

These facilitator's notes reflect the general issues discussed among the individual participants in the meetings, and are part of a collaborative process to identify and potentially resolve issues associated with the Final Decree. While all participants are encouraged to voice any concerns during the meetings, failure to comment or respond to any issue or statement by another participant or in these facilitator's notes shall not be taken to be either agreement or disagreement, and shall not be used against the participants in any subsequent litigation.

Acquavella Working Group Facilitator's Notes – (12/14/06)

9:30 PM – 3:30 PM – Bureau of Reclamation Yakima Field Office Conference Rooms

Discussion Agenda

- Review and recommend areas for inclusion in 2007 Legislative agenda
- Review Ecology's 2nd draft of the proposed Final Decree
- Identify and triage the issues that are to be addressed by the Working Group
- Reach consensus, to the extent possible, on resolution of the issues
- Identify other issues for Working Group discussion
- Refine work plan
- Next steps including work assignments in preparation for the next Working Group meeting

All documents referenced in these notes can be viewed and downloaded from the WA Department of Ecology website at

<http://www.ecy.wa.gov/programs/wr/rights/adjhome.html#decreeworkgroup>

A. General

All future meetings of the Working Group will be held at Ecology's Yakima Avenue office, unless otherwise notified. The meetings will begin as soon as possible after conclusion of the Court's water day session (2nd Thursday of each month). This will be approximately 11AM. Participants should bring a brown bag lunch for these late starting meetings.

The product of the Working Group will be a Draft Final Decree as prepared by Ecology. The draft will be based on their research, the discussion in the Working Group and will include a report on unresolved issues..

The term "general agreement" used in the meeting notes of the Working Group indicates that the majority of the group participating in the discussion was in agreement with the next steps to be taken and ready to move on to the next issue. It does not imply agreement to a final draft to be submitted to the Court nor acts binding any party nor will be used against the participants in any subsequent litigation.

The active participation of the Referee's Office (Ecology) was discussed. The knowledge of the adjudication and its history that this office (Becky and Elaine) has can be valuable to the Working Group deliberations. It was generally agreed that the Referee's Office should remain as the single point of contact for distribution of Working Group materials and posting to the Ecology website. When the input of the Referee's Office is needed, the Working Group can request their participation in meetings.

B. Review needs/opportunities for enabling legislation in 2007

Areas for potential legislative recommendations included:

- Continuing jurisdiction of the court
- Ability for Ecology to waive fees for certificates and for recording with the counties
- Eliminate county requirement for parcel numbers in any land record

Ecology has finished compiling their legislative agenda for the 2007 session. Any legislative recommendations related to the issues discussed as part of this final decree will need to be submitted to the Legislature by another party. It would appear that none of the issues identified above will be considered in the 2007 session. Regarding waiving of fees, Ecology noted that any proposal should be structured so that there would be no revenue loss to counties. _

There was considerable discussion on the topics of Ecology's role in the recording of certificates, use of parcel numbers, reporting of change in ownership, metering records, efficiency of administration and accuracy of records. Most, if not all, of these issues may be resolved through administrative practices. This topic is related to **Sections 7 and 12 of the Draft Final Decree** – Reporting Change of Ownership.

There is an existing state statute requiring Ecology to record certain water rights certificates that are within state jurisdiction. Ecology emphasized their need to keep the adjudication "clean" in the Yakima Basin and to maintain an accurate record of who is responsible for metering reports.

Participants felt that reporting of change of ownership should not be required for irrigation districts, cities and other such entities. In the case of individual owners, the information on the certificate can be used to get current information from the county. When change results in an ownership split, a new certificate would be issued.

Ecology will prepare draft language for the final decree on recording of certificates, need for parcel numbers for certificate recording, reporting of ownership and enforcement. It will include input as feasible from counties, a title company, etc. Working Group participants, including Joe Mentor (property owners), Matt Wells (cities), Jeff Schuster (Yakama Nation) and Larry Martin (Irrigation districts) will consult with Ecology on the development of this draft language.

C. Review of Ecology's 2nd draft proposed Final Decree and issues Identified by Working Group participants.

Ecology prepared a 2nd draft proposed Final Decree for discussion. The 2nd draft includes changes to specific Sections based on the discussion at the December meeting. The review of the 2nd draft was focused first on the revised sections and then on the remaining sections. This process will be used to address issues in future meetings.

Introduction

Ecology's proposed language used in the Introduction (page 2, lines 5 – 7) was discussed. The sentence was as follows: "The time for appeals of these Conditional Final Orders has now expired, and all timely filed appeals of the Conditional Final Orders have been completed, except as to the Conditional Final Order for Subbasin 23, the Ahtanum Irrigation District and the John Cox Ditch Company."

- This language would be correct only if the CFOs for Ahtanum Irrigation District and Subbasin 23 do not include "final for appeal" language, to avoid holding up the Final Decree while these CFOs are appealed.
- The exceptions may be unneeded if a Final Decree can be issued with appeals still in progress.

It was suggested that the sentence should be removed from the text and raised as an issue in submitting the Draft Final Decree to the Court.

It may be 2008 or beyond before all appeals have been completed. Charlie Shockey (US DOJ) and Barbara Markham (WA Ecology) will research whether it is appropriate to issue a final decree before all appeals are concluded.

Section 1

The revision expanded the definition of Yakima Basin to include the entire Yakima Reclamation Project. Part of the Kennewick Irrigation District is outside the Yakima Basin but a right was confirmed for it as part of the Yakima Reclamation Project – so both descriptions are needed. This is similar to the wording used in the Department of Interior material submitted to the Court in the Bureau of Reclamation's rights filing. The group discussed the need for a more detailed description Ecology will revisit this definition considering the statement of facts in the adjudication that describes the area. A suggestion was to simply have the Final Decree reference the description of the basin that was provided in the original statement of facts.

Section 1b still requires discussion. This may be needed in order to address groundwater to surface water changes in the future. Ecology indicated that, at this time, it is unaware of any permits other than those identified in 1b.

Section 2

The group discussed the need for the exception statement. It was suggested that the exception (i.e. Bugni) described in 2a could be deleted here but continued as part of the discussion in Section 8. There are other exceptions under law that aren't stated. As an additional complication, all parties do not agree on what the relinquishment statute means.

Ecology will work on wording of Section 2b aimed at keeping the essence of the section. There was some concern expressed about trumping previous agreements. A small group is still working on this issue.

Section 3

The group generally agreed to the changes made by Ecology.

Section 4

No changes were made to the 1st draft. Discussion of Section 4 was deferred to a later meeting. Issues to discuss later include but are not limited to:

- Non-diversionary stockwater orders
- Line 9 - what does "at the time of this adjudication" mean?

- Cite order without trying to paraphrase
- Including Section 4 in Section 5
- Are inclusion of Sections 4 and 5 necessary or appropriate and, if so, which orders should be listed?

Section 5

Some language changes were proposed and general agreement was reached on the modification made to the wording of Section 5 in the 2nd draft. John Gilreath volunteered to work with Ecology on the wording in Section 5c.

Section 6

While there were no changes from 1st draft of Section 6, a suggestion was made, however, that in line 4 “claimant” be changed to “confirmed water right holder”. In line 5 the suggestion was made that “claimant” should be changed to “holder or successor.”

Section 7

See discussion on page 1 in “B. Review needs/opportunities for enabling legislation in 2007”
The main question discussed here was how people can be made aware of the conditions and/or their obligations. Any conditions to be included in certificates should all be in the schedule of rights. There was also discussion about whether the schedule trumps the CFO. It was proposed that the intent of this section might be clearer if it was separated into two separate issues:

1. Conditions and limitations
2. Making metering orders permanent

Ecology indicated that it plans to give notice that the Court has set conditions and limitations if the proposed language is adopted. This includes telling people about requirement to notify Ecology about changes in the person or address responsible for metering. It is the intent of this section to make 1994 metering order and 2005 metering order perpetual. The 1994 and 2005 orders will be posted on the website.

Section 8

See discussion included in Section 2 above. Ecology will post the list of orders on the website next week. It was suggested that Pretrial Orders should also be posted on the website.

Section 9

The Yakama Nation and Ecology will meet to consider the language changes suggested and other concerns with this section.

Section 10

Jurisdiction discussion will be on agenda for a later meeting. Issues for discussion include:

- Correcting errors on certificates
- Familiarize selves on New Mexico issues- Federal Court or State
- Need to be clear about who has what jurisdiction - Court/State
- Inherent jurisdiction
- Identify potential legislative changes
- Federal status relative to jurisdiction
- Yakima Superior Court's jurisdictional history
- Consistency in judgments On appeal could go to different counties (where land is, where person lives, Thurston County)
- Implications of the New Mexico issues- Federal Court or State
- Identify Potential Jurisdictional Issues - matrix

- Broad to small
- federal, tribal, state
- civil/criminal action
- Water Master
- PCHB

To facilitate this discussion, a matrix will be developed including specific jurisdiction and potential jurisdictional issues. Working Group participants were encouraged to provide Roundtable Associates with input for the matrix.

Section 11

Notification process will be documented by Ecology for further review by the Working Group to include getting the Final Decree out ahead of final approval.

Section 12

Ecology will consider moving this topic to Section 7 under metering and measuring.

Other issues for Working Group discussion

Specific limits or conditions that apply to all

- Access to property, etc.

Pathway for corrections to certificates

- What's on the certificate will be what's on the schedule of rights (except for parcel numbers)
- Can clerical type errors be fixed w/o legal process?

Make reference to but avoid paraphrasing other orders.

Clarify Reclamation/Ecology roles/responsibilities for administration, oversight, enforcement

Defer to later

- Orders or Memo opinions that are listed / not listed
- Natural flow
- 1 Bucket
- Post 05

2006/2007 Working Group Meeting Schedule

Meetings will be held monthly on Court water days (2nd Thursday) through April 2007 or as required. They will begin after the Court session, usually around 11AM.

January 11, 2007	11AM – 3:30PM	Yakima - Ecology Conference Rooms
February 8, 2007	11AM – 3:30PM	Yakima - Ecology Conference Rooms
March 8, 2007	11AM – 3:30PM	Yakima - Ecology Conference Rooms
April 12, 2007	11AM – 3:30PM	Yakima - Ecology Conference Rooms

Participants

Matthew Wells	Attorney – City of Yakima	mattheww@prestongates.com
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Stuart Crane	YN	cranes@yakama.com
Bob & Marianna Archey	Facilitators	roundtable@roundtableassociates.com

Next Meeting

Thursday, January 11, 2007

11:00 AM – 3:30 PM – Ecology Yakima Conference Rooms

Notes prepared 12/18/2006 by R. Archey, Roundtable Associates

Next steps including work in preparation for Working Group meetings

Attachment 1 will include Next Steps and action items from previous meetings as well as the meeting covered by these notes. The date in () is the meeting date where work was identified.

Final Decree Issuance prior to completion of appeals, Intro - (US DOJ) and (WA Ecology) will research whether if it is appropriate to issue a final decree before all appeals are concluded (12/06).

Status: In progress (DOJ, Ecology)

List of Amendments, Sec 2 - Ecology will provide list of amendments referenced in Section 2 (11/06)

Status: In progress (Ecology)

Refine language 2b, Sec 2 - Jeff Schuster, Joe Mentor and Matt Wells agreed to discuss/resolve language "off line" and suggest changes. (11/06 and 12/06)

Status: In progress (Jeff, Joe and Matt)

Order regarding Non-Diversiory Stockwater Rights, Sec 4 - YN to look at the order and discuss with Ecology (11/06)

Status: In progress (Ecology, YN)

Language changes, Sec 5 - Ecology will work on the wording in Section 5c. (12/06)

Status: In progress (John Gilreath, Ecology)

List of orders to be considered for incorporation into Draft Final Decree, Sec 7 & 8 - WG participants agreed to each submit their list of orders to be considered. Ecology will query their pleadings data base to develop a list of potential orders to consider here. (11/06). It was suggested that Pretrial Orders should also be posted on the website. (12/06).

Status: Orders will be posted to website by 12/23/06. Ecology will look into posting pretrial orders.(Ecology)

Process for ensuring accuracy of certificates, Sec 7 & 12 - Ecology agreed to work with other participants to discuss its proposed process for sales/changes that are undocumented and for ensuring post-CFO information is accurately reflected on certificates and see if such a process can be acceptable to other parties. (11/06). Ecology will prepare draft language on recording of certificates, need for parcel numbers for certificate recording, reporting of ownership and enforcement. It will include input as feasible from counties, a title company, etc. Working Group participants, including Joe Mentor (property owners), Matt Wells (cities), Jeff Schuster (Yakama Nation) and Larry Martin (Irrigation districts) will consult with Ecology on the development of this discussion paper.

Attachment 1

Status: Draft language for discussion at January meeting (Ecology, et al)

YN water right administration, Sec 9 - YN and Ecology will discuss revisions to the language in this section. (11/06)

Status: In progress (Ecology, YN)

Jurisdiction post issuance of Final Decree, Sec 10 - To facilitate the jurisdiction discussion, a matrix will be developed including specific jurisdiction and potential jurisdictional issues. (12/06)

Status: Draft available for January 2007 meeting (Roundtable, Ecology, WG participants)

Notification Process, Sec 11 - Ecology will propose an efficient, effective, inclusive process to provide adequate legal notice for comments on the proposed final decree (11/06).

Status: In progress (Ecology)

Consistency with Trust language - US will present options (11/06)

Status: In progress (USDOJ and DOI)

Organize an on-line Reference Library - Identify documents to post to website, e.g. relevant statutes, relevant orders and opinions (11/06)

Status: In progress and ongoing (Ecology, Roundtable)

Acquavella Working Group Report of Issues

Attachment 2 will serve as a place holder for issues where Working Group consensus is not reached or where Court input is necessary.

1. Final Decree issuance before completion of appeals

“The time for appeals of these Conditional Final Orders has now expired, and all timely filed appeals of the Condition Final Orders have been completed, except as to the Conditional Final Order for Subbasin 23, the Ahtanum Irrigation District and the John Cox Ditch Company.”

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Status (12/06

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