



BAKER RIVER PROJECT RELICENSE

Solution Team

November 28, 2001

9 a.m. – 3 p.m.

Skagit County Administration Building.
700 South 2nd Street, Mt. Vernon, WA

Mission: By April 30, 2004, the Baker Solution Team will draft a settlement agreement for relicensing of the Baker River Project that best meets the interests of the signatories.

FINAL MEETING NOTES

Winter Weather Advisory: Call Connie at 425-462-3556 to see if meeting is canceled due to inclement weather. Call Lyn at 425-444-8156 if something comes up at the last minute (on the way to the meeting).

Team Leader: Connie Freeland (Puget Sound Energy) (425) 462-3556, cfreel@puget.com

Members Present: Jon Vanderheyden (District Ranger U.S. Forest Service), Steve Jennison (WA Dept. of Natural Resources), Jerry Louthain (Anacortes & Skagit PUD), Arn Thoreen (Skagit Fisheries Enhancement), Paul Schissler (Town of Concrete), Susan Rosebrough (Regional Office National Park Service), Gary Sprague (WA Department Fish & Wildlife), Stan Walsh (Skagit System Cooperative), Bob Helton (Citizen), Bill Reinard (Wildcat Steelhead Club), Bob Nelson (Rocky Mountain Elk Foundation), Steve Fransen (National Marine Fisheries Service), Fred Seavey (US Fish & Wildlife), Dave Brookings (Skagit County Public Works), Bruce Freet (National Park Service), Ruth Mathews (Nature Conservancy), Burton Reanier (Skagit County Public Works), Connie Freeland (PSE), Lloyd Pernela (PSE), Ed Schild (PSE), Cary Feldmann (PSE), Rhonda Hilyer (Agreement Dynamics), Lyn Wiltse, facilitator (PDSA Consulting, Inc.), Steve Hocking (FERC Representative).

NEW ACTION ITEMS

- ALL: Review draft process for elevating issues to Solution Team and get feedback to Connie by year-end.
- ALL: Review Glossary Document (PSE will post on website).

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- Patrick: Contact environmental organizations in the Puget Sound Area re: participation with Cascade Conservation Council
 - Connie: Contact Jim Karcher re: Whatcom County representative
 - Connie: Check with Kristin re: hard copies of Fred's digest
 - Connie: Send out Solution Team history blurb for members to review
 - Lloyd: Resurrect Study Overview document for Solution Team
 - Connie: Create prototype of Solution Team notebook and bring to next meeting
 - Lloyd: Create overview of ongoing and proposed 2002 studies for January meeting
 - Steve H: Get us re: Federal Power Reserve land withdrawal (BLM); what we can do to protect ourselves if we elect not to do "unnecessary studies"; what is available through FOIA.

REPORT ON OLD ACTION ITEMS

- Connie: Created a list and text of all CFRs referred to in the Communications Protocol and Process Document and distributed to members
- Connie: Saw that Fred's digest was distributed to members electronically
- Connie: Created draft explanation of Solution Team mission, background etc.
- Connie: Talked to Burt re: November 28 and Whatcom County representative

AGENDA

November 28, 2001 Mt. Vernon, Washington

9:00 to 3:00 (with working lunch provided)

1. Introductions
2. Review/revise minutes/agenda
3. Action Items
4. "Final" review of Communications Protocol/Process Document (red-line showing attorney changes)
5. Questions and answers with Steve Hocking of FERC
6. Timeline
7. 2002 Studies/Process for Solution Team review of Studies
8. Protocol to bring Working Group issues to Solution Team for resolution
9. Set schedule/agenda for next meeting
10. Evaluate meeting

INTRODUCTIONS

We were pleased to welcome first-time attendees: Steve Hocking (FERC), Ruth Mathews (Nature Conservancy), and Dave Brookings (Skagit County Public Works).

PROCESS FOR SOLUTION TEAM TO REVIEW STUDIES

We agreed that it makes sense to have the Working Groups continue to create and approve Study Plans and that the Solution Team would help resolve study-related disagreements.

Additionally the Solution Team would review studies periodically for:

- Information sharing
- Financial
- Timing
- Holistic View/Priorities

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- Gaps/Gap Analysis
 - Synergies/ Potential Funding and in-kind partnerships

FORMAT TO REVIEW STUDIES

1. For initial study requests: Title, Purpose, Timeline
2. Once study plans have been approved: One page overview (of Study Plan)

We will get a cumulative list at our January meeting. Get update in the spring (annual progress report), another progress report in the fall, then next January (three times/year)

COMMUNICATIONS PROTOCOL/PROCESS DOCUMENT

Resource Agency Attorneys and PSE attorneys are continuing to revise legal language re: confidentiality, reservation of rights, studies and settlements. Lloyd distributed a draft of the language currently being considered. The process by which public agencies would handle requests for information from potential competitors is being discussed. Steve Hocking (FERC) expressed concern that these documents were not yet complete. He strongly advised us to complete and approve these at our January meeting. He feels these documents should be done at least two years before the license application is filed so they can act as guidelines for the work being done. We aim to get the “final” draft of these documents early enough to allow Solution Team members to review them prior to our January meeting.

QUESTIONS FOR STEVE HOCKING/FERC

In Steve’s opening remarks, he emphasized FERC’s desire to support the ALP in as many relicensing cases as possible.

- *Background (related to job):*
 - 10 years @ FERC
 - Relicensing experience: Approximately 8 years with post licensing group (amendment applications, compliance plans, etc.) Last 1.5 years in Licensing Group
- *What is FERC looking for in the Alternative Licensing Process (ALP) request?:*

FERC looks for consensus to use the process as evidenced by the Communications Protocol and Process Document.
- *His role (How things might change with the application filing, etc.):*

His job is to be our advisor as we move through the ALP process. He will advise us re: Commission procedures, provide technical assistance as needed, and share his experience with other ALPs.
- *How will he be involved/over what time period? Will he be with us for the long haul?:*

His role might change if the Commission decides to separate staff into decisional and non-decisional. This would happen if there is a settlement agreement and it is contested. If this happens and he has been heavily involved with helping us create our settlement agreement, he would not be decisional staff. This is a FERC policy to make sure decisions are fair. Staff decisions are typically upheld by the Commission. Also, if FERC doesn’t approve our request to go ALP, we may lose him as our contact.
- *What he can and can’t help us with...time-wise, etc:*

He will be involved in scoping meetings and otherwise available via teleconference.
- *How can we consult with him (ex-parte)?:*

Ex-parte means all get access to same info at same time. These regulations only apply when there is potential of or during a contested proceeding. This does not exist now, so ST members can communicate with Steve as needed, subject to the Communications Protocol.

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- *How will he coordinate with others at FERC?:*
He will work closely with legal advisors, as well as folks in Hydropower West Branch, including reps from the various resource areas within FERC.
 - *Feedback on Communications Protocol/Process Document:*
Steve reviewed our current drafts and had a FERC attorney review them. He thought they looked good and would forward comments to Lloyd.
 - *Confidentiality Section (IV):*
Concern about confidentiality is a new challenge; Steve said we are blazing a new trail. FERC only recently issued four orders to deal with this situation on the Priest Rapids Project #2114. These orders are available on FERC's website. They describe how FERC is drawing the line between what information must be made available and what can be protected against would-be competitors.
 - *Studies Section:*
Reference Coastal Zone Management Act consistency (CZMA) and State Historic Preservation Office (SHPO).
 - *Settlement Section:*
There is no problem with this section. Settlement procedures would be good in the PD. He wants to see a schedule for actually developing a settlement agreement.
 - *Public Reference File: What needs to be part of the public record?:*
We file NEPA document and license application and whatever else we want to include. Otherwise, we don't need to worry about what goes into the Commission's record. It will include our 6-month reports, public meeting notices, FERC notices, Draft License Application, Final License Application, PDEA.
 - *What types of settlement agreements raise red flags?:*
 - Problems with jurisdictional issues (throwing everything into the agreement): FERC does not have jurisdiction over anyone except the licensee and cannot enforce any third party actions included in a settlement agreement. Thus, they won't incorporate those elements into the license which are beyond FERC's jurisdiction. Settlement is between parties themselves; to enforce, they must use other venues if FERC has no jurisdiction.
 - No connection (nexus) between project and PMEs: FERC will only include in license PMEs with obvious connection to project.
 - *Other comments re settlement agreements:*
 - Non-compliance of settlement issues: FERC can only enforce articles with licensee.
 - Economics: FERC wants settlement agreements so probably won't have problems with economics of a project if the licensee has signed the agreement. Economic cost analysis of each element and overall economic evaluation will be addressed in the EA.
 - *Perspective on how to deal with interim conditions, agreements prior to license acceptance:*
Generally, FERC is fine with interim conditions if all parties are fine with them, they don't conflict with licensing conditions and don't require an amendment application. FERC discourages an amendment process right before relicensing because they would have to do another EA right before a comprehensive review, which is what relicensing is.
 - *His thoughts/experience on competitive application:*
Priest Rapids is only the second case of competition he knows of; the second is in Maine. Existing condition and baseline description information must be publicly available. Actual plans, proposals for the application or analysis that would support plans can be privileged.

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- *Hot points FERC looks at in applications, PDEAs, etc.:*
 - There is often a lack of analysis of dissenting or conflicting points of view. All points of view need to be discussed in the preliminary NEPA document. The analysis states why the proposal is deemed the best; EA needs to explain why any group disagrees and why we disagree with them.
 - We can include whatever alternatives in the EA that we want, such as Project removal and decommissioning. The level of analysis for these two alternatives can be a very high-level analysis (briefly discussed and dismissed) or a very detailed analysis. The amount of discussion in the PDEA depends on how many are calling for the alternative. It is our ALP and our PDEA. Alternatives to be studied are approved by the group. We decide if it is or isn't a viable alternative. If it does not make sense, do not spend time in NEPA on a lot of detail. All EAs usually include decommissioning, federal takeover and non-power license alternatives. FERC has only issued one non-power option in the last 70 years. This would be a temporary license between a power license and when someone else takes the project over.
 - *Impacts: Ongoing, cumulative, continuing impacts; baseline:*

Steve encourages us all to agree what the impacts are and what would be the mitigation measures. Labeling the type of impact is a contentious area; he suggests using "PM&Es" in license documents. The question of baseline is also a contentious area. Baseline is not an issue; the issue is what are impacts. We need consensus on impacts. FERC won't address the baseline question if there is a settlement agreement. If there is controversy, FERC will go to its definition of baseline as existing conditions in 2004.
 - *Who decides if an EA or EIS? Criteria for decisions?:*

If we go ALP, we start the decision of whether to prepare an EA or EIS. Ultimately FERC makes this decision since they are the ones that must comply with NEPA. Relicensed projects are traditionally EAs; new projects are EISs. Major construction activity, operational changes, and controversy are the criteria FERC looks at to determine whether it should be an EA or an EIS. He suggests we start on an applicant-prepared EA. If it turns into an EIS, our group loses control because FERC will administer the document. A third party contractor must be used if it is an EIS. This contractor must be on the approved list by FERC. FERC has, in the past, converted EAs to EISs as necessary if there will be a major impact from the project. FERC is more often sued for the decisions it makes rather than for if an EA was prepared when parties thought an EIS would be more appropriate.
 - *Earliest date for license? Criteria for length of license?:*

Most license applications utilizing the ALP are processed in just over a year if there are few unresolved issues. Steve suggests that we make most decisions here and not send them to FERC. Typically relicenses are for 30 years; new licenses are typically for 50 years. A relicense with major capital investments or major financial commitment could be for 40 years. The Commission makes this decision at the time the license order is issued. It doesn't show up in the draft EA. License length may be stipulated as a term in a settlement agreement, but FERC may not necessarily agree with this.
 - *Federal Power Reserve -- original land withdrawal under the FPA and how that relates to the project boundary:*

The Federal Power Reserve withdrawal is only in effect until a project is built. Steve will do some research on this (with BLM) and let us know if that is still in effect. This should have no bearing on the relicensing process. We need to look at lands within the project boundary and their nexus to the project. FERC will set the exact project boundary in the license order. The NEPA document discusses need for lands to be included or removed from the project boundary. The current consensus at FERC is that project islands are permissible.

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- *How does the boundary relate to Late Successional Reserve?:*
To the extent that the project occupies Forest Service lands, the FS has mandatory conditioning authority over its lands that are within the project boundary. FERC examines land use plans for consistency.
 - *ESA: What happens if species are listed/de-listed during period of the license?:*
If listed during current licensing period, we would consult. If de-listed, we wouldn't.
 - *What studies are necessary? How about if we agree not to do a study because we know what the outcome would be?:*
This would be fine if we reach a settlement agreement. If we don't, then we wouldn't have the study to back up a particular recommendation. FERC can always ask for additional studies after a license application is filed. Steve will do some research on this and get back to us.

In closing, Steve strongly suggested that we set and abide by deadlines for comments on draft studies and reports. This is critical because of the time required to participate in the ALP. In clarifying the issue of consensus to use the ALP, Steve noted there is a difference between parties disagreeing with an ALP and not having time to participate in an ALP process. After the meeting, Steve agreed to be available via telephone for a short period during future Solution Team meetings.

TIMELINE

Lloyd distributed a memo re: Relicensing Timelines Assumptions prepared by Pat Weslowski of the Louis Berger Group. The memo compares and contrasts the traditional, alternative, and hybrid relicensing processes.

He also distributed two Gantt charts: one for the traditional process and one for the alternative process. Assuming we submit a request for the ALP in January 2002, it looks like it may be the first of April before we are likely to get a ruling from FERC on our ALP application.

We hope that we can complete the necessary tasks in a timely enough manner to get a FERC ruling as early as possible.

Lloyd also referenced a schedule comparing the three approaches and stressed that it is only a rough draft. We'll get an update of the timeline at our meeting in January.

MEETING HANDOUTS

- Memorandum to: Lloyd Pernela, Connie Freeland – From: Pat Weslowski, The Louis Berger Group, Inc. Re: Relicensing Timelines Assumptions, November 26, 2001
- Alternative Relicensing Process, Gantt chart
- Traditional Relicensing Process, Gantt chart
- Initial Draft of Process for Elevating Issues to the Solution Team, Lyn Wiltse, November 28, 2001

PARKING LOT

- Members disclose legal requirements (perceived authority and responsibility).
- Members need to describe their roles in terms of decision-making authority in their organizations (this relates to who would be members of the Policy Solution Team).
- Develop a template for Working Group recommendations.
- Define a process for delayed resolution (based on incomplete studies).
- PSE provides their expectations of license legal ramifications.
- Adaptive management:

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- How can we take into account future technology, knowledge, conditions, resources, etc.?
 - How can we balance licensee exposure?
 - Clearly define everything to be included in a settlement agreement (expectations).
 - Determine what is/isn't part of the administrative record.
 - Develop procedures around press attending these meetings.
 - How to enlist recreational users.
 - Define "mitigate."
 - Define "baseline." (Teamlet?)
 - Define "project induced." (Teamlet?)
 - Consider tour.
 - FERC boundary.
 - How do we handle new people coming into the process?
 - Develop public information protocol
 - Create Baker Relicensing Notebook for participants

MEETING EVALUATION

Well-Dones:

- Burt hosting us!
- Steve H's presentation!
- New participants – Ruth, Dave, Steve H.
- Lasagna/cookies
- Out on time!
- Caffeinated facilitator

Need to Improve:

- Snow
- Parking
- Missing stirrers for coffee
- No tea
- Caffeinated facilitator
- No phone

TENTATIVE AGENDA FOR NEXT MEETING

January 23, 2002 USFS Office, Mountlake Terrace, WA

9:00 to 3:00 (with working lunch provided)

1. Introductions
2. Review/revise minutes/agenda
3. Action Items
4. "Final" approval of Communications Protocol/Process Document
5. 11:00 : Q&A with Steve (FERC) via telephone
6. Review Timeline
7. Process for Solution Team to Review Studies
8. Studies/Budget for 2002
9. Protocol to bring Working Group issues to Solution Team for resolution

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10. Set schedule/agenda for next meeting (2/27)
 11. Evaluate meeting
 12. Comments from observers