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## **Baker River Project License Implementation**

### **Baker River Interim Coordinating Committee**

January 23, 2008  
9:00 am – 3:00 pm

**WDFW**  
16018 Mill Creek Boulevard  
Mill Creek, WA

**Conference Call-in Information:**  
**MeetingPlace Main Number** 425-456-2500  
**Toll Free Number** 888-228-0484  
**Meeting ID:** 123456 **Password:** 802906

## **AGENDA**

- 9:00 – 9:45      Introductions**
- Review Notes, Agenda
  - Project Updates
  - Action Items
- 9:45 – 10:30      Resource Group Decision Process Chart**
- 10:30 – 11:00      2008 Capital and O& M Program**
- 11:00 – Noon      License Schedule Update**
- 12:00 – 1:00      Lunch**
- 1:00 – 2:00      Updates From Resource Groups**
- 2:00 – 3:00**
- Next Steps
  - Next meeting Agenda Date: 2/27/08
  - Evaluate Meeting

**Directions to WDFW, 16018 Mill Creek Boulevard, Mill Creek:**

- From Interstate 5, take exit #183
- From the south, turn right onto 164th Street
- From the north, turn left onto 164th Street
- Go east on 164th St. about one mile (passing Martha Lake on the left)
- At the bottom of a long hill, turn left onto Mill Creek Boulevard and go about 1/2 mile
- The WDFW office is on the left (west) side of the street
- Parking is limited; if necessary, park across the street at the shopping center
- Check in at the front desk and let them know you are attending the BRICC meeting in the Large Conference Room; they will direct you

**Paper copies: Arn Thoreen, Bob Helton, Patrick Goldsworthy**

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## **Baker River Project License Implementation**

### **Baker River Interim Coordinating Committee Final Conference Call Notes**

January 23, 2008  
9:00 am - 1:00 pm  
WDFW Mill Creek

### **FINAL MEETING NOTES**

#### **PRESENT**

Ed Schild, Cary Feldmann, Paul Wetherbee and Kathleen Maddox (PSE); Stan Walsh (SRSC); Rich Johnson and Mark Hunter (WDFW); Bob Nelson (RMEF); Bob Helton (Citizen); Jon-Paul Shannahan (Upper Skagit); Patrick Goldsworthy (NCCC); Lou Ellyn Jones by phone (USFWS); Alice Kelly by phone (Dept. of Ecology); Dennis London by phone (Wildcat Steelhead Club); Lyn Wiltse and Jamie Riche, facilitation (PDSA Consulting, Inc).

**Kathleen's Contact Information:** 425.462.3831, [Kathleen.Maddox@pse.com](mailto:Kathleen.Maddox@pse.com)

**NEXT BRICC MEETING DATE:** February 27, 2008

**2008 Meetings:** 9am–3pm, WDFW, 3/26, 4/30, 5/28, 6/25, 7/23, 8/27, 9/24, 10/22, 11/19, 12/17

#### **TODAY'S AGENDA TOPICS**

Notes, Agenda, Action Items  
Resource Group Decision Process Chart  
2008 Capital and O&M program  
Project, Resource Group Updates  
Next Steps, Next Meeting Agenda, Meeting Evaluation

#### **NEW ACTION ITEMS**

- All: Review, confirm primary and back-up representatives on the BRICC contact sheet
- Lyn & Jamie: Draft and distribute suggestions for integrating proxy notification into team norms
- Paul: Bring a flow chart to our next BRICC meeting outlining the BRCC decision process
- Kathleen: Send out most recent norms and contact list
- Kathleen: Follow up to ensure better conference phone equipment is available for the BRICC and Resource Group meetings

#### **OLD, STILL RELEVANT, ACTION ITEMS**

- Linda Email out ACE reservoir design requirements

## **LICENSE UPDATE:**

The BRICC is still waiting for the BiOp from NMFS. Lyn shared an update from Steve Fransen; he is working hard on final edits even as we meet. When finished, legal review should require no more than 2 to 4 days. At this point PSE is doing all they can to be ready as soon as the license is issued. They are hoping to get it no later than May (after FERC's three-month review).

## **DISCUSSION OF FLOOD STORAGE LANGUAGE PROPOSAL**

PSE entered into a settlement agreement with the City of Mount Vernon, the City of Burlington, and Dike Districts 1 and 12 to end legal challenges to the Baker Comprehensive Settlement Agreement. As part of that settlement, the Petitioners had the opportunity to ask the BRICC to consider their proposal to modify Article 107 to the BRICC.

Three letters of response to the petitioners were distributed at the meeting; those letters were from Bob Helton and the Upper Skagit and Sauk-Seattle Tribal Communities. DOE also sent a letter saying it wanted to wait until the completion of the GI. WDFW felt similarly. USFWS sent a letter in support of not changing the Comprehensive Settlement Agreement. The Wildcat Steelhead Club sent a similar letter. As the deadline is now past and there was not unanimous support, the proposal is no longer on the table.

## **DECISION PROCESS**

Paul distributed a copy of Article 601 along with a one-page flow chart outlining his understanding of how a decision would get elevated from a resource group to the BRCC. We discussed the meaning of "consensus" and how to operationalize the "no objection" definition in Article 601. We discussed how to document existence of a quorum on meeting sign-in sheets and a notification process for proxy representation. Lyn and Jamie will create a draft of how these things might be integrated into team norms. We also discussed having two weeks' notification of issues on agendas.

Team norms do not supersede the process outlined in 601. Paul will bring a flow chart to our next meeting outlining the BRCC decision making process (pg. 138 of the article). Paul will also send the flowchart we reviewed today to the Resource Groups for review (how resource groups elevate issues to BRCC).

## **PSE's 2008 CAPITAL AND O&M PROGRAM**

Paul distributed a spreadsheet showing the implementation schedule for 2008 Baker projects:

- The Upper Baker FSC should be operational by the end of March; painting to be finished after the 'fish rush.'
- The hatchery is in detailed engineering right now. It requires a special use permit from the USFS, who requires a license to issue the permit. Construction will commence after the license and permit are issued in time (hoping for 2008).
- The Lower Baker power house modification, which ties to Article 106, will proceed to detailed engineering in the second half of 2008.
- The Lower Baker FSC should be operational in 2012. Planning for this will continue through 2008.

Schedule is being defined for the following projects:

- Acquisition of elk habitat will be emphasized in 2008.

- Floating loon platforms
- Baker Lake Resort

PSE expressed how the delay in license issuance makes it difficult for them to plan. The WTC requires them to demonstrate prudence in how they spend money; otherwise they may not be able to recover their costs through rates. The longer we go without a license, the more uncertain proceeding with pre- licence expenditures becomes.

### **ARG UPDATE**

Cary shared that the FSC's screens are being balanced Feb 28 – March 28. The fish handling / sampling facilities will also be ready to go by the end of March. Then they will do the de-ballasting, which will lower the FSC in the water. We will then be ready to operate! There will be an opening ceremony of some kind; stay tuned for details!

Development of the hatchery will be coming up to 60% design shortly. Ernie Brannon will be providing an independent review. Cary shared that the In-Stream Flow Report is complete. Next ARG meeting is February 12. The co-managers will be getting together soon to discuss lake planting.

### **TRIG UPDATE**

Bob (RMEF) shared that negotiations are still underway with the landowners of the “original property.” In the meantime, the TRIG is actively looking at other parcels. Each property's vegetation is reviewed carefully for elk forage. The loons did not use the loon nesting platform that was launched last year, so TRIG agreed to modify the platform to make it more attractive to the birds and redeploy it this spring.

The TRIG is also in the process of writing the Terrestrial Resource Management Plans, with a botanical teamlet focused on chapters within their area of expertise. The aim of these plans is to keep decisions local and then issue reports to FERC. Bob shared that this work is moving forward slowly but surely and the process is working well. Cary shared that there might be a graduate student working on *carex flava*.

### **CRAG UPDATE**

Paul shared that the CRAG met in January and supports (through the Historical Properties Management Plan) the disposal of the old gulper, which is a contributing element of the historical district and is being replaced by the new FSC. The team has salvaged the louvers and documented the gulper's attributes.

### **RRG UPDATE**

When the RRG met last, the focus was on process, using Article 303 as a plan model. The group is laying out a conceptual plan for how the resort will be redeveloped. There are BiOp issues relative to Marbled Murrelet and Spotted Owls – may have to do surveys to address these issues.

### **G.I. UPDATE**

The president's budget did include funding for the Corps to work on the GI (General Investigation). We will get an update from USACE at our next BRICC meeting.

### **SKAGIT COUNTY FLOOD CONTROL MGMT DISTRICT**

Skagit County is assembling a flood control management district and has invited PSE to participate in a

technical review capacity. The Advisory Group is 15 members appointed by county commissioners, and there are three technical groups. We will get more information at our next meeting.

### **PMF UPDATE**

PSE is completing their work on the Probable Maximum Flood – they will be getting input from FERC on the draft report and will be meeting with Skagit County next month. We'll get an update on the findings at our February BRICC meeting.

### **MEETING EVALUATION**

#### **What Went Well**

- Phone participants – good input, thanks for calling in!
- Welcome Mark Hunter!
- Good organization
- Nice working group reports
- Facilitation adequate
- Congrats to new dad, Jon-Paul :)

#### **What to Do Differently**

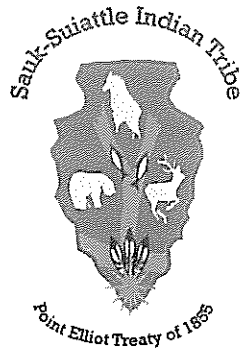
- Different caterer, include a fruit plate or other options for those with dietary restrictions
- Missing some folks
- Phone participants need access to information prior to meeting
- Improve phone equipment – satellite mics still not working well

### **AGENDA TOPICS, NEXT MEETING**

- Review / Discuss Decision Flow Charts
- License Update
- Project Updates
- Skagit Co. Flood Control Mgmt. District
- PMF Update
- USACE: GI Update and ACE Measures Evaluation
- Next Steps

#### **Future Meeting Topics:**

- Presentation / Update on GI process
- Project scheduling relative to license issuance (what if we don't have a license by Q1, Q2, etc.)



5318 Chief Brown Lane  
Darrington, Washington 98241-9420

(360) 436-0131  
Fax (360) 436-1511

January 4, 2008

Scott G. Thomas  
City Attorney  
City of Burlington  
833 South Spruce Street  
Burlington, WA 98233

**RE:** *Cities of Burlington and Mount Vernon and Dike Districts 1 and 12 request to amend the Baker River Project Settlement Agreement.*

Dear Mr. Thomas:

This letter is in response to your letter dated November 20, 2007, requesting changes to the Baker River Project Settlement Agreement. The Sauk-Suiattle Indian Tribe is supportive of efforts to provide additional flood protection for the Skagit Valley but cannot support changes to the Baker Settlement Agreement at this late date. The Tribe is however, willing to work with the Cities and Dike Districts through the Army Corps of Engineers (ACOE) Skagit General Investigation (GI) to evaluate the potential for future flood control at the Baker Project. The Tribe understands that the ACOE will examine a wide range of flood control options for the Baker River Project as a part of the Skagit GI and supports the Skagit GI as the appropriate vehicle for comprehensive flood protection planning.

The Tribe worked very hard over a five year period to understand the interests of the other 23 parties involved in the Baker relicense and to work collaboratively with them to reach a comprehensive Settlement Agreement that considered those interests. That comprehensive settlement was sent to the FERC November 24, 2004. It is unfortunate that the Cities and Dike Districts chose to follow a litigative path instead of active involvement in that collaborative process. That litigative path has caused substantial delays in the permit processes that must be completed before the FERC can issue a new license for the Baker River Project, which triggers implementation of the Baker Settlement Agreement.

During the relicense process the participants sought a legal opinion from the FERC on flood storage at the Baker Project. It was the FERC's opinion that flood control at the Baker Project could not be altered without Congressional action. The FERC also made it clear that they would rely heavily on the ACOE's recommendation on flood control for the new license. The ACOE consistently advised the relicense participants that the Skagit GI was the only process through which it could evaluate additional flood control at the Baker Project. The GI process also gives a level of assurance to relicense participants that the environmental analyses of additional flood control measures would be of similar detail to environmental analyses of issues studied in the

collaborative relicense process. It was clear to relicense participants through extensive discussions with the FERC and the ACOE that the FERC relicense process and Skagit GI were not on the same timeline and that additional action after license issuance would be necessary for any increase in flood control at the Baker Project. It was frustrating to the Tribe and other Baker relicense participants that shortly after the Settlement Agreement was signed flood control interests sought to severely limit the environmental analysis in the GI with respect to the Baker Project. The Tribe is hopeful that such attempts to limit the scope of the GI are now in the past.

The Tribe suggests the best course of action for the Cities and Dike Districts to move forward is to work collaboratively with the Baker Settlement Agreement parties. By developing a collaborative relationship with the Baker Settlement Agreement parties, the Cities and Dike Districts will be in the best position to gain future support from the Settlement Agreement parties for proposed changes to the Baker Project license if the Skagit GI subsequently recommends additional flood storage at the Baker Project.

The Tribe is pleased that the Cities and Dike Districts have settled with PSE and agreed to drop all legal challenges to the Baker License and Settlement Agreement. The settlement between PSE and the Cities and Dike Districts, however, raises additional concerns. The \$3 million payment from PSE to the Cities and Dike Districts for flood control measures is essentially relicense funds. If any of those funds are used for projects that are in conflict with the interest of any Baker Settlement party it would lessen the value of the comprehensive settlement bargained for by that party. It is essential in building a collaborative relationship between the Cities and Dike Districts and the Baker Settlement Agreement parties for the Baker River Coordinating Committee (BRCC) to review those proposed projects.

The Tribe would consider future changes in the Baker River Project FERC license provided that:

1. The Cities and Dike Districts work to understand the interests of the 24 Baker Settlement Parties and work to ensure that impacts to those interests from additional flood control are avoided or appropriately offset.
2. The Cities and Dike Districts support, without limitation, the Skagit GI as the process through which any additional flood control is evaluated.
3. The Cities and Dike Districts present proposed projects that would use funds from the \$3 million settlement with PSE to the BRCC for review to ensure those projects do not adversely impact the interests of the settlement parties.
4. The Skagit GI recommends additional flood control at the Baker Project with sufficient measures to offset impacts to resources of interest to the Tribe.

If you wish to discuss the Sauk-Suiattle Indian Tribe's comments, please contact Stan Walsh of the Skagit River System Cooperative at (360) 466-1512 or email [swalsh@skagitcoop.org](mailto:swalsh@skagitcoop.org).

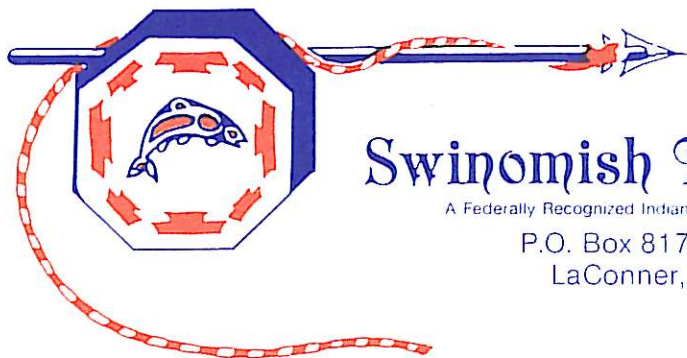
Sincerely,



James Roberts  
Chairman, Sauk-Suiattle Indian Tribe

Cc: BRCC (electronic)





Phone (360) 466-3163  
Fax (360) 466-5309

## Swinomish Tribal Community

A Federally Recognized Indian Tribe Organized Pursuant To 25 U.S.C. § 476

P.O. Box 817 • 950 Moorage Way  
LaConner, Washington 98257

January 10, 2008

Scott G. Thomas  
City Attorney  
City of Burlington  
833 South Spruce Street  
Burlington, WA 98233

Reference: Cities of Burlington and Mount Vernon and Dike Districts 1 and 12 proposal to change the Baker River Project Settlement Agreement.

Dear Mr. Thomas:

This letter is in response to your letter dated November 20, 2007 requesting changes to the Baker River Project Settlement Agreement. The Swinomish Indian Tribal Community is supportive of efforts to provide additional flood protection for the Skagit Valley but cannot support changes to the Baker Settlement Agreement at this late date. The Tribe is however, willing to work with the Cities and Dike Districts through the Army Corps of Engineers (ACOE) Skagit General Investigation (GI) to evaluate the potential for future flood control at the Baker Project. The Tribe understands that the ACOE will examine a wide range of flood control options for the Baker River Project as a part of the Skagit GI and supports the Skagit GI as the appropriate vehicle for a comprehensive flood protection plan.

The Swinomish Tribe worked very hard over a five year period to understand the interest of the other 23 parties involved in the Baker Relicense and to work collaboratively with them to reach a comprehensive Settlement Agreement. That comprehensive settlement was sent to the FERC November 24, 2004. It is unfortunate that the Cities and Dike Districts chose to follow a litigative path instead of active involvement in the collaborative process. That litigative path has caused substantial delays in the permit processes that must be completed before the FERC can issue a new license for the Baker River Project and trigger implementation of the Baker Settlement Agreement.

The Tribe suggests the best course of action for the Cities and Dike Districts to move forward is to work collaboratively with the Baker Settlement Agreement parties. By developing a collaborative relationship with the Baker SA parties the Cities and Dike Districts may gain future support for changes to the Baker Project license if the ACOE Skagit GI subsequently recommends additional flood storage at the Baker Project.

During the relicense process the participants sought a legal opinion from the FERC on flood storage at the Baker Project. It was the FERC's opinion that flood control at the Baker Project could not be altered without Congressional action. The FERC also made it clear that they would rely heavily on the ACOE's recommendation on flood control for the new license. The ACOE consistently advised the relicense participants that the Skagit GI was the only process through which it could evaluate additional flood control at the Baker Project. The GI process also gave a level of assurance to relicense participants that environmental analysis of additional flood control measures would be of similar detail to environmental analysis of issues studied in the collaborative relicense process. It was clear to relicense participants through extensive discussions with the FERC and the ACOE that the FERC relicense process and ACOE Skagit GI were not on the same timeline and that additional action after license issuance would be necessary for any increase in flood control at the Baker Project. It was frustrating to the Tribe and other Baker Relicense participants that shortly after the Settlement Agreement was signed flood control interest sought to severely limit the environmental analysis in the GI with respect to the Baker Project. The Tribe is hopeful that such attempts to limit the scope of the GI are now in the past.

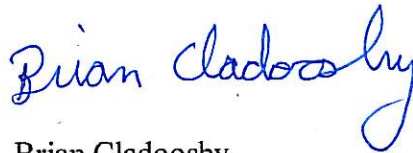
The Swinomish Tribe is pleased that the Cities and Dike Districts have settled with PSE and agreed to drop all legal challenges to the Baker License and Settlement Agreement. The settlement between PSE and the Cities and Dike Districts however, raises additional concerns. The \$3 million settlement from PSE to the Cities and Dike Districts for flood control measures is essentially relicense money. If any of those funds are used for projects that are in conflict with the interest of any Baker Settlement party it would lessen the value of the settlement for that party. It is essential in building a collaborative relationship between the Cities and Dike Districts and the Baker Settlement Agreement Parties for the Baker River Coordinating Committee to review those proposed projects.

The Swinomish Indian Tribal Community may be open to future changes in the Baker River Project FERC license provided that:

1. The Cities and Dike Districts work to understand the interest of the 24 Baker Settlement Parties and work to ensure that impacts to those interests from additional flood control are offset.
2. The Cities and Dike Districts support, without limitation, the ACOE Skagit GI as the process through which additional flood control is evaluated.
3. The Cities and Dike Districts present proposed projects that would use funds from the \$3 million settlement with PSE to the BRCC for review to ensure those projects do not impact the interest of the settlement parties.
4. The Skagit GI recommends additional flood control at the Baker Project with sufficient measures to offset impacts to resources of interest to the Tribe.

If you wish to discuss the Swinomish Indian Tribal Community's comments please contact Stan Walsh of the Skagit River System Cooperative staff at (360) 466-1512 or email [swalsh@skagitcoop.org](mailto:swalsh@skagitcoop.org).

Sincerely,



Brian Cladoosby  
Chairmen, Swinomish Indian Tribal Community

Cc: BRCC (electronic)

# Resource Group Decision Process

*Article 601 of Settlement Agreement*

