

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 – (3/7/07)

12:30 PM – 4:00 PM – Department of Ecology Yakima Conference Rooms

Discussion Agenda

- Reach agreement, to the extent possible, on resolution of the jurisdiction issues and process for legal notice and comments
- Review March (#5) update to draft Proposed Final Decree
- Refine work plan

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/yakima_finaldecree_wg.html

A. General

There were no corrections to the February 7, 2007 Facilitator's Notes.

B. Process of legal notice for comments on Final Decree

Ecology proposed a process intended to be efficient, effective, and inclusive and to provide adequate legal notice for comments on the proposed final decree in the form of a draft motion to amend Pretrial Order No. 8. The proposal was discussed and participants generally agreed to add 30 days to Paragraph D, extending the reply to any party's response to an objection to within 240 "days after the date of the mailing of the NOAPFD."

Ecology will also add the process for submission, publication and notice of filings to include:

- Prescribed filing cover sheet format – entity name, subbasin, summary of the nature of the filing
- Official summary of listings in the Monthly Notice Report

C. Jurisdiction

Jurisdiction after the entering of the Final Decree was discussed at length including:

- Applicability of the federal McCarran amendment
- Manner in which state laws govern jurisdiction
- Focus on administration, enforcement or both
- Minimizing the number of courts involved on a specific issue

A number of participants advocated in favor of retaining jurisdiction in Yakima County Superior Court. Ecology and Reclamation agreed to research and further discuss the jurisdictional issues prior to the continuation of discussion at the April meeting.

D. Review of Ecology's 5th Draft Proposed Final Decree and Issues Identified by Working Group Participants.

Paragraph 1

After discussion of the area of adjudication and the map included in the 1985 Pretrial Order No. 3, there was general agreement¹ to amend the first sentence to add "excluding the McNary Pool of the Columbia River." There was also general agreement as to the edits to Section 1(b) contained in Ecology's 5th Draft.

Paragraph 2

Add 2/14/2007 as "Date of Entry of CFO" for USA/ Bureau of Reclamation/ City of Cle Elum.

Paragraph 3

Remove a and right in line 24 - to read "Every user of surface water is ..."

Paragraph 6

Recording of certificates - Ecology has been consulting with work group participants², county auditors and recording supervisors on an analysis of the process and necessity of recording adjudication certificates. Ecology will prepare draft final decree language, as necessary, on recording of certificates, parcel numbers, and ownership. Input has been obtained in meetings with county auditors in February and recording supervisors in March. A final meeting will be held on April 11th prior to the work group meeting. It will include title company representatives.

Paragraph 7

Work group participants will research and provide any additional Pendente Lite orders that should be included.

Paragraph 8

Orders are listed in this paragraph because they are not CFO's and make reference to generic issues. The Court asked to see a list of such orders. They may/may not be included in the Final Order. Listing of the 8/24/2005 Memorandum Opinion concerning Roslyn is premature and a recommendation was made that it be removed.

Members of the working group will inform Ecology of any others they would like included.

Paragraph 9

This paragraph addresses administration and enforcement. There was discussion regarding the language as it might affect the YRD's contracts on the YN reservation. Jeff and Brian will review.

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.

² Participants include Joe Mentor (property owners), Matt Wells (cities), Jeff Schuster (Yakama Nation) and Larry Martin (Irrigation districts)

Paragraph 10

Jurisdiction - See Section C above.

There were suggestions by some to frame the jurisdiction discussion around 3 alternative wordings of Paragraph 10:

1. The court shall not retain continuing jurisdiction of this action once the Final Decree is entered, except to any extent the court has inherent continuing jurisdiction under state law. (*current wording*)
2. The court shall retain continuing jurisdiction of this action once the Final Decree is entered to the extent the court has inherent continuing jurisdiction under state law.
3. The court shall retain continuing jurisdiction of this action once the Final Decree is entered to the extent the court has inherent continuing jurisdiction under state law and to specifically include:
 - .
 - .
 - .
 - .
 - .

E. Other Discussion - Previous Next Step Items

A) Final Decree Issuance prior to completion of appeals - (US DOJ) and (WA Ecology) will research whether if it is appropriate to issue a final decree before all appeals are concluded. A discussion paper will be available for the April meeting (DOJ).

B) Process for ensuring accuracy of certificates – At the April meeting, Ecology will be prepared to discuss the 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.

C) Recording of Certificates – see Paragraph 6 above

D) Notification Process – see Section B above

E) Jurisdiction – see Section C and Paragraph 10 above

F) The United States is OK with current status (This item is complete) ????

2007 Working Group Meeting Schedule

The working group will meet on the Wednesday prior to water day as follows:

April 11, 2007	Noon – 4:00 PM	Yakima - Ecology Conference Rooms
May 9, 2007	Noon – 4:00 PM	Yakima - Ecology Conference Rooms

Participants

Barbara Markham	Ecology - WA AG	barbaram@atg.wa.gov
Ben Bonkowski	Ecology	bbon461@ecy.wa.gov
Bill Ferry	Reclamation	wferry@pn.usbr.gov
Bryan Myre	YNID	bmyre@lyon-law.com
Carol Knudson	Ecology	cknu461@ecy.wa.gov
Carron Helberg	Reclamation	chelberg@pn.usbr.gov
Charles Shockey	US DOJ	charles.shockey@usdoj.gov
Darrell Monroe	Ecology	dmon461@ecy.wa.gov
Dave Brown	City of Yakima	dbrown@ci.yakima.wa.us
Jack Hockberger	Reclamation	No e-mail
Jeff Schuster	Attorney – YN	jeffschuster@worldnet.att.net
Joe Mentor	Mentor Law Group	mentor@mentorlaw.com
John Gilreath	KRD	johngilreath@elltel.net
Larry Martin	SVID, YTID, et al	lmartin@halversonlaw.com
Matthew Wells	Preston Gates & Ellis	matthew.wells@klgates.com
Ron VanGundy	Roza	ron@bentonrea.com
Stuart Crane	YN	cranes@yakama.com
Tom Cowan	Roza	tcowan@cowanmoore.com
Bob & Marianna Archey	Facilitators	roundtable@roundtableassociates.com

Next Meeting

Wednesday, April 11, 2007 – Noon PM – 4:00 PM – Ecology Yakima Conference Rooms

There will be a morning meeting in the Ecology Yakima Conference Rooms with county auditors and title companies (Paragraph 6 above). To facilitate a noon start of the full work group meeting, a “brown bag” lunch is recommended.

All Work Group documents are available on the Ecology website
http://www.ecy.wa.gov/programs/wr/rights/yakima_finaldecree_wg.html

Notes prepared 3/11/2007 by R. Archey, Roundtable Associates