
BAKER RIVER PROJECT RELICENSE**BAKER RIVER INTERIM COORDINATING COMMITTEE**

**April 24, 2006
9:00 am - 3:00 pm
USFS Mountlake Terrace Office**

***Purpose: To transition to the Baker River Coordinating Committee (BRCC)
in support of implementing the new Baker River Project License.***

FINAL MEETING NOTES**PRESENT**

Ed Schild, Arnie Aspelund, Cary Feldmann, Tony Fuchs, Lloyd Pernela, and Connie Freeland (PSE); Rob Mohn (Louis Berger); Stan Walsh (SRSC); Jeff McGowan and Dave Brookings (Skagit County); Rich Johnson, Brock Applegate and Gary Sprague (WDFW); Jon Vanderheyden and Rod Mace (USFS); Jon-Paul Shannahan (Upper Skagit Indian Tribe); Lou Ellyn Jones (USFWS); Jack Oelfke (NPS); Alice Kelly (Dept. of Ecology); Steve Jennison (WDNR); Bob Helton (Citizen); Jack Billman (Town of Concrete); Patrick Goldsworthy (NCCC); Bob Nelson (RMEF); Linda Smith and Chuck Ebel (USACE); and Jamie Riche, facilitator and note-taker (PDSA Consulting, Inc).

NEXT MEETING DATES

May 1, 2006, 9:00 – 5:00, FERC Hearing (USACE District Office in Seattle, Galaxy Room)

May 2, 2006, 6:00 – 9:00, FERC Hearing (CottonTree Inn, Mt. Vernon)

May 16, 2006, 9:00 – 3:00, BRICC (USFS, Mountlake Terrace) – *tentative*

AGENDA TOPICS

- 9:00 – 9:15 Review Notes, Agenda
- 9:15 – 10:00 Review of Activities to Date
 - April 11, 2006 Conference Call
 - Lewis River experience
 - Conversations with Steve Hocking
- 10:00 – 2:30 Review DEIS (*lunch and breaks included*)
- 2:30 – 2:50 Next Steps
- 2:50 – 2:00 Set next meeting date; evaluate meeting

NEW ACTION ITEMS

- Connie – Send Settlement Agreement Joint Explanatory Statement to all
- USFS – Send Connie extension request letter
- Connie – Route extension request letter to all, file with FERC by Friday, April 28

WELCOME

Jamie welcomed the group and noted that this is the first time the BRICC (Baker River Interim Coordinating Committee) has met since June 2005.

REVIEW OF ACTIVITIES TO DATE

Connie reviewed the notes from the April 11 BRICC conference call, Rob Mohn shared information about the Lewis River relicensing process, and several members of the group shared insights gained from conversations with Steve Hocking.

Feedback from Steve Hocking was that our License Application was voluminous and detailed. He indicated that many of FERC's changes are intended to minimize repeated information. Articles that are unchanged will probably make it through the process largely intact, even though the wording has been simplified. Categorical changes (such as disallowing 3rd party funding) were made throughout the document.

When asked about FERC's thinking behind the various types of proposed changes, as well as similarities and differences with other approved licenses, the feedback was that some areas (such as Article 505) need additional clarity (details) while other areas were changed or eliminated due to unclear nexus to the project.

FERC changes to or exclusions from the Settlement Agreement can be grouped into four categories:

1. Funding to Third Parties
 - a. FERC disallowed third-party funding throughout (ex: funds to USFS for management).
 - b. FERC's interest is in ensuring enforceability, and their authority is over PSE not other parties.
 - c. No example of this was allowed in the Lewis River license.
2. Lack of Specificity
 - a. FERC also looks for clear, specific, enforceable articles so the compliance and enforcement folks can know exactly what they are enforcing.
 - b. Lewis River ex: \$30m "in lieu" fund, which said if all signing parties found that original fish passage plan wasn't working, then could forgo fish passage and use the \$30m to enact other measures. FERC ultimately accepted the spirit of the idea, with the dollar amount removed and the addition of FERC approval to any proposal.
3. Lack of Nexus (ex: dispersed campsites)
 - a. FERC has not been persuaded to move on this, even when presented with compelling arguments. In cases where the nexus is less clear, FERC seems to be more comfortable with bigger one-time expenses than they are with ongoing expenses.
4. 10(j) and 4(e)
 - b. In Lewis River, there were some 4(e) conditions that FERC originally disallowed, then

- allowed with the caveat that FERC didn't recommend the activity.
- c. Lou Ellyn commented that there was a 10(j) exclusion related to gravel, which was allowed when recast (further explained) as a baseline rather than another study.

In addition, FERC generally doesn't support cost caps but wants deliverables.

Cary shared that our best chance for getting FERC to reconsider its current opinion will be to show them areas where they misinterpreted what we said in the Settlement Agreement. Otherwise, they have not been generally inclined to change their opinion.

One of our challenges is that FERC doesn't seem to be clear about their policies in terms of dealing with Settlement Agreements. We've heard that some of the delays we've been dealing with have been due to internal changes at FERC.

DEIS REVIEW

The group then reviewed the DEIS with the Berger matrix projected on a screen. As the group discussed the most significant differences between Settlement Agreement and the DEIS, Jamie noted possible responses, areas of misunderstanding, and additional data/background information FERC may need. (A copy of this matrix is included with these notes.)

Response strategies include:

1. Strong, cohesive public presence and verbal comments at FERC meetings (May 1 and 2)
2. Eloquent, persuasive and detailed written comments (due May 30)
3. Institutional, "political" pressure
4. Regulatory authority through mandatory conditioning and recommendations: 10(j), 4(e), and 401
5. "Side" agreements with various parties, based on the Settlement Agreement

The overriding preference is to see the terms of the Settlement Agreement reflected in the final license articles. PSE is committed to the spirit and terms of the Settlement Agreement.

NEXT STEPS

Throughout the day, members of the group shared their individual organizations' planned responses and noted opportunities for collaboration and shared review of each others' comments.

PSE and USFS representatives met after the main meeting adjourned to plan their response to the areas that could be addressed through other jurisdictional processes (especially the recreation measures).

The group discussed the possible value of filing for an extension to allow for a more coordinated response and to allow for inclusion of the results of the 10(j) conference call within the FEIS. Currently, the 10(j) conference call is scheduled for June 1, after comments on the DEIS are due. Members of the group noted that Lewis River was given a 60-day comment period, while we were given 45 days for a more complicated project. The group decided to submit the extension request this week, yet act according to the current timeline, as we may not know FERC's response to the request in time for it to make much difference. Rod will send Connie language for an extension letter, which she will route to the group for support and electronically file with FERC by this Friday (April 28).

MEETING EVALUATION

What Went Well

- Finished on time
- Great participation; got through full agenda
- Facilitation

What to Do Differently

- Need water in the morning session
- Cookies

NEXT MEETING

May 16, 2006, 9:00 – 3:00, BRICC (USFS, Mountlake Terrace) – *tentative*

AGENDA TOPICS

- Review Notes, Agenda
- FERC schedule, BRICC activities
- Review DEIS Comments
- Next Steps
- Set next meeting date; evaluate meeting