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## BAKER RIVER PROJECT RELICENSE

### **Solution Team**

May 27, 2003

9:00 a.m. – 3:00 p.m.

WA Dept. of Ecology  
Bellevue, 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**

**Note:** Call Connie at 425-462-3556 if unable to attend the meeting so she can plan for lunches. Call Lyn's cell phone 425-890-3613 if something comes up at the last minute (on the way to the meeting).

**Conference Call Number:** This is a toll-free call. The procedure is:

- Dial **1-866-280-6429** at the designated date and time.
- Enter the Participant code of **144995** followed by the # **sign**.
- You will be asked to record your name.
- You will hear hold music until the Host has dialed into the call.

**Team Leader:** Connie Freeland (Puget Sound Energy) 425-462-3556, [connie.freeland@pse.com](mailto:connie.freeland@pse.com)

**Members Present:** Steve Hocking and Keith Brooks by phone (FERC), Arn Thoreen (Skagit Fisheries Enhancement Group), Bob Nelson (Rocky Mountain Elk Foundation), Pam Klatt (Louis Berger Group), Bill Reinard (Wildcat Steelhead Club), Marian Valentine (U.S. Army Corps of Engineers), Bob Helton (Citizen), Len Barson (The Nature Conservancy), Jon Vanderheyden (USFS), Gary Sprague (WDFW), Cary Feldmann, Kris Olin, Connie Freeland, and Lloyd Pernela (PSE), Patrick Goldsworthy (North Cascades Conservation Council), Rod Sakrison (DOE), Dave Brookings by phone (Skagit County Public Works), Stan Walsh (Skagit Systems Cooperative), Dee Endelman (Agreement Dynamics), Lyn Wiltse, Facilitator and Mary Jean Bullock, Note-Taker (PDSA Consulting, Inc.)

### **2003 Solution Team Meeting Schedule:**

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June 24, July 22, August 26, September 23, October 28, November 25, and December 16.

**Agenda May 27, 2003 at Offices of DOE in Bellevue**

**9:00 a.m. – 3:00 p.m.**

1. Introductions
2. Settlement Process Update
  - May 14 Workshop Debrief
  - Next Steps
3. Schedules/Timelines
4. Preparation for FERC call/ FERC call
  - Flood Control Update
5. Action Items
  - PDEA Update
  - HYDROPS/TST Update
6. Working Groups:
  - What's Hot?
  - Status of Studies in Working Groups
7. Other?
8. Set June 24, 2003 Agenda and Evaluate Meeting

**NEW ACTION ITEMS**

- ALL: Submit to Dee contact information for your attorney by June 10.
- Keith: Get dispute resolution case citation to Connie.
- Lloyd: Button up with FERC re: flood control study request after June 11, Economic/Operations meeting.
- Connie: Button up with FERC re: Whatcom County and the Town of Concrete meetings re: Shoreline Development permitting process (fall timeframe).
- Cary: Put together PSE meeting to discuss Recreation issues as they relate to continuing impacts.
- Kris: Button up with Lorna Luebbe (PSE attorney) re: expanding settlement agreement outline and boilerplate language.
- ALL: Contact Paul at 425-462-3746, paul.wetherbee@pse.com re: any HYDROPS runs you are interested in.
- Lloyd: Copy Bob H. on TST notes.

**SETTLEMENT PROCESS UPDATE/ DEBRIEF OF MAY 14 CROSS-RESOURCE WORKSHOP**

Dee reported that cross-resource issues to be resolved by teamlets were defined at the May 14 workshop. Team leaders have emailed invitations to their members requesting which teamlet they want to join. Some of these teamlet meetings will be “virtual” (handled through email). We are aiming to have these issues resolved by the end of September. Whichever issues are still outstanding at that point will be elevated to the Solution Team. There may also be issues between now and then that the facilitators recommend be elevated to the Solution Team if it appears that the Working Groups are unable to make progress toward resolving them.

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The Cultural Working Group will be meeting through a series of teamlets instead of their regular monthly working group. This will take place during the summer as they work on completing the requirements for the Historic Properties Management Plan.

The Terrestrial Working Group has set up three additional meetings (in the form of intensive RESOLVE sessions) between now and September. They have already identified three PME's for the Louis Berger Group to begin to draft license articles. They are close to agreement on two more.

The Recreation Working Group has also scheduled three additional meetings in the next few months to RESOLVE outstanding issues.

The Aquatics Working Group is addressing the major fish issues through the Instream Flows and Fish Passage Technical Working Groups. Some of the Aquatics studies are on hold due to the North American Vertical Datum issue. Dee will be discussing with them how they can most effectively engage in the settlement process when the Working Group meets again on June 12.

#### **NEXT STEPS**

Dee distributed an updated (simplified) draft of the Flow Chart outlining the process to develop license articles from PME's. The new chart shows the decision made at the last Solution Team meeting for the Berger Group to prepare draft license articles. It also shows how the legal working group will be engaged. Another revision shows how the working groups (in addition to the Solution Team) will review draft license article language.

#### **SCHEDULES/TIMELINES**

Kris reported that there has been no real change in the schedule since last meeting.

#### **PDEA UPDATE**

For the Cross Resource Workshop, the Berger Group put together a matrix outlining to what extent they felt the PME's being considered by the Working Groups were sufficient for evaluation in the PDEA. There were very few in that category.

Therefore, the Berger Group has asked PSE to organize another PME package. This will consist of the first proposed actions used for the March cross-resource workshop with changes made since then, if any. Berger will evaluate this, along with any specific ranges in the PME's, in the fall draft PDEA (October). Berger will also evaluate PSE's best guess at an operating regime in the fall draft PDEA.

PSE will also provide cost estimates for PME's included in the PDEA.

The Berger Group will provide a working draft of the PDEA to Working Group members on August 1. PSE will issue the draft PDEA for a 90-day public comment period starting October 1. During this period, any agreements made since June 2 will be included in the final PDEA to be submitted April 30, 2004.

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## **HYDROPS/TST UPDATE**

HYDROPS is expected to be fully functional by June 13. Recalculations based on the 1988 datum update are now being made.

## **OUTLINE FOR SETTLEMENT AGREEMENT**

Connie distributed the draft outline for the Settlement Agreement prepared by PSE attorney Lorna Luebke. There was some confusion around the meaning of measures included/not included in the license. We agreed to ask for clarification when we have Steve and Keith on the phone.

As part of our process, we are including the interests of all participants, including NGOs.

A question was raised about the proper timing to share this outline with attorneys. It was suggested that it may be good to get the attorneys that will be working on this together in the near future. Ideally, members of the Solution Team would meet with them to ensure our intentions are preserved and avoid a repeat of what happened with the Communications Protocol/Process Document. Maybe we could get on their calendars now to start meeting in August. The meetings with attorneys will be facilitated. All were asked to submit to Dee the contact information for their attorneys.

Marian stated that the Corp's attorneys operate in a reactive mode and are expecting to review only language (drafted by PSE) that concerns the Corps directly.

At our April Solution Team Meeting, we agreed to have the Berger Group take PME's that have gained consensus in the Working Groups and translate them into license article language. Descriptions of the measures in the PME's will appear in the body of the Settlement Agreement, with the actual license articles appearing in the appendices.

At the April meeting, we agreed to have Lorna draft the outline for the Settlement Agreement. After some discussion, we agreed to ask her to flesh out the outline as a next step and begin drafting some of the boiler plate language.

## **FERC CONFERENCE CALL**

**Question – How do we call out what is/is not included in the license? What types of things would fall under “measures agreed to but not included in the license”?**

**Answer –**

FERC is looking to include in the license anything with a nexus to the project and within FERC's jurisdiction, and also (ideally) in the Settlement Agreement.

Third party agreements and perhaps language around dispute resolution may fall under the heading of “measures agreed to but not included in the license.” Also in this section would be anything agreed to by the parties, but not having a nexus to the project and not within FERC's jurisdiction. It would be helpful to have all the agreements (whether within FERC's authority to enforce or not) together in the Settlement Agreement.

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**Question – Where does flood control fall? Section IIIA?****Answer –**

Flood control would likely appear in Appendix A. Section IIIA would be a description of the measure. The conditions might be in the Appendix, in the form of a 10(a) recommendation from the USACE (?). Ideally, it would mirror what is in the settlement. We would call it out under its own heading, since it is unique as a congressional mandate.

It was pointed out that there may be conflict between flood control and 401, CZMA (mandatory conditions), and possibly with ESA regardless of existing or additional levels of flood control. If there are impacts that need to be mitigated for, who would be responsible for the mitigation? We will cross that bridge when/if we come to it.

**Flood Control Update**

PSE will be meeting on June 3 with the Skagit County Commissioners to discuss the issue of flood control. Dave has resubmitted the flood control study request to the Economic/Operations Working Group. They meet again June 11. The USACE has agreed to help with the scoping and funding of this study.

**REPORT ON OLD ACTION ITEMS**

- Connie: Sent out Cary's white paper on White River Project Fish Operations on May 16.
- Kris: Sent out next draft of diagram (Flow Chart for Preparing Settlement Agreement and License Articles) for Solution Team review before May 27 meeting.
- Marian: Invited Ken Brettmann and Ron Kent to attend May 14 workshop.
- Dave: Gave an update on flood control status and its relationship to relicensing process from May 2 meeting at the May 14 workshop.
- ALL: Remembered to get Scoping Document 2 comments to Connie asap (preferably by 4/25).
- Cary: Saw that an Agenda for the Instream Flows meeting got sent out asap.
- Kris: Revised and sent out updated version of Baker Relicense Project Flow Chart Schedule, changing "1<sup>st</sup> Draft SA" to "1<sup>st</sup> Draft Outline of Boilerplate for SA."
- Jon: Checked availability of conference room at USFS building in Mountlake Terrace for our May 27 meeting.

**WHAT'S HOT IN THE WORKING GROUPS?****Aquatics**

- Datum issue
- Fish passage
- Alluvial fan

**Economics/Operations**

- Flood control
- Getting fall draft PDEA out with proper content
- 11 months ...and counting!

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## **Cultural**

- HPMP deadlines
- PDEA schedule

## **Terrestrial**

- This summer will be intense
- We developed our Settlement Process

## **Recreation**

- Aesthetics Study
- Percentages of responsibility according to project-relatedness (between USFS and PSE)

## **STUDIES UPDATE FOR SOLUTION TEAM**

### **Aquatics**

- Lots! Comments are due.

### **Economics/Operations**

- Flood Control and Spawning Incubation Flow Study Requests on hold until our June 11 meeting.

## **Cultural**

- Archaeology Draft Report is out!
- Historic Structures Draft Report is out!
  - This report is releasable as it doesn't appear to include any confidential information.

## **Terrestrial**

- All studies are on track!

## **Recreation**

- Aesthetics Study is being refined.
- Rest of studies are out in draft form and we are looking for comments on them.

## **PARKING LOT**

- 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).
- Define a process for delayed resolution (based on incomplete studies).
- Adaptive management:
  - How can we take into account future technology, knowledge, conditions, resources, weather (global warming), etc.?
  - How can we balance licensee exposure?
- How to enlist recreational users.
- Define "project induced." (Teamlet?)
- Develop public information protocol.
- Summary Record of Decisions.
- PMEs listed for each Working Group.

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## **HANDOUTS**

- Flow Chart – PMEs to License Articles & Settlement Agreement – Date revised 5/16/03
- Draft Settlement Agreement Outline for the Baker Hydroelectric Project – May 6, 2003
- PDEA Update – For the May 27, 2003 Meeting of the Baker Solution Team

## **Tentative Agenda June 24, 2003 at USFS Office Building in Mountlake Terrace**

**9:00 a.m.–3:00 p.m.**

1. Introductions
2. Settlement Process Update
  - Settlement Outline
  - Next Steps
3. Schedules/Timelines
4. Preparation for FERC call/ FERC call
  - Flood Control Update
5. Action Items
  - HYDROPS/TST Update
6. Working Groups:
  - What's Hot?
  - Status of Studies in Working Groups
7. Other?
8. Set July 22, 2003 Agenda and Evaluate Meeting

## **MEETING EVALUATION**

### **Done Well**

- Got out early
- Thanks to Ecology for hosting
- Syrup
- Cream
- New phone worked well!

### **Do Differently Next Time**

- Continuing saga/indecision on flood control
- First working day of the week is tough especially after a 3-day weekend