

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 – (5/9/07)

12:15 PM – 3:45 PM – Department of Ecology Yakima Conference Rooms

Discussion Agenda

- Reach agreement, to the extent possible, on open issues:
- Review May (#7) update to draft Proposed Final Decree
- Review May status report to the Court
- Next Steps

A. General

There were two corrections to the April 11, 2007 Facilitator's Notes.

1. In the section A. General revise the 2nd paragraph as follows:

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~~ it issues the Final Decree even if appeals are ~~completed~~ pending. If final decree needs to be modified, there are procedures for that. Ecology does not envision issuing certificates until all appeals are completed.

2. In section Paragraph 9 revise the 2nd paragraph as follows:

~~Ecology will work with the~~ Yakama Nation and Federal representatives will provide recommendations to revise the wording in this section. This may occur after Ecology has submitted the Proposed Draft Final Decree to the Court in June.

B. Review of Ecology's 7th Draft Proposed Final Decree and Issues Identified by Working Group Participants.

Paragraph 1

Reclamation recommended the addition of a part c. to this section. After discussion by the work group (see Paragraph 3) it was proposed as follows:

“(c) as accrue to the united States pursuant to the withdrawals and grants under RCW Chapter 90.40.”

Paragraph 3

The work group held a lengthy discussion on the injunctive language and structure of Paragraph 3. The injunctions were focused on three primary points:

1. Use of water consistent with the user's water rights
2. Claiming of water rights
3. Interference with prior or superior rights

The discussion included Reclamation's concerns regarding their operation of the basin water system. These included:

- Future uses
- Right to convey water
- Operational releases

Ecology will revise and restructure Paragraph 3 and distribute for comment. The paragraph will be divided into separate sections to cover the points discussed.

- (a) Lead paragraph as included in the current revision (7th)
- (b) Claiming of water rights
- (c) Use consistent with rights
- (d) Interference with prior or superior rights
- (e) Federal river operations pursuant to RCW Chapter 90.40

Paragraph 6

Ecology reported that they had received word that Yakima, Kittitas and Benton county Recording Supervisors are in agreement that the form presented to them will work. They would like a parcel number if possible but if not they will record the certificates and index by name.

Paragraph 9

This paragraph will be separated into two parts:

- (a) Dealing with Ecology's authority to administer and enforce the decree (with the exceptions noted)
- (b) Dealing with any party's right to bring a motion to show cause to enforce the Decree's injunctions.

As noted in A. General (above) the Yakama Nation and Federal representatives will provide recommendations to revise the wording in this section. This may occur after Ecology has submitted the Proposed Draft Final Decree to the Court in June.

C. Other Discussion

May 22 Status Report to the Court

The draft status report prepared by Roundtable Associates was reviewed by the work team. A few revisions were requested. Ecology will submit the status report to the Court.

2007 Working Group Schedule

May 22, 2007	Report to the Court due
June 7, 2007	1 PM – 4 PM - Final review via conference call
June 14, 2007	Draft Proposed Final Decree due to the Court

Participants

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Next Meeting

Wednesday, June 7, 2007 – 1 PM – 4:00 PM – Conference Call

A call in number will provided

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

Notes prepared 5/16/2007 by R. Archey, Roundtable Associates