

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON D.C. 20426
January 24, 2005

OFFICE OF ENERGY PROJECTS

Project No. 2150-033--Washington
Baker River Project
Puget Sound Energy

Col. Debra M. Lewis
U.S. Army Corps of Engineers, Seattle District
P.O. Box 3755
Seattle, WA 98124-3755

Reference: LOU – Cooperating Agencies for NEPA and ESA

Dear Col. Lewis:

This letter of understanding (LOU) sets the protocol that the Federal Energy Regulatory Commission (FERC), acting as lead agency, and the U.S. Army Corps of Engineers (Corps), acting as cooperating agency, will use in preparing an Environmental Assessment (EA) and a Biological Assessment (BA) for the proposed relicensing of the Baker River Project. The Baker River Project is located on the Baker River in Whatcom and Skagit Counties, Washington.

Purpose of the EA and BA

In accordance with the National Environmental Policy Act, FERC staff must prepare either an EA or an Environmental Impact Statement before FERC can decide whether to issue a new license for the Baker River Project. In addition, FERC staff must prepare a BA if any new license affects federally listed species under the Endangered Species Act.

At this time, FERC intends to prepare an EA and a BA for the Baker River Project. The EA will be based on Puget Sound Energy's new license application filed April 30, 2004, settlement agreement filed November 30, 2004, and Applicant Prepared Environmental Assessment. The BA will be included within the EA.

Responsibilities

- FERC and the Corps will set reasonable deadlines for reviewing and providing comments on preliminary drafts of the EA and BA and on any notices, additional

information requests, and other correspondence directly related to the development of the EA and BA. FERC and the Corps will strive to meet all agreed-upon deadlines and will notify the other agency in advance of any deadlines likely to be missed;

- FERC, as lead agency, will prepare preliminary drafts of the EA and BA and provide drafts to the Corps for its review;
- The Corps will review all drafts and provide comments. The Corps will ensure that all comments are consistent and will consolidate all comments into a single package (for each draft document) for return to FERC;
- FERC will consider and incorporate any comments from the Corps or explain to the Corps why any comments were not incorporated;
- FERC and the Corps are free to communicate with each other on any issue related to licensing the Baker River Project but all pre-decisional communications between FERC and the Corps, written and verbal, will be kept confidential. Both staffs will refrain from communicating with persons, groups, or other agencies who are interested in the project regarding the content of staff documents before the documents are formally made available for public review;
- FERC and the Corps will expedite exchanging comments and preliminary draft documents using email, fax, CDs and express mail to the extent possible;
- The Corps will provide any additional data or analysis to FERC needed for the record and to support a licensing decision;
- The Corp's lead contact will eSubscribe to the Baker River Project docket (P-2150-033) using FERC's web-based eSubscription system and will periodically review all documents filed and issued on the project using this system. Further, the Corp's lead contact will periodically review FERC's mailing list for the project and submit any additions, deletions, or changes to the mailing list to facilitate communications with the Corps and other stakeholders.

Dispute Resolution

FERC and the Corps agree to cooperate in good faith to fulfill their respective responsibilities concerning the Baker River Project. If a dispute arises concerning this LOU or development of the EA and/or BA that cannot be resolved at the staff level, the issue will be elevated to a group consisting of a FERC supervisor and attorney and a Corps supervisor and attorney. If the matter still cannot be resolved by such a group, the

issue will be elevated to FERC's Director, Division of Hydropower Licensing and the Corp's Northwestern Division Engineer. FERC has an Alternative Dispute Resolution Service that may be available to help with any disputes.

Ex Parte

The Corps acknowledges that it is FERC's policy that an agency cannot cooperate and intervene in the same proceeding. By requesting and being granted cooperating agency status, the Corps agrees to forgo its right to seek intervention in this proceeding.

Staff Coordination

- Steve Hocking will be the lead contact for FERC at (202) 502-8753, fax (202) 219-0205 or steve.hocking@ferc.gov;
- Chuck Ebel will be the lead contact for the Corps at (206) 764-3626, fax (206) 764-4470 or charles.j.ebel@usace.army.mil.

General Investigation Study

The Corps manages the Baker River Project for flood control as authorized by the Flood Control Act of 1962 et. al. and implementing regulations and agreements. The Corps has an ongoing General Investigation Study that includes storage at the Baker River Project. Any EA or BA developed pursuant to this LOU is not intended to address this General Investigation Study.

Termination

Either agency may voluntarily terminate its involvement in this LOU with 30 days written notice to the other agency. Failure on the part of either agency to abide by the terms of this LOU will be grounds for termination of this LOU.

We appreciate your interest in interagency cooperation and look forward to working with you and members of your staff.

Sincerely,

Ann F. Miles
Director, Division of
Hydropower Licensing

I concur with this LOU:

_____ Date

Debra M. Lewis, Colonel
District Engineer
U.S. Army Corps of Engineers

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