



December 9, 2008

RE: Proposal for an Interlocal Agreement to Pursue Additional Flood Storage

Dear Mayors and Commissioners,

Recently County Commissioner Sharon Dillon and Burlington Mayor Ed Brunz met to discuss a range of topics, and during the discussion an idea came up to form a partnership consisting of every city, town and dike district in Skagit county to more effectively pursue increased flood control storage and enhanced flood control operations at the dams. As several parallel processes/projects have gone forward in the flood control realm (Mount Vernon's flood wall; Burlington's proposed "certified levee segment," Hamilton's relocation project, La Conner's Ring Dike, the "3 Bridge Corridor" project, several individual Dike District improvement projects, the Corps of Engineers General Investigation process, and the Flood Control Zone District Advisory Committee process), it has become clear that one flood measure universally beneficial to every city, town and dike district is additional flood control from the dams. At Commissioner Dillon's request, Will Honea drafted up a conceptual interlocal agreement for your consideration, attached here. The purpose of this letter is to request your participation in this partnership.

What would be the goals? The recently issued license for the Baker Hydroelectric project contains conditional provisions to obtain additional flood control in the short term (drawdown in advance of an imminent flood), and longer term (dam modifications to enable more efficient flood control capability). But the license provisions require FERC acceptance and Corps of Engineers cooperation, among other administrative challenges. For Ross dam on the Skagit main stem, the issue is not so much the amount of flood control storage (although storage should be increased somewhat), as it is the date for full flood pool drawdown – currently not until December 1st. We think the full drawdown date should be mid-October. There is much work involved to achieve these goals. Frankly, it is a steep uphill battle. We believe a partnership effort will greatly improve the odds of eventually increasing upstream flood storage, for the benefit of all of our citizens.

If you agree in principle with this proposal, please respond to [cmartin@ci.burlington.wa.us](mailto:cmartin@ci.burlington.wa.us), or contact me directly at 755-9715. Thanks very much for your consideration and help.

Sincerely,

Chal A. Martin, P.E.  
Public Works Director / City Engineer

Encl

**AN INTERLOCAL AGREEMENT TO ADVANCE THE COMMUNITY'S INTERESTS  
WITH RESPECT TO FLOOD STORAGE IN THE SKAGIT RIVER BASIN**

This Interlocal Cooperative Agreement ("Agreement") dated this \_\_\_\_ day of December 2008 by and between Skagit County, the City of Burlington, the City of Mount Vernon, the City of Sedro-Woolley, the City of Anacortes, the Town of La Conner, the Town of Concrete, the Town of Lyman, the Town of Hamilton, Dike District #1, Dike District #3, Dike District #5, Dike District #9, Dike, Drainage and Irrigation District #12, Dike District #17, Dike District #20, Dike District #22, and Dike District #25, (the "Partners") establishes a partnership for the purposes of advancing the community's interests with respect to flood storage in the Skagit River Basin, and is executed with reference to the following facts:

**WHEREAS**, flooding in the Skagit River Basin poses a catastrophic threat to human life and property within Skagit County;

**WHEREAS**, flood storage behind hydroelectric dams within the Skagit River Basin is a proven, highly-effective, and efficient method of protecting life and property in the Skagit River Basin from the risk of catastrophic flooding; and

**WHEREAS**, programmatic drawdown of hydroelectric dam reservoirs in the Skagit River Basin during the late summer and early fall benefits spawning salmonids with consistent and predictable instream flows, while simultaneously providing consistent and predictable flood storage; and

**WHEREAS**, Skagit County and certain other Partners agreed to the terms and conditions of the "Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement" dated November 30, 2004 ("Settlement Agreement"), a document that allowed Puget Sound Energy to obtain a new license for the Baker River Hydroelectric Project from the Federal Energy Regulatory Commission (the "FERC license"); and

**WHEREAS**, the principal benefit of the bargain for the Partners acquiescing to the Settlement Agreement was Puget Sound Energy's promise to actively advance reservoir drawdown and additional flood storage measures within the Baker River Hydroelectric System; and

**WHEREAS**, a 50-year license for operation of the Baker Hydroelectric project was recently issued by the Federal Energy Regulatory Commission, which contractually requires certain actions by Puget Sound Energy to adequately meet its obligations under the Settlement Agreement associated with additional flood storage, and the Partners desire to join together in an effort to secure the community's principal promised benefit arising under the 2004 Settlement Agreement; and

**WHEREAS**, the safety of the community with respect to life threatening catastrophe should take precedence over corporate profits and any other special interests; and

**WHEREAS**, the community will be well-served by a joint, unified approach to flood control by the Partners.

**NOW, THEREFORE**, the Partners agree as follows:

**1. Joint Flood Storage Strategy.** For the term of this Agreement, the Partners shall plan and execute a cooperative, joint strategy regarding flood storage in the Skagit River Basin.

**2. Joint Strategy Team.** To facilitate this objective, the Partners shall establish a Joint Strategy Team charged with rapidly and efficiently developing and executing the Joint Strategy. The Partners shall, within 10 days of the execution and approval of this Agreement:

- a. Designate one (1) representative to be principally responsible for coordination consistent with this Agreement, communicating the name of that representative to the other Partners. Recognizing many Partners to this agreement do not have full time staff, any Partner to this agreement may designate any other Partner to be its representative.
- b. Meet at least once weekly for the first two months this Agreement is in effect, with the goal of establishing a common set of policies and strategies for advancing flood storage. By agreement of the parties' representatives this may be reduced to a once monthly meeting;
- c. Share resources, staff, technical consultants and technical work as necessary to facilitate the objectives of the Joint Strategy Team.

**3. Cost Sharing.** The Joint Strategy Team may from time to time obtain reports from technical consultants, legal advice and other professional services in furtherance of its goals. Such costs shall be shared equitably between the Partners according to a formula to be established by the Partners. No responsibility for any costs may be incurred absent unanimous approval by the Partners.

**4. Joint Prosecution / Defense Agreement.** The Partners have contemplated, discussed and investigated litigation as a mechanism intrinsic to achieving the objectives sought by this Agreement and/or will discuss and analyze litigation in furtherance of this Agreement's goals and objectives. Accordingly, the missions, objectives and goals of this Interlocal Agreement will be substantially compromised and undermined by disclosure of communications arising under this Agreement to potentially adverse parties. Accordingly, communications arising from this Agreement between the Parties' representatives shall be considered protected by the attorney-client privilege, work product doctrine, deliberative process, and other applicable privileges. This Agreement and its existence may be disclosed. The Parties shall treat all such communications as confidential, shall not disclose the subject of communications arising under this Agreement to third parties except as may be ordered by a court with appropriate jurisdiction, and shall promptly inform all other Partners of any third party efforts to obtain communications arising under this Agreement.

**5. Termination.** Any Partner may terminate its participation in this Agreement by providing at least 30 days prior written notice to all other Partners. The terminating Partner must pay its share of any costs and expenses incurred as part of a cost sharing arrangement to which the terminating Partner has prior agreed in writing.

[SIGNATURE PAGES TO FOLLOW]