

DATE: OCTOBER 4, 2019

TIME 11:31 a.m.

INTERVIEWER: KEVIN GREENE AND TOM BEERS
EAGLE INTEL SERVICES

CONTRACTOR: NORTH CAROLINA GENERAL ASSEMBLY AND SUBCOMMITTEE
ON THE ACP

PARTIES PRESENT: KEVIN GREENE
TOM BEERS
BILL LANE, DEQ
KAREN HIGGINS, DIVISION WATER RESOURCES
DREW HARGROVE, DEQ

1 KEVIN GREENE: Today's date is October 4, 2019. My name is KEVIN GREENE,
2 My company is Eagle Intel Services and we have been contracted by the North Carolina General
3 Assembly Subcommittee on the ACP for the purpose of gathering and reporting information
4 back to the Subcommittee. We are recording this interview. I would like to have each person
5 present to state your name, their position and that you acknowledge that we are recording this
6 interview. And I will start with Tom.

7 TOM BEERS: My name is Tom Beers, I'm an investigator with Eagle Intel Services and
8 I understand that this is being recorded.

9 BILL LANE: Bill Lane from DEQ and I understand that this is being record.

10 KAREN HIGGINS: Karen Higgins, Division Water Resources. I understand this is
11 being record.

12 DREW HARGROVE: Drew Hargrove, DEQ. I understand it is being recorded.

13 KEVIN GREENE: Thank you. I believe that Mr. Lane would like to add something?

14 BILL LANE: Yes. This interview is beginning at 11:31. Based upon agreement with
15 the parties it will last no longer than an hour, so it will conclude no later than 12:31. Also, by
16 agreement of the parties the questions that will be presented today will Ms. Higgins' official
17 duties related to the 401 water quality certification for the Atlantic Coast Pipeline. There won't
18 be any questions related to her other projects or to anything in her personal life.

19 KEVIN GREENE: Thank you and Thank you for being here. You have already stated
20 your name. Would you just give us a brief history of your employment within the Department or
21 within Government?

22 KAREN HIGGINS: Sure, so, as of August, 2019, I became the Water Planning Section
23 Chief within the Division of Water Resources. Prior to that, I was the 401 & Buffer_Permitting

1 Branch Supervisor. I took that position in May, 2011. Prior to that, I was a Training
2 Coordinator within the Division and an Environmental Specialist within the Division. I started
3 working for the State in August, 2005.

4 KEVIN GREENE: So the position that you were in began in 2011-2019, was. What was
5 that position one more time?

6 KAREN HIGGINS: My current position?

7 KEVIN GREENE: That's the current position?

8 KAREN HIGGINS: My current position, yes, so I changed positions in August, 2019
9 and I am now the Water Planning Section Chief.

10 KEVIN GREENE: During 2017-2018 during the ACP Permitting Process, what was
11 your position at that time?

12 KAREN HIGGINS: My position at that time was the 401 & Buffer Permitting Branch
13 Supervisor.

14 KEVIN GREENE: That's it. And who did you supervise?

15 KAREN HIGGINS: So, I have eight (8) staff. Do you want me to.

16 KEVIN GREENE: Who was involved in the ACP Permitting process that you
17 supervised?

18 KAREN HIGGINS: So the Primary Staff that I supervised was Jennifer Burdette. She
19 was the Environmental Specialist.

20

21 KEVIN GREENE: OK. And then the authorities above you? What was the change of
22 command above you?

1 KAREN HIGGINS: So when I was 401 Branch Supervisor, my direct Supervisor was
2 Jeff Poupart. He is the Section Chief.

3 KEVIN GREENE: OK. And above him?

4 KAREN HIGGINS: Above him is Jim Gregson, the Deputy Director. Was he the
5 Deputy Director in 2017.

6 KEVIN GREENE: Was he the Deputy Director in 2017?

7 KAREN HIGGINS: I don't remember.

8 KEVIN GREENE: And can you explain your involvement with specifically the ACP,
9 Atlantic Coast Pipeline permitting process?

10 KAREN HIGGINS: So, we received an Application requesting the issuance of a 401
11 Water Quality Certification and Buffer authorization and those tasks, that Application was
12 reviewed by my staff and myself to recommend a decision.

13 KEVIN GREENE: OK. Do you recall when you received that Application?

14 KAREN HIGGINS: It was May of. I forget the year, but it was in May.

15 KEVIN GREENE: 2017, I will kind of remind you of that, 2017. Prior to receiving the
16 Application, did you have contact or discussions with the Applicant?

17 KAREN HIGGINS: I did not have any discussions with the Applicant prior to May.

18 KEVIN GREENE: Are you aware that other people within that division had
19 conversations with the Applicant?

20 KAREN HIGGINS: Are you asking about my division?

21 KEVIN GREENE: Yes.

22 KAREN HIGGINS: Yes.

23 KEVIN GREENE: OK. And what were those regarding?

1 KAREN HIGGINS: That was regarding the 401 Application & Buffer process.

2 KEVIN GREENE: Do you know when that began? When those conversations began?
3 Or that process began?

4 KAREN HIGGINS: I don't have a date.

5 KEVIN GREENE: And what would be your role, or involvement in the process? The
6 401 permitting process, specifically with the ACP?

7 KAREN HIGGINS: So, my job is to support my staff. Help respond to questions that
8 they may have. If we sent requests for additional information, I may be the one asked to sign
9 that letter. And inform management if there are questions that require their decision.

10 KEVIN GREENE: OK. And do you recall how many requests for additional
11 information they received? The Applicant received? Or that you requested?

12 KAREN HIGGINS: Without looking at it, I don't remember the specific number.

13 KEVIN GREENE: OK. We will get into that in just a few minutes. At that particular
14 time, were you dealing with other 401 Applicants outside of the ACP?

15 KAREN HIGGINS: Yes.

16 KEVIN GREENE: Do you have any idea how many?

17 KAREN HIGGINS: No.

18 KEVIN GREENE: Would it be 10's 100's?

19 KAREN HIGGINS: I mean without reviewing our database, I don't want to speculate.

20 KEVIN GREENE: OK. Were there any projects similar to the ACP that you were
21 having to deal with?

22 KAREN HIGGINS: Can you clarify? Similar in what ways?

1 KEVIN GREENE: Yes, OK. Let's break it down into how would you categorize the
2 ACP 401 Permitting Process compared to every other ones you receive within your division?

3 KAREN HIGGINS: It was a large project to review.

4 KEVIN GREENE: Did you have other large projects?

5 KAREN HIGGINS: I don't remember every project we had in house to review. We, did
6 we have any of the exact scale of ACP? No.

7 KEVIN GREENE: Had you ever worked on or supervised individuals working on a
8 project at the scale of the ACP?

9 KAREN HIGGINS: Yes, I have worked on similarly scaled projects.

10 KEVIN GREENE: And roughly how many?

11 KAREN HIGGINS: It would be a guess, so, several. I couldn't really give a number.

12 KEVIN GREENE: OK. Were those before or after the ACP?

13 KAREN HIGGINS: I guess, I don't – before, yes. After, I would have to review our
14 files.

15 KEVIN GREENE: OK, so you were experience in dealing with large projects such as the
16 ACP, prior to the ACP Permitting Project.

17 KAREN HIGGINS: Yes.

18 KEVIN GREENE: And of those, did the ACP Project Permitting differ from in any way,
19 the procedures differ than those that you had been previously been dealing with at the same
20 magnitude?

21 KAREN HIGGINS: They did not differ.

22 KEVIN GREENE: Did those projects receive the same type scrutiny as the ACP?

1 KAREN HIGGINS: So, I am giving a broad general answer without getting into the
2 details, but we scrutinize every project thoroughly.

3 KEVIN GREENE: And what are some of the factors that you consider in issuing a
4 permit?

5 KAREN HIGGINS: So the 401 rules spell out six (6) criteria that we have to evaluate to
6 issue our decision. So we follow those six (6) criteria.

7 KEVIN GREENE: OK. And for the ACP Project, out of those six (6) criteria, were there
8 any ones that you had more difficulty or it was more difficult to receive the information or to get
9 the information from the Applicant?

10 KAREN HIGGINS: I'm sorry, I am just going through the six to see. So, I would say
11 that there were two factors that were relatively straightforward to receive the information from
12 the Applicant. The rest were not as straightforward.

13 KEVIN GREENE: OK. What would you say the most significant one was?

14 KAREN HIGGINS: Uh, I don't think that I could pick one specifically.

15 KEVIN GREENE: OK. What of those four (4) factors are we talking about? Name
16 those four (4) factors.

17 KAREN HIGGINS: Oh, this is a test.

18 KEVIN GREENE: I'm sorry.

19 KAREN HIGGINS: So I don't have the rules in front of me.

20 KEVIN GREENE: What about cumulative impact?

21 KAREN HIGGINS: So that was one of the four. That is one of the criteria.

1 KEVIN GREENE: During the 401 processing, was there anything out of the norm of
2 how you proceeding with the permitting process? How you would normally proceed with the
3 process?

4 KAREN HIGGINS: There was nothing out of the norm.

5 KEVIN GREENE: OK. At any time were you asked to have staff meetings on a regular
6 basis?

7 KAREN HIGGINS: With my - Is the question was I asked to have meetings with my
8 staff or with who, do you mean?

9 KEVIN GREENE: With other divisions coming together. I am assuming other divisions
10 on a regular basis.

11 KAREN HIGGINS: Yes.

12 KEVIN GREENE: We have notes that there are meetings - it seems like on a weekly
13 basis. Do you recall that?

14 KAREN HIGGINS: I do recall the weekly meetings.

15 KEVIN GREENE: Can you give us a brief summary of what those entailed and who
16 participated?

17 KAREN HIGGINS: So without having a list of attendees, my understanding the intent of
18 those meetings was to provide updates on our status of our application review to management so
19 they were aware of what we were doing.

20 KEVIN GREENE: Was that a common practice with the other large scale Applications
21 that you had previously processed?

22 KAREN HIGGINS: I did not have weekly meetings with previous projects.

1 KEVIN GREENE: OK. How often did you communicate with the Secretary's Office
2 regarding the ACP project permitting process?

3 KAREN HIGGINS: Uh, I mean I don't have a record of every communication in front of
4 me so I am not sure I could answer that accurately.

5 KEVIN GREENE: OK and you previously stated that I believe the Application was
6 submitted in May, and we determined 2017. It is 2017.

7 KAREN HIGGINS: I believe you.

8 KEVIN GREENE: So Thank you.

9 KAREN HIGGINS: 2017.

10 KEVIN GREENE: At that point in time, there were numerous requests for additional
11 information. Was there a point during 2017 that you thought the permit was going to be issued,
12 or could have been issued?

13 KAREN HIGGINS: Can you clarify?

14 KEVIN GREENE: Well, we will get into that a little bit more.

15 KAREN HIGGINS: OK.

16 KEVIN GREENE: In fact, let's just go to a little timeline of events that took place.
17 There were four (4) requests for additional information that we have seen the letters. And do you
18 want to go over?

19 TOM BEERS: Yeah, I can. I am going to show you. This is a copy of the hearing
20 officer's report. Are you familiar with these, with the process, right?

21 KAREN HIGGINS: Yes, I am familiar with the Hearing Officer's Report.

22 KEVIN GREENE: And who is the Hearing Officer?

23 KAREN HIGGINS: Brian Wrenn.

1 KEVIN GREENE: And did he work kind of under you? With you? How did that
2 relationship as Hearing Officer, what is that relationship?

3 KAREN HIGGINS: Sure, so the Hearing Officer is often not within the, decision making
4 chain, so that we have an independent entity to hear the public's comments and provide
5 recommendation to the Department. So Brian does not work for me and never has.

6 KEVIN GREENE: OK. Thank you.

7 TOM BEERS: So this is a final approved Hearing Officer's Report. It is dated January
8 22 and signed by Brian Wrenn. This is from the files of DEQ. On the second page, there is a,
9 basically a table that shows some dates of additional information requested and received. I
10 assume that this was all the information that was request and the dates that you asked for
11 information to supplement the Application and the dates that you received that.

12 KAREN HIGGINS: Yes.

13 TOM BEERS: And how is that usually requested? Additional Information?

14 KAREN HIGGINS: Sure so additional information is requested - for this particular
15 project, we issued letters. We sent emails and then if we had a meeting or a phone call with the
16 Applicant and there were questions raised they may have provided additional information in
17 response to questions at meetings.

18 TOM BEERS: Is there an official request that goes out by letter and are there
19 supplemental more informal receipts and requests? Or is it all formalized through a letter or
20 documentation somehow?

21 KAREN HIGGINS: It is primarily formalized through a letter. If in the processes we
22 just have a quick question, we may have emailed the Applicant for a small point to clarify and
23 they may have responded via email.

1 TOM BEERS: OK. So going with that timeline, this is a schedule of timing events that
2 was from your notes from the ACP or a section of the DEQ web page. I am just going to show
3 it to you and then I am going to ask for it back so I can ask a couple questions.

4 KAREN HIGGINS: OK.

5 TOM BEERS: OK. Well, so on the Hearing Officer's Report, we see on November 15
6 on that date, I think there are requests number 11-15, additional information received relating to
7 request number 3. So there was a request number 3 on October 26 and it looks like the final
8 additional information received on November 15. So in your notes, this is dated 11-20, so five
9 (5) days after that receipt of information. You have a timeline that kind of breaks down when
10 you received that final information and it looks like you plan on getting the additional
11 information and you are actually making some plans for issuing the Hearing Officer's Report and
12 working toward the final permit. Do you recall that time frame when it looks like you had an
13 understanding that the review is nearing completion and you are working toward a permit, at that
14 time frame?

15 KAREN HIGGINS: I'm sorry, can you ask your question again? I was reading and
16 listening, I apologize.

17 TOM BEERS: I understand. I have had a chance to look at all this stuff ahead of time. I
18 understand it has been a while.

19 So that was your notes. It looks like it is kind of a draft anticipated schedule of what may
20 occur with the permit process. And it looks like there are some projected dates of when the
21 Hearing Officer's Report could be submitted.

22 KAREN HIGGINS: Yes, it was a projected.

23 TOM BEERS: Projected, right projected. So it, and that's dated 11-20.

1 KAREN HIGGINS: OK.

2 TOM BEERS: And it is after that final information was received. I guess the question
3 is, at that point in time, did you have an understanding that you had received all of the
4 information that you would need at that time and you were trying to work toward the scheduling
5 of the permit approval?

6 KAREN HIGGINS: So, I mean I do not remember on October 20, what I had reviewed
7 or not. We

8 BILL LANE: November 20.

9 KAREN HIGGINS: I'm sorry November 20, thank you. November 20th, we did not
10 have adequate information to complete our review. So we asked for more information and that
11 protracted the scheduled that we thought we would be able to meet.

12 TOM BEERS: So you hadn't finished your review of the additional information received
13 at that time?

14 KAREN HIGGINS: I do not know if we had reviewed all of it on this date. It was five
15 (5) days after - according to this. I do not know if there was a weekend or not. So I do not know
16 if we had completed our review at that time.

17 TOM BEERS: OK. So I guess the question is it looks like you are projecting out an
18 approval process, but you don't recall if you were actual had the understanding that this permit,
19 that they had satisfied all of their requirements at this point, you don't recall, because you asked
20 for more information?

21 KAREN HIGGINS: We asked for more information because they didn't sufficiently
22 respond to our request. I cannot recall if on October - I keep saying that - November 20, if we
23 had reviewed all of the information provided.

1 TOM BEERS: OK. Let's move on to the next – I think the next request for information
2 was November 28. Is that the next one?

3 KAREN HIGGINS: That is the next one on this table. Yes.

4 TOM BEERS: So, do you recall. And was that the final request for information at that
5 point?

6 KAREN HIGGINS: It was the final letter.

7 TOM BEERS: The final official request in a written letter.

8 KAREN HIGGINS: In a written letter. Yes.

9 TOM BEERS: Here it is here. That is the written letter on November 28 asking for that
10 information. I know that is a long letter and we don't have a lot of time. So

11 KAREN HIGGINS: Sure.

12 TOM BEERS: It looks like it's looking for cumulative impact information. Does that
13 ring a bell?

14 KAREN HIGGINS: Yes, it does ring a bell.

15 TOM BEERS: Could you explain that final request and why that was made.

16 KAREN HIGGINS: Yes, so we had several iterations of the analysis submitted to us by
17 ACP. Each iteration got a little closer to answering our question, but it was either not sufficient
18 or not correct and so we kept having to ask for additional information so that we could say that
19 they had completed the process. So the version that we received prior to this letter did not
20 sufficiently resolve the question about cumulative impacts. We had remaining questions and that
21 is what this letter details.

22 TOM BEERS: Unanswered questions that they did not supply in their previous answers
23 up until November 15?

1 KAREN HIGGINS: Correct.

2 TOM BEERS: Whose decision was it to prepare that letter and send it out?

3 KAREN HIGGINS: So, Jennifer was the primary reviewer. She and I met and we also
4 discussed with Brian, as the Hearing Officer, as to whether the three of us had sufficient
5 information to recommend a decision to the director. And we did not.

6 TOM BEERS: And that was the decision made by the three of you speaking?

7 KAREN HIGGINS: Yes.

8 TOM BEERS: It didn't come from anyone above you telling you to do this, it was your
9 decision, the three of you?

10 KAREN HIGGINS: It was our decision.

11 TOM BEERS: OK. Some of this is based on information from the Hearing Officer's
12 public comments? Is that why Brian Wrenn was involved with this because he is involved in
13 that aspect?

14 KAREN HIGGINS: Correct. So as in the Hearing Officer's Report, I am going to flip to
15 later in the report. Brian provides - I am trying to get to the beginning - So this section five (5)
16 were Brian talks about the criteria with which to make a decision and a recommendation as to
17 whether it is met. As we discussed previously, one of those is cumulative impacts and so, Brian
18 made a conclusion in his report and recommendation based on the information in the Application
19 and throughout the hearing process. So that is why he was involved.

20 TOM BEERS: OK. So moving to later dates.

21 KAREN HIGGINS: Do you want this back.

22 TOM BEERS: Yeah, I will take that back so I don't lose it. This came from here.

23 KEVIN GREENE: And he will lose it.

1 TOM BEERS: Yeah,

2 KAREN HIGGINS: Oh, sorry about that I didn't know if we still needed the table.

3 TOM BEERS: I might need it again. I'll just keep it here. So there are some emails that
4 we pulled from the DEQ website. I got them mixed up in there. You can look at these, but we
5 are rushed for time. You can scan these. I have a little summary that I can talk to you about
6 these. That first email is December 14. It looks like you are attempting to schedule a meeting
7 with Linda Culpepper, who I think was the Division Chief?

8 KAREN HIGGINS: Director, or Acting Director.

9 TOM BEERS: Acting Director. And you are looking to try to schedule a meeting to
10 speak with her about the Hearing Officer's Report and you are trying to set that up for January
11 4th or 5th. I guess at that time, you are anticipating at least on 12-14 you are anticipating that you
12 are going to get what you need?

13 KAREN HIGGINS: Yes.

14 TOM BEERS: They are anticipating that, but you haven't gotten it yet?

15 KAREN HIGGINS: Any time we send a request for additional information, we
16 anticipate a full and complete response from the Applicant. Whether we get it is up to the
17 Applicant.

18 TOM BEERS: Because that is what they are supposed to do, right? OK. So that's on
19 the 14th. So right there you are trying to, I guess, get this on the schedule to work to get this
20 approved and you are scheduling that. Moving through some of those emails, there is January 3rd
21 it looks like you and I think Ms. Burdette are reviewing the Hearing Officer's Report, January 4th
22 with Brian Wrenn. There is communication

1 BILL LANE: Let's hold on. Let's slow down and just be clear that we are all looking at
2 the same thing.

3 TOM BEERS: OK. I have a summary so if she is going to. I can pull these out there.
4 Yeah, let's do that.

5 BILL LANE: Thank you.

6 TOM BEERS: So here is an email from Brian Wrenn. It looks like he has incorporated
7 some of your changes into your Hearing Officer's Report.

8 KAREN HIGGINS: OK

9 TOM BEERS: OK And it looks like you are getting ready for this meeting that you set
10 up with Ms. Culpepper to review the Hearing Officer's Report. There is an email where Bridget
11 Munger is communicating with Mr. Wrenn where he agrees to send her the Hearing Officer's
12 Report to her, rather than go directly to Ms. Culpepper. Do you recall the Hearing Officer's
13 Report going to the Secretary's officer rather than the Division Director?

14 KAREN HIGGINS: I was not copied on these messages and I do not recall if I was
15 aware that there was an exchange between Brian and Bridget.

16 TOM BEERS: Is it normal for the Secretary's Office to review Hearing Officer's Report,
17 rather than the Division Director?

18 BILL LANE: Let's clarify that we are not talking about - this is not an email to the
19 Secretary's Office. This is an email to Bridget Munger.

20 TOM BEERS: I think there is a, well, she doesn't recall those emails during that time
21 frame.

22 KAREN HIGGINS: Well I was not part of this email exchange.

1 TOM BEERS: You weren't part of that exchange. So the question I have would it be a
2 normal practice? Who normally approves the Hearing Officer's Report and signs it and sends it
3 on?

4 KAREN HIGGINS: Uhm, the Hearing Officer's Report comes from the Hearing Officer.
5 I don't know that I would phrase it that there is an approval of it. It is a working draft and
6 becomes final by the Hearing Officer. It is not uncommon to get review and feedback from
7 others.

8 TOM BEERS: So when you set up the meeting back in December to try to meet with
9 Linda Culpepper to review the Hearing Officer's Report. Is that normal for you to review this
10 report with the Director?

11 KAREN HIGGINS: So the email was anticipating that we would have a final report with
12 a recommendation for the Director. It is common that we sit down with the Director and review
13 the final report. So this was not to review and the Director to modify the draft report. The
14 intent was to review the final report and go over any questions that she may have after reviewing
15 the report.

16 KEVIN GREENE: And I guess his question is - Is it common for the report to go to the
17 Secretary's Office prior to that review with the Director?

18 KAREN HIGGINS: So, uhm.

19 BILL LANE: Again, this is an email from Bridget Munger, it is not in the Secretary's
20 Office.

21 TOM BEERS: But you can answer the question. Is that common?

22 BILL LANE: Yeah, You can answer the question, I am just clarifying that the email.

1 KAREN HIGGINS: Sure, so I am aware that it has happened on previous 401
2 Applications. I can't speak to Hearing Officer's Reports in other programs. The 401 program is
3 not the only program within DWR that has Hearing Officer's Reports. So I cannot speak to other
4 programs.

5 KEVIN GREENE: Right.

6 KAREN HIGGINS: But I am aware of other 401 Hearing Officer Reports that were
7 reviewed by individuals within - outside of the Division of Resources or Water Quality at the
8 time.

9 KEVIN GREENE: OK.

10 TOM BEERS: Just read that top email there. I think that is the one.

11 KAREN HIGGINS: OK.

12 TOM BEERS: So you were communicated in with that email, correct.

13 KAREN HIGGINS: I was.

14 TOM BEERS: And what does it reflect?

15 KAREN HIGGINS: So the email states: Someone is home with a sick child, and out of
16 school due to snow. The Secretary's Office wants to review the HO Report prior to sending to
17 Linda. I told Bridget we would send a copy to them when we send it to Jeff. I am doing another
18 read through right now, when do you think you can finish your review. The message is from
19 Brian to myself and Jennifer.

20 TOM BEERS: So what did you understand from that email?

21 KAREN HIGGINS: I don't recall this email. You know so I, I'm not, I don't, so if I
22 said anything, I would be speculating on my memory.

1 TOM BEERS: Right, what is the body, what is his message to you, do you believe that
2 to be true, what he told you. That the Secretary's Office is going to review it?

3 KAREN HIGGINS: I mean I can't speak for Brian, as to whether someone
4 communicated that to him or not.

5 TOM BEERS: Right, but if that is truly an email that he sent to you to tell you that the
6 Secretary's Office wants to review it. In your experience, is that a normal process for the 401
7 Hearing Officer's Reports?

8 KAREN HIGGINS: It does not happen with everyone, but it certainly has happened on
9 previous ones. So, we don't have that many Hearing Officer's Reports in 401 land so it is hard
10 to speak in broad generalities about what is normal, when it is a very small handful of projects.
11 That is why I am being a bit reluctant to speak in broad generalities when the sample size is so
12 small.

13 TOM BEERS: OK so for your recollection at that time, you don't recall this being a big
14 thing. That it isn't something that you remember today of this happening.

15 KAREN HIGGINS: I

16 TOM BEERS: A conversation like, why they are doing this or this is out of the
17 ordinary?

18 KAREN HIGGINS: I do not remember being alarmed or any sort of red flags being
19 raised by this.

20 TOM BEERS: OK. What's that?

21 KEVIN GREENE: This is just a follow-up.

22 TOM BEERS: OK

1 KEVIN GREENE: Your follow-up and I will show you this in just a second. I want to
2 read it. This is an email - Just a few minor suggestions highlighted in yellow. I don't think
3 Jennifer will review this today, so please go ahead and send to Jeff and others. Since the
4 Department is reviewing the documents before going to Linda, I am sur that it will be ready for
5 her by Monday. Shall we try to reschedule for later in the week? We could try for after the MC
6 on Thursday, maybe 3:30 or Friday. And this is an email dated Friday, January 5 at 11:37.

7 KAREN HIGGINS: OK.

8 KEVIN GREEN: So at that point you are trying to still schedule to meet with Linda
9 Culpepper and for her to review the Hearing Officer's Report.

10 KAREN HIGGINS: For her to review the Final.

11 KEVIN GREENE: The final.

12 KAREN HIGGINS: Yes

13 KEVIN GREENE: The final. And once she reviews the final, what typically happens?

14 KAREN HIGGINS: So, the Hearing Officer's Report has a recommendation and the
15 Director can agree with the recommendation from the Hearing Officer's Report or not. Staff
16 may or may not have a different recommendation than the Hearing Officer. We present all of
17 that to the Director. The Director considers it and they ultimately make the final decision.

18 KEVIN GREENE: Whether a permit would be issued or not?

19 KAREN HIGGINS: Yes.

20 KEVIN GREENE: OK.

21 TOM BEERS: In your experience, where there was a Hearing Officer's Report
22 submitted, at that final stage with all the effort that went into working on the Hearing Officer's

1 Report, is it typical for that to be approved, or is it sometimes denied at that point by the
2 Director?

3 KAREN HIGGINS: Do you mean, is the recommendation denied? Or is the project
4 denied?

5 TOM BEERS: The project denied. Would it be denied?

6 KAREN HIGGINS: I have been involved in a 401 review where at that stage the
7 Director determined to deny the project.

8 TOM BEERS: Which ones was that, do you recall?

9 KAREN HIGGINS: I do, it was the Alcoa 401 Certification succeeded with their FERC
10 license.

11 TOM BEERS: Was that similar circumstances to this? Was there any other
12 circumstances that may have been involved with that that would differ from this one? Like do
13 you recall the reason for that denial?

14 KAREN HIGGINS: I do remember the reason for the denial. It was related to the
15 Department of Administration filing a law suit about ownership of the riverbed. That was not
16 related to the ACP. That was not a point of question in this particular project review.

17 TOM BEERS: So in this particular project, did you have any expectations that this
18 would not have been approved.

19 KAREN HIGGINS: We did not expect it to not be approved. Our recommendation was
20 to approve and at no point were we told something different.

21 TOM BEERS: OK. Had this been delivered to the Director, rather than going first
22 through another layer of review - How long would it take for that permit to be issued after it was
23 reviewed by the Director, typically?

1 KAREN HIGGINS: I don't know that I could give you a definitive date. It is usually a
2 short amount of time. The clock is very tight and so we are usually recommending it to the
3 Director with not a lot of time before we run out of the clock, so it is usually a shorter window.

4 TOM BEERS: Within a week? A shorter window, are we talking weeks, months, days?

5 KAREN HIGGINS: Oh, the ones I am thinking of, a couple days to probably not more
6 than a week.

7 TOM BEERS: So a few days on average that you would expect it. It wouldn't have
8 been weeks typically? I'm just talking about what you would expect.

9 KAREN HIGGINS: Sure, right, so I can't think of any examples where it was several
10 weeks.

11 TOM BEERS: OK. In this case, there was another layer of review, rather than
12 anticipating going to Culpepper for review it went to the Secretary's Office for another layer of
13 review. The permit in this case was issued January 26, so that was roughly twenty (20) days
14 later? Is that extended that? Well, let me ask a different question. Do you know what came of
15 the review from the Secretary's Office? Where you informed of what they found in that review
16 of the report?

17 KAREN HIGGINS: So, I

18 KEVIN GREEN: Can I interject for a moment. I will show you a document.

19 TOM BEERS: Let's let him

20 KAREN HIGGINS: I, sure, so I wouldn't quite agree with your characterization of the
21 review steps. But I don't recall whether I saw any edits from Bridget to Brian. I don't recall if I
22 saw that or not.

1 TOM BEERS: Let me ask a question then. If it was going to - these are Brian's words in
2 his email to the Secretary's Office. Would Bridget have been the person to review the
3 document? Or would there be someone else at the Secretary's office that would actually looking
4 at the document for accuracy or what would they be looking at?

5 KAREN HIGGINS: You would have to ask the Secretary's Office who reviewed it.
6 Someone spoke to Brian which is why he made this statement. That was not conveyed to me, so
7 I can't speak for who in the Secretary's Office may or may not have.

8 KEVIN GREENE: So you don't know how he was notified or

9 KAREN HIGGINS: I do not.

10 KEVIN GREENE: OK

11 TOM BEERS: And you don't know the result of that review at the Secretary. If it was
12 reviewed or who reviewed it. You weren't informed of that.

13 KAREN HIGGINS: So what I can say is that I don't remember seeing like a track
14 changes or red line version of edits from the Secretary's Office. I can say that the Hearing
15 Officer's recommendation was not changed.

16 TOM BEERS: OK

17 KEVIN GREENE: Do you recall meeting with the Secretary regarding this.

18 KAREN HIGGINS: Yes, I've meet with the Secretary and others on this, yes.

19 KEVIN GREENE: OK. Do you recall a - this is - I will let you identify them, but these
20 were taken off the staff files. Are these your notes?

21 KAREN HIGGINS: Yes, those look like my notes.

22 KEVIN GREENE: OK. I have actually highlighted that top thing and I believe there is a
23 date up there, 1-12.

1 KAREN HIGGINS: Yes

2 KEVIN GREENE: And if you can just read what your notes state there.

3 KAREN HIGGINS: Sure, so it says it's a meeting with Secretary Regan, with Shelia,
4 Linda and Brian. Questions regarding – do you just want me to read the highlighted-

5 KEVIN GREENE: Yes ma'am.

6 KAREN HIGGINS: Ok, sorry. Questions regarding cumulative analysis, what info does
7 commerce have? Send a summary of conclusions and then it says, Hearing Officer
8 recommendations.

9 KEVIN GREENE: Can you add a little more context to what that meeting was about? In
10 reference to your notes there?

11 KAREN HIGGINS: Sure, So, as I stated previously, meetings, the weekly meetings as
12 well as this meeting was to provide a status update on where we were on the review of the
13 Application and responses to additional information requests we had sent.

14 KEVIN GREENE: OK. And so is this regarding - What issues were being addressed at
15 this time?

16 KAREN HIGGINS: So, we provided an update to the Secretary that some of the
17 challenges we felt as staff we were having with the Applicant, was trying to reconcile the
18 information they were portraying in the cumulative impact analysis that there wouldn't be any
19 with their website and commercials. We were hearing on the radio about all the economic
20 development that was going to result from this project so we were reading information that there
21 was going to be all this economic development and then they were telling us that there was
22 nothing foreseeable happening. So we were having a challenge kind of reconciling those two

1 pieces of information coming from the Applicant. So that is what we talked about at the
2 meeting.

3 KEVIN GREENE: So this would have been after you had reviewed the Hearing
4 Officer's Report, I believe we've got the 4th or 5th. Whatever time frame that was. And then you
5 met on the 12th, so as per your review of the Hearing Officer Report with Brian, or Brian's
6 review of the report, were those concerns addressed to him, Brian, prior to meeting with the
7 Secretary?

8 KAREN HIGGINS: The concerns about the information from the Applicant? Is that
9 your question?

10 KEVIN GREENE: Yes, the impact, yes ma'am.

11 KAREN HIGGINS: OK. Yes, Brian was involved in all of the discussions we were
12 having with the Applicant. He was, I shouldn't say that. I can't remember if he was at every
13 single phone call and meeting, but he was certainly involved in the broad discussion about the
14 cumulative impact analysis and the information contained therein.

15 KEVIN GREENE: OK. So, when you reviewed his work product, I believe on the 5th
16 and you were looking to set up a meeting with Culpepper, what changed in between that time
17 frame that now, this is becoming an issue? The cumulative impact is becoming an issue?

18 KAREN HIGGINS: It did not become an issue between the 5th and the 12th, it had been
19 an issue throughout the entire Application review.

20 KEVIN GREENE: OK. In your review of the Hearing Officer's Report did you make
21 recommendations that we needed more information on that?

1 KAREN HIGGINS: No, it was in response - The add info request came from that review
2 of information in the Application. At the same time we were reviewing the Application, Brian
3 was also working on the Hearing Officer's Report and putting that information together.

4 KEVIN GREENE: OK.

5 TOM BEERS: The Hearing Officer's Report was complete with all those answers
6 presumably in the report. This is after it has been sent to the Secretary's Office for review, that
7 you are having this discussion about these impacts. Was someone at the Secretary's Office
8 asking to revisit the Hearing Officer's Report and make edits to it? Is this what the purpose?

9 KAREN HIGGINS: No, the purpose of the meeting was not, it was information seeking,
10 status update from staff. It was not providing directions on how we were to proceed with the
11 review.

12 TOM BEERS: There was no request to go compare any documents or to reconcile what
13 the ACP commercials were saying verses what you were finding? Was there a request to do that
14 at that point?

15 KAREN HIGGINS: There was not a request from Secretary Regan or Shelia to do that at
16 this meeting.

17 TOM BEERS: That was basically you giving them the status of what's going on?

18 KAREN HIGGINS: Yes. It was us explaining where we were at in the process and what
19 the back and forth was with the Applicant.

20 TOM BEERS: At that meeting do you recall getting information that the Hearing
21 Officer's Report was approved and that they were moving towards the permit.

22 KAREN HIGGINS: That was not - I have no recollection of that being discussed at the
23 meeting. Based on my notes, we discussed the questions we had had on the cumulative impact

1 analysis and provided an update on that to the Secretary and then we discussed the
2 recommendations that Brian was going to put forth in the Hearing Officer's Report.

3 TOM BEERS: Which he already did put in, right?

4 KAREN HIGGINS: He had, it was a discussion of what are the recommendations, so if
5 you read the Hearing Officer's Report, it provides recommendations on if 401 is issued, how it
6 should be conditioned, and so that is the subject that we discussed. Where some of those details
7 of recommendations that Brian had regarding if it was issued, how it should be conditioned.

8 TOM BEERS: OK.

9 KEVIN GREENE: Did the Secretary's Office ask you to contact Commerce and get
10 additional information from Commerce.

11 KAREN HIGGINS: They did not ask us to contact Commerce.

12 KEVIN GREENE: OK. And going back to – these are your notes from the 4th- we've
13 got - give the HO Report graph decisions to Linda on Monday. Bridget will talk with Doug
14 about news release decision. So what is that pertaining to – The news release decision?

15 KAREN HIGGINS: So, the Department when there is a decision that has a lot of public
16 interest, they may issue a news release regarding the decision so that the public is aware.

17 KEVIN GREENE: So on the 4th, it appears that it is apparent that everyone is ready to
18 move forward with a decision.

19 KAREN HIGGINS: We were always working towards moving a decision, moving
20 towards a decision.

21 KEVIN GREENE: Right.

22 KAREN HIGGINS: I, and, you know, we worked through the month of January to get to
23 a decision. As we had since May of 2017.

1 KEVIN GREENE: Right, I understand. And you worked on Sundays and weekends, per
2 these emails.

3 KAREN HIGGINS: I did.

4 KEVIN GREENE: Especially, up towards the end. It was a lot of time invested in that.
5 So, I guess my question though, were you anticipating the permit to be issued in the emanate, I
6 say emanate, within a normal time frame of one or two weeks at that point in time on January 4th.

7 KAREN HIGGINS: I was not.

8 KEVIN GREENE: OK. Then why were we talking about notifying for the press release.

9 KAREN HIGGINS: Again, it is not uncommon that we work on multiple steps so that
10 we are ready. So, when we are working towards getting to that final decision and that Hearing
11 Officer's Report, another step could be the news release so we go ahead and start working on
12 that. Cause everyone has a lot of things going on and the sooner we get started the more likely
13 we are to be ready.

14 KEVIN GREENE: OK. Are you familiar with the draft denial letter?

15 KAREN HIGGINS: I am.

16 KEVIN GREENE: And can you give us a little background on why that was prepared
17 and did you prepare that?

18 KAREN HIGGINS: I did prepare that.

19 KEVIN GREENE: And when did you prepare that?

20 KAREN HIGGINS: I prepared it, I think I first drafted it sometime in January. I would
21 have to look at the file to see the date that it was.

22 KEVIN GREENE: I think we actually have.

23 TOM BEERS: January 1st.

1 KEVIN GREENE: January 1st.

2 TOM BEERS: Is what is in the file. Can you show that to her.

3 KEVIN GREENE: Yeah.

4 TOM BEERS: This is a print from the Web Page that shows it.

5 KAREN HIGGINS: OK. So, can you ask your question again, I'm sorry.

6 KEVIN GREENE: Well, we will start out - Can you give us a little back ground as to
7 why you drafted that?

8 TOM BEERS: This is the actual, that's just the print from the web page, showing the
9 date. That's the draft with no date on it.

10 KAREN HIGGINS: Sure, so as I stated previously, when there is a public hearing, we
11 provide a Hearing Officer's recommendation and staff recommendation to the Director, for the
12 Director to consider, but the Director makes the ultimate decision. So the Director could choose
13 to issue or deny. If in this particular case, our recommendation both the Hearing Officer and
14 staff was to issue the project. If the Director didn't go along with our recommendation and
15 elected to deny it, this was prepared just so we had the address, the project number ready and
16 then the Director would fill in the reasons for denial based on whatever their conclusions were.

17 KEVIN GREENE: Would that be something that the Director would seek information
18 from the people gathering the information from the Applicant?

19 KAREN HIGGINS: They could, but if they have - So, for this particular project, we did
20 not - staff did not have any reasons to recommend denial, and we were not asked to fill in this
21 letter. So I can't speak to whether Linda would have asked us to fill it out or if she would have
22 filled it out.

23 KEVIN GREENE: Were you asked to prepare the letter?

1 KAREN HIGGINS: No, I was not.

2 KEVIN GREENE: Why, do you do that on a normal, regular basis when you have a
3 public hearing? Is that the way I understand it?

4 KAREN HIGGINS: Right, so we had done this previously on projects that had a public
5 hearing where we presented it to the Director.

6 KEVIN GREENE: Can you tell us how many?

7 TOM BEERS: Every project that has a public hearing gets a draft of that letter. Is that
8 fair to say?

9 KAREN HIGGINS: I would not say that, no. So this was something that we did based
10 on discussions during a previous project and so that was, it was, sort of, it may have been the
11 first time we had done that, I am not sure. And as I said, we don't have a lot of public hearings
12 on 401 Applications, there is not a large sample size to speak in large generalities. But we had
13 done this before, and that is why I recommended having this, so that it was clear that it was the
14 Director's discretion to make the final decision.

15 KEVIN GREENE: Is that a document that you would normally prepare when you are
16 ready to present everything to the Director?

17 KAREN HIGGINS: Yes, it was given to her at the same time as the draft 401
18 Certification and the Hearing Officer's Report.

19 KEVIN GREENE: OK.

20 TOM BEERS: So, just to be clear. When the Hearing Officer's Report was reviewed by
21 the Secretary's Office, you weren't aware, who reviewed it, if it was reviewed, but you realized
22 that they did not make any edits to that document as far as you know, to the final.

1 KAREN HIGGINS: No, I believe what I said was I don't know whether they made
2 recommendations. The recommendation from the Hearing Officer to issue the 401 was not
3 modified. That was from the original draft I saw that Brian was preparing the Hearing Officer's
4 Report to the final throughout the entire process, the final recommendation was to issue.

5 TOM BEERS: So was it ever modified by the Secretary's office?

6 KAREN HIGGINS: Not that I am aware of.

7 TOM BEERS: That you could compare the two documents and see if there were changes
8 and there were none.

9 KAREN HIGGINS: I never saw

10 TOM BEERS: And you could see edits.

11 KAREN HIGGINS: a version of Secretary edits.

12 TOM BEERS: OK. And they didn't involve you with discussions to go back and edit, of
13 course. That didn't happen. You didn't have any discussions about their review process?

14 KAREN HIGGINS: I do not recall having any discussions with anyone in the
15 Secretary's Office about that, no.

16 SOMEONE: Two minutes.

17 TOM BEERS: Two minute warning.

18 KEVIN GREENE: Alright, we will just wrap up the end process of how everything
19 shook out. Because it appears that every appeared. We had emails going back and forth on the
20 weekend of the 21st. The 19th is a Friday, the 21st there is an email at 8:50 p.m. on Sunday
21 evening Wrenn emails Higgins back with Final HO Report and asks questions about final permit.
22 Do you recall working and answering stuff on the weekend of the 21st and 22nd.

1 KAREN HIGGINS: I mean I recall working on the project. I don't have specific dates
2 without looking.

3 KEVIN GREENE: OK. What was the reason for the sense of urgency at that point in
4 time?

5 KAREN HIGGINS: I don't know if it was a sense of urgency or, it is not uncommon
6 that I work on nights and weekends.

7 KEVIN GREENE: OK. And then I believe that you send Culpepper an electronic copy
8 on the 23rd with the ACP permit and denial letter. Do you recall doing that?

9 KAREN HIGGINS: So, again, I do not have anything in front of me. My recollection is
10 Brian emailed Linda the Hearing Officer's Report and we - I provided the 401 Certification we
11 were recommending and then the blank denial template.

12 KEVIN GREENE: OK.

13 TOM BEERS: Were you made aware that there was a mitigation fund being negotiated
14 between the Governor's Office and the ACP partner's related to the ACP?

15 KAREN HIGGINS: I was not.

16 TOM BEERS: You were never made aware of that?

17 KAREN HIGGINS: Not during the review of the Application, No.

18 TOM BEERS: You found out after the fact?

19 KAREN HIGGINS: So, I was actually on vacation the day the final 401 was issued and I
20 read an article and that was the first I was aware of whatever the fund is.

21 KEVIN GREENE: No discussion between the Governor's Office regarding that and your
22 Department for mitigation purposes.

23 KAREN HIGGINS: No one discussed it with me.

1 KEVIN GREENE: OK. Did you have any other discussions with any of the Governor's
2 staff regarding the ACP permit.

3 KAREN HIGGINS: No, I have never discussed it with the Governor's officer or their
4 staff.

5 KEVIN GREENE: OK. Well, we appreciate it. Our time is up. So I am going to
6 officially stop this at 12:31 and 50 seconds.