

---

## BAKER RIVER PROJECT RELICENSE

### Solution Team

February 27, 2002

9:00 a.m. – 3:00 p.m.

USFS Office  
Mountlake Terrace, 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 (U.S. Forest Service), Steve Jennison (WA Dept. of Natural Resources), Gary Sprague (WA Department Fish & Wildlife), Don Schluter by phone (Trout Unlimited), Rod Sakrison (Dept. of Ecology), Stan Walsh (Skagit System Cooperative), Bob Helton (Citizen), Bill Reinard (Wildcat Steelhead Club), Dave Brookings (Skagit County Public Works), Patrick Goldsworthy (North Cascades Conservation Council), Bob Nelson (Rocky Mountain Elk Foundation), Fred Seavey (US Fish & Wildlife Service), Steve Fransen (National Marine Fisheries Service), Jerry Louthain (City of Anacortes & Skagit Co. PUD), Arn Thoreen (Skagit Fisheries Enhancement Group), Rhonda Hilyer (Agreement Dynamics), Connie Freeland (PSE), Lloyd Pernela (PSE), Ed Schild (PSE), Cary Feldmann (PSE), Lyn Wiltse, facilitator (PDSA Consulting, Inc.), Steve Hocking and Keith Brooks by phone (FERC Representatives).

**NOTE:** The March 27 Solution Team meeting will be held at the Dept. of Ecology office in Bellevue. Directions will be sent out prior to the meeting.

---

## **NEW ACTION ITEMS**

- ALL: Review “Most Current Version” of Communications Protocol/Process Document (especially settlement language). Imagine confidentiality language (re: competition) gone. Get comments to Connie by March 8.
- ALL: Consider questions to pose to FERC during conference call.
- ALL: Get Connie comments on the initial draft of the Scoping Document 1 by March 8.
- Connie: Send out PSE’s intentions ASAP.
- Connie: Send out “Most Current Version” of Communications Protocol/Process Document.
- Connie: Share new version of Elevating Issues Process with Team Leaders.
- Stan: Button up with Russ re: confidentiality in Communication Protocol/Process Document minus protective PSE language. Is it sufficient for tribes?
- Connie: Re-send website link for the Digest of Federal Resource Laws of Interest for the US Fish and Wildlife Service. (She will do so as soon as USFWS website is back up.)
- Ed: Meet with Bruce, Lloyd, Stan, Jon, Rod, Bob (Lyn) re: Settlement Process.
- Connie: Send out second draft of Scoping Document 1 by middle of March.

## **REPORT ON OLD ACTION ITEMS**

- Connie: Checked with Rob Whitlam, from Office of Archaeology and Historic Preservation, re: their participation. At the present time they will participate by being on the distribution list.
- Connie: Passed out a draft of letter of support for the request to use the Alternative Licensing Process.
- Jon: Checked out Forest Service Office at Mountlake Terrace as backup for future meetings.
- Cary: Sent out FERC project numbers for Avista license. [Cabinet Gorge #2058; Noxon Rapids #2075]
- Ed/Bruce/Lloyd: Drafted strawman process for getting to settlement.
- Lyn and Connie: Suggested new “beeping” phone protocol.
- Stan and Lyn: Re-drafted protocol for elevating issues to Solution Team. This process was reviewed and accepted with the changes suggested by Bob Helton.
- Burt/Dave: Reserved Skagit County location (potentially) for March/April meetings.

## **AGENDA**

**February 27, 2002 USFS Office, Mountlake Terrace, WA**

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

1. Introductions
2. 9:10 – 9:30 Review/revise minutes/agenda
3. 9:30-10:00 Confidentiality: Where are we?
4. 11:000 – Noon FERC Conference Call
5. 12:30 LUNCH
6. 12:30 -1:15 Initial draft of Scoping Document 1; Settlement Process strawman
7. 1:15 – 1:30 Action Items
8. 1:30 1:45 Studies
9. 1:45-2:15 Review schedule of Solution Team Meetings and set next agenda/location
10. 2:15 – 3:00 Evaluate Meeting

---

## **CONFIDENTIALITY STATUS**

The attorneys met February 26, 2002. They are going to meet again in a week re: terms of coming to agreement on how to handle confidentiality.

Russ Busch, the attorney representing all three tribes, has submitted language around confidentiality. Their main concerns are protecting archeological sites, cultural practices (other than fishing) and related information. Most attorneys seem comfortable with what Russ proposes. Lloyd distributed Russ's outline for us to review.

Lloyd also distributed the latest red-line version of the Confidentiality Section of the Process Document. The attorneys have not yet agreed on how to handle Section 4-2 : Procedures to Protect PSE Against Competitive Use of Collaborative Information.

PSE's interest is to protect sensitive information during the interim period where a would-be competitor might be able to effectively use the information. PSE doesn't intend to exclude participants' access to information. It is the dissemination of critical information, e.g. financial, future plans, alternative analysis, that they are looking to control.

PSE would enter into confidentiality agreements with Tribes, citizens and NGO participants. However, PSE's desire to not provide critical information to a competitor runs counter to how agencies operate in an open environment.

Fred shared that USFWS was uncomfortable with how broadly this issue is being defined and that PSE would be the one determining what is confidential. It was pointed out that in the Grant County PUD case with PacifiCorp (the competitor) requesting information, it was a traditional process not an ALP.

USFWS suggests that FERC determine on a case by case basis re: What is/is not confidential? Many felt that this was not a viable alternative, as FERC would not be able to respond in a timely fashion. It was felt that if FERC determined confidentiality, than PSE's option would be to not give agency folk the material. It was suggested that the Solution Team rather than PSE make the decision around what should be considered confidential. FERC could then arbitrate where needed (if the Solution Team couldn't agree).

There is no legal precedent re: how to balance the Freedom of Information Act with confidentiality. The ALP calls for all information being open and transparent. It was suggested that we have been trying to draft "secretive" language into a process intended not to be secretive. If a Licensee wanted confidentiality, FERC's traditional process is used. FERC does allow a hybrid traditional process, where a draft environmental assessment and settlement agreement would be forwarded with the license application.

NMFS also has trouble with setting a precedent that could be used in other NMFS activities across the nation.

It was suggested that the scope of material that would be held confidential should be limited. It was suggested that PSE could provide a list of potentially confidential documents/information.

---

---

### **Our Options:**

- Let attorneys continue
- Throw out confidentiality language and go ALP
- Go hybrid
- Go traditional
- Teamlet to resolve
- Work up a “Confidentiality Schedule”
- Gentlemen’s Agreement

Several NGO representatives expressed a desire to go ALP so that decisions would be made by this group rather than FERC. They also like the inclusive nature of the ALP and feared that they would not be as involved in a traditional process.

After additional discussion, Ed Schild announced that PSE will take a week or so to do a risk assessment around possibly removing the confidentiality language from the Communications Protocol/Process Document. PSE may elect to go traditional (hybrid) if they need to protect themselves from a competitor. Stay tuned...

### **FERC CONFERENCE CALL**

Keith Brooks and Steve Hocking from FERC were on the phone. We discussed confidentiality as reflected above.

### **PROTOCOL TO BRING WORKING GROUP ISSUES TO SOLUTION TEAM FOR RESOLUTION**

Stan and Lyn revised the draft of this process since our February meeting. We reviewed and approved this process (with Bob Helton’s suggested edits) for bringing Working Group issues to the Solution Team for resolution.

### **SETTLEMENT PROCESS STRAWMAN**

Lloyd distributed a “strawman” draft of a collaborative process leading to recommendations for settlement. This draft uses interests as the driver to issue resolution. It was expressed that a process for resolving issues has been used successfully by other groups. A teamlet, consisting of Ed, Bruce, Lloyd, Stan, Jon, Rod, and Bob, will meet to work on a plan for the settlement process.

### **DRAFT SCOPING DOCUMENT 1**

Connie distributed this document and asked for comments by March 8, 2002. This is a preliminary draft of the full scoping document for the Environmental Assessment. The Working Groups are reviewing Part II regarding the resource specific issues. Connie will compile comments and send out another draft prior to the March 27 Solution Team meeting. This document supplements the Initial Consultation Document, which will be issued in March. Scoping Document 1 will be issued in April. A joint public meeting/scoping meeting will be held in May.

### **HANDOUTS**

- Russ Busch’s element for the confidentiality section.

- 
- 
- Federal Register/Vol. 67, No. 28/Monday, February 11, 2002/Proposed Rules re: Endangered and Threatened Species: Findings on petitions to De-list Pacific Salmonid ESUs.
  - Example of General Letter of Support re: Use of Alternative Licensing Procedures.
  - Draft Collaborative Process Identification of Issues/Recommendations (2/26/02).
  - Draft Scoping Document 1 Environmental Assessment for the Relicensing of the Baker Project (April, 2002).
  - Study Request Index and Study Index (2/25/02).

## **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:
  - 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 meeting/project tour in May
- 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:**

- Got done early
- Good food
- Exceptional candor
- PSE's willingness to re-look at confidentiality
- Made progress
- Good facilitation – especially with many waiting to speak
- Jon's comments; ability to see "the forest for the trees"
- Sense of brinksmanship
- Lunch time caucusing
- No earthquake

---

---

**Need to Improve:**

- We'll miss Fred
- Some people had to leave early
- All be aware of time when speaking
- Be as succinct as possible
- Need more informal chat time
- Change 30-minute lunch to 45-minute lunch
- Sense of brinksmanship

**TENTATIVE AGENDA FOR NEXT MEETING**

**March 27, 2002 Department of Ecology, Bellevue, WA**

**9:00 to 3:00 (with 45 min. working lunch provided)**

1. Introductions
2. Review/revise minutes/agenda
3. Where Are We? What are next steps for the Solution Team?
4. FERC Conference call
5. Review Studies
6. Review revised draft of Scoping Document 1
7. Settlement Process Teamlet report
8. Collaboration Review
9. Action Items
10. Other issues?
11. Set schedule/agenda for next meeting (4/24)
12. Consider holding May 22 meeting at the Project
13. Evaluate meeting
14. Comments from observers?