Objection; she said she
2 wanted to read the abstract. You're asking a question
3 while she's trying to read.
4 MR. PERRY: Oh, thank you for correct me.
5 MR. MCCORMICK: That's my understanding.
6 THE WITNESS: Yes, I'm trying to read the
7 abstract.
8 MR. PERRY: Please do so. And just tell me
9 when you're ready.
10 Thank you, Attorney McCormick.
11 MR. MCCORMICK: I didn't have a good one
12 for that, so I just threw out one.
13 MR. PERRY: Thank you; move to strike.
14 THE WITNESS: Okay.
15 Q (By Mr. Perry) Have you had a chance to read
16 the abstract portion of this exhibit, your final report?
17 A Yes.
18 Q And I see with respect to several of the
19 furbearing animals that are the subject of this report,
20 they were subject to trapping during the course of your
21 study; fair to say?
22 A Correct.
23 Q Okay. And muskrats, they were trapped by
24 trappers in the vicinity of the Flathead River complex;
25 fair to say?

1 (Deposition Exhibit No. 20 marked for
2 identification.)
3 Q (By Mr. Perry) And, ma'am, is this the report
4 that you and I were just discussing a few minutes ago,
5 your report on the effects of water level fluctuations
6 on aquatic furbearer distribution abundance and habitat
7 in the northern Flathead Valley?
8 A Yes.
9 Q Okay. And, ma'am, with respect to this report,
10 fair to say you came to some conclusions regarding the
11 four major species you were looking at.
12 A Correct.
13 Q And do you recall what those four species were,
14 in a general sense?
15 A Beaver, otter, mink, and muskrat.
16 Q And, ma'am -- and feel free to refer to your
17 report if you need to refresh your memory, but do you
18 recall what, if any, conclusions you came to --
19 A Did I just rip your -- let me pull this off. I
20 thought it was stapled. I was going to read the
21 abstract.
22 Q Take your time. I'm just trying to figure out,
23 as a result of your report, and please refer to it if
24 you need to to refresh your memory, but let's take each
25 one of them. Did you establish any causal link --

1 A Yes.
2 Q Okay. And I see that you indicated in 1987,
3 anyway, that your -- this is on the second page of your
4 abstract, first full paragraph, you indicate and I
5 quote, "Survey results showed that a 1,006 muskrats were
6 harvested and 3,859 trap nights from the Flathead
7 Valley. Sixty-two percent were trapped from
8 nonfluctuating environments." Do you see that
9 indication?
10 A Correct.
11 Q Ma'am, did you -- and again, feel free to refer
12 to your final report which has been marked as Exhibit
13 20 -- do you have any opinion as to whether or not
14 trapping of muskrats has any adverse impact on the
15 population of muskrats in that river and slough system?
16 A We did analyze reproductive traps. I pulled
17 all the reproductive traps of voluntarily given
18 carcasses, and they have extremely high reproductive
19 rate which is in the literature. Three litters a year
20 sometimes. And most of the literature indicates they
21 can sustain fairly high harvest. They have a high
22 turn-over right in population.
23 I don't know what the -- we don't have the
24 population in the Flathead to know what percent is
25 harvested, so I can't speak to what impact this harvest

1 level may have.

2 Q Fair enough.

3 With respect to the habitat preferred by the
4 muskrat, would you agree with me that the Flathead River
5 system, sloughs included, would be preferable to a
6 muskrat versus the banks of the Flathead Lake itself?

7 A There was a companion study completed by the
8 Confederated Salish and Kootenai tribes at this time
9 that studied the lake at the south end. They did radio
10 telemetry work. And they had muskrats living in the
11 shoreline area that did abandon the shoreline area in
12 the late fall/winter when the water levels dropped. I
13 don't think that study compared habitat quality of a
14 lake versus a river. I can't -- if this lake was a
15 natural lake, I don't think there would be a huge
16 difference between a natural lake and a natural river.

17 Q Okay.

18 A It would be like the -- could be like the
19 slough which seemed to have a higher density than the
20 river or the slough that fluctuated. So I'm not
21 sure -- if I'm answering your question.

22 Q No, you are. And I guess my question is, you
23 used the term "a natural lake." Now, are you talking
24 about a lake that isn't subject to fluctuations caused
25 by dams?

1 I can say Egan Slough, which does not
2 fluctuate, is a very good place for muskrats.

3 Q Okay. And in low-pool times for the lake,
4 you'd agree with me that the mudflats on the north shore
5 become much more pronounced.

6 A Correct.

7 Q Okay. And the muskrat likes to nest in the
8 banks of a riparian system, essentially, don't they?

9 A Correct.

10 Q And when you're at low pool on the lake, that
11 would kind of be an adverse condition for nesting of a
12 muskrat, wouldn't it?

13 A The water will come to the higher level. At
14 that time it's summer, and they can survive there.

15 Q Okay.

16 A But it is difficult, obviously, in the spring
17 for them to find a place for a bank den, unless there's
18 standing water, which there is out there on the
19 waterfowl production area. As I recall, we found
20 evidence of muskrat houses. They're surviving in those
21 ponds. They may move out of there; we don't know. I
22 didn't do the telemetry studies.

23 Q Okay.

24 A But there seems to be some stable habitat for
25 them to at least exist in, in spite of the dam, in spite

1 A I wasn't sure what you were asking. You said
2 would the lake be a better place for muskrats than the
3 river. I think that's what you were asking me.

4 Q Well, let me rephrase the question.

5 In your opinion, as a professional having
6 studied furbearing aquatic mammals as you did for a
7 couple of years anyway, did you ever reach any
8 conclusion whether, as a result of that study or your
9 knowledge and experience and training, as to which
10 environment a muskrat would rather be in, in terms of
11 breeding, foraging, nesting, that type of thing, a
12 fluctuating lake like Flathead or the river system with
13 the sloughs?

14 A Well, both systems are impacted. And that's
15 why I'm confused. Because the river system also has
16 fluctuating environment which seems to make them more
17 vulnerable to predation when the water levels drop and
18 there's no cover near water. They like cover in water.
19 But they are a versatile, wide-ranging species that
20 likes all water edges. They just don't survive as well
21 in some places as others, I think, based on those
22 exposures to predators and other stresses that might
23 occur when the water levels change during the winter, in
24 this case. So there's impacts in both environments. I
25 can't say the lake is worse or better than the river.

1 of the fluctuations.

2 Q Okay. Now, out of the four species that you
3 studied, beaver, muskrat, river otter, and mink, during
4 your study, were all those species legally hunted, do
5 you know, during your study?

6 A There was a trapper limit at that time on river
7 otter. It's changed now, but I believe they were
8 all -- yes.

9 Q So they could all be trapped.

10 A Correct.

11 Q And during the course of your study, did you
12 come to any conclusions, as a result of discussions you
13 may have had with trappers -- I believe you did have
14 some discussions with trappers -- as to where they liked
15 to trap those animals? Was it the river complex or the
16 lake, or can you expound on that a little bit for me?

17 A I worked with trappers that I knew were
18 trapping the areas we were studying. So I didn't ask,
19 in general, where trappers trapped. I did work with
20 trappers in the sloughs, and some of them were
21 homeowners. One of them was a river -- he lived on the
22 river because that's where I was studying. It was a
23 doctor, and he provided carcasses.

24 Could you repeat the question again?

25 Q Sure. I mean, generally, I mean, as --

1 A Where did they like --
 2 Q -- where did they like to trap? Was it on the
 3 lake or was it in the river? Which was preferable, if
 4 you came to learn.
 5 A I think most of the trappers that I encountered
 6 or volunteered were river -- preferred the rivers or the
 7 sloughs. I don't know. I didn't -- I don't know of any
 8 that were trapping in the lake, per se. They may have,
 9 but I didn't meet them or I don't know if there were
 10 any.
 11 Q As a general proposition, did you ever form any
 12 opinions or reach any conclusions as to which was
 13 more -- a more stable habitat for these four species of
 14 animals, the fluctuating lake or the fluctuating river
 15 system?
 16 A You're trying to compare the fluctuating river
 17 to the fluctuating lake for these four species.
 18 Q And which was a more stable habitat, in your
 19 opinion, if you reached any conclusions in that regard.
 20 A I don't recall comparing those two. They were
 21 randomly surveyed as one continuous project area. I
 22 didn't -- and then I did separate out, in the analysis,
 23 the lake versus the river. But I do not recall my
 24 conclusions.
 25 Q Fair enough.

1 to the map in Jim's office. There's a whole Forest
 2 Service map, and we try to get a sense of where it is
 3 and who it is, what it is. So that's the
 4 initial -- those two ways are how we're initially aware
 5 of any proposal.
 6 Q And you recall the north shore project, the
 7 North Shore Ranch?
 8 A Uh-huh.
 9 Q Yes?
 10 A Yes.
 11 Q And do you recall, in a general sense, how you
 12 first became aware of that subdivision application?
 13 A I honestly cannot remember if it was through
 14 contact from Eric -- was it Mulcahy or one of the
 15 consultants or -- I believe -- it definitely was before
 16 the plat letter, I believe. Because we must have had
 17 meetings. I know there were early meetings, so I
 18 presume we had a couple of those early on.
 19 Q And do you recall, in a general sense, in what
 20 capacity Eric Mulcahy was serving the North Shore Ranch
 21 applicant? Was he an environmental consultant or do you
 22 recall?
 23 A Engineer? I don't recall.
 24 Q Okay.
 25 A I don't know.

1 And, ma'am, in your time with the agency, Fish,
 2 Wildlife & Parks, obviously you've had an occasion on a
 3 number of occasions to write letters about proposed
 4 developments in the Flathead area; right?
 5 A Correct.
 6 Q And as a general proposition, when you prepare
 7 these letters regarding a subdivision, how do you first
 8 get involved in the process? Can you describe that for
 9 me, the mechanism by which you first become involved in
 10 that process?
 11 A Typically there's two ways. A developer or a
 12 consultant will call and say My client or my -- this
 13 individual or company is interested in doing such and
 14 such on this area, what are your thoughts? We'll
 15 provide, off the top of our heads, information to the
 16 consultant if we are knowledgeable. Or if we don't
 17 know, we tell them Don't know. Sometimes we may get
 18 invited to look at it, at a property. Oftentimes -- so
 19 it can happen right early in those stages.
 20 Most times -- I don't know if it's most.
 21 Sometimes it's through the letter from the county that
 22 is in the box. That's the first time we've had a chance
 23 to even know something was happening on that parcel. If
 24 they provide -- they provide legal description.
 25 Sometimes a map, or some type of map. Typically we go

1 Q And in general, in terms of your involvement in
 2 the subdivision process, so to speak, is it uncommon for
 3 an applicant to approach you or your agency to seek your
 4 input, in terms of potential mitigation with respect to
 5 potential impacts on wildlife or wildlife habitat?
 6 A So the question is, is it uncommon?
 7 Q Is it uncommon?
 8 A Yes, relatively.
 9 Q Okay. And do you recall in this case whether
 10 or not the applicant approached your agency to seek
 11 input with respect to potential mitigation regarding
 12 potential wildlife or wildlife habitat impacts?
 13 A Yes.
 14 Q Okay. And do you recall whether or not the
 15 applicant approached you or your agency before the
 16 application itself had been filed?
 17 A I believe so.
 18 Q And did you partake in any conversations with
 19 either the applicants, the principals, Keith Simon or
 20 Sean Averill or their representatives, with respect to
 21 that issue?
 22 A I believe so. I honestly I don't recall the
 23 chain of events. I believe we had at least one or two
 24 meetings in our office here. I don't recall if it was
 25 before or after the plat. But since it was two-some

1 years ago, I just don't know for sure.
 2 Q Okay.
 3 A I believe it was.
 4 Q But you do recall, in a general sense, that you
 5 did have at least one meeting --
 6 A Correct.
 7 Q -- with the applicant or the applicant's
 8 representatives.
 9 A Uh-huh.
 10 Q Is that a "yes"?
 11 A Yes.
 12 Q If you could just wait for me to get my
 13 question out, because I'm long-winded. And you may
 14 think I'm done and I may not be.
 15 With respect to that meeting, did the
 16 applicants or their representatives seek your input, in
 17 terms of what you thought would be appropriate
 18 mitigation, given their proposed subdivision?
 19 A Did they ask for appropriate mitigation?
 20 Q Did they seek your input?
 21 A For appropriate mitigation.
 22 Q Yes, ma'am.
 23 A They sought the department's input.
 24 Q Okay; fair enough. Thank you for correcting
 25 me. When you had that meeting with them, were you

1 representing Fish, Wildlife & Parks?
 2 A Yes. I believe there were several people
 3 there. That's why I -- I don't recall if it was a
 4 one-on-one who was at the meeting, but I believe, yes,
 5 we were talking about the development --
 6 Q Okay.
 7 A -- and the impacts. Now, I'm not positive I
 8 remember talking about all the mitigation in the first
 9 meeting.
 10 Q Okay; fair enough. Did you have more than one
 11 meeting with the applicant or the applicant's
 12 representatives?
 13 A There may have been more than one meeting.
 14 Q Okay. And do you recall, as a general
 15 proposition, that the applicant sought your input, your
 16 agency's input, as to, you know, what might be
 17 appropriate mitigation with respect to wildlife or
 18 wildlife habitat impacts posed -- potentially posed by
 19 this subdivision?
 20 A Yes.
 21 Q And did you have occasion to give them or the
 22 applicant or its representatives any of your opinions on
 23 what might be appropriate mitigation with respect to
 24 potential impacts on wildlife or wildlife habitat?
 25 A I think we discussed the impacts. And the

1 proposal -- the open space in the proposal numerous
 2 times. I know I'm not the only biologist that worked on
 3 this, so they got input from Jim and these guys got
 4 input from Tom later on.
 5 Q That would be Jim Williams and Tom Litchfield?
 6 A Tom Litchfield; correct. And I believe there
 7 were different comments coming from different people
 8 with parts of the proposal with varying expertise
 9 amongst the wildlife staff. I -- I'm trying to recall.
 10 My suggestions were to not put it in this location, as I
 11 recall. I was feeling the impacts of as significant a
 12 development could not be mitigated on-site.
 13 Q Okay. Did you ever advise or offer any
 14 opinions as to whether or not any off-site mitigation
 15 could offset potential impacts?
 16 A I don't recall having that opportunity or that
 17 discussion coming up.
 18 Q Okay. And I just want to be clear on the
 19 record. Do you recall, personally, having had more than
 20 one meeting about these issues with the applicant or the
 21 applicant's representatives?
 22 A I recall two. I recall numerous phone calls
 23 and e-mails, but that may have -- you know, getting
 24 information to and from each other. But I recall two
 25 meetings.

1 Q Okay. And do you recall, in a general sense,
 2 what year that would have been? I know it was some time
 3 ago. Your best sense.
 4 A I would guess -- no, I don't recall. I'm
 5 thinking the chain of events, from looking at the
 6 summary, what we prepared, that the first couple
 7 meetings were in 2006.
 8 Q Two thousand six. Did you keep any notes from
 9 any of those meetings or --
 10 A No.
 11 Q -- things like that? Do you recall, in a
 12 general sense, that Keith Simon or Sean Averill were in
 13 attendance at some or both of those meetings?
 14 A Correct.
 15 Q And do you recall having met with any wildlife
 16 consultant that was representing the applicant?
 17 A Correct, one meeting.
 18 Q Okay. And was that Mr. Elliot?
 19 A Correct.
 20 Q And did you and Mr. Elliot have any discussions
 21 about potential impacts on wildlife or wildlife habitat?
 22 A We did.
 23 Q Okay. And during the course of your
 24 discussions with Mr. Elliot, Joe Elliot, did you or he
 25 discuss any potential mechanisms of mitigation?

1 A We did. We talked about the buffer area, I
2 believe. There may have -- Lynn Verlanic with the Fish
3 and Wildlife Service was also in the room. I know there
4 was discussion there, maybe, with respect to the bald
5 eagle nest.
6 Q Okay.
7 A I think distance considerations were discussed
8 with respect to that bald eagle nest and maybe timing.
9 I'm not positive.
10 Q Anything else you recall?
11 A You probably have better notes than I do on
12 this.
13 Q Unfortunately, I don't have any notes from
14 these meetings. With respect to that bald eagle nest on
15 the WPA -- you're talking about the one on the WPA?
16 A (Nods head.)
17 Q Yes?
18 A Correct.
19 Q There was only one; right?
20 A There's only one that was within -- that was in
21 close proximity. There's three or four bald eagle
22 nests on the waterfowl production area.
23 Q Were any of them active in 2006 to your
24 knowledge?
25 A I think it was active in 2006 though not

1 A In general, bald eagles have, through
2 generations, selected sites near human presence.
3 Individual bald eagles can be different in how they
4 acclimate. And there is a difference in tolerance
5 among -- we know that from just general observations and
6 studies of bald eagles in trying to determine potential
7 effects, that they're different.
8 Q So --
9 A So we can't generalize about all bald eagles
10 acclimate to various degrees of human disturbance. They
11 will abandon in some cases, they will tolerate in
12 others.
13 Q So depending upon which bald eagle, it may be
14 more likely to acclimate to human presence than another
15 given bald eagle; is that --
16 A Correct.
17 Q Now, you've been on the WPA before; right?
18 A Correct.
19 Q And you know what I'm referring to, the WPA
20 that abuts the North Shore Ranch?
21 A Yes.
22 Q When you were on there, whatever time in the
23 past, say, five or ten years, was there more than one
24 active bald eagle nest to your knowledge?
25 A Yes.

1 successful. I'm not positive on that.
2 Q Okay.
3 A At the time, there was definitely a nest
4 structure there and a pair on-site and had been
5 as -- it's the Dedmans nest. We all knew about it. You
6 could see it from the highway, and it had been active
7 for decades.
8 Q And it was visible from Highway 82?
9 A Correct.
10 Q And that breeding pair had nested there for
11 some period of time prior to 2006?
12 A Correct.
13 Q Fair to assume they had hadn't been adversely
14 impacted by road noise from Highway 82?
15 A No.
16 Q Not fair to assume that?
17 A Fair to assume that they were comfortable with
18 that nesting site, given the traffic and what you were
19 saying.
20 Q And in your experience as a wildlife biologist,
21 have you ever come to learn that bald eagles can
22 acclimate themselves to human presence?
23 A You're saying that bald eagles acclimate to
24 human presence.
25 Q Yes, ma'am.

1 Q How many were active at any given time?
2 A Based on information provided me from the Fish
3 and Wildlife Service and Kristi DuBois, our nongame
4 coordinator, they provided a map showing active bald
5 eagle nests. And I believe there were four at the time
6 of this proposal.
7 Q Do you know how many are active on the WPA
8 today?
9 A I do not.
10 Q Did you ever come to learn that the one that
11 was within about 1,660 feet of the line where the North
12 Shore Ranch project was abandoned in approximately 2007?
13 A I think that was confirmed in '07.
14 Q And obviously that abandonment occurred in the
15 absence of any development on the North Shore Ranch
16 property, insofar as there has been no construction.
17 A Correct.
18 Q Do you have any understanding as to why that
19 breeding pair abandoned that nest?
20 A There was -- no, I have no knowledge as to why
21 they abandoned. There was a storm since '07 where many
22 trees had blown down. And I believe that nest either
23 blew out since '07 -- or that was July '07, or that tree
24 blew down, because the nest is no longer visible from
25 the highway.

1 Q And that was my understanding as well that the
2 nest had actually blown down. That's your understanding
3 as well?

4 A Right. But I don't know when abandonment took
5 place.

6 Q Do you know whether that breeding pair has
7 attempted to renest on the WPA?

8 A We believe it is. We don't know if it's that
9 pair but we know there's a new nest on the WPA. Bald
10 eagles will typically nest in adjoining habitat.

11 Q Is there any way that you can determine or you
12 have determined -- by "you" I mean FWP, that the bald
13 eagle pair that's new to the site, so to speak, is the
14 same one that had been in that nest that blew down?

15 A We cannot confirm that.

16 Q Okay. And sitting here today, do you have any
17 knowledge as to how many breeding pairs are nesting in
18 the WPA, bald eagles?

19 A I do not know exactly. The surveys have just
20 been flown. I believe someone in our office can
21 probably provide that, but I don't know it.

22 Q Okay. And, ma'am, in a general sense, you're
23 familiar with the surrounding environs, so to speak,
24 around the WPA.

25 A Correct.

1 Q And you're aware of the fact that there are
2 hundreds of residential structures in that complex.

3 A Correct.

4 Q And they're in direct vicinity of the WPA, are
5 they not?

6 A Yes.

7 Q And, ma'am, it's true, is it not, that you've
8 never linked the existence of those houses to any
9 adverse impact on habitat for wildlife or wildlife
10 itself in the vicinity of the WPA.

11 A Never had any reason to be asked that question
12 or to do that analysis. There could be, there may not
13 be. I never had any reason to be investigating that or
14 asking that question of anybody.

15 Q Okay.

16 A Or doing surveys associated with that. So I
17 don't know.

18 Q And, ma'am, when you first became employed with
19 Fish, Wildlife & Parks, do you recall that the Eagle
20 Bend golf course was in its construction phase?

21 A I recall the Army Corps of Engineers permits
22 being -- public meetings with respect to those permits
23 so they could dredge those home sites or the access to
24 the river from those home sites. I remember our
25 department having considerable concerns about water

1 Q And you'd agree with me that there are
2 approximately 12 residential structures within about a
3 quarter of a mile of the WPA.

4 A Correct.

5 Q You'd agree with me that the WPA abuts Eagle
6 Bend golf course?

7 A It does.

8 Q And, ma'am, have you, in the past, ever linked
9 use of the Eagle Bend golf course with any adverse
10 impact on wildlife or wildlife habitat on the WPA?

11 A I'm not aware of what may be going on on the
12 WPA on those parcels.

13 Q Okay. In this case, with regard to the North
14 Shore Ranch application, fair to say that you were of
15 the opinion that the residential development proposed
16 would have an adverse impact on wildlife and wildlife
17 habitat in the WPA?

18 A Correct.

19 Q Okay.

20 A Potential.

21 Q Potential. And, ma'am, you'd agree with me
22 that Eagle Bend golf course -- well, let me ask you the
23 question. Have you ever been onto the golf course or in
24 its parking lot in the vicinity of the golf course?

25 A Correct; I've been on the road around there.

1 quality and cumulative effects. I don't recall the
2 details of that. It was not in my area of work at that
3 point.

4 Q Do you know whether or not FWP expressed any
5 opinions on potential impacts posed by the Eagle Bend
6 golf course on wildlife or wildlife habitat when that
7 project was going through the application process?

8 A I wouldn't know. I was not involved in the
9 management program at that time, in terms of making
10 those -- being aware of applications or who was
11 commenting.

12 Q Okay. When you first started at FWP, what was
13 your position?

14 A Research specialist.

15 Q And can you expound on what that title would
16 mean? What did you do?

17 A It was -- the scope of work initially related
18 to assessing the impacts and developing the wildlife
19 mitigation plans for Hungry Horse Reservoir and then
20 Kerr studies. So they were limited scopes of work. We
21 were, you know, asked to work on those and prepare these
22 reports.

23 Q Okay. And with respect to the Hungry Horse
24 Dam, do you recall in the mid-'80s when you first
25 started with FWP, one of the primary issues that was

1 being discussed by FWP was how to mitigate impacts posed
2 by that dam?

3 A Hungry Horse?

4 Q Hungry Horse.

5 A Repeat the question. I missed something.

6 Q With respect to your involvement at FWP
7 starting in the mid-'80s, do you recall whether or not
8 one of the issues of concern to FWP was how to mitigate
9 impacts posed by the Hungry Horse hydroelectric project?

10 A Correct. We were looking at the impacts of
11 construction, not the ongoing -- as the ongoing
12 operation at that point -- the first job put before us
13 the State of Montana, under the Northwest Power Act, was
14 to investigate those construction and inundation
15 impacts.

16 Q Right. And do you recall ever having seen a
17 letter from the director of your agency, James W. Flynn,
18 to the Bonneville Power Administration in which he
19 indicated that despite the fact that approximately
20 24,000 acres had been flooded due to the construction of
21 the Hungry Horse hydroelectric project, the impacts on
22 wildlife and wildlife habitat could, in fact, be
23 completely mitigated. Ever see that letter?

24 A I don't recall.

25 Q Okay. Let me show you Exhibit 6 to

1 A I did.

2 Q Okay. And can you describe those discussions
3 for me, in a general sense?

4 A One of my first duties here was to take the
5 loss assessments prepared by Dan Casey, and turn that
6 into a mitigation plan.

7 Q Okay.

8 A Because I didn't have anything to do with this
9 letter, per se, but I was tasked to develop how we might
10 mitigate the impacts.

11 Q Okay.

12 A And spent the better part of my first year and
13 then in between these various studies building the
14 details of how we might go about mitigating. The
15 department at this time was interested in a settlement,
16 and we did complete that settlement in '89. What
17 we -- unlike -- we're very unique in that Montana
18 settled for all wildlife impacts related to the two big
19 dams, Hungry Horse, and we assumed full responsibility
20 for mitigation as a result of that settlement.

21 Q Okay.

22 A So our approach from the beginning was What's
23 it going to take, and then later, How much is it going
24 to cost.

25 Q Okay. And do you recall, in a general sense,

1 Mr. Satterfield's deposition. I'd ask you to take a
2 read through that.

3 A Okay. Okay.

4 Q And with respect to this letter that Mr. Flynn
5 wrote on July 9, 1984, I see that he indicates in a
6 couple different places, second paragraph, first
7 sentence, in his conclusion that it was possible to
8 achieve complete mitigation of the impacts posed by
9 construction of the Hungry Horse hydroelectric project
10 on wildlife resources; fair to say?

11 A He said it, yes.

12 Q And, ma'am, in a general sense, you're familiar
13 with the Hungry Horse Dam; correct?

14 A Correct.

15 Q Okay. And I believe you started at FWP within
16 a year or so of this letter; would that be fair to say?

17 A Three months prior.

18 Q Three months prior.

19 A Or two, May of 1984.

20 Q May of '84.

21 A Correct.

22 Q Did you have any involvement at all in
23 discussions here at the agency, and by that I mean FWP,
24 about how to mitigate the inundation of about 24,000
25 acres?

1 that during this time period, approximately
2 spring/summer of 1984, that FWP came to the conclusion
3 that, in fact, the impacts, the significant impacts
4 posed by the flooding of about 24,000 acres could, in
5 fact, be completely mitigated?

6 A Apparently the management of the agency felt
7 that; yes.

8 Q And did you, yourself, ever reach that
9 conclusion, that given appropriate mechanisms, the
10 impacts posed by the Hungry Horse hydroelectric project
11 could be completely mitigated?

12 A The guidelines for mitigation were set up by
13 Bonneville Power. They created a system of crediting.
14 Montana chose some animal habitat units that were a
15 little bit different than created later. If you create
16 a goal and achieve the goal -- you create a goal based
17 on the losses and you achieve that goal, you have
18 mitigated under this kind of design that we set up under
19 the program.

20 Q Okay.

21 A So we did achieve, I believe, there's many
22 interpretations that are still -- it's still debated
23 whether we achieved true mitigation. The public has a
24 different interpretation versus the agencies like the
25 Forest Service or other biologists and BPA's own

Page 57

1 biologist and the council that were all involved in.
 2 But you have to set some sideboards and some goals. And
 3 if you achieve those, or you assume responsibility for
 4 achieving those, and you meet your goals, then in one
 5 sense of the word, you have achieved mitigation. You
 6 set out to protect so many acres of these kinds of
 7 habitats and you've achieved that.
 8 Whether I could biologically say the animals or
 9 the ecosystem at Hungry Horse is -- that the habitats
 10 on-site are mitigated, you know, it's a different
 11 question.
 12 Q Sure.
 13 A So I think there's just different shades of
 14 gray in this kind of analysis. And on paper, on the
 15 surface, acres were achieved of mitigation. And it does
 16 replace some of the habitats that were lost.
 17 Q Okay.
 18 A But you can find arguments on this issue that
 19 are, you know, pretty intensive that you can never
 20 replace whatever was lost there.
 21 Q Right; right. And I guess that's my question.
 22 I mean, with respect to this project, would it
 23 be fair to say that FWP was of the belief that although
 24 on-site mitigation could not be accomplished, perhaps
 25 off-site mitigation would offset adverse impacts on

Page 58

1 wildlife and wildlife habitat?
 2 A Correct.
 3 Q And would it be fair to say, also, that FWP
 4 worked constructively with the Bonneville Power
 5 Administration in order to arrive at an idea of how to
 6 mitigate on-site impacts by off-site preservation?
 7 A Not only Bonneville, tribes, federal agencies,
 8 electric power generators that were part of the
 9 Bonneville system. We worked with the public. We
 10 worked in a large coalition to come up with something
 11 that made sense; correct.
 12 Q And would it be fair to say, also, that FWP,
 13 during the course of these discussions, which I assume
 14 went on for some of period of time; fair to say?
 15 A Yes.
 16 Q Would it be fair to assume that FWP offered its
 17 own ideas to Bonneville Power Administration or others
 18 about what might be a mechanism or mechanisms to
 19 mitigate on-site adverse impacts on wildlife and
 20 wildlife habitat?
 21 A On-site?
 22 MR. PERRY: Yes, ma'am.
 23 Could I have that read back, please?
 24 (Whereupon the previous question was read back
 25 by the court reporter.)

Page 59

1 Q (By Mr. Perry) And just to be clear, I'm not
 2 asking if you had discussions about what could be done
 3 on-site to mitigate. What I'm asking you is, did you
 4 have discussions about what could be done off-site or
 5 on-site to mitigate adverse impacts that were occurring
 6 on-site? Do you understand my question?
 7 A I do. And it's just a minor point of
 8 clarification. We weren't looking at ongoing impacts of
 9 the reservoir or the -- at that point.
 10 Q Okay.
 11 A For Bonneville, we were looking at construction
 12 and inundation impacts. They had already occurred when
 13 the dam was built. So we were going backwards in time
 14 and trying to figure out what those impacts were and if
 15 we could mitigate them on-site or off-site, not ongoing
 16 impacts. That analysis, really, never has been done.
 17 Q Thank you for clarifying.
 18 A It's kind of a minor point, but there's a
 19 slight difference there.
 20 Q Thank you for clarifying that. And obviously
 21 the dam had been constructed years before 1984, decades
 22 before; right?
 23 A Correct.
 24 Q Okay. But in terms of your agency, FWP's
 25 involvement at this juncture in 1984 through 1989, would

Page 60

1 it be fair to say that you or your agency, to your
 2 knowledge, engaged in discussions with BPA, Bonneville
 3 Power Administration, and others, about how to mitigate
 4 these impacts?
 5 A Correct.
 6 Q Okay. And would it be fair to say that they
 7 were discussions that occurred over a period of time
 8 from approximately 1984 up to 1989?
 9 A Correct.
 10 Q Okay. And do you recall whether or not your
 11 agency provided some ideas to BPA and other interested
 12 parties about what might be an appropriate way to
 13 mitigate these long-standing impacts?
 14 A We wrote a document.
 15 Q And you essentially gave some advice about
 16 FWP's ideas on how to mitigate.
 17 A Correct.
 18 Q Okay. And in your understanding, have been
 19 here for -- been at FWP for a quarter century now, have
 20 you ever been involved in this type of process with
 21 regard to any other project?
 22 A Libby Dam and the Lower Clark Fork dams as
 23 well, developing that mitigation plan, as they call it.
 24 Q Okay. And the preparation of a mitigation
 25 plan, is that something, in your experience at FWP,

1 that's limited to just impacts posed by public or
2 quasi-governmental projects? Do you understand my
3 question?

4 A No. I'm trying to figure it out.

5 Q My question is, you know, I see and you've
6 testified that, you know, FWP had a number of years of
7 involvement with regard to the Hungry Horse
8 hydroelectric project, in terms of how to mitigate the
9 impacts; correct?

10 A Correct.

11 Q And my question is, in your experience over the
12 last twenty-five years, has FWP ever undertaken that
13 type of analysis or engaged in that process with regard
14 to any private project, not a governmental project or a
15 quasi-governmental project?

16 A Well, Kerr Dam is a private dam, you know, with
17 a license process. So it's quasi-public/private there.
18 I would suggest that we have probably worked with Eagle
19 Bend -- or not Eagle Bend. What's that -- Iron Horse, I
20 believe. I think there's been numerous times where, at
21 the discretion of the landowners, they asked for us to
22 work with them to see if there's not some -- if our
23 expertise couldn't be used in building a better project.

24 Q Okay.

25 A I don't think there's requirements, though,

1 mitigate --

2 Q Okay.

3 A -- the impacts to some degree. We don't know
4 if it's going to work because they have not built.

5 They've -- they haven't done anything except put one
6 road in, which they did in the wintertime. So even
7 though it's been approved, we don't know if the
8 mitigation will work. But we did work with the
9 developer to try and set the development back, protect
10 the trees, put other restrictions in there, visual
11 things, that would help in an attempt to mitigate for
12 the rookery to maintain the colony of nesting herons
13 there.

14 Q And to your knowledge, I mean, sitting here
15 today, can you recall any other developments in which
16 you've been involved in that same capacity, working with
17 the developers to arrive at what you consider to be
18 appropriate mitigation for the development?

19 A I have worked with another project in the Smith
20 Valley. I make a lot of suggestions, verbal
21 suggestions. And they sometimes do things and sometimes
22 don't. In this case, that developer did change some lot
23 lines. In the Smith Valley example, I was concerned
24 about -- they had some open space on two sides of the
25 development, elevationally above and below, but they had

1 that stipulate that, like there was with the Northwest
2 Power Act.

3 Q And have you, yourself, in the past twenty-five
4 years, ever been involved in, you know, providing advice
5 or call it what you will, counsel, to a private party
6 about potential mechanisms of mitigation associated with
7 a contemplated project?

8 A Yes.

9 Q Okay. And can you tell me what projects?

10 A One example that comes to mind is a small minor
11 subdivision in Kila, Tungsten Holdings. The neighbors
12 brought to our attention there was a great blue heron
13 rookery on the property. We confirmed that. It was
14 occupied. There would be two homes built within the
15 rookery. We met, we looked at the great blue heron
16 guidelines, research on that rookery, information that
17 was provided by the folks that lived next to it, counted
18 the number of nests, measured the trees, and decided
19 with the developer that we could create a two-acre park,
20 incorporate all the nest trees and have setbacks for the
21 development. Timing restrictions and other mitigations
22 because the plat was already submitted, it was already
23 to public hearing when this was brought to our
24 attention, so there wasn't much time or -- we used what
25 opportunity we had to draft a plan that might

1 no space, alleys, connectivity corridors at all. And I
2 made some suggestions for -- just the coulees or gullies
3 or, you know, some way for white-tailed deer, elk to
4 move, as the green up comes down in the spring to move
5 through the development, move back up if -- because
6 there's these big open space areas but there were no
7 movement corridors. And we did tighten up the -- they
8 tightened up the footprints in response to that to make
9 it more porous. They adjusted fencing restrictions so
10 there were no fences other than very minimal fences
11 around dog kennels or gardens or something. There was
12 not -- you know, some subdivisions, they connect all
13 their fences.

14 Q Right.

15 A That was not allowed in that subdivision, as a
16 result of our discussions. They agreed to
17 nonnative -- or non -- deer-resistant plants and no
18 fruit trees.

19 Q Okay.

20 A To make it as less attractive and to avoid the
21 nuisance wildlife issues and bear issues. So
22 they -- they did do, you know, those handful of things.

23 Q Okay. And with respect to that subdivision, do
24 you recall the name of that one?

25 A Buffalo Hill --

1 Q Buffalo Hills?
 2 A Buffalo something.
 3 Q What town was it in?
 4 A It's out in Smith Valley.
 5 Q And obviously there was a commissioners'
 6 hearing on that subdivision, I would assume.
 7 A I would assume.
 8 Q Do you recall whether or not you attended?
 9 A I did not attend.
 10 Q Do you recall whether or not you submitted a
 11 letter to the subdivision to the Board of County
 12 Commissioners?
 13 A I wrote so many letters. I can't recall if
 14 that was just -- I think I did. I think -- I think it
 15 was Eric Mulcahy, again, and I think we wrote some
 16 letters.
 17 Q And do you recall, in a general sense, whether
 18 or not you were of the opinion that the mitigation that
 19 you had discussed earlier would have been effective or
 20 ineffective in that letter?
 21 A I don't know what you mean.
 22 Q Well, I know in some of the letters you've
 23 written, especially with regard to the North Shore Ranch
 24 property, you were basically of the opinion that impacts
 25 on wildlife and wildlife habitat could not be mitigated;

1 trying to keep them away from the development into the
 2 open spaces. So there was not much -- I haven't seen
 3 the plat. I never -- hardly ever follow up on the final
 4 plats to know all the things that were incorporated. I
 5 believe they did not drop lot lines or create those
 6 corridors that I had requested. So I do -- that has not
 7 been built, and I wouldn't know what the effects of the
 8 mitigation are or my concerns until that thing is built.
 9 But not everything was addressed.
 10 Q Okay. And I guess my question --
 11 A So this full -- this degree is important in the
 12 question, I guess, to know what you're talking about;
 13 full mitigation or partial mitigation, or that makes a
 14 big difference, I guess.
 15 Q And I guess my question really boils down to
 16 the question, you know, if you speak with a developer
 17 before the commissioners' hearing and the developer
 18 either comes to you before you get the letter from the
 19 county or after you get the letter from the county and
 20 they sit down with you and they say Gee, we want to
 21 build this project. Can we pick your brain, so to
 22 speak, in terms of how do we mitigate any
 23 adverse -- potentially adverse impacts on wildlife or
 24 wildlife habitat, you're willing to have that
 25 discussion.

1 fair to say?
 2 A Uh-huh.
 3 Q Yes?
 4 A I'm sorry; yes.
 5 Q Now, with respect to that Buffalo Hills
 6 subdivision in Smith Valley, do you recall whether or
 7 not you rendered a letter indicating that Yes, if these
 8 things that we've discussed with the developer are
 9 completed, there will be effective mitigation of
 10 potential impacts on wildlife and wildlife habitat?
 11 A I just want to go back to the two -- the
 12 letters that you're talking about and whether things are
 13 mitigated. There may be a difference between mitigated
 14 and fully mitigated. These are all terms where people
 15 can interpret them differently.
 16 Q Uh-huh.
 17 A And I think in the Smith Valley letter, if
 18 there was one or at least in the information I provided
 19 the developer, the things they did would help to
 20 mitigate. And a lot of it was the future impacts of
 21 nuisance wildlife. It wasn't discussing, maybe in those
 22 instances, the impacts of the development on wildlife,
 23 the taking of the area that wildlife would use. I mean,
 24 that was not the focus of this. This was to deal with
 25 high densities of deer coming in and being nuisances and

1 A Correct.
 2 Q Would it be fair to say you're willing to have
 3 that discussion every time?
 4 A Yes.
 5 Q And would you agree with me that if the
 6 subdivider at that point in time receives your advice,
 7 your counsel, your ideas on mitigation and they adopt
 8 those ideas, that you later, if you correspond with the
 9 county, would be of the opinion that if this mitigation
 10 is undertaken, we'll be able to at least maybe, not
 11 fully mitigate, but at least partially mitigate
 12 potentially adverse impacts on wildlife and wildlife
 13 habitat?
 14 A That's a fair statement.
 15 Q Okay. And -- well, strike the question.
 16 MR. PERRY: Could we go off the record,
 17 Attorney McCormick?
 18 MS. JAKES DOCKTER: Would this be a good
 19 time to take a break?
 20 MR. PERRY: Off the record. Alan doesn't
 21 like to go off the record.
 22 (A discussion was held off the record.)
 23 (Deposition in recess from 12:08 p.m. to
 24 1:33 p.m.)
 25 Q (By Mr. Perry) Ma'am, you're familiar with the

1 North Shore Ranch project; right?
 2 A Correct.
 3 Q And in a general sense, you'd agree with me
 4 that it really wasn't a shoreline development. It
 5 didn't have any proposed construction on the shoreline
 6 the lake.
 7 A Correct.
 8 Q And to your knowledge, do you recall that the
 9 boundary, so to speak, of the project, with respect to
 10 the shoreline, was about half a mile away? Is that
 11 consistent with your memory?
 12 A I think my knowledge of the area is that part
 13 of it abuts the dike, and the dike on the waterfowl
 14 production area on the other side of it at high-water
 15 mark is wet.
 16 Q Right.
 17 A So I don't know that distance, but maybe in
 18 places -- depends on where you define the lake.
 19 Q Okay; fair enough.
 20 A It's vegetated cattails for a considerable
 21 distance inland. So that boundary could be closer than
 22 half a mile.
 23 Q Okay. Would you agree that given the distance
 24 removed from the lakeshore of this project, the project
 25 would be unlikely to disturb waterfowl or shore birds on

1 to the dike, some of those species can use that area
 2 depending on where the shoreline is and may coexist.
 3 But it may not. Depending on if one person walks the
 4 shoreline in the off season, that will displace whatever
 5 is using that shoreline.
 6 Q And not just limiting the question to the
 7 shoreline --
 8 A Okay.
 9 Q -- in terms of the species that are -- that
 10 occur in that area --
 11 A Okay.
 12 Q -- white-tailed deer, et cetera, do you have an
 13 opinion as to whether the species that predominate in
 14 the vicinity of this project would be likely to adapt to
 15 the presence of this project?
 16 A I think there will be cropland, upland species,
 17 small birds and mammals that will exist in your open
 18 space buffer, as you propose, where there's natural
 19 vegetation. There will be species that will come in
 20 because they prefer residential vegetation. There will
 21 be species that will be displaced or will not take
 22 advantage or utilize some of this space because it's not
 23 what they need. It's not foraging habitat or resting
 24 habitat or food source for those species.
 25 Q Okay. And obviously it's your opinion, FWP's

1 the lakefront?
 2 A Our footprint of the project is different than
 3 the project.
 4 Q Uh-huh.
 5 A The footprint isn't going to impact the direct
 6 shoreline. It was our premise, our concern, that there
 7 would be activities, not saying they're legal or
 8 whatever, but there's activities that would have impacts
 9 beyond the subdivision.
 10 Q Okay. And do you have particular activities in
 11 mind that would cause those impacts?
 12 A It's usually pets and people.
 13 Q Uh-huh; okay. They were the primary forces, so
 14 to speak, behind those contemplated impacts?
 15 A Correct.
 16 Q Would you agree that many of the species on or
 17 near the North Shore Ranch project would be likely to
 18 adapt to residential development?
 19 A You know, I don't understand "adapt." I don't
 20 know if you mean continue to coexist or be attracted to
 21 the residential development. "Adapt," I don't know what
 22 that means.
 23 Q Continue to coexist?
 24 A Okay; there will likely be species on the
 25 lakeshore, depending on where that is, if it's low water

1 opinion, that the construction of this project would
 2 displace some species from the project land.
 3 A Displace and/or no longer provide habitat
 4 for -- it's not like the species in the subdivision are
 5 there all the time and they will be displaced, like five
 6 deer, whatever might be out there, and they're
 7 displaced. It's the integration of this with -- it's
 8 the habitat that that provides or the protection it
 9 provides for species that need space that they'll no
 10 longer prefer to be where they are, either on the
 11 waterfowl production area or over that land or on that
 12 land, that portion of their habitat range or their
 13 habitat use area will be unavailable --
 14 Q Uh-huh.
 15 A -- when it changes down the road.
 16 Q Okay.
 17 A So "displaced" is kind of a -- it's a
 18 hard -- it's not a term I would use.
 19 Q Okay.
 20 A I guess -- I don't know quite what you mean by
 21 it.
 22 Q And I was thinking, you know, for instance, a
 23 member of the amphibian family that doesn't travel
 24 well --
 25 A Okay.

1 Q -- if that animal were present on the site,
2 they don't migrate. That type of animal might be
3 displaced by this project. Is that fair to say?
4 A Right; there will be some animals that live in
5 those kinds of habitats that, if they're changed, they
6 probably might be displaced.
7 Q Now, you talked about, you know, animals that,
8 due to the presence of this project, may no longer
9 forage or perhaps nest on the land. You recall your
10 testimony?
11 A Correct.
12 Q Now, would it be your opinion that these
13 species that might not any longer forage or brood or
14 nest on this property, would be unable to do so
15 elsewhere in the vicinity of the project?
16 A It's our feeling that this habitat that's
17 available is occupied. So if you're displacing
18 harriers, red-tail hawks that forage on these kinds of
19 lands, foxes, any species, there you're pushing them
20 over into somebody else's area. And then there will be
21 fewer of them and there will be a net loss, a net loss
22 of habitat for them. They may displace, but they'll
23 move into the territory of another harrier or another
24 bald eagle, and they're going to be replacing that
25 individual. They're going to be displaced and on down.

1 And sooner or later you have less or fewer animals is
2 the way that works.
3 Q And would that have been a process that was
4 ongoing well prior to this application, this project?
5 A In the Flathead Valley, or where?
6 Q I'm sorry; in the Flathead Valley, due to
7 residential development, due to, you know, the growing
8 use of the land for agricultural purposes, that type of
9 thing? Would it predate this application, that process?
10 A Right; it's an ongoing process all the time.
11 Q Okay.
12 A Every time land use changes, there's a change
13 in the corresponding whatever wildlife utilization or
14 habitat values are.
15 Q Would you agree with me that bald eagles tend
16 to nest in large-diameter trees or snags?
17 A Well they tend to prefer large height, tall
18 trees. If there's not tall trees available, they'll
19 nest in what they -- these trees were not big. The
20 Dedman nest, they were not big, big trees. They were
21 old either aspen or birch. And I would think their
22 diameter isn't more than six or eight inches.
23 Q Okay.
24 A So they don't always nest, but they don't have
25 a lot of choice in that there's not a lot of forest

1 along the shoreline. I think there might have been
2 historically, but they nest in what's available. And
3 they're not on top of another nest.
4 Q Would it be fair to say that a bald eagle would
5 be unlikely to nest in a sapling of a cottonwood, for
6 instance?
7 A Correct.
8 Q The tree would have to have some girth and some
9 strength to support the size nest that they customarily
10 establish.
11 A Correct. They need at least two -- you know,
12 two main branches or something to hold the nest.
13 Q Okay.
14 Now, having been on the WPA, would you agree
15 with me that, in general, the cottonwood trees on the
16 WPA that are near the North Shore Ranch project are
17 typically of small diameter?
18 A I think they're mostly -- there's a few
19 cottonwoods. There's willow and aspen and birch.
20 There's not as much of that old cottonwood tree habitat
21 there. So they're probably at their maximum size. And
22 those species don't get traditionally very big.
23 Q And when you were on the WPA over -- assuming
24 over the last many years you've been on that site; fair
25 to say?

1 A Off and on.
2 Q Off and on over the last however many years?
3 A Twenty-some years, yeah.
4 Q Twenty years. Would you characterize any of
5 the trees on the site as old growth?
6 A On your land?
7 Q No, on the WPA.
8 A On the WPA. Well, like I said, they're
9 willow -- there's a nonnative willow tree that's
10 probably at old growth for it.
11 Q Okay.
12 A They just don't get big. I believe there's
13 trees that blew over that are decadent and would be at
14 their maximum age. They're not your ponderosa pine,
15 cottonwood-size tree.
16 Q Right.
17 A They're apples and oranges. It's
18 species-dependent.
19 Q How would you characterize, in a general sense,
20 the forested areas of the WPA, in terms of whether it's
21 old growth, new growth, or some mix?
22 A I would say it's a mix.
23 Q Okay.
24 A Has some very old ponderosa pines scattered and
25 a few scattered cottonwoods of small, some very young,

1 to medium and old, I believe, depending on where you are
 2 in that matrix.
 3 Q And would you agree with me that the national
 4 post-delisting management guidelines for bald eagles
 5 recommend maintaining a distance of at least 660 feet
 6 from any disturbance?
 7 A Are you talking federal?
 8 Q Yes.
 9 A That's probably correct.
 10 Q Is the state regulatory authority different in
 11 terms of the distance between the disturbance?
 12 A We have a different philosophy that a planning
 13 process that's been approved by the Fish and Wildlife
 14 Service. I think they developed guidelines nationwide.
 15 Q Uh-huh.
 16 A Our guidelines, Montana Bald Eagle Working
 17 Group, has been working for a long time, I don't even
 18 know how long, to develop what we think is a plan that
 19 will work in absence of -- you know, eventually after
 20 the bald eagles were delisted. And that's more of a
 21 customized approach, given the history of the bald
 22 eagle, where it forages, what other trees are in the
 23 area, if it's in a timbered site versus an open site, a
 24 whole lot of known ecology of it and try to work with
 25 the landowner on developing what we call bald eagle

1 federal guidelines on the new post-delisting management
 2 guidelines. And the federal government says that it
 3 recommends a distance of 660 feet from any disturbance.
 4 A I think that's a minimum.
 5 Q A minimum. And my question is, in light of
 6 that, would approximately 1,600 feet, in your opinion,
 7 be sufficient to mitigate against disturbance from human
 8 presence?
 9 MR. MCCORMICK: Objection; asked and
 10 answered.
 11 Q (By Mr. Perry) You understand my question?
 12 A Yeah. I think I answered that. It really
 13 depends on the individual pair.
 14 Q Okay. So again, we come back to the uniqueness
 15 of each bald eagle.
 16 A Pair.
 17 Q Of each pair.
 18 A Correct.
 19 Q Some will withstand human presence close, some
 20 won't.
 21 A Right.
 22 Q And you never know when the bald eagle nests in
 23 a given nest what type of eagle it is in terms of its
 24 sensitivity to human presence.
 25 A The nongame people that have been working on

1 management plan that will really address the needs of
 2 that species and hopefully maintain the integrity of the
 3 nesting or the territory, not just the tree, but the
 4 territory. And our philosophy is that we customize that
 5 with the landowners or the community ideally long before
 6 something happens. But it usually happens as a result
 7 of some -- something new happening to the landscape, and
 8 Aha, there's an eagle's nest there.
 9 Q Would you agree with me that a 1,600-foot
 10 distance from an eagle's nest that's uninhabited to the
 11 nearest residential lot on the North Shore Ranch
 12 property would be an adequate buffer to protect that
 13 nest from disturbance?
 14 A The eagles usually tell you what's an adequate
 15 distance, by behavior. If that nest was active now and
 16 we were standing on the corner of your property down
 17 there, and they were oblivious to -- not even looking at
 18 you, that would give you some idea of that buffer during
 19 the nesting season, February, March, April. If they
 20 flush or -- you know, they sort of tell you what that
 21 distance is. And that's why we customize those bald
 22 eagle management plans. In the absence of that, I don't
 23 know if I could tell -- think we could say. It could be
 24 less, it could be more.
 25 Q And I'm just kind of pointing back to the

1 this plan and have been working with eagles and
 2 mitigation over a number of years, tell me that if
 3 you're an isolated rural setting, undeveloped area,
 4 they're more sensitive. They just never have had much
 5 intrusion especially on a closed WMA or WPA that's
 6 closed almost half a year; that their sensitivity would
 7 be greater -- most likely, you don't know -- than one on
 8 where the eagles moved into a developed lakeshore and is
 9 nesting in a tree above everything kind of oblivious to
 10 what's below it in a more forested or densely covered.
 11 They can adapt in the sense that a pair that form after
 12 development has occurred and pick a territory, they'll
 13 take what's left. And they can adapt. But it's not the
 14 same as this pair adapting to that development coming
 15 in. It's just -- they're apples and oranges between
 16 those kinds of birds, their pair behavior.
 17 Q So one pair might adapt to very close human
 18 development, another pair might not.
 19 A Right. So it's hard to tell.
 20 Q Would you agree with me that trespass or
 21 increased recreational use of the WPA is really a US
 22 Fish and Wildlife Service management issue that should
 23 be addressed through mitigation on its part?
 24 A On its part?
 25 Q On its part.

Page 81

1 A Okay; so you're asking if the federal
2 government needs to increase their workload to address
3 potential trespass issues.
4 Q Yeah. My question is, if there's a risk of
5 trespass for instance on the WPA, obviously that risk
6 would have existed before this application was ever
7 filed. Would you agree with that?
8 A It exists; yes.
9 Q And if the US government, FWS, wanted to
10 protect against the risk of trespass, insofar as it owns
11 the WPA, only it could take appropriate steps to
12 mitigate that risk.
13 A Actually, it takes a community to work on a
14 trespass issue in some ways. Our wardens or adjoining
15 landowners report -- the sheriff will get called when a
16 helicopter or a plane tries to land out there. So they
17 do what they can. They haven't even had enforcement up
18 here for a number of years. So it's -- they do what
19 they can, given what resources they have.
20 Q And I guess my question is, if I lived in one
21 of the 12 residences that's within a quarter of a mile
22 of the WPA, and I had knowledge that people were
23 trespassing on the WPA, it wouldn't be incumbent on me,
24 as a private citizen, to do anything about it, would it?
25 A It depends on the citizen. Some will and some

Page 82

1 won't, because they trespass themselves.
2 Q But in terms -- to your knowledge, would I have
3 any legal obligation to go anything about some third
4 party that was trespassing on the WPA?
5 A A legal requirement?
6 Q Yes, ma'am.
7 A I don't think so.
8 Q And you'd agree with me that the WPA itself was
9 created, at least in part, to provide recreational
10 opportunities for residents in the vicinity of it?
11 A It has -- they have federal, you know, mandates
12 under the Migratory Bird Act where the funding came
13 from. I'm not going to pretend I know exactly what they
14 say. But I understand it's for wildlife-related
15 activities, wildlife -- it's primarily for bird nesting
16 and foraging habitat, bird conservation.
17 Q Uh-huh.
18 A Compatible uses are photography, hunting, and
19 trapping, things like that. Dog walking, parks
20 and -- other kinds of recreation, just exercise, is not
21 a compatible use with a WPA.
22 Q Okay.
23 Would you agree with me that hunting on the WPA
24 would serve to adversely impact wildlife that's in the
25 vicinity of the hunting?

Page 83

1 A Wildlife that are probably hunted, especially,
2 but yes.
3 Q Especially.
4 A There's some intention to not disturb but take
5 advantage of the fact -- well, you try to sneak in
6 there, of course, before light to set up your decoys.
7 Q But the noise associated with hunting, you'd
8 agree with me that wildlife in the vicinity of that
9 noise source will be impacted by it.
10 A Right. I mean, it's mostly if you're using a
11 dog and your intention is to disturb ground nest -- or
12 pheasants or huns or geese, you might disturb them.
13 Q For instance, if you're on the WPA and you were
14 bird hunting and there were white-tailed deer in the
15 vicinity of where you and your friends, perhaps, were
16 firing shotguns, it would be likely that the deer would
17 be disturbed by that; fair to say?
18 A It could happen, yes.
19 Q And, ma'am, having been on the WPA over the
20 last twenty or so years, would it be fair to say that
21 you can hear road noise from Highway 82 when you're in
22 the WPA?
23 A Probably. I don't recollect --
24 Q Okay.
25 A -- hearing anything when I'm out there.

Page 84

1 Q Would you agree with me that wildlife habitat
2 in the Flathead Valley is currently fragmented from
3 extensive agricultural developments, residential
4 developments, infrastructure, and roads?
5 A It depends on what species you're talking
6 about. Obviously, from a native preColumbian, you know,
7 native habitats that were once here,
8 agricultural-fragmented native grasslands. So grassland
9 native birds and other species were impacted by that
10 fragmentation. The species that live here now have some
11 native habitat but have -- the species can use these
12 agricultural lands. So subdivision in a way begins to
13 fragment the agricultural fabric that was here.
14 Q Uh-huh.
15 A So it's species dependent on the degree of
16 fragmentation and the time period you're talking about.
17 And I'd say land uses are changing. And as they go from
18 one type to another type, there's -- some species are
19 affected differentially than others. It depends on if
20 they're an ungulate versus a bird, you know. Ungulates
21 in a fragmented -- some species in a fragmented forest
22 habitat don't travel across those openings and some do.
23 Deer would and a lynx might not.
24 Q Uh-huh.
25 A Same thing on the ground. Some species adapt

1 well to the interspersed development and red-tail hawks
2 might be one, for example, and pheasants. And then
3 there's others that -- like grizzly bears, that aren't
4 going to make their way across, once houses show up,
5 that probably could or might -- they do make their way
6 into the valley now. I know at some point that's not
7 going to happen. That will be too fragmented.

8 Q Would you agree with me that the loss of native
9 grasslands in the vicinity of the North Shore Ranch
10 project and the WPA has adversely affected avian species
11 who previously -- or that previously relied upon the
12 extensive presence of native grasslands?

13 A Correct.

14 Q Can you tell me what species would have been
15 adversely affected by agricultural development over,
16 say, the last twenty-five years in the vicinity of the
17 WPA?

18 A I had a good answer for that, except for the
19 twenty-five-year thing. My answer would have been
20 Columbian sharp-tailed grouse, a subspecies of
21 sharp-tailed grouse that depended on the Palouse
22 Prairie. They have been gone from the Flathead,
23 probably, for more than fifty years and some of the
24 adjoining valleys where we had sharp-tailed grouse. In
25 the last twenty-five years -- I mean, agriculture's been

1 you rendered some letters regarding Ficken Farm Estates?
2 Do you recall that?

3 A Yes.

4 Q And would you characterize that as being in
5 proximity to the WPA, Ficken Farms I and II?

6 A It was next to Blasdel, another WPA.

7 Q And with respect to Pheasant Haven, is that the
8 other subdivision down there?

9 A That's another one.

10 Q That's another one?

11 A There's a whole bunch of them.

12 Q And this was in the '03-'04 time period?

13 A Correct.

14 Q And would you agree with me that within a
15 couple of miles of the WPA, there has been development,
16 subdivision development over the last five years?

17 A Significant, in terms of Blasdel WPA which
18 doesn't -- we don't have a map here showing that. But
19 those Ficken Farms, Sky View Estates and Pheasant Haven
20 and Mackinaw were all within like one year and all in
21 this one kind of Blasdel area and getting closer to the
22 WPA.

23 Q And would it be fair to say that one of your
24 concerns about this project, North Shore Ranch, was the
25 cumulative impacts that had already been brought to

1 here since 1910; I don't know.

2 Q I was just asking --

3 A The Homestead Act.

4 Q I was just asking during your time that I know
5 you were here.

6 A My twenty-five years? You know, this area has
7 been relatively stable for the last twenty-five years,
8 in terms of land use changes. Nothing has significantly
9 changed in this zone of the lake in the last twenty-five
10 years.

11 Q Well, there's been some subdivision development
12 in the vicinity of the WPA over just the last ten years;
13 right?

14 A Mackinaw Estates and stuff in lower valley.
15 But the area that's right adjoining the WPA, there's
16 been virtually no change in my -- you know, maybe a
17 change in ownership but not a change in land use.

18 Q And Mackinaw Estates, that's close to the WPA?

19 A It's close to your subdivision.

20 Q How far, in your best approximation, would that
21 be from the WPA, Mackinaw Estates?

22 A Let's see; three-quarters of a mile.

23 Q Three-quarters of a mile?

24 A Half mile, something like that.

25 Q If I recall correctly, at one point in time,

1 bear, so to speak, on this area of the north shore of
2 Flathead Lake?

3 A The cumulative effects are in this
4 river -- Flathead Valley area that runs from the river
5 as it crosses the north part of -- it's really not the
6 north part of the valley -- south of Kalispell the river
7 hits the lake and -- the mouth of the lake. That zone
8 has a disproportionate amount of wetlands and river and
9 shoreline habitat and cottonwood forest and is a real
10 attractant to these migratory birds. I'm not going to
11 say they don't exist everywhere else. I mean, they do.
12 There are sporadic habitats across the whole valley.
13 This is for a contiguous, heavily used waterfowl, bird
14 watching, heavily hunted, recreated productive area for
15 birds. So those -- I forget the question now.

16 Q The question was, with respect to the North
17 Shore Ranch subdivision application --

18 A Oh, that's right.

19 Q -- I believe that you were of the opinion that,
20 you know, this application itself may pose an
21 impact -- adverse impact on wildlife or wildlife
22 habitat. But in addition, it really was part of a
23 bigger, potentially cumulative impact, that all of the
24 subdivisions in this area had already posed.

25 A I think that is consistent with what our

1 comments -- the agency's comments were with those other
2 subdivisions. And this was, again, brought up as an
3 issue.

4 Q And would you agree with me that the
5 pre-existing subdivisions, the ones that predated this
6 application, already posed a cumulative impact on
7 wildlife or wildlife habitat in that area?

8 A It's incremental.

9 Q And would you agree with me that, as a general
10 proposition, the population in that area has grown
11 during the time you've been employed with Fish,
12 Wildlife & Parks?

13 A People population?

14 Q People population.

15 A I would say the number of units of parcels that
16 have been subdivided have been -- I have no idea how
17 many people occupy or anything.

18 Q Fair enough.

19 A So there are more units of subdivisions since
20 2000 than probably -- there was very little activity
21 until more recently in the last five to ten years than
22 the previous -- how many years have I been
23 here -- fifteen before that.

24 Q Would you agree with me that the potential
25 impact of the North Shore Ranch project on the entire

1 A I'm not going to be able to answer that very
2 easily.

3 Q It's kind of a simple question. We're talking
4 about less than 400 acres at issue in the North Shore
5 Ranch project. You're aware of that.

6 A Uh-huh.

7 Q That's a "yes"?

8 A Yes.

9 Q You'd agree with me that in the Flathead Valley
10 there are hundreds of thousands of acres of land; right?

11 A In the Flathead Valley or --

12 Q In the Flathead Valley.

13 A I don't know; probably.

14 Q And my question is, in light of the fact that,
15 you know, this is 400 acres of hundreds of thousands of
16 acres in the vicinity of the project, would you agree
17 that potential impacts, on a global scale with respect
18 to the whole valley, posed by this project would be
19 relatively small?

20 A I can only speak from a wildlife point of view.
21 And I can't agree with the statement, because it's a
22 disproportionately high impact on wildlife, given how
23 little of the -- I won't say how little, but where
24 wildlife distributes themselves in this valley isn't
25 equal. If wildlife was equally distributed, there was

1 Flathead Valley, with respect to wildlife and wildlife
2 habitat, would be relatively small, given the extensive
3 property already owned by FWP or Fish Wildlife Service
4 or other conservation easements that have been obtained
5 by third-parties in that area?

6 A You'll need to rephrase that.

7 MR. PERRY: Can you just ask that again for
8 me; read that?

9 (Whereupon the previous question was read back
10 by the court reporter.)

11 THE WITNESS: It's got a lot of parts. I
12 have to think about the answer.

13 The proposal is in a sensitive area, the North
14 Shore Ranch proposal. Disproportionate -- in our
15 opinion, it was a disproportionately greater impact of
16 that size subdivision in that location than other parts
17 of the valley. To compare a subdivision proposal of any
18 size to the cumulative effects of what's happening in
19 the Flathead Valley, I don't think has a relevance to
20 looking at the individual impacts of one proposal in one
21 area.

22 In other words, in all the conservation of
23 other organizations is not mitigation for a proposal.
24 They're not -- it's just apples and oranges again.

25 Q (By Mr. Perry) Let me ask my question again.

1 so many robins and so many deer, and you took out a
2 piece, it would be incremental but no one piece would be
3 different than every other. Wildlife are not equally
4 distributed. Their habitat is not equally distributed.
5 So it really depends on what 400 acres you're talking
6 about.

7 Q Okay.

8 Would you agree with me that the proposed
9 development at the North Shore Ranch property would not
10 be expected to impact Canada goose nesting or
11 brood-rearing habitat?

12 A The north shore is a very important
13 brood-rearing area. That occurs starting now. And the
14 WPA is closed now. So we believe that there will be
15 some trespass issues then, the trespassers would be
16 disturbing Canada geese brood rearing for sure. There's
17 also nesting on probably those -- there's four or five
18 identified, known, or maybe even more, Dan Casey's work,
19 looked at goose breeding on the WPA. There was some.
20 It doesn't have the old growth trees that some geese
21 nest in and it does have some elevated places geese
22 would choose. And again, trespass during the nesting
23 season would impact both nesting and Canada geese on the
24 WPA.

25 Q And this issue of trespass with respect to the

1 WPA, you'd agree with me that it's entirely speculative
 2 to conclude that any of the potential residents of this
 3 subdivision are going to trespass on the WPA.
 4 A I would conclude that there's likely trespass
 5 from -- onto public land from private development. It's
 6 our experience as a land management agency that it's a
 7 constant problem up here at Kuhns Wildlife Management
 8 Area. It's a constant problem at Batavia. It's a
 9 constant problem at Smith Lake. It's very, very
 10 difficult for people not to want to wander into public
 11 lands. They don't understand. And, also, their pets
 12 don't understand.
 13 Q Right; I understand.
 14 A It's our experience it's a big problem.
 15 Q But you don't have any data upon which to rely
 16 that these particular houses, this particular
 17 development, will provide housing for people who are
 18 essentially lawbreakers. I mean, you're relying upon
 19 experience in other places; right?
 20 A Correct.
 21 Q You don't have any scientific data to support
 22 the proposition that these people are going to trespass
 23 in this new subdivision, do you?
 24 A I can't predict what those people might do.
 25 Q And you can't predict what they're going to do

1 Lake is an area of, quote, "national significance,"
 2 close quote, for its wildlife values.
 3 A If it was in one of those letters -- is it in
 4 on of our letters?
 5 Q It is, yeah. And it's in an exhibit. I can
 6 show you the exhibit.
 7 A You know, I don't remember; I don't recall.
 8 Q And let me suggest to you that during the
 9 course of his deposition, he said that the letters that
 10 he forwarded to the county with regard to this north
 11 shore project had actually been drafted by you and other
 12 people who worked under him.
 13 A Correct.
 14 Q And that's a true statement.
 15 A True.
 16 Q Okay. Did you, yourself, draft any letters for
 17 him to sign, with respect to the north shore project?
 18 A I helped draft.
 19 Q With whom did you work in helping to draft
 20 those letters?
 21 A Tom, when he was here.
 22 Q Tom Litchfield?
 23 A Yes. Jim Williams, Alan Wood. I don't know if
 24 you know Alan.
 25 Q I don't.

1 with their pets either, in terms of whether or not they
 2 confine them or let them run wild; right?
 3 A Our experience tells us that out of a certain
 4 number of residences near a closed or protected area,
 5 pets will -- dogs especially, are notorious trespasser
 6 of those lands.
 7 Q And, again, that's predicated upon your
 8 experiences in other places --
 9 A In the Flathead Valley.
 10 Q But you don't have any scientific data upon
 11 which to predicate any opinion that these people in this
 12 new subdivision are, again, going to be lawbreakers and
 13 let their pets run wild; right.
 14 A I can't have scientific information on
 15 something that hasn't happened.
 16 Q That's exactly my point.
 17 Now, when I spoke with Mr. Satterfield today
 18 and on Tuesday, we discussed, I believe on Tuesday, his
 19 opinion that the north shore of Flathead Lake was an
 20 area of national significance for its wildlife values.
 21 You're aware of the opinion that he's expressed in that
 22 regard?
 23 A Not on Tuesday.
 24 Q In a general sense, are you aware that he's
 25 expressed the opinion that the north shore of Flathead

1 A He's my other supervisor. Fish and Wildlife
 2 Service staff, Dan Casey. The organizations I think I
 3 referenced in some of my -- or some of our submitted
 4 testimony, used their data, their information in
 5 drafting. Doris Fischer is another person we've added
 6 to our staff in Helena, land use planner with lots of
 7 experience, understands the process a little better than
 8 the field people, I think, and used her input. And it
 9 was collaborative.
 10 Q When you folks, as you've described them, were
 11 drafting letters for Mr. Satterfield to sign, what data
 12 did you personally rely upon in providing any opinions
 13 regarding potential impacts posed by this subdivision on
 14 wildlife or wildlife habitat?
 15 A I used Fish and Wildlife Service, their staff.
 16 Several members of their organization provided input.
 17 The data -- bird data list that Dan Casey prepared, I
 18 used that. Some of my own personal observations, having
 19 worked in the area, knowing what species are generally
 20 found on the north shore and in the field, farm fields.
 21 Q Uh-huh.
 22 A Our Heritage Program information. Kristi
 23 DuBois provided bald eagle information as well as the
 24 Fish and Wildlife Service. So a real diversity of
 25 resource experts in this area with some management

Page 97

1 experience there or inventory -- survey and inventory
 2 experience.
 3 Q Okay.
 4 Now, it's true, is it not, that the federal
 5 government has failed to designate any part of the north
 6 shore of Flathead Lake as a critical habitat for any
 7 endangered species?
 8 A Correct, I guess. The species that -- I don't
 9 know what -- they have a lot of species that are listed
 10 and not designated critical habitat. So I don't believe
 11 they've designated any critical habitat here for those
 12 species.
 13 Q And would you agree with me that a critical
 14 habitat has a special meaning, under the Endangered
 15 Species Act?
 16 A Correct; that's what I was getting at. It's so
 17 clearly defined in the Endangered Species Act that kind
 18 of -- there is a critical habitat definition for
 19 federally listed species.
 20 Q And I guess, in light of the fact that you've
 21 testified that in preparing draft letters for
 22 Mr. Satterfield to sign in this case in regard, rather,
 23 to this subdivision, you relied, at least in part, on
 24 information and opinions that you receive from the US
 25 Fish and Wildlife Service; correct?

Page 98

1 A Correct.
 2 Q And during that process, it's fair to say that
 3 no one from Fish Wildlife Service ever informed you, in
 4 words or substance, that they considered any portion of
 5 the north shore of Flathead Lake to be critical wildlife
 6 habitat within the context of the Endangered Species
 7 Act.
 8 A I'm not aware of that. I don't really
 9 understand the bald eagle part of this. I haven't
 10 worked under the Endangered Species Act for bald eagles
 11 recently. I don't think if -- if they have no critical
 12 habitat under the Endangered Species Act -- if there is
 13 no such critical habitat identified for bald eagles,
 14 then I don't think there would be any other species with
 15 critical habitat, as defined by the Fish and Wildlife
 16 Service, on this area.
 17 Q Okay. And as a general proposition, when you
 18 were involved in drafting correspondence for
 19 Mr. Satterfield to sign, I note that the term "critical
 20 wildlife habitat" is used. Are you aware of that?
 21 A In our --
 22 Q Yes, ma'am.
 23 A You'll have to show me. I think we try to stay
 24 away from that, in terms of the endangered species
 25 habitat. But it is -- it is used -- oh, it's used in

Page 99

1 the county subdivision law, I think, or subdivision
 2 growth policy. They use the word "critical." It has
 3 other meanings beyond the Endangered Species Act. So we
 4 do use it in the context of the more general meaning,
 5 meaning very important.
 6 Q And I'm just trying to find the exhibit from
 7 Mr. Satterfield, his March 26, 2008 letter. Here we go.
 8 And I believe that he described it as critical wildlife
 9 habitat. And I'm just interested as to what that means,
 10 in the context of his letter.
 11 A Do you know what paragraph or page?
 12 Q It's on the bottom of the second page. He
 13 talks about the fact, and I quote, "We have provided
 14 information to support the importance of this area in
 15 our previous comments to Flathead County that this area
 16 should be considered critical or crucial wildlife
 17 habitat," close quote. Do you see that indication?
 18 A Yes, I do.
 19 Q And, I mean, did you help draft this letter for
 20 Mr. Satterfield?
 21 A Yes, I did.
 22 Q Okay. And did you, yourself, use -- did you
 23 write this language; do you recall?
 24 A It was edited.
 25 Q Okay.

Page 100

1 A So at this point, I don't know if -- you know,
 2 choosing words at this point could have been anybody in
 3 the staff. Putting the basic information together, I
 4 did.
 5 Q And I'm just trying to find out -- I know that
 6 it's a term of art, so to speak, within the Endangered
 7 Species Act. And the USFWS hasn't designated any part
 8 of this environment as a critical wildlife habitat but,
 9 yet, it's described in this letter as such. And I'm
 10 just trying to ask -- to find out what that means if
 11 it's not within the context of the ESA.
 12 A It is not intended to be in the context of the
 13 ESA, because they use it specifically. I think this
 14 reference comes from above, yep, out of the county's
 15 growth policy which, for lack of a better term, they
 16 used to describe really critical -- "critical," I used
 17 it again. The county has chosen that term to identify
 18 areas of high importance for wildlife in the growth
 19 policy.
 20 Q In the growth policy.
 21 A And it's quoted above, "The density of
 22 residential land use" which -- emphasis was added, "has
 23 a significant impact on wildlife and wildlife habitat if
 24 not adequately mitigated." That's one of the criteria
 25 that they're going to take a look at. "When proper

1 development techniques are combined with a low overall
2 density, humans and wildlife can successfully coexist.
3 It is unreasonable to stop all development in wildlife
4 habitat. But it is also unreasonable to allow
5 high-density development in areas that are critical to
6 healthy management of wildlife populations."

7 Q Okay.

8 A So the comment we made, subsequent to that, is
9 in reference to that term of "critical." It doesn't
10 have a definition. It doesn't say "under the Endangered
11 Species Act" up here. So the use of it below is simply
12 a mirroring of whatever it means to the county that we
13 think this is one of those areas.

14 Q Okay. And with respect to this use "critical,"
15 and I keep coming back to it because I know it's well
16 defined under the Endangered Species Act. But would you
17 agree with me that it's a term that's not defined by FWP
18 in any of its regulations?

19 A We don't regulate, I don't think, habitat in
20 that sense. I'm not aware of our use of that term or
21 definition of that term in a regulatory environment.

22 Q Let me show you Exhibit 18 to Mr. Satterfield's
23 deposition. I suggest to you it's the Flathead County
24 Planning and Zoning Subdivision Report dated Feb 1, 2008
25 regarding the North Shore Ranch project. And I'd point

1 the test of this. If we could map critical habitat or
2 crucial areas as the state is starting to use -- we're
3 defining crucial areas. Fish, Wildlife & Parks is on a
4 mission to kind of define a crucial area or a critical
5 area. When we define it and work with the counties to
6 map it, I think, then, we will get to what we're driving
7 at here.

8 Q Okay.

9 A But we haven't gotten that far with the county
10 on a state-wide basis, you know, to start to
11 identify -- come up with a definition and identify it
12 and then propose it for adoption under county laws. I
13 think that's the direction this growth policy kind of
14 expects to go in with -- you know, not just us but other
15 resource agencies so we know where this stuff is. But
16 it's not mapped yet, and this is the -- the county
17 doesn't have a great definition. But our letter would
18 say We think it's going to meet some kind of definition.
19 Or We think it's close to what is considered critical
20 habitat, important for a population.

21 Q Okay. And so it's your testimony that as of
22 March 26, 2008 when this letter was sent by
23 Mr. Satterfield to the county, the term "critical
24 wildlife habitat" outside of the Endangered Species Act,
25 had yet to be defined in Flathead County.

1 your attention to the top of page 17. And at the top of
2 page 17, under paragraph 41.2, the Flathead County
3 Planning and Zoning staff state, and I quote, "The
4 subject property has not been identified by Flathead
5 County as 'critical wildlife habitat' but is adjacent to
6 a large US Fish and Wildlife Service waterfowl
7 production area (Flathead 2,370 acres)," close quote.
8 Have I read that correctly?

9 A You have read it correctly.

10 Q And I just have to profess my confusion when
11 the county says it's not been designated as critical
12 wildlife habitat and the US Fish and Wildlife Service
13 has not designated this area as critical wildlife
14 habitat under the Endangered Species Act Section 7, I'm
15 just trying to understand what that terms means within
16 the context of the letter marked as Exhibit 19 that you
17 and I were just discussing, the March 26, 2008 letter.
18 Can you explain to me what it means?

19 A I think I can. We're not talking about the
20 Endangered Species Act. When -- and Flathead County,
21 under a growth policy, it anticipates, we would think,
22 to begin to identify what they think are critical
23 wildlife habitats. It's a subjective term in the growth
24 policy. It's a subjective term, probably when we're
25 mirroring it, in our comments. But we think it meets

1 A Correct.

2 Q And so you'd agree with me that no applicant
3 who's seeking approval of a subdivision application,
4 would have had any notice as to what that term meant,
5 outside of the Endangered Species Act; fair to say?

6 A I would disagree. I think, based on our
7 initial comments with the developer, our initial
8 comments to the planning office -- you know, when this
9 thing got started, this was adjacent to a publicly
10 managed refuge bought with dollars to protect it. And
11 that it was getting darn close to being really, really
12 important wildlife habitat. And in our minds, if there
13 was a definition, we would have happily told them it's
14 critical. But we don't have a county definition. We're
15 not using endangered species. We didn't have a
16 state-wide definition. So at the time, I think our
17 conversations were pretty clear, This is important
18 habitat. It's part of this important area. We have
19 concerns about off-site impacts, that it was pretty
20 clear that we were concerned about it. And I don't
21 think it's fair to say, if it's not designated, it's not
22 a point to consider.

23 Q What's the difference between important
24 wildlife habitat and critical wildlife habitat?

25 A The Endangered Species Act, primarily. That

1 definition by the Endangered Species Act sometimes make
2 it critical. Sometimes it's better to take stay away
3 from it, but the county chose not to.

4 Q And the county didn't define the term, though;
5 right?

6 A Correct. The county relies a bit on the state
7 to help them do those kinds of exercises, to identify
8 what's critical or important. And we just haven't gone
9 through that exercise yet to find out what criteria we
10 would use; would it be acceptable to the county to use
11 those same criteria. It's unfortunate that that word is
12 in here.

13 Q Would you agree with me that a third party
14 reading a letter from you or from your agency, or two
15 letters, let's say, one says It's important wildlife
16 habitat, the other one says It's critical wildlife
17 habitat, would you agree with me that it conveys a
18 difference, in terms of the relative importance of a
19 habitat, if you call it "important" versus calling it
20 "critical"?

21 A It could depends on the context. I think the
22 term "critical" here was used to point to a findings of
23 fact -- wherever it went. What page was that on?

24 Q That is one page two of Exhibit 19. Oh, on the
25 other one, it was --

1 A Well, it was wise to stay away from it because
2 it confused people -- it was a confusing term because of
3 the Endangered Species Act, and we didn't have a
4 definition ourselves that was working, you know. We
5 have critical winter range. We have an institutional
6 use of the word. But we, you know, didn't have a huge
7 definition, so we stick to "important," "very
8 important," "highly important," and try to list all the
9 reasons why, spelling it out in more detail than just
10 using "it's critical habitat" for such and such.

11 I think the switch here was simply to reflect
12 using the same term in the growth policy saying The
13 county has these concerns. We've given you enough data
14 to think that we meet whatever test the county had in
15 mind. There's enough importance here to meet that
16 critical test with whatever the county had in mind when
17 they were looking at that paragraph, when they wrote
18 that paragraph.

19 Q Even though that term was, as yet, undefined by
20 the county.

21 A But it indicated to us that they have something
22 in mind, and they gave some parameters for it. And we
23 think the information we've provided the county meets
24 that test. And they incorrectly -- they should be
25 identifying this as critical habitat or they should

1 A Yeah, here we go. It was mirroring the use of
2 the term, in believing, probably because the growth
3 policy wasn't adopted until after this thing was
4 underway. And if you look at the growth policy as a
5 background for commenting on this subdivision, it was
6 new -- it came in somewhere in the middle of this
7 application process -- that it gave the agency a chance
8 to say Okay, you mentioned "critical" in your land use
9 growth policy, and we believe this meets that test, even
10 though there's not a defined -- a true definition of it.
11 It meets the test that's -- "important" was probably
12 just one way of saying it. But because you used that
13 term, it seemed acceptable for the agency to reflect
14 that same term. I'm not trying to make -- you know,
15 it's a difficult term that has a lot of definitions.
16 I'm not trying to belittle your point, I'm just trying
17 to say there's a rational explanation for using
18 "critical" in this context, after the growth policy was
19 developed.

20 Q All right. So it really was an undefined term
21 in the growth policy that you folks used once that term
22 had been used in the growth policy?

23 A Correct.

24 Q Okay. But before that it, would have been
25 "important" habitat?

1 identify critical habitats in this area and should have
2 done so as part of this finding of fact.

3 Q Would you agree with me that any subdivision
4 constructed in the vicinity of Flathead Lake would cause
5 a loss of wildlife habitat?

6 A In the vicinity of the waterfowl production
7 area and undeveloped -- what do you call them -- buffer
8 lands and agricultural lands on this north shore, I
9 would agree would have a significant impact. The rest
10 of Flathead Lake I can't speak to.

11 There are places, I'm sure, on the lake and in
12 areas I'm not that familiar with, the south shore on the
13 reservation, that probably have undeveloped important
14 wetland components and are important and may have
15 similar impacts. But in this context, any development
16 in that zone, I would consider -- we would consider
17 having potential impacts.

18 Q And you'd agree with me that the property at
19 issue, the North Shore Ranch property, as it currently
20 exists, is not in its native state.

21 A Correct.

22 Q And it's true, is it not, that the property in
23 its current state has few, if any, native species of
24 flora left on it?

25 A Correct.

1 Q And you'd agree with me that the property at
2 issue has very limited trees to provide habitat for a
3 variety of avian species?

4 A Yes.

5 Q You'd agree with me that there aren't any trees
6 on the North Shore Ranch property that could support the
7 nesting of a bald eagle.

8 A I don't think so. I would agree.

9 Q You would agree with that.

10 A I haven't been on the entire property, so I
11 don't know. But from aerial photos and from what I can
12 see from the road, I don't think there's a whole lot of
13 trees there.

14 Q And you'd agree with me that the north shore
15 developer's intent to restore native vegetation on the
16 North Shore Ranch property would, in fact, serve to
17 improve habitat for many native species?

18 A Could you repeat that?

19 Q Sure. Are you aware of the fact that as part
20 of the development proposal, the applicant offered to
21 and represented that it would restore native vegetation
22 on large portions of the property? Are you aware of
23 that?

24 A I'm aware of their restoration plan for that
25 portion of the proposal that was the open space area;

1 impacts on wildlife habitat posed by this application?

2 A That's more of a philosophical question in
3 terms of is it the responsibility of a federal agency
4 who has other missions and mandates to mitigate for
5 development. I disagree.

6 Q My question isn't whether or not they have that
7 responsibility. My question is, as a wildlife
8 biologist, if the USWFS were to do that, wouldn't it
9 mitigate some of the potential impacts, anyway, on
10 wildlife habitat posed by the North Shore Ranch project?

11 MR. MCCORMICK: Objection; calls for
12 speculation.

13 Q (By Mr. Perry) Do you understand my question?

14 A I can answer it?

15 Q You can answer it.

16 A You know, I don't think the foraging
17 opportunities -- I don't think the lands owned by the
18 Fish and Wildlife Service has that potential. It's
19 pretty wet. And they don't have the money or the
20 ability to go buy all the foraging habitat that
21 migratory birds use. So the little bit they could do
22 probably wouldn't do very much for the tens of thousands
23 of migratory birds that disburse across the whole
24 Flathead Valley.

25 Q And, again, I'm trying to be point specific

1 yes.

2 Q And my question is, if that were, in fact, to
3 occur, would it serve to improve habitat for native
4 species of birds, for instance?

5 A It would for that area, yes.

6 Q And you'd agree with me that the US Fish and
7 Wildlife Service would be fully empowered to plant its
8 own forage lots on the WPA as it deems fit, if it so
9 chose.

10 A I guess I need you to repeat that question.

11 Q Sure. You'd agree with me that the USFWS is
12 fully empowered to plant forage lots on the WPA to
13 assist in nesting or brooding or foraging of waterfowl
14 and other bird species in the vicinity of the WPA, if it
15 wanted to.

16 A If they felt it was needed. I think it's the
17 understanding that the WPA -- some of the foraging
18 opportunities existed next to the WPA on private land.
19 So they haven't put any energy into it. I think that's
20 one of the reasons that hasn't been -- that's a possible
21 reason. I don't know -- they have the power. I don't
22 know if they feel it's ecologically necessary.

23 Q And in your opinion, your professional opinion
24 as a wildlife biologist, wouldn't the planting of forage
25 plots on the WPA serve to mitigate potentially adverse

1 with potentially adverse habitat impacts posed just by
2 the North Shore Ranch project.

3 A Uh-huh.

4 Q Now, those tens of thousands of birds that you
5 just described, they don't all forage on the North Shore
6 Ranch lands; right?

7 A No.

8 Q And I'm talking about mitigation of impacts
9 potentially posed by the North Shore Ranch application.

10 A Okay.

11 Q And my question is, if the Fish and Wildlife
12 Service deemed fit, it could have, during the course of
13 this project or this application during which you and
14 FWS spoke about it, it could have chosen, if it wanted
15 to, to plant forage lots to assist in potential
16 mitigation.

17 MR. MCCORMICK: Objection; calls for
18 speculation and foundation.

19 THE WITNESS: I can't speak for the Fish
20 and Wildlife Service.

21 Q (By Mr. Perry) Okay. Well, let me ask you
22 this question. Is it your opinion that the Fish and
23 Wildlife Service would somehow be prevented or
24 prohibited from planting forage lots on its own land?

25 A There could be. There are internal management

1 guidelines and public review processes and all kinds of
2 compatibility tests that they have to run before they
3 can do anything. So I can't speak for what they can and
4 can't do on their lands. I'm not that qualified to do
5 that.

6 Q And all these potential bars to doing so that
7 you just described, have you ever seen any documents
8 that would substantiate your opinion that there is any
9 bar or prohibition from planting forage lots on the WPA?

10 MR. MCCORMICK: Objection; misrepresents
11 the testimony.

12 THE WITNESS: I don't know what happens
13 when he objects.

14 Q (By Mr. Perry) You get to answer.

15 A Oh, okay; I didn't know that. Their
16 conservation planning process requires
17 environmental -- NEPA, you know, National Environmental
18 Policy Act, public review, input from state agencies,
19 adjoining landowners. So for them to change management
20 from just more of a natural state management to more
21 aggressive, they have to find the funding, and they have
22 to develop a rationale, and then they have to get, you
23 know, internal approval for it. That's all I know about
24 their planning process. So those steps, knowing those
25 are written down in law, might prevent them from being

1 of the Flathead WPA and all the federal lands in this
2 district of Lost Trail are all under new management in
3 Great Falls as opposed to the bison range. When that
4 transition took place somewhere in the middle of this,
5 they decided they had to revisit all their management
6 plans. And they had a public meeting, and we went to
7 that meeting. And I learned a little bit about that
8 planning process.

9 Q And in your discussions with Lynn Verlanic and
10 other people from FWS, did any of them, during the 2004
11 to 2008 time period, ever indicate to you, in words or
12 substance, that there was, in fact, a management plan in
13 place for the WPA that abuts the North Shore Ranch
14 property?

15 A Was I aware of it?

16 Q Did they inform you, in words or substance,
17 that one, in fact, existed?

18 A I think Ray Washtak said he developed something
19 for the North Shore -- or for the WPA Smith. I never
20 saw it. I assumed there was some minimal checklist,
21 something that he had. He had to do something when he
22 came up here to -- you know, he had to work with his
23 supervisors on a plan. I never saw it. I don't know if
24 it was called a plan. Maybe it was an internal
25 discussion. I don't know what he had, but I thought

1 able to accommodate increased agricultural production on
2 their lands.

3 Q Okay. But sitting here today, you're not aware
4 of any federal regulation or state law that would
5 absolutely prohibit FWS from doing that.

6 A No, I am not aware of any law that would
7 prohibit that.

8 Q Have you ever seen a management plan for the
9 WPA that abuts the North Shore Ranch property?

10 A I have not.

11 Q Do you know if one even exists?

12 A I think there may be an interim or some type of
13 management plan completed. And that's what they're in
14 the process of revising, as I understand it.

15 Q And are you aware that the WPA was first
16 established in approximately 1970?

17 A Correct.

18 Q Okay. So a management plan, would it be fair
19 to state, has been almost forty years in the making?

20 A I have no idea.

21 Q Well, you said there's an interim plan that
22 you're aware of that's being discussed right now; is
23 that true?

24 A They're developing a new plan, new federal
25 guidelines, new laws, new managers. The administration

1 there was something.

2 Q But you've never seen it.

3 A I've never seen it.

4 Q And do you know whether or not, once a wildlife
5 habitat is established to be a critical wildlife habitat
6 under the Endangered Species Act, as to whether or not
7 there's any federal requirement for the implementation
8 of a management plan?

9 A I don't know. I don't know much about the
10 critical habitat Endangered Species Act requirements.

11 Q Is it your opinion that none of the potential
12 impacts posed by the North Shore Ranch subdivision on
13 wildlife or wildlife habitat would be capable of
14 mitigation?

15 A Is it -- can you repeat that?

16 Q Sure. Is it your opinion that none of the
17 potential impacts posed by the North Shore Ranch
18 subdivision on wildlife or wildlife habitat are capable
19 of mitigation?

20 MR. MCCORMICK: Could I ask a question
21 first?

22 MR. PERRY: No.

23 MR. MCCORMICK: Just as to whether, when
24 you say "your," the definition of your, if you're asking
25 for her opinion or Fish, Wildlife & Parks'.

1 exclusively, in terms of rendering an opinion that there
2 were hundreds of species that relied upon the north
3 shore of Flathead Lake?

4 A That and -- I went through it and looked at it
5 to see if it made sense.

6 Q Okay.

7 A I was looking for species that didn't seem to
8 fit, you know, that might be outside their distribution.
9 I wanted to see about long-billed curlews and species
10 that aren't very commonly seen here. I did go through
11 it and see if it made sense from the part of the bird
12 world that I know. And it looked pretty good. And it
13 was clear that not everything was known to occur.

14 There's some likelies, and there's quite a few
15 birds in the third category here. I think there's
16 a -- I can't speak to whether Dan keeps track of them.
17 He contributes to the bird distribution all the time.
18 He's -- I think he told me, and I could be wrong, that
19 this checklist that he uses is based on them -- on other
20 confirmed observations for this latlong.

21 Q You think he may have said that he relied upon
22 other data?

23 A Yes; that he built this general checklist from
24 which he builds other checklists for which we use some
25 of our land acquisitions; that this is built off of the

1 A Not now I don't.

2 Q Okay.

3 And you'd agree with me that during the
4 pendency of this subdivision application, you had
5 repeated discussions with the Flathead Land Trust and
6 the Flathead Lakers about acquiring this property; fair
7 to say?

8 A About doing conservation with willing
9 landowners on the north shore.

10 Q And this was one of the properties that you
11 discussed acquiring, did you not?

12 A The potential, yes.

13 Q Okay. And during the course of the pendency of
14 this application, you obviously -- you conferred with
15 Robin Steinkraus about it, did you not?

16 A Robin some of the time. Mostly, Castanza* was
17 their representative to some of the conservation
18 strategy meetings.

19 Q And that's the Flathead Lakers?

20 A She's a staff member of the Flathead Lakers.

21 Q And during the pendency of this application,
22 you were aware, were you not, that the Flathead Lakers
23 wanted this application to be denied?

24 A I can't speak to what the Flathead Lakers
25 wanted.

1 latlong system. And then the bird surveys that he does,
2 he does breeding birds surveys here. The Christmas bird
3 count data that he keeps track of, all the Audubon
4 Christmas bird count data for twenty-five years. He's
5 well established in keeping all the bird data accounts
6 in Montana, this part of Montana.

7 Q Earlier you referred to Marilyn Wood as quote,
8 unquote, your colleague. Do you remember that
9 testimony?

10 A Today?

11 Q Yes, just about two minutes ago.

12 A I don't recall.

13 Q Did you consider Marilyn Wood your colleague at
14 the time that you were assisting in preparing opinions
15 on this project?

16 A I did not use Marilyn Wood as a person to
17 consult to put opinions on this project. I consulted
18 biologists, staff members, managers. Marilyn Wood
19 is -- used to be an employee, and we worked as
20 colleagues back in 1984 till '91 when she left the state
21 agency.

22 Q Do you know why Exhibit 21 started off with an
23 e-mail from Marilyn Wood to Susannah Casey and Dan
24 Casey, and the response from Dan Casey is sent to
25 Marilyn Wood and you? Do you know why that occurred?

1 Q They didn't ever tell you, in words or
2 substance, We want this subdivision application to be
3 denied?

4 A No. They more or less said they wished it
5 wasn't there. Wished it was -- you know, We could do
6 this other strategy and we didn't have this threat to
7 the land. I think -- their focus isn't denial or not
8 denial. It's just a focus on It's too bad we weren't
9 ahead of this train. We should have been out working
10 with these landowners, you know, that
11 wish-you-could-roll-the-clock-backwards kind of
12 thinking.

13 Q Is it your testimony that you never became
14 privy to any written document from Robin Steinkraus by
15 which she sought denial of this subdivision application?

16 A I could have been sent a copy of her letter. I
17 did not participate in her writing of the letter. I
18 think people exchanged information however they felt it
19 was best, you know. People ask me for technical
20 information, I would share it. And if they sent me
21 their comments -- I did ask for the Fish and Wildlife
22 comments prior to our completing ours, to help with the
23 technical information. I did not correspond or
24 intentionally correspond to develop any testimony for
25 these other organizations for their comment.

Page 145

1 (Deposition Exhibit No. 22 marked for
2 identification.)
3 Q (By Mr. Perry) Ma'am, the document marked as
4 Exhibit 22 to your deposition, have you seen this
5 before?
6 A I think so, yes.
7 Q Fair to say it was an e-mail of a draft letter
8 from Paul Williams and Robin Steinkraus, president and
9 executive director of the Flathead Lakers, dated July
10 18, 2006?
11 A Yes.
12 Q Okay. And it was sent to you on that day about
13 2:39 in the afternoon, was it not?
14 A Correct.
15 Q And I see on the third page of this document,
16 in the middle of the page, it states, and I quote, "The
17 Flathead Lakers strongly recommend that the Flathead
18 County Planning Board recommend denial and that the
19 Flathead County Board of Commissioners deny the
20 preliminary plat proposed for the North Shore Ranch
21 subdivision," close quote. Have I read that correctly?
22 A Correct.
23 Q Fair to say that in July of 2006, about a year
24 and a half before the final hearing on this subdivision
25 application, the Flathead Lakers informed you that they

Page 146

1 wanted this application to be denied?
2 A She copied me. I wasn't interested in what
3 they said. I never read -- I mean, I might have glanced
4 at it. It wasn't -- you know, it was a cc for your FYI,
5 for your information. In other words, We wrote a
6 letter.
7 Q And I'm a little confused, because I see at the
8 top of this document, page one, Robin Steinkraus stated
9 to you, and I quote, "Thanks for sharing your comments.
10 I've copied the Lakers' comment letter below for your
11 information. Thanks for your help and suggestion,"
12 close quote. Have I read that correctly?
13 A You have read that correctly.
14 Q Fair to say that you shared your comments
15 regarding this letter with Robin Steinkraus?
16 A I did not. I honestly don't know what she's
17 talking about there. What I think we did is talk on the
18 phone about comments that we were going to make,
19 comments that they -- you know, they were going to make,
20 and that's the comment she says. That helps them
21 formulate the letter, and here's the letter, by the way.
22 I do not remember editing or reading this letter prior
23 to this attachment.
24 Q Okay. So is it your testimony that you never
25 commented on this letter to Robin Steinkraus?

Page 147

1 A It is my understanding -- or my memory is that
2 I did not read her letter and provide her comments on
3 this letter.
4 Q Okay. And one final question before we break
5 until one o'clock on Monday to continue your deposition.
6 Is it your testimony that in the summer of 2006, you
7 never learned that the Flathead Lakers wanted the North
8 Shore Ranch application to be denied? Is that your
9 testimony?
10 MS. JAKES DOCKTER: Objection; asked and
11 answered.
12 THE WITNESS: In 2006.
13 Q (By Mr. Perry) Yes, ma'am.
14 A That's the same year.
15 Q Is that your testimony?
16 A Could you repeat that?
17 Q Sure. Is it your testimony that in the summer
18 of 2006, you never learned that the Flathead Lakers
19 wanted the North Shore Ranch subdivision application to
20 be denied?
21 A It's my recollection that what they put in this
22 letter, I wasn't -- I did not pay attention to.
23 Q And I'm not just limiting it to this letter.
24 A Okay.
25 Q I'm just saying, did you ever learn --

Page 148

1 A Oh, I'm sure at some point it dawned on me that
2 they probably -- I read this at some point or I was told
3 this on the phone or I was at the hearing, one or the
4 other. What I was trying to clarify is that I didn't
5 help them write this letter, in terms of editing and
6 reading it and saying You should do this. I did not do
7 that.
8 Q Okay; fair enough.
9 A I want to make that very clear.
10 MR. PERRY: Let's continue to one o'clock
11 on Monday, with Counsels' consent.
12 MR. MCCORMICK: Sounds good.
13 (Deposition in recess from 3:20 p.m. to
14 Monday, May 11, 2009, at 1:00 p.m.)
15 Q (By Mr. Perry) Ma'am, when we left last week,
16 in terms of your deposition, we talked about what
17 knowledge you had, I believe it was in the summer of
18 '06, regarding some other individuals' and entities'
19 thoughts on denial of this application. Do you recall
20 our discussion?
21 A Yes.
22 Q Okay. And, you know, before I get back to this
23 discussion, just a couple of fundamental questions for
24 you.
25 Would you agree with me that both the North

1 Shore applicant and Flathead County were entitled to
2 receive an unbiased opinion on potential wildlife and
3 wildlife habitat impacts posed from the subdivision
4 posed by FWP?

5 A Correct; I would.

6 Q And, ma'am, you'd agree with me that FWP's
7 interest in potentially acquiring the property at issue,
8 or helping others to acquire it, was and is irrelevant
9 to determining whether or not this subdivision posed any
10 impacts on wildlife and wildlife habitat.

11 A Could you repeat that, please?

12 Q Sure. You'd agree with me that FWP's interest
13 in acquiring the property, or helping others to acquire
14 it, was and is irrelevant to determining whether or not
15 this subdivision posed any impacts on wildlife and
16 wildlife habitat.

17 A The way I would prefer to answer that or to
18 restate that, I guess, the wildlife impacts were very
19 relevant in discovering and determining what those were
20 or might be. It was very relevant to our decision for
21 the acquisition.

22 Q And my question is the opposite.

23 A Or the potential conservation of some kind of
24 conservation outcome.

25 Q No; I appreciate that. My question is whether

1 A So I don't see a conflict of interest.

2 Q I'm talking in a general sense. As a general
3 proposition, would you agree that FWP would disserve the
4 public interest if its opinion on any project were
5 colored by its own self-interest or any conflict of
6 interest it might have?

7 A If there was such a conflict, that would not
8 serve the public well.

9 Q So you'd agree with that statement.

10 A Yes, I would agree with that, I hope, uh-huh.

11 MR. PERRY: I don't know if we marked this.
12 Could we just go off the record for a second?

13 MR. MCCORMICK: Sure.

14 (A discussion was held off the record.)

15 Q (By Mr. Perry) Ma'am, I'd present you with
16 Exhibit 3 to Mr. Satterfield's deposition and ask you if
17 you can identify that document for me.

18 A This is -- let's see. Okay; it is some
19 comments to Johna Morrison, Flathead County Planning and
20 Zoning, in '04 -- 2004, February 24th, by myself
21 responding to their request for comments for three
22 preliminary plats.

23 Q And the first three pages of this document,
24 anyway, is a letter that you, in fact, wrote yourself;
25 is that true?

1 or not FWP was at all interested in acquiring this
2 property or helping others to do so, FWP's determination
3 as to whether or not this subdivision posed any impacts
4 on wildlife or wildlife habitat was a separate and
5 distinct inquiry from whether or not you wanted to own
6 the property or anything like that.

7 A That is correct.

8 Q Okay. And you'd agree with me that FWP would
9 disserve the public's interest if its opinions were
10 colored by self-interest or any conflict of interest.

11 A Our opinions for the subdivision were
12 professional, independent, just what you were saying
13 early on.

14 Q And my question is, would you agree that FWP
15 would, in fact, disserve the public interest if opinions
16 that it rendered, in particular with respect to this
17 subdivision application, were colored by any
18 self-interest or conflict of interest that FWP might
19 have?

20 A I just -- I have trouble with the concept of
21 conflict of interest here. I don't see a conflict if
22 you see there's concerns about a development on wildlife
23 impact and you're supporting by saying If we have the
24 opportunity we'd like to help maintain that.

25 Q And I'm talking in a general sense.

1 A It is.

2 Q Okay. When you wrote this letter with respect
3 to these three subdivisions, Farmland Acres, Pheasant
4 Haven and Mackinaw Estates, did you consult with any
5 other employees here at FWP in writing this letter?

6 A I did.

7 Q With whom did you consult; do you recall?

8 A Oh, 2004, Jim Williams, I believe,
9 was -- reviewed everything that we commented -- or
10 whoever the manager was -- and I think he's been here
11 since 2000 -- always reviewed the comments.

12 Q Uh-huh.

13 A Let's see. These were a long time ago.
14 Probably Dwight Bergeron in our office is an
15 ornithologist. I mean, we have these discussions in
16 general, frequently, when these things come in. So I
17 can't remember everybody I might have talked to.

18 Q Okay. And just in a general sense, when you
19 get a letter from the county requesting your input, or
20 FWP's input on a given subdivision, do you have
21 any -- or did you at this time have any custom or habit
22 in terms of initially consulting with employees at FWP
23 about the project, or how do you approach preparing a
24 letter like this?

25 MR. MCCORMICK: Objection; compound

1 question.

2 **THE WITNESS:** The first part, is there a
3 general -- could you repeat that part?

4 **Q** (By Mr. Perry) Sure. Is there a general
5 custom or habit that you had back in '04 with regard to
6 how you approached creating a document such as this,
7 once you got a notice in from, say, Flathead County of
8 the pendency of subdivision applications?

9 **A** If we review the application and you see Oh,
10 you know, there might be some concerns you might have
11 with, you know, habitat or hunting or any of those, you
12 usually discuss it right away with your supervisor and
13 manager, discuss with other people who know the area.
14 If it's a stream, we talk to Mark Deleray in fisheries
15 or the appropriate fisheries biologist. Sometimes we
16 combine our comments into one letter. If there's
17 federal lands, in this case, and in the -- in this case
18 because of Blasdel, we consulted -- I typically consult
19 with the land manager who was probably Ray Washtak back
20 in 2004. So you jogged my memory a little bit there.
21 And if there's additional information that you need on
22 bald eagles or others, we consult with -- in our
23 department and often with Fish and Wildlife Service. So
24 it really depends on the proposal.

25 **Q** Okay. And would that be the general mechanism,

1 impacts posed by these three subdivisions?

2 **A** Can I take a check and see what I put in here?

3 **Q** Please do.

4 **A** I think the information was mostly
5 hunter-provided information over the years, not
6 scientific reports and that type of things. What
7 hunters tell us, knowledge of the area, having worked
8 with many of these landowners prior to this proposal in
9 terms of what's on their land and when they come and
10 that typical -- what you can see and observe from living
11 in the valley and working in that area.

12 **Q** Okay.

13 **A** Not a lot of detailed scientific reports were
14 done on these properties and could be utilized.

15 **Q** So, essentially, would it be fair to say that
16 some of your opinions, anyway, expressed in this letter,
17 Exhibit 3, would have been predicated upon statements
18 that hunters had made to you?

19 **A** Definitely.

20 **Q** Okay.

21 **A** And landowners.

22 **Q** And landowner.

23 **A** Uh-huh.

24 **Q** And, ma'am, in reviewing this property, you've
25 had a chance to read through this letter and compare it

1 so to speak, of preparing this document, Exhibit 3?

2 **A** I believe it was joint. My name is on it, but
3 I think Jim Williams and I went over the actual, you
4 know, review of it and editing and, you know, anything
5 that needed tweaking. He usually adds a few things,
6 changes a few words. And substantively, the technical
7 information generally comes from the biologist.

8 **Q** Okay. And in this particular circumstance,
9 Exhibit 3, this technical information that you've
10 described that comes from the biologist, would that be
11 information that came from you or you with consultation
12 with other people?

13 **A** A combination; just years and years of this
14 kind of stuff and constantly consulting and probably
15 firming up that concern or, you know. So I think there
16 was some reference maybe in number of hunter days in
17 here. Something like that might come from somebody
18 managing the land nearby.

19 **Q** And do you recall, sitting here today, and I
20 know it was some time ago, I appreciate that, but do you
21 recall with respect to these three subdivisions that you
22 addressed in this letter, Exhibit 3, aside from perhaps
23 discussing it with Mr. Williams or Mr. Bergeron or other
24 employees of FWP, did you, yourself, review any
25 scientific data with respect to, you know, potential

1 to some of the letters from FWP regarding the North
2 Shore Ranch project. And I see that some of the
3 descriptions of the habitat differ in this general area
4 between the two sets of letters. And by that I mean, in
5 the North Shore Ranch project, as you know, letters
6 written by Mr. Satterfield and FWP characterized the
7 land at issue, the North Shore Ranch property, as
8 containing critical wildlife habitat. Do you recall
9 that?

10 **A** Yes, I do.

11 **Q** Now, Mackinaw Estates, for instance, that's a
12 piece of land that's very close to the WPA, is it not?

13 **A** It's at the junction -- or close to the
14 junction of North Somers Road and near Highway 83. It's
15 closer to Highway 83 than the WPA.

16 **Q** Can you approximate -- I'm sorry; were you
17 done? I didn't mean to cut you off.

18 **A** I think it's closer to the highway than it is
19 the WPA. I can't tell you exact distances. It's
20 probably on that aerial photo.

21 **Q** Well, let me ask this question. Does Mackinaw
22 Estates, to your knowledge, that piece of land, does it
23 lie in proximity to the North Shore Ranch property?

24 **A** Yes, it does.

25 **Q** Okay. Does it border it; do you know?

1 A It does on one side, I believe.
 2 Q And is it to the north of the North Shore Ranch
 3 property?
 4 A It's west.
 5 Q West.
 6 A May I look at this map?
 7 Q You bet; sure.
 8 A I believe, yeah, it's just to the west.
 9 MR. MCCORMICK: Can we indicate for the
 10 record that the witness is referring to Exhibit 14?
 11 MR. PERRY: Thank you, Counsel.
 12 Q (By Mr. Perry) Would it be just due west, or
 13 is it northwest?
 14 A Due west.
 15 Q Due west. And, ma'am, I see on Exhibit 3, on
 16 page two, with respect to Mackinaw Estates, you
 17 indicated, and I quote, "Although the area may be
 18 suitable for development as it is close to Somers, we
 19 want to point out that the wetland complex is just to
 20 the north and south are very important resting, foraging
 21 and staging area for migratory birds as well as for
 22 upland game birds," close quote. Have I read that
 23 correctly?
 24 A Yes, you have.
 25 Q Would it be fair to say that in your addressing

1 A I believe we were working with the county as we
 2 still are, to produce maps in conjunction with the
 3 county and did not -- I don't believe we did submit
 4 something that we didn't feel was -- would have been
 5 ready at that time.
 6 Q Okay.
 7 A If that was the intention to do this, but
 8 getting it done is a lot harder than one would think.
 9 Q And I guess that's my question. Today, as we
 10 sit here, has -- to your knowledge, has FWP promulgated,
 11 either with the assistance of the county or without it,
 12 any mapping of sensitive wildlife areas in the county?
 13 A We do have maps on our web -- on the Montana
 14 Natural Heritage Program or Montana Natural Resource
 15 Information websites of big game, big game winter
 16 ranges. There may be others. I think you referred to
 17 the white-tailed deer density map. I believe there's
 18 others. Just about anything that we complete in a
 19 cohesive manner, you know, using all the biologists'
 20 inputs sitting in rooms with federal or other nearby, we
 21 put on the website -- or on the state library website
 22 when they're done. So there could be more up there that
 23 I'm not familiar with.
 24 Q And do any of these maps that you've just
 25 described, in any way, address any portion of the North

1 the Mackinaw Estates subdivision proposal, you failed to
 2 opine that any of the wetland complexes in its vicinity
 3 constituted critical wildlife habitat?
 4 A I did not use the word "critical." I said
 5 "very important."
 6 Q And, ma'am, with respect to any of the three
 7 subdivisions addressed in Exhibit 3, did you ever
 8 express any opinion that either they contained critical
 9 wildlife habitat or they were in proximity to critical
 10 wildlife habitat?
 11 A I did not use the word "critical" if you didn't
 12 find it in here. And I haven't seen it.
 13 Q Okay. And in my reading of it, I failed to
 14 find it as well. Is that consistent with your memory?
 15 A Yes.
 16 Q And, ma'am, on page three of this document, I
 17 see there's an indication made just before your closing
 18 sentence -- or sentences, you stated, quote, "We are
 19 working on a specific map that will help the county's
 20 planning staff recognize the most sensitive wildlife
 21 areas along the Flathead River," close quote. Do you
 22 see that indication?
 23 A I see it.
 24 Q Do you know if you or FWP ever prepared and
 25 provided the county with that map?

1 Shore Ranch property, to your knowledge?
 2 A I believe there's no critical maps or wildlife
 3 maps, per se, for that area except the white-tail -- the
 4 big game maps would be there.
 5 Q How about for the WPA? Is there mapping as
 6 you've described it of the WPA itself that abuts the
 7 north shore property?
 8 A There is a GIS layer known as protected lands
 9 or stewarded lands, I don't remember the exact name of
 10 it, that deals with all the conservation lands in the
 11 state, all the easements, waterfowl production areas.
 12 Specially managed lands, I think it's called. Or at
 13 least that includes that category of lands. So our
 14 wildlife management areas, federal wildlife management
 15 areas, the conservation easements that public or private
 16 entities hold is called the stewardship layer. And
 17 that's a really important element of those important
 18 natural areas of the state. It's something that a
 19 landowner or developer would be able to consult and say,
 20 Ah, look at this. Somebody is doing these things.
 21 Because it doesn't show up on all maps. It's kept at
 22 our state library, and we disburse that to everybody in
 23 counties, and hopefully people use it for planning.
 24 Q I'm sorry, I didn't mean to interrupt. Would
 25 the overlay you've described, would that just provide

1 information as to land that was either subject to a
2 conservation easement or was conserved through state or
3 federal authority?

4 A Any private donated easement. All the private
5 land trusts participate to the extent that they can. So
6 Flathead Land Trust, Montana Land Reliance, Nature
7 Conservancy, Elk Foundation, all those voluntarily put
8 their donated easements up on the website as well.

9 Q Okay. But in terms of the mapping that we had
10 described in Exhibit 3 of sensitive areas, would you
11 agree with me that this overlay that you've described of
12 easements and land that's been set aside is not the
13 equivalent of a map of sensitive wildlife areas?

14 A I would agree with you.

15 Q You would agree with me.

16 A I would. It's not -- that protected lands or
17 stewardship gives you some idea of sensitive areas
18 because it has the wildlife areas on it.

19 Q Ma'am, do you recognize Exhibit 8? I suggest
20 to you I received this document from FWP in response to
21 our subpoena. And I'm just having some trouble
22 identifying who wrote it.

23 A I have no idea.

24 Q Do you recognize --

25 A It is my writing. I don't recognize what it is

1 A It could, or it could apply to any property on
2 the north shore such as the Miller property or working
3 with the other landowners.

4 Q Okay.

5 A I don't know.

6 Q And, ma'am, turning your attention, if I could,
7 to Exhibit 1 to Mr. Satterfield's deposition, do you
8 recognize this document?

9 A Yeah, I recognize it. I haven't reviewed it
10 since many years ago.

11 Q Okay. And I guess my simple question is, this
12 document dated October 14, 2003, apparently promulgated
13 by Mr. Vincent, Dan Vincent, regional supervisor, is
14 this a document that you had any input into; do you
15 recall?

16 A I'm sure I prepared the draft; uh-huh.

17 Q And is that customary at FWP for you to prepare
18 drafts on occasion of letters that will be signed by the
19 regional supervisor?

20 A Often when it looks like there's going to be a
21 conflict in the -- and we get lots and lots of
22 subdivisions we don't comment on. And sometimes we
23 comment very minutely. But if it looks to you there's a
24 significant issue, then our internal policy has evolved
25 over the last decade, we immediately talk to

1 or when it is or what it was for or whose project.

2 Q Okay.

3 A Let me get a handle on it here. Okay; I still
4 can't identify -- except for it says "whole north shore"
5 down here.

6 Q At the top left I see there's an indication
7 "Venturini"?

8 A I believe that's a duck -- there's a guy with
9 that last name who's with the -- maybe Ducks Unlimited.
10 He may have called.

11 Q Can you tell from looking at Exhibit 8 whether
12 or not it is a document that applies to the North Shore
13 Ranch project we're here discussing today?

14 A Only by "Consider other alternatives - whole
15 north shore" is the only thing that would indicate it.

16 Q I see on the right-hand side, and maybe you
17 could read it for me, there's a little block here on the
18 right-hand side. Can you just read that for me?

19 A "Sig" would probably mean "significant
20 management area or others." Doesn't make sense. But
21 "FWP would be willing to manage 200 or more acres."

22 Q Do you know whether or not that applies to the
23 North Shore Ranch property, that statement?

24 A I do not.

25 Q Okay.

1 supervisors. So you're not -- you're putting something
2 together that makes sense, you know, has got other eyes
3 reviewing it. So you're doing it the best job you can
4 pulling the information together. Did you think of
5 this? Do you know about that? You know, just so you're
6 comfortable that -- the public's going to read this.

7 You know the public's going to read something like that.

8 Q How, during your tenure at FWP has a decision
9 been made, in circumstances like this, as to whether or
10 not you will write the letter and sign the letter, as
11 Exhibit 3 demonstrates, or whether or not the regional
12 supervisor will sign the letter, as Exhibit 1
13 demonstrates?

14 A I think, because of this particular
15 development --

16 Q You're referring to Exhibit 1?

17 A -- in our office, I think a lot of
18 general -- conversations would occur between the
19 manager, Jim Williams's position, and the biologist's
20 position, on most subdivisions. In the case of
21 something that there's community concern, sportsmen have
22 called, others have called, you've had meetings with the
23 developer, landowner, and you suspect there's going to
24 be some controversy or, you know, the planning board, at
25 the meeting there's going to be 25 people showing up or

1 whatever, then it's elevated. And sometimes you just
2 don't know. And I wrote maybe that -- one of these
3 letters because probably more -- if that's a shortage of
4 time, you just sometimes have to send them out. Because
5 that day they need to have the comment in order to put
6 it into the report, the staff report. So sometimes I
7 believe especially under e-mail I may only have a chance
8 to write it, and I tell somebody I'm writing this letter
9 and I copy them. Other times you have more time and
10 it's fairly controversial or it could be, you run it up
11 the food chain just so everybody's on the same page,
12 because you never know who's going to call. So you want
13 your supervisor to always know what you're doing. And
14 they want their supervisor to know. And it's just a way
15 to keep everybody informed. It's one of the ways.

16 Q So it would be fair to say that if a given
17 project or subdivision application that's come into your
18 office here, if you have a sense that it may be a
19 controversial project, that you would pass it up the
20 food chain, as you have described, so that your boss or
21 his boss could sign off on the final letter?

22 A Yes.

23 Q As a general proposition, when you know that
24 it's going to be, for instance, your boss's boss,
25 Mr. Satterfield, who is going to sign a letter, what, if

1 and our experience. I'm not accustomed, nor do we have
2 the time, nor would my supervisor let me go into deep
3 literature reviews on every subdivision that came across
4 our desk or that we've commented on during those years.
5 If people need that, that's a different standard, and we
6 might need to maybe try that some day. But it's not a
7 standard we work under now.

8 Q Okay. And has -- in your experience, dealing
9 with Flathead County, has the county ever requested from
10 you any support for any of the opinions you offer in
11 letters?

12 A Not to my knowledge.

13 Q Ma'am, calling your attention to Exhibit 2 to
14 your deposition, ask you if you -- or Exhibit 2 to
15 Mr. Satterfield's deposition, ask you if you recognize
16 that document.

17 A I do.

18 Q Fair to say it's a petition that was signed by
19 a number of people, including yourself, during December
20 of '03 calling for Flathead County to -- the
21 commissioners to deny Ficken Farm Phase I and II and the
22 Sky View Estates subdivisions as proposed near Blasdel
23 waterfowl production area?

24 A I forgot all about it. It looks familiar. I
25 mean, I recognize the names.

1 anything, do you do to bring Mr. Satterfield up to speed
2 on the scientific data or objective data that would
3 support opinions that you've drafted?

4 A I'm not sure the supervisor's looking for
5 extensive objective data. I think they're looking for
6 your opinion and whether you've supported your opinion
7 in the letter, whether the letter meets what the
8 planning boards or the government entities are looking
9 for so you're not talking about other issues that aren't
10 relevant to the plat or those kinds of things. Just
11 it's a coherent -- gives facts where you have them, that
12 type of letter. So it's not a scientific review of your
13 letter. It's a, you know, more eyes that read
14 something, usually the better the product.

15 Q And as a general proposition when you,
16 yourself, undertake to author a letter like this,
17 whether in a draft form for Mr. Satterfield or for
18 yourself to send out under your signature, do you have a
19 custom or habit of citing to, say, peer-review journal
20 articles or objective data that would support your
21 opinions?

22 A As a management biologist, typically -- and my
23 understanding of the Subdivision Planning Act, they're
24 looking for our best knowledge; what we are work -- our
25 working knowledge some of which came from our education

1 Q Is that your signature at the bottom of the
2 page, second-to-the-last name?

3 A Uh-huh.

4 Q That's a "yes"?

5 A Yes.

6 Q And, ma'am, just a general question. You were
7 obviously personally against these three subdivisions;
8 fair to say?

9 A In '03 I, honestly, was more concerned with the
10 county's process of reviewing and listening to
11 information that our agency provided and others provided
12 at this time. It was -- they were ignoring it all.

13 Q Well, you'd agree with me --

14 A So that was my biggest concern.

15 Q -- by signing this document, you essentially
16 petitioned the Flathead County commissioners to deny
17 Ficken Farms Phase I and II and Sky View Estates
18 subdivisions.

19 A It doesn't say anything about denying it that I
20 see here.

21 Q In the second sentence it states, and I quote,
22 "We request the Flathead County commissioners deny the
23 Ficken Farms Phase I and II and the Sky View Estates
24 subdivisions as proposed near Blasdel Waterfowl
25 Production Area." Have I read that correctly?

1 A Correct.

2 Q You'd agree with me that by signing this
3 document, you joined with others in calling for the
4 Flathead County commissioners to deny those three
5 subdivisions.

6 A Correct.

7 Q And, ma'am, you'd agree with me that as a
8 general proposition, if you, on a personal level, are
9 opposed to these subdivisions, it would be impossible
10 for you to render an objective opinion on what, if any,
11 impacts they posed on wildlife or wildlife habitat.

12 A I don't agree with that statement.

13 Q So is it your testimony that despite the fact
14 you were personally opposed to these three subdivisions,
15 you could still provide an objective opinion as to what,
16 if any, impacts they posed on wildlife or wildlife
17 habitat?

18 A I believe so.

19 Q Okay.

20 Ma'am, during the course of your evaluation of
21 these projects, including the North Shore Ranch project,
22 you'd agree with me that, in a general sense, fencing
23 can adversely impact wildlife and wildlife habitat?

24 A Some fencing for some species, yes.

25 Q For instance, on the North Shore Ranch

1 A Barbed wire is probably the problem.

2 Five-strand barbed wire fence, typical, so it's hard to
3 go under or over, especially younger animals, is
4 probably -- has an impact on animals trying to cross it
5 at certain times of the year. Split-rail fence can be
6 negotiated pretty easily by most ungulates.

7 Q But a barbed wire fence, in general, can have
8 an adverse impact on ungulates. You'd agree with me?

9 A Most of them do, yes.

10 Q Ma'am, the document marked as Exhibit 5 to your
11 deposition, if I could just refer you to that.

12 MR. MCCORMICK: Would that be
13 Mr. Satterfield's deposition?

14 MR. PERRY: I'm sorry. Mr. Satterfield's
15 deposition; thank you.

16 THE WITNESS: Okay.

17 Q (By Mr. Perry) Ma'am, the document marked
18 Exhibit 5, fair to say it's a letter from you to Kirsten
19 Holland at Flathead Planning and Zoning, dated July 17,
20 2006?

21 A Yes.

22 Q And, ma'am, fair to say that this e-mail
23 addresses the North Shore Ranch project we've been
24 discussing?

25 A Yes, I do.

1 property, if it -- as we discussed last week, if it were
2 to be used to graze cattle, obviously the owner would
3 have to have fencing to keep the cattle out of the WPA,
4 for instance; true?

5 A True.

6 Q Now, it's my understanding that, as a general
7 proposition, fencing such as that that would be
8 necessary to keep cattle from entering the WPA and
9 entering other people's property, generally doesn't have
10 a beneficial effect on wildlife in the area. Is that
11 fair to say?

12 A Fencing can be constructed in a way -- smooth
13 wire fencing, wildlife crossing areas, can have almost a
14 negligible impact on wildlife, depending on the type of
15 fence and what species are there.

16 Q Let's say --

17 A That's why I was qualifying, because it
18 depends.

19 Q Let's call it a standard split-rail fence with
20 barbed wire --

21 A Uh-huh.

22 Q -- that borders the waterfowl production area.
23 In terms of, let's say, ungulates, would that have a
24 beneficial or an adverse effect on the movement of
25 ungulates?

1 Q And fair to say you had had an opportunity to
2 review a report that the applicant had provided to the
3 county from Dr. Joe Elliot?

4 A It was sent to me by Kirsten, I presume;
5 uh-huh.

6 Q And obviously before you wrote this e-mail, you
7 had a chance to review that report, did you not?

8 A I did.

9 Q And did Kirsten Holland send you this report
10 out of the blue, or did you request it? How did that
11 come about?

12 A I believe after, I'm not sure what, the hearing
13 or the newspaper or some -- at some point after we
14 submitted our comments, the county said
15 something -- either she or somebody said There's
16 conflicting comments -- or conflicting -- different
17 kinds of comments coming from the developer. And I said
18 Oh, I didn't see those. All we get is a little planning
19 request for comments and a little map from the county.
20 We don't get extensive other information. And so I said
21 Well, if there's additional information from the
22 developer, then I suppose I should -- I think she asked
23 for my comments. She goes How do I respond to his
24 comments? I said I don't know what Dr. Elliot's
25 comments are, so she sent it to me and she asked for my

1 response.
 2 Q So she solicited your response.
 3 A I believe so.
 4 Q And I see in the middle of the page there's an
 5 indication made, and I quote, "I think this area would
 6 be an ideal target area for an open space bond or TDRs.
 7 It is highly visible and important. There are acres of
 8 restorable wetlands, there's a land management entity
 9 that would be willing to manage these lands, and there
 10 are benefits to water quality and potential for
 11 increased recreational opportunities. There are many
 12 grant programs available for these conservation
 13 purposes," close quote. Have I read that correctly?
 14 A Yes, you have.
 15 Q And at this point in time, obviously your
 16 agency and you, in particular, had been called upon to
 17 express opinions on potential impacts on wildlife and
 18 wildlife habitat; true?
 19 A True.
 20 Q Okay. And did you consider it to be within the
 21 scope of that task to express opinions on open space
 22 bonds or transferable development rights, that type
 23 thing?
 24 A I think it's in this -- in the scope of
 25 commenting and growth policies and subdivisions and

1 to say This is an educational moment. I can provide
 2 information beyond the typical Let's just comment on the
 3 subdivision. That information could be used or not used
 4 by the county.
 5 Q And at this time in July -- yeah, July of 2006,
 6 did you have any educational background in land use
 7 planning?
 8 A Let's see. I believe we've covered it numerous
 9 times at our wildlife society meetings. There's been
 10 papers. I can't recall any detailed workshops just like
 11 a planning -- planner level workshops, though I've
 12 attended some since. I believe we had division
 13 meetings, wildlife division meetings where the topic of
 14 land use and subdivisions and what were we are all
 15 grappling with with the number of proposals coming
 16 across our desk, what our agency was expected to do.
 17 Those discussions went on all the time. How do we
 18 respond? How does Region Three respond? How does
 19 Region Two respond? Who's in charge? So there was
 20 quite a bit of self-education within the department,
 21 fish and wildlife and parks, in terms of recreation in
 22 How do we respond? and What kind of information do they
 23 want? and, you know, How do we do this? I think up
 24 until this point, we didn't have a land use planner on
 25 staff. We did begin thinking about hiring one in about

1 cumulative effects and seeking a way to conserve
 2 important habitats, it's within our scope to put
 3 together options or ideas on how conservation can be
 4 achieved. It's in our mission to do that. I think it's
 5 an option that the county should be looking at for these
 6 kinds of areas, whether it's this project or any future
 7 project.
 8 Q So is it your opinion that when your agency and
 9 you, in particular, are called upon to respond to an
 10 application for a subdivision that's been filed, you're
 11 entitled to express opinions not only on impacts on
 12 wildlife and wildlife habitat but, in fact, on how the
 13 county should or could manage a particular area of land?
 14 Is that your testimony?
 15 A I believe that's okay.
 16 Q And you'd agree with me, however, that that
 17 issue set forth in that particular paragraph is not
 18 linked, in any substantive sense, to the question of
 19 what impacts are posed on wildlife or wildlife habitat.
 20 A I think it's connected in that if you identify
 21 and your expertise shows or your testimony shows or your
 22 information shows that it's a significant wildlife area
 23 and that there are alternatives for these kinds of
 24 significant -- to protect these areas so they're not
 25 lost or not changed, I think this is a great opportunity

1 2007 and put together a description of what that person
 2 would do and how they could help us become better at
 3 this.
 4 Q Okay. Would you agree with me that in 2006,
 5 anyway, when you and your office received notice of a
 6 subdivision application that had been filed, the county
 7 didn't ask for your advice on land use planning, did it?
 8 A In 2006 we were going through the growth
 9 policy, beginnings of the growth policy. And they did
 10 ask us to participate. I've been participating in
 11 county master plans and growth policies since the
 12 mid-'90s.
 13 Q My question is with respect to a subdivision
 14 application has been filed and you get a notice letter
 15 from the county, and the letter says This application
 16 has been filed. If you wish to comment, please do so,
 17 in words or substance; right?
 18 A Correct.
 19 Q You'd agree with me that at no time in any of
 20 the letters that you've received from Flathead County,
 21 has Flathead County expressly requested you to opine on
 22 any issue pertinent to land use planning.
 23 A Not in those letters.
 24 Q I see at the end of this document, Exhibit 5,
 25 you indicate, and I quote, "This project will set a

1 precedence for other landowners along the north shore
2 either way. It has huge implications for this portion
3 of the valley. I would like to have the opportunity to
4 see if we, the local, state, federal agencies, along
5 with other partners, could work with the north shore
6 landowners to protect this important area rather than
7 wish we had done so ten years from now," close quote.
8 Have I read that correctly?

9 A Yes, you have.

10 Q When you refer to quote, unquote, "other
11 partners," to whom were you referring?

12 A It says "local, state, federal agencies, along
13 with other partners." The funding entities, such as
14 North American Wetlands Conservation Act, Farm and Ranch
15 Protection Program, Land Trust and conservation
16 organizations that can bring money to the payable, land
17 management expertise.

18 Q Okay.

19 A Are typical partners.

20 Q And amongst that group of other partners, did
21 you then consider the Flathead Land Trust to be one of
22 those potential other partners?

23 A Yes.

24 Q And would the Flathead Lakers have been
25 considered by you at this time to be one of those

1 here's some other thoughts.

2 Q And at this time, it's fair to say that as of
3 July of 2006, you, yourself, were of the opinion that
4 this north shore of Flathead Lake should be conserved,
5 if possible; fair to say?

6 A Yes.

7 Q And you sought to alert the county to your
8 opinion in that regard, at least by this e-mail; fair to
9 say?

10 A Yes.

11 Q And your thoughts on that, your opinion that it
12 should be conserved, did you find that to be
13 substantively linked to your opinions as to what, if
14 any, impacts the application posed on wildlife and
15 wildlife habitat?

16 A Could you repeat that?

17 MR. PERRY: Can you read that back, please?
18 (Whereupon the previous question was read back
19 by the court reporter.)

20 THE WITNESS: It's more like the
21 substantive link, what that means. I can see where
22 these might be two sides of a coin. The comments on the
23 development are of a nature that if they're significant
24 enough to say there are concerns about the wildlife and
25 wildlife habitat arises to such a level that you think

1 potential other partners?

2 A Yes.

3 Q And would the Citizens for a Better Flathead
4 also have been included by you at that time amongst that
5 group?

6 A Not necessarily.

7 Q Are there any other or were there any other
8 local land trust or nonprofit organizations that you
9 then considered to be amongst that group of quote,
10 unquote, "other partners"?

11 A Flathead Wildlife, Inc., Pheasants Forever,
12 Ducks Unlimited, Montana Land Reliance come to mind, off
13 the bat, that might be interested in an initiative like
14 this.

15 Q And, again, to the extent that you express
16 opinions on, or statements anyway, on essentially
17 conservation in this last paragraph, did you consider
18 that to be within the request from the county for you
19 to -- or your agency to express an opinion on wildlife
20 and wildlife habitat impacts?

21 A I think their request from us is very broad,
22 and they've asked for background on lots of issues. So
23 I didn't feel -- I felt it was within the realm of -- it
24 might not be what they were expecting, but it was within
25 the realm of Here's what I know about the area, and

1 they should be conserved, and you're willing to put your
2 money where your mouth is, then I see it as the same
3 coin, just two sides of the same coin. So they're
4 substantively linked but not -- I don't know if that
5 answers your question, I guess, if that's what you were
6 looking for.

7 Q (By Mr. Perry) Nope; that's fair enough.

8 Now, we see in some of the letters
9 Mr. Satterfield wrote regarding this project, that he
10 was of the opinion that the north shore of Flathead Lake
11 was an other area of quote, unquote, "national
12 significance," close quote. Do you recall that
13 statement?

14 A I do.

15 Q And he testified that during the pendency of
16 this application, the letters that he signed were, in
17 fact, drafted by you and Mr. Williams and other people
18 who were beneath him. Is that true?

19 A Correct.

20 Q And with respect to the letters that he wrote
21 with respect to the North Shore project, obviously you
22 took some part in drafting those letters; fair to say?

23 A Correct.

24 Q With respect to those letters, did you offer
25 the opinion that the north shore of Flathead Lake was an

1 area of national significance?
 2 A I can't recall if that was mine or Jim's or
 3 Tom's or anybody's. I don't recall that; if that was me
 4 or someone else.
 5 Q Okay. Would there be any documentation
 6 anywhere that could refresh your memory in that regard,
 7 to your knowledge?
 8 A To where the statement came from or why the
 9 statement was used?
 10 Q Yes, ma'am, where the statement came from.
 11 A I don't know where I would find that.
 12 Q Okay.
 13 Now, as we know, this was not an area that had
 14 been established to be critical wildlife habitat under
 15 the Endangered Species Act; correct?
 16 A Under critical as defined by the Fish and
 17 Wildlife Service.
 18 Q As defined by the Fish and Wildlife Service.
 19 A Correct.
 20 Q And I guess my question is, is this term "an
 21 area of national significance," is that a term of art in
 22 wildlife biology? Or how does one define that term?
 23 A I think we use -- in a lot of resources, we use
 24 state and local importance, cultural resources,
 25 or -- and we have statewide significance, we have our

1 don't know if they've thought about designating any of
 2 these areas or not. I don't know -- I have only heard
 3 of very few, like ICUN or whatever, international like
 4 areas off the coast of various countries where there's
 5 coral beds, you know, that have this sort of
 6 international significance. I don't know of any
 7 criteria in the Fish and Wildlife Service or any program
 8 that would designate an area, other than federal
 9 ownership, that would be like that.
 10 Q Okay.
 11 A Like a national significance.
 12 Q And that's my question. In light of the fact
 13 that Fish and Wildlife Service is, in fact, a federal
 14 agency that's charged with oversight of wildlife and
 15 wildlife habitat throughout the 50 states, my question
 16 was whether or not you knew whether or not they had also
 17 agreed with your characterization that this area was an
 18 area of national significance.
 19 A I do not know if they had agreed.
 20 Q Do you know what, if any, data you or others at
 21 FWP relied upon in coming to characterize this, the
 22 north shore of Flathead Lake, as an area of national
 23 significance?
 24 A I think I can only guess at this point that the
 25 thought process was the value of the lake, because it is

1 comprehensive comp plan, comprehensive fish and
 2 wildlife. We work at a statewide level. And then
 3 things that are probably of national significance are
 4 for species that move across national boundaries, have
 5 national funding sources or protections on them.
 6 In terms of Flathead Lake, which is maybe the
 7 source of the thinking for this, because it's the
 8 largest freshwater lake west of the Mississippi it meets
 9 standards for clarity and importance in terms of on a
 10 national scale. And the fact there's migratory birds
 11 that cross boundaries -- international boundaries from
 12 Mexico, South America, all the way to Alaska, I think
 13 those are the factors that enter into one's working
 14 definition of national significance. I don't know of
 15 any hard-core standards in this context that we were
 16 following or thinking of at the time.
 17 Q And do you know, with respect to Flathead Lake,
 18 to your knowledge, has the Fish and Wildlife Service, US
 19 Fish and Wildlife Service ever opined that it is an area
 20 of national significance, the north shore of Flathead
 21 Lake?
 22 A I don't know what process they would -- if they
 23 have a process --
 24 Q Do you know, is my question.
 25 A No, I don't know if they have a process. I

1 thought of as a pretty significant resource in terms of
 2 the western US; the value of the migratory birds that
 3 come here on their way to other places and return; and
 4 the federal ownership that gives some protection to that
 5 resource. And those would be the primary factors going
 6 into that statement, I would guess.
 7 Q Okay.
 8 Now, during the course of the North Shore Ranch
 9 application, the pendency with Flathead County, fair to
 10 say you had discussions and sent e-mails back and forth
 11 between yourself and your agency and US Fish and
 12 Wildlife Service?
 13 A Correct.
 14 Q And at one point in time, US Fish and Wildlife
 15 Service also wrote a letter about this project, did it
 16 not?
 17 A I think they'd written a couple, yes.
 18 MR. PERRY: A couple letters; thank you.
 19 And let me show you -- or jump ahead a little bit and
 20 show you that -- one of the letters regarding this
 21 project that I believe was prepared by Ms. Verlanic, if
 22 I can find it. I'm sorry; Kathleen Burchett.
 23 (Deposition Exhibit No. 23 marked for
 24 identification.)
 25 Q (By Mr. Perry) Ma'am, the document marked as

1 Exhibit 23 to your deposition, have you seen this
2 document before?

3 A I believe I have.

4 Q Okay. And fair to say it's an April 22, 2008
5 letter from Kathleen A. Burchett, a complex manager for
6 the United States Department of the Interior Fish And
7 Wildlife Service?

8 A Correct.

9 Q And she managed at that time the Benton Lake
10 National Wildlife Refuge, did she not?

11 A As well as all the management areas over on
12 this side.

13 Q On this side of the State of Montana?

14 A The Flathead District. I'm not sure what they
15 call it, but Lost Trail National Wildlife Refuge, Smith
16 Lake, Batavia, North Shore, Blasdel, all that complex is
17 now under their management as well.

18 Q And I see that contrary to the March 2008
19 letter from Mr. Satterfield, Ms. Burchett fails to
20 express any opinion that this area is an area of
21 national significance; fair to say?

22 A They don't use that term.

23 Q And she also fails to render any opinion that
24 this area, and by that I mean the North Shore Ranch land
25 abutting the WPA, is critical wildlife habitat.

1 Q And, ma'am, do you agree -- well, strike the
2 question.

3 I see Ms. Burchett also states in the next
4 paragraph, and I quote, "Modifying the location of the
5 trail, increasing the buffer width to at least 150 yards
6 (primarily for safety purposes) and ensuring that the
7 Service is consulted prior to construction activities
8 occurring closest to an active bald eagle territory will
9 assist in minimizing impacts," close quote. Have I read
10 that correctly?

11 A Yes, you have.

12 Q Do you agree with that?

13 A I think those help in mitigating impacts.

14 Q Do you agree that those undertakings, so to
15 speak, would assist in minimizing impacts posed by this
16 subdivision?

17 A They assist in minimizing. It is not to say
18 that these alone mitigate for all the impacts.

19 Q I see at the conclusion of that paragraph
20 there's a statement, quote, "All of these modifications
21 will assist in minimizing impacts to wildlife and other
22 natural resources," close quote. And you agree with
23 that statement, do you not?

24 A Where's that again?

25 Q End of that same paragraph, ma'am.

1 A In this letter?

2 Q Yes, ma'am.

3 A Okay. So the question was again?

4 Q With respect to the land at issue in the North
5 Shore Ranch project and abutting lands, including the
6 WPA, fair to say that Ms. Burchett failed to express the
7 opinion that any of that land is properly categorized as
8 critical wildlife habitat?

9 A Correct.

10 Q And, ma'am, I see in the second paragraph of
11 this letter, Ms. Burchett states, and I quote, "Ideally,
12 the Service does not support additional development next
13 to waterfowl production areas. However, we do support
14 the individual rights of property owners. The goal of
15 our efforts is to minimize impacts to wildlife and other
16 natural resources while working cooperatively with local
17 developers," close quote. Have I read that correctly?

18 A You have read it correctly.

19 Q And, ma'am, at the time that this letter was
20 drafted in the spring of 2008, you at FWP, did you also
21 view one of FWP's goals as being an attempt or a process
22 of attempting to minimize impacts to wildlife or other
23 natural resources while working cooperatively with a
24 local developer?

25 A We did, frequently.

1 A I see that; correct.

2 Q And, ma'am, I see in reading this one-page
3 letter, I think it's four paragraphs, you'd agree with
4 me that despite the fact that the US Fish and Wildlife
5 Service owned the WPA that abutted the property at
6 issue, they failed to raise many of the concerns that
7 FWP raised with respect to this project; fair to say?

8 A In this letter, they failed to raise those
9 concerns. In other correspondence which are in the
10 record, they did.

11 Q This was their final letter on this project,
12 was it not?

13 A I don't know about final. It is -- the letter
14 is dated April 22nd --

15 Q Two thousand eight.

16 A But there were so many steps in this process,
17 all those were final -- we thought they were final. You
18 know, six preliminary plats, the modifications,
19 subsequent meetings, then, you know, changes again. So
20 they were all -- there were lots of final letters.

21 Q Do you recall that after you reviewed this
22 letter, you called Ms. Burchett to discuss it with her?

23 A I did; yep.

24 Q And you complained to her about this letter,
25 did you not?

1 A I believe I did.
 2 Q Because you felt that the USFWS had backed off
 3 of its criticism of this project and had left FWP alone
 4 in the critiques and criticisms that FWP had rendered;
 5 fair to say?
 6 A No, I wouldn't agree with that.
 7 Q Okay.
 8 A I would say they did back off some of their
 9 earlier claims.
 10 Q And you asked why, did you not?
 11 A I didn't understand why.
 12 Q Well, my question is, you asked her why.
 13 A Yes.
 14 Q And you asked whether or not anyone or some
 15 other entity had influenced her in changing her
 16 opinions, did you not?
 17 A I don't recall.
 18 Q Do you recall when you saw this letter, having
 19 discussions with Marilyn Wood about it?
 20 A Not -- no I -- probably, probably several
 21 people.
 22 Q And by the way, how long have you known Marilyn
 23 Wood?
 24 A 'Eighty-four.
 25 Q Nineteen eight-four, so twenty-five years?

1 concerned and worked with each other and us, you know,
 2 and asked all the time what they could do. And I think
 3 they had enough concerns to organize and create this
 4 network of information so that others -- you know what
 5 people do when they don't want something in either their
 6 backyard or something developed. They network. So
 7 I -- the question was again?
 8 Q Did you do anything, when you were involved
 9 with this project, North Shore Ranch project, to assist
 10 anybody, a nongovernmental employee or group, to protest
 11 the project?
 12 A Protest.
 13 Q Or to object to it.
 14 A I try to maintain this agency view -- working
 15 for this agency, I would work towards getting the best
 16 information to the county, work on these alternatives so
 17 that we could not just say This is a project that has
 18 these significant impacts but there's a solution to
 19 this -- a possible solution to this, if we all work
 20 together, including the landowner. And in doing so, I
 21 worked with these other organizations to say This is
 22 what our thoughts are. And I don't tell them what to
 23 do, but I do work with them in terms of if there's many
 24 people saying the same thing, it does have some effect
 25 in maybe the outcome.

1 A Yes.
 2 Q And would you call yourselves friends?
 3 A Off and on.
 4 Q How long have you known Mayre Flowers?
 5 A Maybe ten years.
 6 Q Would you call yourselves friends?
 7 A Not really.
 8 Q How long have you known Ken Siderius?
 9 A Five years, maybe.
 10 Q And would you yourselves friends?
 11 A No; acquaintances, a lot of acquaintances.
 12 Q That's all right.
 13 Did you see yourself, when you were evaluating
 14 this project in particular, as having any obligation to
 15 induce, for lack of a better word, people in the general
 16 population to protest to the project?
 17 A On north shore?
 18 Q Yes, ma'am.
 19 A Or on anything? Induce?
 20 Q To induce or encourage or assist others in
 21 voicing objection to the project.
 22 A In this project, I think we shared information
 23 about the project, the state it was in, what Fish,
 24 Wildlife & Parks's concerns were, Fish and Wildlife
 25 Service's concerns were. Others were very, very

1 Q And when you say you worked with these other
 2 people, would the Flathead Land Trust be among that
 3 group of people with whom you worked?
 4 A I worked with the Land Trust primarily to
 5 develop a viability analysis or a plan that -- a
 6 feasible plan that if we said these things in a letter
 7 about being able to come up with the funding or
 8 conservation easements with some landowners, not just
 9 North Shore Estates, we have to have a plan and we have
 10 to have the ability to deliver that. As an agency, we
 11 can't do that without partners. It takes too many
 12 grants and too many steps and very many processes to
 13 bring that significant focus to an area like this. So
 14 you need partners. And the Land Trust is the
 15 only -- not the only, but one of the local organizations
 16 with which we've partnered before to do that. And so it
 17 was a natural fit for this as well.
 18 Q And when you were meeting -- well, strike the
 19 question.
 20 Fair to say that during the pendency of this
 21 application, the North Shore Ranch application, you had
 22 occasion to speak about this project with members of the
 23 Flathead Land Trust.
 24 A Correct.
 25 Q And you had occasion to meet and

1 discuss -- meet with and discuss this projection with
2 members of the Flathead Lakers organization.

3 A We had meetings about the north shore that
4 dealt with the conservation strategy.

5 Q And they attended those meetings.

6 A Yes. And that's where the discussion could go.
7 Mostly, it was to design what are the ways to fund and
8 develop funding sources for and who are the interested
9 landowners. It did turn, on occasion, to the -- if this
10 was coming up for a public hearing, the North Shore
11 Ranch, it would turn to that as what's going on there as
12 well.

13 Q Okay. And during that same time period you'd
14 agree with me that you had meetings with members of
15 Citizens for a Better Flathead with respect to this
16 project, as well.

17 A I never had any meetings with them. They
18 attended, on occasion, these north shore conservation
19 strategy meetings.

20 Q And when they attended, did you have occasion
21 to chat with them about the North Shore Ranch project?

22 A There were discussions, yes.

23 Q And when you met with those groups, Flathead
24 Land Trust, Flathead Lakers, and Citizens for a Better
25 Flathead, fair to say you came to conclude that they

1 on impacts on wildlife or wildlife habitat posed by this
2 project?

3 A There were opportunities where they may have
4 asked me and I may have offered, or they preferably, I
5 think, got copies of the prepared statements.

6 Q And with respect to this project, do you recall
7 ever having provided any of those -- the individuals
8 associated with any of those groups -- copies of any
9 proposed letters from FWP?

10 A It's possible.

11 Q Okay. And do you recall, sitting here today,
12 having done so?

13 A I think the one we looked at last week was
14 Robin Steinkraus requesting our comments.

15 Q And I'm actually asking the converse question.

16 A Oh.

17 Q Did you ever provide any of them with any of
18 the draft letters that you had prepared eliciting their
19 comments?

20 A Oh, their comments. At what time; anytime?

21 Q Anytime during this project, '06 through the
22 spring of '08.

23 A I think I remember asking for Lynn Verlanic's
24 comments in putting together our comments. I don't
25 recall asking for other people's letters, per se.

1 were all unanimously against this project?

2 A Based on conversations at those meetings, I
3 would conclude that.

4 Q And, ma'am, when you had those meetings with
5 these people, would it be fair to say that they provided
6 you with information that they had garnered about their
7 thoughts on potential impacts or hydrological issues,
8 that type thing?

9 A I don't think that was the focus of the
10 meetings. I don't think that was the purpose at all.
11 And so there were discussions that were carried on, with
12 or without my participation, sometimes. I didn't always
13 pay attention to all the other technical issues. These
14 were not meetings about the subdivision. Somebody may
15 have offered and said I've looked at water quality. But
16 I'm not an expert in water quality, so I didn't listen
17 to that part of the conversation.

18 Q At any point in time did you ever discuss with
19 members of any of those three groups potential wildlife
20 habitat or wildlife impacts posed by this project?

21 A I did not discuss with those organizations the
22 wildlife impacts. They looked to the department for
23 those analyses and Fish and Wildlife Service.

24 Q Okay. So would it be true, then, that you had
25 occasion to provide these groups with your own opinions

1 Q And as a general proposition, have you ever
2 done that in the past, asked nonprofit organizations to
3 comment on a draft letter that you had prepared with
4 regard to any subdivision?

5 A With regard to a letter to the -- asked them to
6 help comment on letters we prepared for the county?

7 Q Yes, ma'am.

8 A Not as a rule.

9 Q And sitting here today, do you recall having
10 done it, though, in the past?

11 A No, not offhand.

12 (Deposition Exhibit No. 24 marked for
13 identification.)

14 Q (By Mr. Perry) Ma'am, the document marked as
15 Exhibit 24 to your deposition, I'd ask you if you
16 recognize that document. And please take your time to
17 review it.

18 A I do remember.

19 Q And fair to say that during July of 2006, going
20 back a little bit in the process here, you had been
21 forwarded a message from a DJ Rankosky with regard to
22 the North Shore Ranch project. Is that fair to say?

23 A Yes.

24 Q And I see at the bottom of the page there's an
25 e-mail that I believe you drafted; fair to say?

1 A This "Dear DJ"?

2 Q Yes, ma'am.

3 A Yes.

4 Q And your e-mail in July 25th, 2006 states in
5 the opening sentence, and I quote, "Your message was
6 forwarded to me as I am the state biologist for the
7 Flathead Valley," close quote. Have I read that
8 correctly?

9 A Yes.

10 Q Do you recall from whom that message had been
11 forward?

12 A I think this fellow was a hunter that called
13 the land trust and talked to them at length. And then
14 they said You need to talk to Fish and Game. And so I
15 can't remember if they forwarded his address, e-mail,
16 phone number, or what, maybe just his -- here's his
17 e-mail address. Or maybe he called me. I can't
18 remember. I remember that -- if this is that guy,
19 that's -- he was a hunter who read about it in the
20 paper.

21 Q Okay. And fair to say that from the e-mail at
22 the top of the page from Mr. Rankosky, assumedly
23 Mr. Rankosky, he voiced concerns and objections to the
24 North Shore Ranch project in words or substance, did he
25 not?

1 how to do that or at least if there was an opportunity
2 still to do that.

3 Q And you provided him with the information, did
4 you not?

5 A Yes, I did, to the best of my knowledge at that
6 time.

7 Q And as a general proposition with respect to
8 subdivisions that your agency and you are evaluating and
9 providing letters regarding, do you get these e-mails or
10 calls from people who inquire of you how to object to
11 the subdivision, that type thing? Is that a common
12 occurrence?

13 A Not -- not that common. I mean, they usually
14 know.

15 Q Uh-huh.

16 A I would say I've had phone calls from two or
17 three people after they read in the newspaper about what
18 we said or what we did or Do you know about this? And I
19 give them the information that says No, we are
20 commenting, and here's the information.

21 Q Okay.

22 A Happened a couple times.

23 (Deposition Exhibit No. 25 marked for
24 identification.)

25 THE WITNESS: Oh, I remember this.

1 A Yes, he did.

2 Q And when you responded to him, I see that you
3 indicated in the second paragraph, quote, "I've attached
4 copies of our letters to the county. The project has
5 yet to go to the county commissioners. I believe there
6 would be a public comment period most mornings before
7 the commission meeting, if you'd like to submit or air
8 your concerns," close quote. Have I read that
9 correctly?

10 A Yes.

11 Q And would it be fair to say that in providing
12 him with that information, you were seeking to assist
13 him in voicing his objections to this proposal, the
14 North Shore Ranch project?

15 A I think he was looking for where he should be
16 voicing -- with us it wasn't -- we would tend to agree
17 with him. If he needed to voice his comments, it's not
18 the land trust, it's not us, it's the county that makes
19 the decision.

20 Q And that's my question. When you provided him
21 with that information, fair to say you were seeking to
22 assist him in his voicing his objection to the North
23 Shore Ranch project at the appropriate venue, so to
24 speak?

25 A I think that's what he wanted to do; find out

1 Q (By Mr. Perry) Ma'am, the document marked as
2 Exhibit 25 to your deposition, do you recognize this
3 document?

4 A I do.

5 Q What is this?

6 A My own notes to myself after reading the
7 findings. Just my own get on the computer and think out
8 loud, so to speak.

9 Q Okay. And I see in the second page of this
10 document there's an indication made in the middle of the
11 page, and I quote, "FWP believes this contains and
12 affects critical habitat as defined by FWP's" bullet,
13 "FWP Comp Plan," bullet, "FWP Tier 1 species, habitats
14 and focal areas," bullet, "Previous agency comments,"
15 close quote. Have I read that correctly?

16 A You've read it correctly.

17 Q Let's start with the comp plan. What is the
18 FWP comp plan and -- well, what is it?

19 A Is there a date on this?

20 Q You know, there isn't. It's undated.

21 A I think, since these were comments to the
22 findings, it probably corresponds to the latest -- the
23 last staff report.

24 Q February 01, 2008? Does that strike a cord?

25 A Yeah, I'm thinking it's more '08. Because the

1 comp plan process began in '06. And it's an internal
2 state -- well, it's a result of federal -- to get
3 federal nongame funding to the various 50 states you
4 have to develop a state comprehensive fish and wildlife
5 program. And we hired TO Smith to develop that plan. I
6 think he worked on it '06, '07 -- probably started '06
7 and finished it in '08, maybe. And it was the state's
8 prioritization of species, habitats and what's that
9 third one, focus areas or something like that, across
10 the whole state that represented basically our highest
11 and best not -- habitats for species not hunted and
12 fished.

13 Q Okay.

14 A So it's a brand new off-the-shelf document that
15 we all participated in and came out right during that
16 time that all 50 states came out with it at that time.

17 Q Was that through FWS, in terms of all 50 states
18 coming out with this document?

19 A Well, our document was a statewide that was led
20 out of Helena. And it utilized all government entities,
21 NGOs that went to develop what habitats, what species,
22 and what areas of the state should we be most concerned
23 with. And all 50 states did it because it's federal
24 funding for nongame species that comes from offshore oil
25 and gas leasing or other sources. Like the

1 that that term, even as of the spring of 2008, was still
2 undefined by the FWP comp plan?

3 A Yeah. Do you mean page two?

4 Q Of Exhibit 25.

5 MS. JAKES DOCKTER: Let the record reflect
6 the first page is identified as page two and the second
7 one's page three.

8 MR. PERRY: Thank you.

9 Q (By Mr. Perry) All right; the second page of
10 the exhibit.

11 A The second page. I was trying to go back and
12 forth here.

13 Q The second page of the exhibit. And my
14 question is, is it true that as of the spring of 2008,
15 the term "critical habitat," quote, unquote, was still
16 undefined by FWP's comp plan?

17 A I would say we didn't use the word "critical,"
18 but we defined it for this document as, you know,
19 important or highly important or those areas in which we
20 need to emphasize for conservation. And I think the
21 department was avoiding the word "critical" because it
22 has too many other meanings, so we just don't use
23 "critical." We define another term to mean what we
24 mean.

25 Q And that's my question. Because I see the word

1 Pittman-Robertson and the Dingle-Johnson federal funding
2 goes to the states. And you have to complete this plan
3 prior to getting any of those funds.

4 Q When was that plan completed, the FWP comp
5 plan; do you know?

6 A I can provide a copy and it will have the date
7 on it.

8 Q That would be great. And I guess my question
9 is, if you know, as of, say, February of 2008, do you
10 know whether or not the FWP comp plan was a finished
11 document?

12 A Yes, it was.

13 Q Okay. With respect to the FWP comp plan, did
14 it, in 2008, define critical habitat?

15 A It defined these focal areas. I think, again,
16 the word "critical" has so many meanings that a lot of
17 people just try to avoid it so it doesn't cause
18 confusion. And so they used -- were using crucial areas
19 in our next emphasis to identify these areas of concern.
20 And I believe in this document they used that word
21 "focal" area. That's probably why I have it in my
22 notes.

23 Q So your use in this document, Exhibit 25 to
24 your deposition, your use of the term "critical
25 habitat," quote, unquote, on page two, would it be true

1 "critical" used in this document. And you say that it's
2 now defined -- or you say, and I quote, "FWP believes
3 this contains and affects critical habitat as defined by
4 FWP's own comp plan." And my question is, does the camp
5 plan define quote, unquote, "critical habitat"?

6 A I think that -- yeah, by virtue that we use
7 these other terms and we have standards for them, that's
8 our way of defining critical habitat, but we don't like
9 the word "critical" so we're not going to call it that.
10 It's splitting hairs, but that's why.

11 Q And I don't mean to be confusing here, but
12 limiting the comp plan to the term, just to the term
13 "critical habitat," would you agree with me that as of
14 2008, that term, quote, "critical habitat," close quote,
15 was a term that still was undefined in FWP's comp plan?

16 A I don't think -- I think -- I'm feeling like
17 you're trying to say we didn't define "critical
18 habitat."

19 Q Well, you're saying you used all these other
20 words, "crucial" and "important," and we stayed away
21 from the term "critical" is what you're telling me. Is
22 that true?

23 A Yeah, but it's another way of saying critical,
24 without using the word.

25 Q I'm limiting my question --

1 A What substantively means critical.
 2 Q I'm limiting my question to that very term,
 3 "critical habitat."
 4 A Okay.
 5 Q And my question is, it's true, is it not, that
 6 as of the spring of 2008, FWP's own comp plan did not
 7 define the term, quote, "critical habitat"?
 8 A It did not use the term "critical" in its
 9 definitions.
 10 Q And in previous agency comments I see down
 11 below, the third bullet in that paragraph, you indicate
 12 that FWP believes that critical habitat had been defined
 13 by FWP's previous agency comments. Fair to say that
 14 that's what this document says?
 15 A That's what it looks like.
 16 Q Do you know sitting here today -- strike the
 17 question.
 18 Sitting here today, can you identify any prior
 19 agency comment from Fish, Wildlife & Parks that, in any
 20 way, defines critical habitat?
 21 A A narrow definition of critical habitat was not
 22 provided by the department. A list of species and
 23 concerns and habitats important for a wide number of
 24 species, showing the importance of the area which might
 25 meet someone's definition if they had one, was what we

1 the -- that the outcome of that might not be -- it might
 2 not be reversible or it might be irretrievable. Those
 3 are all kinds of the words -- buzz words we used in
 4 training for trying to determine whether something is
 5 significant or not. And if you can reduce those impacts
 6 to a nonsignificant level, through mitigation, through
 7 design, then it's not significant.
 8 So it's a judgment call. It's something that
 9 the public gets to weigh in on through our policies, you
 10 know, MEPA, NEPA. We try to make the call based on
 11 experience and science and quantifying if it's 50 elk or
 12 200 elk or three elk. It gives you some scale for that
 13 analysis or acres. So it's not a hard-and-fast
 14 definition, but there are some working definitions out
 15 there with regard to the MEPA, NEPA guidelines.
 16 Q Would you agree with me, having just reviewed
 17 the April 22nd letter of 2008 from Kathleen Burchett,
 18 that at least within the confines of that letter and her
 19 opinions, she didn't have -- or she didn't express the
 20 opinion that there were significant adverse impacts
 21 posed by this subdivision that could not be mitigated,
 22 did she?
 23 A She did not.
 24 Q And you obviously, at that time, would it be
 25 fair to say, you disagreed with her conclusions in this

1 provided.
 2 Q Okay.
 3 A And when you mention critical under the
 4 county's growth policy, I think that was the time that
 5 critical was -- if there was a test, we were trying to
 6 meet that test. If there was a county definition, this
 7 was the information -- these are the notes that led to
 8 that letter which looked like we were trying to help the
 9 county define it.
 10 Q Okay. And as you and I talked about the other
 11 day at some length, the growth policy that you just
 12 discussed, it used the term "critical habitat," but it
 13 had no definition for it.
 14 A I agree.
 15 Q How does one quantify whether an impact from a
 16 subdivision will be a quote, unquote, "significant
 17 impact"? Is there a way to scientifically quantify
 18 that?
 19 A That's a good question. I believe
 20 there's -- through our Montana Environmental Policy Act
 21 and National Environmental Policy Act training there's
 22 levels of significance used in that training. It's used
 23 in a way that the impact can't be fully mitigated or
 24 reduced in some way that there's a residual amount of
 25 impact that's going to have an effect that in

1 letter in that regard.
 2 A I did.
 3 Q Now, you'd agree with me, would you not, that
 4 virtually any subdivision constructed anywhere near
 5 Flathead Lake would cause a loss of some wildlife
 6 habitat. Would that be fair to say?
 7 A Yes.
 8 Q And would you agree with me that this would be
 9 true, regardless of where the development is physically
 10 located?
 11 A No, I would disagree.
 12 Q Are there areas within a half a mile of
 13 Flathead Lake, in your opinion, that you could -- on
 14 which you could build, say, a 300-lot subdivision that
 15 would have zero impact on wildlife or wildlife habitat?
 16 A Within a half mile of Flathead Lake?
 17 Q Yes, ma'am.
 18 A And it would have zero?
 19 Q Yes, ma'am.
 20 A I can't think of a location that there would be
 21 zero impact.
 22 Q And, ma'am, you'd agree with me that the
 23 property at issue, as it currently exists, is not in its
 24 native state. And by that I mean it's been farmed for
 25 grain for many years.

1 A I would agree.
 2 Q And it's true, is it not, that the property in
 3 its current state has few, if any, native species of
 4 flora left on it?
 5 A I would agree.
 6 Q And you'd agree with me that the property at
 7 issue has very limited trees to provide habitat for a
 8 variety of avian species?
 9 A I would agree.
 10 Q And you'd agree with me that the North Shore
 11 Ranch developers' intent, as expressed to the county, to
 12 restore native vegetation on the property would, in
 13 fact, improve habitat for many native species.
 14 A Correct.
 15 Q And you'd agree with me that the US Fish and
 16 Wildlife Service would be fully empowered to plant
 17 forage lots on the WPA, if it chose to do so?
 18 A Agreed.
 19 Q Is it your testimony that none of the potential
 20 impacts posed by the North Shore Ranch project on
 21 wildlife or wildlife habitat were capable of mitigation?
 22 A I did not -- none?
 23 Q That's my question. Is that your opinion?
 24 A No.
 25 Q What, if any, impacts, in your opinion, could

1 Highway 82 would have no impact on waterfowl and other
 2 animals in the vicinity of the WPA?
 3 A I think the wildlife in that vicinity that
 4 lives there now is accustomed to the noise on the road.
 5 Q And, ma'am, it's true, is it not, that the WPA
 6 itself is fenced, is it not?
 7 A I don't know. I think there might be remnants
 8 of fence out there. I don't know if it's a hundred
 9 percent.
 10 Q And coming to the opinions that you have with
 11 respect to the potential impacts of the North Shore
 12 Ranch project, aside from discussions with other
 13 employees at FWP, did you ever consult any peer-review
 14 journal articles regarding potential impacts?
 15 A I don't recall journal articles. There are
 16 some textbooks that we use in the office, the avian bird
 17 books; Migratory Waterfowl, Life of Birds. I'm not sure
 18 what they're called anymore, but they're on my shelf.
 19 Q And did you refer to them when you were
 20 evaluating this project?
 21 A Yes, we did.
 22 Q When you say "we" --
 23 A No, I did. But I know others did too.
 24 Q And sitting here today, do you have a distinct
 25 memory of the names of any of those books?

1 have been mitigated?
 2 A I believe the developer made some minor changes
 3 in the open space and in the trails and, in fact,
 4 dropping a few lots at the end of the project at the
 5 public hearing, the planning board hearing, to help
 6 mitigate some of the impacts.
 7 Q Now, you'd agree with me that during the time
 8 that you were involved in evaluating this project and
 9 offering opinions, assisting in the preparation of
 10 opinion letters for Mr. Satterfield to sign, you didn't
 11 have any evidence that any endangered species of any
 12 kind nested, brooded or foraged on the North Shore Ranch
 13 property, did you?
 14 A I did not.
 15 Q And you'd agree with me that there are
 16 obviously residential properties and subdivisions and a
 17 golf course that already border the WPA?
 18 A I'm aware of that.
 19 Q And that was true at the time this application
 20 was filed; true?
 21 A True.
 22 Q You'd agree with me that highway 28 is a source
 23 of noise in the vicinity of the WPA?
 24 A I do.
 25 Q And is it your opinion that road noise from

1 A The one that refreshed my memory with this last
 2 week is the Bellrose Ducks, Geese and Swans of North
 3 America or something along those lines. And it has the
 4 migration flyways for the major waterfowl species.
 5 Q Okay. And sitting here today, do you recall
 6 the name of any other book that you used at that time to
 7 offer opinions on the North Shore Ranch project?
 8 A There's the National Geographic bird
 9 book -- number of bird identification books that also
 10 show maps and habitat preferences. And I can't recall
 11 the name of the book that's sitting on there. It's kind
 12 of a life history book about birds. I'll have to get
 13 that title to you.
 14 Q And when you say "life history," is that "Life"
 15 as in the publishing company?
 16 A Well, no. Each bird has kind of the habitat
 17 requirements, more detail onto -- and it's drawn from
 18 the literature.
 19 Q Okay.
 20 A And it has -- there's one for mammals. And
 21 there's a book like it for birds. And I just can't
 22 recall what the title of it is.
 23 Q But at this time, sitting here today, you have
 24 distinct recollection of having referred, at least, to
 25 those three books in rendering opinions on this

1 subdivision?

2 A I believe there's a paper we submitted with our
3 testimony on this, or maybe another subdivision, on the
4 impacts of dogs on waterfowl -- wildlife management area
5 northwest of Kalispell, the Kuhns WPA. And that paper
6 was given at a wildlife society meeting. And I think I
7 attached the abstract of that paper.

8 Q And my question is, just with respect to those
9 three books that you just identified, do you have a
10 distinct recollection, sitting here today, of having
11 referred to them and relied upon them in rendering any
12 opinion with respect to the North Shore Ranch
13 application?

14 A In addition to those books or --

15 Q No, just those three books that you specified.

16 A I thought you were asking if I looked at other
17 papers. And I'm recalling that I looked at this other
18 paper.

19 Q And my question is, sitting here today, do you
20 have a distinct recollection of having referred to the
21 Bellrose book, migratory waterfowl book, the National
22 Geographic bird book that you described and the life
23 history of birds book that you identified? Do you
24 recall --

25 A Yes, yes.

1 welcome either. But I did -- you can access some of the
2 property from the highway.

3 Q Okay. Well, you referred to a visit that you
4 made with Sean Averill; is that correct?

5 A Correct.

6 Q And were you and he in his vehicle or your
7 vehicle visiting the property; do you recall? Do you
8 recall?

9 A I don't recall. I believe I had my vehicle,
10 met him on-site.

11 Q Okay. And when you met him on-site, did he, in
12 any way, restrict your ability to walk any part of the
13 property that you wanted to?

14 A I believe it was wet and wintery, and you
15 couldn't drive, except I think we followed Sean out on
16 one road that was open.

17 Q Okay. And my question is, did he try to
18 prevent you from accessing any part of the property?

19 A No.

20 Q You'd agree with me that prior to settlement of
21 the Flathead Valley, native plant communities over much
22 of this portion of the valley in the vicinity of the
23 North Shore Ranch were predominately open stands of
24 ponderosa pine with shrubs and herbaceous species
25 characteristic of the Palouse Prairie?

1 Q -- sitting here today, having looked at them in
2 order to investigate potential impacts on wildlife or
3 wildlife habitat posed by the North Shore Ranch
4 application?

5 A Yes.

6 Q Now, you'd agree with me that the majority of
7 the North Shore Ranch property, approximately 321 acres,
8 is land cultivated for grain or hay production?

9 A Correct.

10 Q And you'd agree with that about 34 acres of the
11 project area is uncultivated wetland, wet meadow and
12 wetlands that the developer intended to set aside?

13 A I think their analysis is correct. I never
14 have been on the property enough to really measure
15 anything or see that much.

16 Q Were you ever prevented from accessing the
17 property?

18 A No. I got permission, at least on one
19 occasion, to drive on the property with Sean.

20 Q Okay. And did you visit the property at that
21 time?

22 A Yes.

23 Q Okay. Did you have unfettered access, or were
24 you prevented from going to any portion of the property?

25 A I don't think I was prevented. I didn't feel

1 A I'd agree.

2 Q And you'd agree with me that, at present, there
3 are essentially no remaining remnants of this habitat
4 type left on the North Shore Ranch property?

5 A I would agree.

6 Q And you'd agree with me that USFWS has no
7 noxious weed plan in place with respect to the WPA?

8 A I would not agree.

9 Q Does it have one in place?

10 A Yes, it does, some type of plan.

11 Q Have you seen it in writing?

12 A No. Kathy said they had a strike team out.
13 When she took over, they assessed weeds, and they had a
14 strike team that very first year. I'm not sure if that
15 was '07 or '08 or both those years, but I know she
16 mentioned that in one of our conversations.

17 Q Have you ever seen a management plan for the
18 WPA?

19 A I have not seen one.

20 Q Would you agree with me that much of the
21 vegetation of the north shore of Flathead Lake is
22 dominated by extensive cattails and bulrush marsh?

23 A Of the WPA or north shore?

24 Q The north shore in general.

25 A The wetlands are cattail dominated. There's

1 bulrush, but there's also a nonnative butmouss rush in
2 there, flowering rush. There's uplands as well
3 intermixed with the wetlands.

4 Q And can you approximate for me, best of your
5 ability, what, in your opinion, the ratio would be
6 between bulrush/cattail and open water on the shoreline
7 of the north shore of Flathead Lake?

8 A Full pool? I guess it doesn't really matter.

9 Q Full pool.

10 A Full pool? It's cattail dominated, the wet
11 wetlands. I don't know what proportion. Even from an
12 aerial photo, there's not enough information here to
13 guess those quantities.

14 Q Fair enough.

15 Would you agree with me that cattail and
16 bulrush, generally, can be described as tall, thick,
17 emergent vegetation?

18 A Correct.

19 Q And would you agree with me that when cattails
20 and bulrushes invade a marsh, they tend to take it over?

21 A I'm not sure what you mean by "take it over."

22 Q Become the dominant species in the marsh.

23 A It depends -- yeah. I mean, once they're
24 established, they're established. But some marshes tend
25 towards one group of species and others tend towards

1 I mean, I think cattails and bulrushes are all part of
2 the natural ecosystem. And there's a whole succession
3 from deep water to shallow water, and they fit into that
4 succession. And so the species aquatic benthic I'm not
5 an expert at, so I know nothing about what insects live
6 where.

7 Q Let me rephrase my question.

8 A Yeah, yeah.

9 Q When cattails and bulrushes get a foothold and
10 start proliferating in a marsh, would you agree with me
11 that, as that foothold grows and they proliferate, it
12 has a tendency to decrease waterfowl use of the marsh?

13 A If the area's completely, one hundred percent,
14 cattails, there's not any pockets of water or few
15 pockets of open water in the marsh, you might -- that
16 kind of monoculture is not very helpful to waterfowl.
17 But if there's pockets of water intermixed, some open
18 water, it's great mallard habitat. It's great habitat
19 for many waterfowl species.

20 Q Would you agree with me that federal and state
21 land management agencies often control cattails through
22 the application of mechanical, chemical, or prescribed
23 fire treatments?

24 A I read about that, yes.

25 Q And you'd agree with me that for waterfowl to

1 others, depending on the soil, depth of water, the type
2 of inundation.

3 And so bulrush like it deeper, and cattails
4 like it shallower. And cattails are more resistant to
5 water level fluctuations.

6 Q And just with respect to cattails, given the
7 appropriate environment for them to grow --

8 A Uh-huh.

9 Q -- when they first get a foothold, would it be
10 fair to assume that they will proliferate rapidly?

11 A They will spread to where they meet those
12 habitat requirements. If it's too deep, they won't go
13 into the too deep. And if it dries out too much, they
14 won't go into the dryout. But they have a wide range of
15 habitat tolerance.

16 Q Would the same be true of bulrush? As long as
17 the habitat is appropriate for them to get a foothold
18 initially, they have a tendency to proliferate, assuming
19 again that the habitat is appropriate?

20 A I would think so, yeah.

21 Q And would you agree with me that marshes
22 deteriorating from cattail and bulrush invasion tend to
23 be used infrequently by waterfowl due, in part, to low
24 invertebrate and benthic productivity?

25 A Well, I disagree with the word "deteriorate."

1 be inclined to use a marsh, a 50/50 ratio of open water
2 to emergent vegetation is desirable?

3 A That sounds about right.

4 Q Would you agree with me that, at present, the
5 WPA waterfront anyway, lakefront, has less -- in
6 general, less than a 50/50 ratio of open water to
7 emergent vegetation?

8 A At full pool it would be higher because you'd
9 have the open water of the lake. But as some of the
10 year there's not water right up to the cattails, you
11 don't have as much open water, I would agree.

12 Q Now, in light of the fact that the lake levels
13 are controlled by artificial means, Kerr Dam being one
14 of them, you'd agree with me that during minimum pool,
15 as much as nearly a kilometer of mudflats is exposed or
16 are exposed along the north shore of the lake?

17 A Correct.

18 Q And it's true, is it not, that during minimum
19 pool residents often operate ATVs, motorbikes, that type
20 thing on the mudflats?

21 A It's not allowed at all from March 1st to July
22 15th, I believe. If they are operating them,
23 they're -- except on private land.

24 Q Except on private land. Now, for instance, if
25 you owned private land in the vicinity of the WPA that

1 fronted on the lake and had a mudflat, you would be
2 entitled to use your dirt bike on the mudflat, would you
3 not?

4 A If you owned the underlying fee of that
5 mudflat, yes.

6 Q You ever seen people using motorized vehicles
7 at low pool on the north shore of Flathead Lake?

8 A I haven't. I've heard about uses occurring.
9 I've heard of airplanes landing and snowmobiles getting
10 out there in the winter. In terms of the area that the
11 federal jurisdiction I understand that enforcement
12 actions on any motorized use would apply, whether it be
13 our wardens or their wardens or sheriffs. So I
14 understand it probably doesn't happen that often on the
15 zone here. I'm not familiar with the private lands.

16 Q Now, these activities, whether it's dirt bikes
17 or using snowmobiles or other motorized activities on
18 these mudflats, that would certainly pose an adverse
19 impact on wildlife, would it not?

20 A It could, yes.

21 Q Would you agree with me that in light of the
22 fact that a majority of the North Shore Ranch property
23 constitutes land that was cultivated for grain or hay
24 production, wildlife use of that cultivated farm land
25 would be largely limited to seasonal use and would occur

1 they?

2 A They do nest on the ground. They might nest on
3 an upland piece, you know, where there's dense nesting
4 cover to protect it.

5 Q Which raptors would nest on the ground on that
6 piece of land?

7 A On that piece of ground, active agricultural,
8 probably not. But the -- it's possible that -- I don't
9 know about the wetland portion, if there's some upland
10 area there that might be useful for short-eared owl
11 or -- mostly, I think, they would forage on that ground
12 not -- it probably doesn't have all the nesting
13 requirements for all the raptors.

14 Q Okay. And as we talked about, it's now
15 cultivated or has been cultivated for hay and grain.
16 And there isn't any shortage of agricultural land in the
17 vicinity of this parcel, is there?

18 A There's several thousand acres of agricultural
19 lands in this area.

20 Q Would you agree with me that
21 residents -- residences that could be located on the
22 North Shore Ranch property and planted with trees, as
23 had been the proposal, would serve to provide increased
24 habitat for great-horned owl?

25 A I don't know if great-horned owls would nest in

1 mostly after the grains have matured?

2 A The use in the spring is in March. It's
3 heavily used for the weeks that the migratory birds from
4 the south and west and various places south of here hit
5 these agricultural fields and then move up to Canada to
6 breed, or Alaska. And so there's heavy use in the
7 spring.

8 There's use year-round by wintering raptors,
9 spring nesting raptors, and migratory birds, migratory
10 raptors, and those nesting along the north shore.

11 There's wildlife use almost year round, but it changes
12 with the seasons and the species.

13 Q With respect to raptors, you'd agree with me
14 that there's no appropriate roosting sites on the North
15 Shore Ranch property for a raptor.

16 A There's some hawks that will perch on a fence
17 post. So harriers come to mind that would use that area
18 as soon as -- all year round. They like the short
19 agricultural fields, short meadows, short grass meadows,
20 hay fields, voles. They're looking for voles.

21 Q For forage.

22 A For -- yeah, small mammals, mostly. And they
23 hunt low to the ground and land on the ground. So they
24 don't need trees.

25 Q But they wouldn't brood on that property, would

1 a development.

2 Q How about the same question with regard to a
3 house sparrow?

4 A Likely.

5 Q A starling?

6 A Very likely.

7 Q American robin?

8 A Likely.

9 Q House finch?

10 A Yes.

11 Q Barn swallow?

12 A I haven't seen those recently. They nest on
13 structures.

14 Q And, in fact, other species, whether migratory
15 or indigenous that are generally adapted to human
16 development, would be likely to set up shop, so to
17 speak, on this property, if it were developed; fair to
18 say?

19 A Fair to say.

20 Q Now, at any point in time that you've actually
21 been in the vicinity of this project land or actually on
22 the land, did you ever see any waterfowl directly on the
23 North Shore Ranch property?

24 A Yes.

25 Q What did you see?

