

## DRAFT MEETING NOTES

# Rocky Reach Settlement Process Settlement Group Meeting

Tuesday, May 3, 2005  
Wenatchee, Washington

### Attending

|                   |                   |                |
|-------------------|-------------------|----------------|
| Alex Martinez     | Ed Odum           | Laurel Heacock |
| Alyssa Buck       | Gary Montague     | Michelle Smith |
| Andrea McNamara*  | Gregg Carrington  | Norm Gutzwiler |
| Ardis Bynum       | Guy Moura         | Pat Irle       |
| Bob Huber         | Jack Speer        | Patti Leppert  |
| Brian Faller*     | Janel Duffy       | Rob Neate      |
| Carmen Andonaegui | Jeff Osborn       | Sonia Wolfman* |
| Carol Wardell     | Jennifer Burns    | Stephen Brown  |
| Charles Hosken    | Jennifer Frozena* | Steve Hays     |
| Craig Gannett     | Joel Molander     | Suzanne Bacon  |
| Craig Kunz        | John Clements     | Wendell Black  |
| Curt Smitch       | Karin Whitehall   | Werner Janssen |
| Dan Adamson*      | Keith Vradenburg  |                |
| Dennis Beich      | Kelly Boyd        | Jerry Cormick  |
| Dennis Chambers   | Kim Nguyen        | Brian Cormick  |
| Denny Rohr        | Kris Pomianek     |                |
| Derrick Sandison  | Kristen Bonanno   |                |

\*By phone

**NOTE:** The next meeting of the Settlement Group is scheduled from 9:30 a.m. to 3:30 p.m. Tuesday, June 7, 2005, Chelan County PUD Auditorium, Wenatchee

### 1. Administrative Matters

- The meeting began with introductions and a brief welcoming note from Chelan County PUD's General Manager, Charlie Hosken, who thanked Settlement Members for all their hard work and commitment to the process. Mr. Hosken also welcomed FERC staff to Wenatchee and thanked them for taking the time to provide advice to the Settlement Group as it compiles a comprehensive settlement agreement for relicensing the Rocky Reach Hydroelectric Project.
- An opportunity for public comment was offered at both the beginning and end of the meeting. No public comment was given.
- Settlement Group members were reminded to review the notes from the last two Settlement Group meetings, March 31, 2005 and April 12, 2005, and provide any

changes to the mediator for inclusion in the final draft, which will then be posted on the Chelan County PUD public website.

- Mediator Jerry Cormick reviewed the draft agenda with the group. There were no changes to the agenda.

## **2. Review and Discussion of Proposed Relicensing Schedule**

Gregg Carrington gave a brief overview of the overall relicensing schedule to the Settlement Group. Highlights are as follows:

### **Settlement Meetings**

- April 12, 2005: Completed review of Shoreline Erosion Management Plan and license articles  
Began review of Recreation Resources Management Plan
- May 2, 2005: Completed review of Recreation Resources Management Plan and license articles  
Completed review of Historic Properties and Cultural Resources license articles (a separate subgroup will review the Management Plan, due to the confidential nature of the material)
- The Management Plans and license articles noted above will be posted on the relicensing public website.
- May 3, 2005: Review Bull Trout Management Plan and begin review of Resident Fish Management Plan
- June 7, 2005: Complete review of Resident Fish Management Plan and license articles  
Review White Sturgeon and Pacific Lamprey Management Plans and associated license articles
- June 8, 2005: Discuss policy issues and continue review and discussion of fish related issues

### **FERC Process**

- January 12, 2005: FERC Notice Requesting Terms and Conditions
- March 13, 2005: Terms and Conditions due from agencies
- April 27, 2005: Chelan County PUD response to Terms and Conditions due
- Aug 2005: Draft Environmental Impact Statement issued by FERC with a 60 day comment period

June 2006: Final Environmental Impact Statement issued by FERC

#### **401 Process**

April 28, 2005: 401 Public Hearing

May 6, 2005: Draft Water Quality Management Plan to be issued (editorial changes only)

May 27, 2005: Comments due on Draft Water Quality Management Plan

May 2005: Draft Temperature report to be sent to the Peer Review Group  
Draft Total Dissolved Gas report to be released  
Draft 401 issued by Department of Ecology

June 2005: Comments due on Draft 401

July 2005: Final 401 issued

### **3. Federal Energy Regulatory Commission (FERC or “Commission”) Presentation<sup>1</sup>**

FERC staff Kim Nguyen, Patricia Leppert and John Clements provided a brief presentation for developing and submitting relicensing settlement agreements to the Commission. Patricia Leppert explained that relicensing settlement agreements sometimes include vague measures that have no clear link to project effects. She said that when Staff reviews a settlement agreement, the focus is on the nexus of any proposed protection, mitigation and enhancement measure to the project. Staff considers direct and indirect effects, including cumulative effects.

To assist settlement parties in identifying issues that are raising red flags, Ms. Leppert provided a discussion of issues raised by settlement agreements that can be difficult to address.

For example, funds that are not for specific measures may not be well-defined and/or have a clear nexus to the project. This has commonly been a problem with adaptive management funds, which can be difficult to analyze as they may be lacking specific protection, mitigation, and enhancement measures. These funds often include spending caps. Such spending caps would not necessarily limit the licensee’s responsibilities to carry out the requirements in the license. Other problematic funds are those earmarked for agency positions, trucks, etc. These funds are not seen as specific measures to protect any specific resources. Law enforcement is another example. It is viewed as a local responsibility that is already in place and funded

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<sup>1</sup> Please note that the summary of the FERC presentation was sent to FERC for their review and suggestions to ensure accuracy. Their suggested changes were incorporated into the notes.

through local jurisdictions by tax payers. Next is the FS coordinator<sup>2</sup>. Staff is unclear about the role of this position, though it has been requested in several relicensing proceedings; therefore, it is difficult to tie to project impacts. Also, the Commission has determined that mandatory conditions pursuant to FPA section 4(e) apply only to reservation lands that are also within the project boundary. Since Staff focuses on the impacts within the project boundary, offsite mitigation, particularly those outside of the river basin, also raises concern. Lastly, settlements sometimes include funds for maintenance of roads in the project vicinity, but there is not always a clear showing that the project has a material impact on the need for maintenance. The parties can find additional guidance through recent Commission orders addressing settlement agreements.

Kim Nguyen, FERC Project Coordinator for the Rocky Reach Project relicensing, also identified several aspects of settlement agreements that Staff would like to see included in future submittals. The detailed management plans including specific measures tied to project effects with costs, management criteria, and goals are welcomed. Attaching these plans to the settlement agreements, wherever possible, helps Staff in evaluating and compiling license articles. Finally, including the rationale for each management plan in an Explanatory Statement Appendix (Proposed Article Justification Statements) will also help Staff in evaluating the need for these plans.

The following captures the subsequent exchange of “Questions and Answers” between members of the Settlement Group and FERC staff.

Q: Our agreement includes adaptive management elements; will this be a problem?

A: Our concern with adaptive management plans is lack of specificity regarding the project impact the plan is meant to address (i.e., the fuzzier the plan, the greater the concern).

Q: Because we are looking at a 30-50 year license, some vagueness in our adaptive management plan is necessary since we don't know exactly what the future will hold. Will this be an issue?

A: It could. The important thing is to be as specific as possible about the project impacts addressed, and measures contemplated, so that a nexus is clearly established between the project effects and the plan's provisions.

Q: What about mitigation measures implemented to enhance a species different than the one being mitigated for?

A: We handle these issues on a project by project basis.

Q: In some cases we believe it is necessary to promote offsite mitigation. We are going to do our best to address the things we feel need to be addressed, while making every effort to show the nexus of the measure to the project. If FERC is concerned

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<sup>2</sup> Note: There is no request for a FS coordinator on any Chelan PUD hydro project.

about something we're including in the settlement agreement, what is the best way for this group to work with FERC to come to a satisfactory resolution?

A: If you make draft plans available to Staff and post it on your web site, Staff will make its best effort to timely review and raise any issue of concern with the Settlement Group.

Q: We would like to formalize a way that FERC could work with the Settlement Group to make sure we don't include any items that would be of great concern to FERC. How can we do this?

A: The sooner a draft is available, the more likely it is that we will have a chance to review it and let the Settlement Group know of any concerns we may have.

We would like to draw your attention to a manual that demonstrates the appropriate style for license articles. We believe it will be helpful to you as you draft your settlement agreement. It's older but a good resource (Manual of Special License Articles, 1992, to be available on Chelan PUD's public relicensing web site). Also, we would like to note that we prefer to not use the term "Americans with Disabilities Act" when discussing accessible facilities, since we are unable to recommend ADA. Instead we prefer the use of the term "barrier free access."

*Note: The Settlement Group noted FERC's preference with regard to the use of ADA and will go back and make sure alternative language is inserted in cases where ADA has been referred to.*

We would also like to share with you the Guidance for Preparing Shoreline Development Applications pamphlet, which we will leave with you, that was compiled by our Compliance Branch. This guidance will help with your settlement agreement since it details what needs to go into a Shoreline Management plan.

Q: Chelan County PUD has taken the position that, as a municipal utility governed by state law that restricts gifting of public funds, it is not able to implement measures unless they are directly ordered to do so in the FERC license. This has influenced how we have crafted the Settlement Agreement. Does FERC have the same understanding?

A: FERC has not previously addressed this issue. It would be helpful if Chelan PUD would draft a legal brief explaining its legal position.

Note: Chelan PUD agreed to draft a legal brief and provide it to the Settlement Members, as well as to submit it as part of the explanatory statement in the Settlement Agreement.

Q: What happens if we do include law enforcement within our agreement if we feel it is justified?

A: If law enforcement is included, you should make your best effort to show a project nexus.

The mediator summarized the discussion by asking whether some of Staff's concerns identified above could be viewed as "red flags" by FERC that would warrant careful

justification if they were to be included in the Rocky Reach Project settlement agreement. He also indicated that the Settlement Group has already been implementing the kinds of issues Staff encouraged so it is reassuring to be on the correct path.

FERC staff concluded their presentation by stating that the Commission likes to consider the overall package of measures included in a settlement agreement while avoiding a debate over whether a specific measure is “mitigation” or “enhancement.” Most importantly, they consider whether the agreement is in the public interest. Finally, they look at the project boundary and whether the proposed measures have a project nexus. The more specific and logical the item is, the less likely it will be that they will have a concern with it.

#### **4. Review and Discussion of Outstanding Issues**

##### *Water Quality*

As discussed during the review of the proposed schedule, many of the “outstanding issues” for water quality are just technical tasks that need to be completed. Ecology stated that the 401 will be issued based on studies and data gathered and included in the Water Quality Management Plan, as well as in the fish plans.

##### *Lamprey*

The Settlement Group quickly reviewed the outstanding issues for Lamprey. Briefly:

- Passage efficiency/survival: Requires new technology, slated for further discussion at the June 7, 2005 meeting.
- Link of HCP to Comprehensive Plan: No longer an issue; agreed not to include any speculative items in the Plan.
- Juvenile impingement: Chelan PUD suggests that we leave it to the forum to define. Marked for further discussion at our next meeting.
- Role of forums and definitions: Moved to policy list, currently under discussion by the Legal Group and slated for discussion at the June 8, 2005 meeting.
- Funding tributary studies and regional research: Chelan PUD working on a draft proposal to bring to the Settlement Group.
- Technical Group Issues: These are technical tasks that still need to be completed.

#### **5. Review and discussion of the Resident Fish and Bull Trout Management Plans and associated license articles**

*Bull Trout:* Jeff Osborn noted that Steve Lewis (USFWS) was not in attendance, but had approved a very similar version of the Plan. Jeff said he would go through

today's changes with him later this week. The Group did make several edits/changes and identified action items. The Group did not review the license articles for Bull Trout, due to the changes made to the Management Plan. The license articles are on the agenda for the next Settlement Group meeting. Jeff will also be sending out the updated version of the Management Plan for review.

*Resident fish:* The Settlement Group reviewed the Management Plan through section 3.3 before running out of time. Several changes were identified, mostly additional information for clarification. Also, Jeff agreed to attend a meeting with Art Viola and Phil Archibald to explain the rationale of the Management Plan to interested Entiat citizens.

## **6. Legal Group Status Update**

Craig Gannett gave a brief update on the status of the Legal Group, which has been discussing the different approach used for the relicensing Fish Forums as compared to the HCP Committees. The Legal Group is trying to reach agreement on how Forum decisions will be made and implemented. Craig Gannett will approach the Legal Group about providing a briefing and/or suggestions to the Settlement Group at the June 8, 2005 meeting on this topic.

## **7. Schedule and Action Items**

The next meeting of the Settlement Group is scheduled as a two day meeting:

- Tuesday, June 7, 2005: Continue review of Resident Fish Management Plan and license articles. Begin review of Lamprey and Sturgeon Management Plans and associated license articles.
- Wednesday, June 8, 2005: Discuss policy issues and continue review and discussion of fish related issues

Please see the attached action items for a detailed schedule of the relicensing process and a list of action items from the May 3, 2005 Settlement Meeting.

The meeting was adjourned at 3:30 p.m.

Attached: May 3, 2005 draft action items