

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 – (4/11/07)

12:15 PM – 4:00 PM – Department of Ecology Yakima Conference Rooms

Discussion Agenda

- Reach agreement, to the extent possible, on the following issues:
 - Jurisdiction after issuance of Final Decree
 - Process for assuring accuracy of certificates (Amendment to pre-trial Order #8)
 - Process of legal notice for comments on Final Decree
 - Recording of Certificates
 - Final Decree Issuance prior to completion of appeals
- Review April (#6) update to draft Proposed Final Decree
- Refine work plan

A. General

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

On the question of issuance of the Final Decree prior to completion of appeals DOJ's opinion is that the Court retains jurisdiction until all appeals are completed. If final decree needs to be modified, there are procedures for that. Ecology does not envision issuing certificates until all appeals are completed

The group generally agreed¹ to proceed with the review of the April Draft Final Decree update and discuss open issues as they arise.

B. Review of Ecology's 6th Draft Proposed Final Decree and Issues Identified by Working Group Participants.

Paragraph 1

US proposed to add a 1c. that recognizes continuation of federal river operations (RCW 90.40) and will draft specific proposal and submit for discussion. There was some concern about where this most appropriately fits in the final decree

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.

Paragraph 2

The group discussed how Sub basin 23 CFO should be included - as separate listings or consolidated. This is dependent the way in which the Court ends up treating SB 23.

2b – Ecology will reword this sub paragraph to make it less ambiguous

Paragraph 3

A question was raised as to whether any use not authorized in decree can be enjoined. DOJ (Pat Berry) agreed to share an example from another decree. The current words perpetuate Post 1905 order.

Paragraph 5

Two fees were discussed – the local government fee for recording with the auditor (~\$50) and the Ecology fee for issuing the certificate (\$50). The US was concerned that the Ecology certificate fee might look like transferring costs of adjudication to Federal government. The issue of fees charged to the Federal government was ruled on in US v Idaho. The Ecology fee increases are applied statewide based on 2005 study for the Legislature. US and Ecology will discuss this further off-line.

Paragraph 6

In a meeting prior to the work group meeting with County recording supervisors and title company representative's tentative agreement was reached on the information needed for recording with the counties. The following questions posed to the counties to resolve this issue:

“If Ecology records with the Auditor (and files with the Clerk's office) a certified copy of the final decree (and attached schedule of rights, with legal descriptions but no parcel numbers) and with a cover sheet, then –

1. When Ecology issues a certificate, can the certificate of adjudicated water right be recorded when the certificate includes legal description but no parcel number and with a reference to a recorded, certified copy, with document of the final decree?
2. If the answer is no, could it be recorded with a cover sheet, only with grantee-grantee names and no legal description but with reference to recorded/filed final decree?”

Matt Wells will draft a sample cover sheet.

Ecology will not add their own conditions on the certificates - only those required by courts will be included.

Paragraph 8

Considerable discussion took place on whether a list of opinions and orders should be included and to what end. The Court has requested to see a list and Ecology believes it would be valuable to describe to people what type of orders would be used in the ongoing administration of the basin. It was left up to Ecology to decide whether the list is included or not in the proposed Final Decree that they will submit to the Court with the other parties having a right to respond to Ecology's draft after it is filed.

The work group discussed the concerns submitted by Adam Gravely (Buck and Gordon LLP) regarding the removal of the 8/24/2005 Memorandum Opinion re: the City of Roslyn. There was general agreement that the Roslyn issue will be resolved before the final decree is issued. Ecology will respond to Attorney Gravely's concerns.

Paragraph 9

Ecology's objective in adding the second sentence to Paragraph 9 was aimed at providing for a means for other entities to bring an action before the Court in the event that Ecology was unable to do so. This generated considerable discussion about the administration/enforcement processes including:

- How an action would be brought before the Court (e.g. motion to show cause)
- Meaning of "any" party (any party or adversely affected party)
- Role of Ecology/PCHB in a Federal issue
- Conflicting cases (Ecology and the Court)

Ecology will work with the Yakama Nation and Federal representatives to revise the wording in this section.

Paragraph 10

Jurisdiction of the Yakima County Superior Court discussion included:

- State court vs. Federal court
- US v Flanagan relative to jurisdiction
- Superior Court case as a continuing case
- Multiple state court involvement

Ecology will revise Paragraph 10 based on the discussion. DOJ will provide suggested wording to the work group based on previous adjudication cases (i.e. US v Flanagan)

C. Other Discussion

Process for assuring accuracy of certificates (Amendment to pre-trial Order #8)

The 4.6.07 draft of Ecology's Motion to Amend Pretrial Order No. 8 to assure that all parties have had access to the Proposed Final Decree and time to file objections and responses was reviewed. There was general agreement on the revisions to the original draft subject to the resolution of the issues described below. Some work group participants requested additional assurance that the documents would be readily available to the public including:

- Posting of documents including objections and pleadings on-line
- Inclusion of the objections and pleadings in the Monthly notice
- Press releases from Ecology to the media to build awareness of the process
- Service of proposed Final Decree on major claimants

Ecology will incorporate some of these suggestions in the final draft of Pretrial Order No. 8. They expect to submit this to the Court in June along with their Draft Proposed Final Order.

May 22 Report to the Court

Roundtable Associates will prepare a draft progress report to the Court for review at the May 9, 2007 work team meeting. It will again include the work group's caution that considering the amount of work and time involved in the proposed review process, actual issuance of the Final Decree is likely to be over a year away.

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
May 22, 2007	Report to the Court due	
June 2007	Final review via conference call, if necessary	

Participants

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Next Meeting

Wednesday, May 9, 2007 – Noon PM – 4:00 PM – Ecology Yakima Conference Rooms

All Work Group documents are available on the Ecology website

http://www.ecy.wa.gov/programs/wr/rights/yakima_finaldecree_wg.html

Notes prepared 4/17/2007 by R. Archey, Roundtable Associates