
Baker River Project License Implementation

Baker River Interim Coordinating Committee

September 21, 2006
9:00 am - 3:00 pm

PSE Bellevue – Summit Conference Room

FINAL MEETING NOTES

PRESENT

Larry Tornberg, Cary Feldmann, Lynda Kupfer and Connie Freeland (PSE); Mark Killgore (Louis Berger); Stan Walsh (SRSC); Brock Applegate, Rich Johnson and Gary Sprague (WDFW); Patrick Goldsworthy (NCCC); Alice Kelly (WA DOE); Bob Nelson (RMEF); Steve Fransen (NOAA); Arn Thoreen (Skagit Fisheries); Torey Nelson (Skagit Co. Public Works); Jeff Dillon (USACE); Rod Mace and Walt Dortch – by phone (USFS); Bob Helton – by phone (Citizen); Lyn Wiltse, facilitator and Jamie Riche, note taker (PDSA Consulting, Inc).

QUOTABLE QUOTE

The Optimistic Pessimist, by Cary Feldmann: “The only thing you can be if you’re a pessimist is pleased because it is either exactly as you predicted or it is better.”

NEXT MEETING DATE

BRICC Meeting: November 16, 9 a.m. – 3 p.m., location TBD

TODAY’S AGENDA TOPICS

FERC: settlement ruling

Review FEIS

Decision re: supplemental comments on FEIS

Flood control legislation

Updates on ongoing projects

NEW ACTION ITEMS

- Cary – Attach brief description of Cushman decision to these notes.
- Connie – Send flood control language agreed to by settlement parties and the legislation language to the call participants.
- Lyn – By the end of the day, send notes of this meeting to Connie to distribute to all.

WELCOME

Lyn welcomed the group and reviewed the agenda for the day. Connie shared the new “Baker River Basin Recreation Guide” brochure to universally positive reviews.

We also welcomed first-time attendees: Torey Nelson (Skagit Co. Public Works); Jeff Dillon (USACE); and Linda Kupfer, who just joined PSE this week as the Compliance Tracking Coordinator.

BREAKING NEWS: FERC SETTLEMENT RULING

Breaking news: FERC issued a policy guidance document regarding settlement agreements just this morning. Walt shared some of the background and walked us through the highlights of this ruling. FERC has been inconsistent in its treatment of settlement agreements in the past. This new guidance document should be helpful in giving us an outline for our responses. Walt believes we can apply all six of FERC’s new guiding principles to our settlement to reasonably and fairly push for adoption of the Settlement Agreement as presented.

He commented that the response to the Portland General Electric Clackamas DEIS was masterfully done and suggests we all read this prior to formulating our own response to the Baker FEIS.

He also suggests that we work to present a unified regional response and will outline some of the themes that would be helpful as we prepare our response to the FEIS. Ex: Suggesting to FERC that supporting intact Settlement Agreements would be an ideal way for them to meet their obligations to the public.

The Circuit Court ruling relating to the Cushman Project may also have implications for us. Steve and others familiar with the ruling walked us through the highlights. In short, the court confirmed that mandatory 4(e) conditions are in fact mandatory – not at FERC’s discretion. Furthermore, the court stated that since FERC doesn’t impose deadlines on itself, it doesn’t have the authority to impose deadlines on other federal agencies. Therefore, FERC doesn’t have authority to impose a time limit on 4(e) conditions. The court also reasserted the Escondido case regarding 4(e) conditions, which had been undermined over time. At this time, the folks at the table believe there aren’t moves underway to appeal this decision.

FEIS REVIEW

Cary commented that PSE was fairly encouraged by FERC’s response as he hadn’t expected the FERC to move very far from their position expressed in the DEIS (see his “optimistic pessimist” quote at the top of these notes). Mark Killgore of Louis Berger noted that the original gap between the Settlement Agreement and DEIS, which was about \$1M per year, has been cut roughly in half in the FEIS. He also noted that there was a lot of progress in the recreation section. The big gaps which remain tend to be in the biological / natural resource areas.

Mark reminded us that although there isn’t an official comment period on the FEIS as there is on a DEIS, there is still an opportunity to influence the Commission because their order does not have to follow the staff suggestions in the FEIS. So, any comments the Commission receives on the FEIS before they issue the license order could influence that order. If we feel we need to, we could also petition for a re-hearing after they issue the final order.

Mark then walked us through the DEIS/FEIS Comparison Matrix prepared by Louis Berger:

Article 101: Fish Propagation

FERC's concern is that their only authority is over the licensee (PSE), so their view is that their mandates must be relative to PSE rather than other agencies. We discussed the strategy of addressing differences between the FEIS and our Agreement through our implementation plans. We agreed that PSE could continue to contract with the agencies for the hatchery manager (all are happy with how it's working with Kevin of WDFW).

Article 109: Large Woody Debris

FERC allowed for the storage of large woody debris outside the project boundary, but PSE must then bring any outside storage location into the project boundary. This adds an administrative burden to PSE, but is doable.

Article 110: Shoreline Erosion

This might be an example where Cushman could be helpful (mandated 4(e) conditions).

Recreation: Mark noted several small victories in these articles, with quite a few DEIS "no's" becoming "yeses" in the FEIS.

Article 302: Aesthetics Management

Identifying additional camping sites so they change from "unspecified" to "specified" *might* allow FERC to accept the articles as presented.

Articles 303 (Baker Lake Resort Redevelopment Plan) & 304 (Baker Reservoir Recreation Water Safety Plan):

PSE believes they can do everything required by articles 303 & 304.

Article 305: Lower Baker Developed Recreation

PSE will notify FERC that the Lake Shannon access road issue has not been resolved yet.

Article 309: Bayview Campground Rehabilitation Funding

Under the Settlement, the campgrounds such as Bayview Campground will continue to be operated and maintained by the USFS. However, the FERC FEIS language states that PSE will operate and maintain these facilities and expand the project boundary to enclose the sites. This suggests that fees for such facilities would no longer go to the USFS to offset costs incurred in the operations as they are project features. And in light of the boundary adjustments for which fees (estimated by the FERC at \$22K per year) would be paid to the Federal government, none of this money would go to the USFS either.

We noted that the language here is confusing. FERC staff recommends that PSE not consult or contract with USFS, but should rather "maintain and operate" the facilities. PSE and USFS plan to talk more about this. Mark suggested that this may also be a section where the Baker FEIS and the Cushman decision crossed like ships in the night; Cushman may help us here.

Article 318: Law Enforcement

Mark noted that FERC has been consistent in their opposition to building any law enforcement into their licenses. FERC has stated that – even if there is a nexus to the project in terms of increased public use

(and therefore increased criminality) – they believe law enforcement is the responsibility of local jurisdictions and not within their (FERC’s) authority. Cary noted that there may be some creative solutions here. PSE will integrate them into their response to FERC.

Article 401: Water Quality

Alice noted that the state needs to review the FEIS and make a SEPA recommendation so that the Town of Concrete can issue their Shoreline Permit. Ecology can then issue the 401.

Article 503: Elk Habitat

Patrick wants to confirm that the wording here is strong enough to ensure we can accomplish our goals. Others feel this is the case and we are not at risk.

Article 505: Aquatic Riparian Habitat Protection, Restoration and Enhancement Plan

Despite our convincing comments, there was no movement here. We’re going to need to address this through other conditions. Ecology has indicated this has been incorporated in their draft 401; they feel pretty confident about putting this condition in the 401.

Article 516: Mountain Goats

This was a “no” to “yes” victory. Cary noted there is some ambiguity in terms of actual implementation. PSE and USFS need to button up on targeted areas and timelines within the implementation plans.

Article 517: Grizzly Bear Road Management

FERC’s take is that PSE is responsible for the work, not just responsible for writing the checks, but PSE can contract with USFS.

Article 603: Adaptive Management

FERC says the article itself is too vague, but PSE can “request an amendment of any license condition whenever circumstances warrant.”

HOW DO WE RESPOND?

- Rod shared that the USFS will file final 4(e) terms and conditions the first week in November.
- Steve announced that NMFS’ timeline for issuing its BO is January 31, 2007.

Cary shared that he believes PSE is planning to respond; Stan and some others around the table are also likely to respond. Although there is no formal timeline, sooner is better than later. Most are planning to respond within a 30-day window. We also agreed that succinct responses are more likely to be read and carefully considered by FERC in such a way to possibly influence the license order before it is issued.

After some discussion, we agreed that it made sense to consider responding regarding the following:

- 505 (riparian habitat)
- 602 (funding)
- 318 (perhaps tie to homeland security)
- 101 (jurisdictional standpoint)

FLOOD CONTROL

Stan reminded the group of the conference call to discuss concerns with the initial draft flood control legislation Congressman Larson introduced. The group developed language for the Corps that everyone could live with. Stan noted that what actually got introduced to Congress was actually much closer to the first draft than to the language the Settlement parties collaboratively drafted. Connie will send out the version that came out in the legislation along with the language the Settlement parties agreed to during the conference call. Stan is concerned that this legislation may conflict with and override our flow article. We will work together to safeguard what is in our agreement.

PROGRESS REPORTS

ARG – Aquatics Resource Group

This team has been meeting quarterly; Fish Passage Technical Working Group has been meeting more often. Highlights from pre-license activities in this area are:

- **FSC:** Cary reported that the contractor and fabricator have been hired for the FSC and final design work is nearly complete. Assembly will be on the shoreline. Work is proceeding according to schedule.
- **Upstream Passage:** The Value Engineering session yielded a few different options to consider, some of which offer some moderate cost savings. Cary was pleased to announce that due to a compressed timeline, it looks like we will be up and running two years ahead of schedule! The settlement calls for construction to begin by June of 2007. We expect to be fully operational by June of 2008!
- **Hatchery:** The Value Engineering session questioned the number of ponds required to hold adult Chinook. The group will take a PDSA approach to determining the number and size of ponds. Other than that, they are going forward with original design/layout.

Elk & TRIG – Terrestrial Resources Implementation Group

The Elk teamlet continues to look for appropriate lands for elk habitat and is working toward a creative land acquisition / swap arrangement with a large landowner. The larger TRIG is looking at getting together again in mid October.

RRG – Recreation Resource Group

The group is meeting approximately quarterly. Pam Garland, the new team leader, has been working with the Forest Service on related issues.

CRAG – Cultural Resources Advisory Group

Connie noted that PSE has hired Jessie's replacement. She starts October 2. The next CRAG meeting will be mid to late October. The Programmatic Agreement (PA) to implement the Historic Properties Management Plan (as noted in Article 201) is being circulated for signatures. The PA has been signed by FERC; it goes into effect when the State Historic Preservation Officer signs it. Other parties are concurring and do not have to sign the PA for it to go into effect.

MEETING EVALUATION

What Went Well

- Nice participation by all
- Arn's facilitation was excellent
- Great food / facilities
- Louis Berger's table greatly facilitated FEIS review – Thanks to Rob Mohn, et al!
- Phone acoustics were good (as reported by Bob Helton)
- Got out early!

What to Do Differently

- Double-booked room issues
- Try to arrange for better traffic!

NEXT BRICC MEETING

November 16, 9 a.m. – 3 p.m. (Location TBD)

AGENDA TOPICS, NEXT MEETING

- Welcome, Review Notes, Agenda
- Timeline Update
- Project Update: FSC, Hatchery, Elk Lands, Permitting Processes, etc.
- Next Steps
- Set Next Meeting Date and Agenda; Evaluate Meeting