

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 – (1/25/07)

9:00 AM – 11:15 AM – Conference Call

Discussion Agenda

- Review Ecology's 3rd draft of the proposed Final Decree
- Reach consensus, to the extent possible, on resolution of the issues
- Identify other issues for Working Group discussion
- Next steps including work assignments in preparation for the February 7th 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

The originally scheduled Acquavella Working Group meeting on January 11, 2007 was cancelled due to the length of the water day Court session. This conference call was scheduled to provide input on the 1/8/07 update of the Draft Proposed Final Decree. A 4th edition of the draft will be produced for discussion at the February 7th Working Group meeting in Yakima.

There were no corrections to the December 14, 2006 Facilitator's Notes.

The nature of the "product" of the working group came up during the discussion of Section 2 of the draft. The current assumption is that it will consist of a report to the Court in June 2007 to include:

1. A draft proposed Final Decree prepared by Ecology that represents the positions that Ecology can agree to and as discussed and refined by the Working Group. Ecology suggested that one option would be for Ecology to present a draft of the Final Decree to the Court as Ecology's proposal with other parties then given an opportunity to respond as they deem appropriate.
2. Identification of the issues that could not be agreed to by the working group and the nature of the disagreements.

The participants cautioned that it may be late in 2008 before a Final Decree is a reality with the schedule of rights deemed accurate and all issues resolved by the Court.

C. Review of Ecology's 3rd draft proposed Final Decree and issues Identified by Working Group participants.

Ecology prepared a 3rd draft proposed Final Decree for discussion. The 3rd draft includes changes to specific Sections based on the discussion at the December 2006 meeting.

Introduction

Revisions were highlighted and met with general agreement¹.

Section 1

Significant time was spent discussing the intent and details of this section. A sub-group consisting of Barbara Markham, Joe Mentor, Jeff Schuster and Matt Wells is working on the intent and wording of Section 1b and will report at the February meeting. Ecology requested that other working group members advise of any use authorizations that might be missing.

Section 2

Discussion of this section included:

- Importance of the date of the CFO
- Including language regarding exceptions
- Conflict of wording in the second paragraph
- Schedule of rights – what will it look like and its inclusion as part of the final decree
- Water Right certificates issued by Ecology
- Relationship of the schedule and the certificates
- Process for verification of the accuracy of the certificates

Ecology believes that the schedule of rights incorporated into the Final Decree will be exactly what is included on the certificate that they will issue with the possible exception of the tax parcel number. This is based on the assumption that the Final Decree controls in the event of conflict with underlying CFOs and will include an accurate schedule of rights. A proposed process for assuring the accuracy of the schedule/certificate will be prepared by Ecology and presented to the working group for discussion at the February or March meeting. While concerns were expressed about the schedule controlling rather than the CFOs, the group agreed to hold further discussion until after the proposed process for review and comment/correction of schedule is prepared.

Section 3

Section 3 needs additional work. Issues included:

- Focus on those rights subject to the Decree
- Recognition of post 1905 issues
- Inclusion of some form of injunctive relief and the relationship of same to the issue of continuing jurisdiction (Section 10)

¹ The term "general agreement" used in the 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.

An example of the format of the schedule of rights was requested including:

- Form in which it would be produced (paper/digital)
- Searchable databases
- Availability to the public
- Assistance in interpretation, etc.

As stated above, a proposed process for assuring the accuracy of the schedule/certificate will be prepared by Ecology and presented to the working group for discussion at the February or March meeting. This process will also include availability and accessibility for a broad range of public reviews.

Section 4

Section 4 (previously section 5) was reviewed with general agreement on the Draft #3 modifications except for 4c which will be reviewed and discussed further at the February meeting.

Section 5

Reclamation requested an estimate of the order of magnitude of the bill that might be presented to the US for recording fees..

Section 6

The need for inclusion of County tax parcel information on the certificates will be the subject of a January 31st discussion in Olympia with the impacted County Auditors. Joe Mentor brokered the meeting and Ecology will participate. Other interested parties are welcome. The meeting will be from 11:30 AM to noon in the Office of the Secretary of State. The outcome will be reported and discussed at the February working committee meeting.

Section 7

The major changes here are a combining of the old sections 7 and 12. Ecology requested proposed language from the group on the last sentence- beginning "A city, town, irrigation district ..."

Section 8

Ecology will provide the details of the documents listed on a disc and/or on the web on or about 2/1/07. The orders (and opinions) that are intended to be permanent and applicable to future administration of the water rights adjudicated in this action are the focus. Participants were requested to identify other orders or opinions that might be included.

The need for a list of orders was questioned. The group generally agreed that the list was useful to help understand the scope of this section. The list can be eliminated later from the draft Final Decree if determined unnecessary.

Section 9

Yakama Nation is still working on the language for this section.

Section 10

Continuing jurisdiction is an issue to be discussed in future meetings by the working group.

Section 11

Notification process will be documented by Ecology for further review by the Working group to include issues discussed in Sections 2 and 3 above.

Other issues for Working Group discussion

The first written report is due to the Court in February. A proposed outline for the report and a working group review process will be available for discussion at the February meeting.

2006/2007 Working Group Meeting Schedule

Meetings have been held monthly on Court water days (2nd Thursday). The schedule was changed to reflect the potentially busy water day Court schedules. Beginning in February, the working group will meet on the Wednesday prior to water day as follows:

| | | |
|------------------|----------------|-----------------------------------|
| February 7, 2007 | 1 PM – 5:00 PM | Yakima - Ecology Conference Rooms |
| March 7, 2007 | Noon – 4:00PM | Yakima - Ecology Conference Rooms |
| April 11, 2007 | Noon – 4:00PM | Yakima - Ecology Conference Rooms |

Participants

| | | |
|-----------------------|--------------------------------|-------------------------------------|
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| Bob & Marianna Archey | Facilitators | roundtable@roundtableassociates.com |

Next Meeting

Wednesday, February 7, 2007 - 1:00 PM – 5:00 PM – Ecology Yakima Conference Rooms

Please check Attachment #1 for work that needs to be accomplished prior to the February meeting.

Notes prepared 1/25/2007 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.

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

- B) **Refine language 1b, Sec 2** - Jeff Schuster, Joe Mentor, Matt Wells and Barbara Markham working on discussing/resolving language “off line” and suggest changes. (11/06, 12/06 and 1/07)
Status: In progress (Jeff, Joe, Matt and Barbara)

- C) **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)

- D) **Process for ensuring accuracy of certificates, Sec 2 and 3** - 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.

- E) **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: Draft language for discussion at February/March meeting (Ecology, et al)

- F) **YN water right administration, Sec 9** - YN and Ecology will discuss revisions to the language in this section. (11/06, 1/07)
Status: In progress (Ecology, YN)

- G) **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 February/March 2007 meeting (Roundtable, Ecology, WG participants)

- H) **Consistency with Trust language** - US will present options (11/06)
Status: In progress (USDOJ and DOI)

Acquavella Working Group Report of Issues

No Change from December Notes

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.”

- 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.

Status (12/06

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