



State of Washington  
**DEPARTMENT OF FISH AND WILDLIFE**

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December 22, 2004

Ms. Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

Dear Ms Salas:

I am writing to provide the Washington Department of Fish and Wildlife's (WDFW) comments regarding the **Baker River Hydroelectric Project** Relicensing Comprehensive Settlement Agreement (**FERC No. 2150-033**).

Our agency has been a full and longstanding participant in the Baker River Project relicensing proceeding and settlement negotiation process. The WDFW, by its signature on the settlement agreement, is a party and strong supporter of the settlement because it comprehensively addresses the impacts of continued long-term operation of the Baker River Hydroelectric Project. We believe the settlement agreement adequately and equitably addresses existing and future impacts of the Baker River Project on fish and wildlife resources. Further as a participant in the many years of negotiations, WDFW has an appreciation of the numerous other parties' interests, including the license applicant (Puget Sound Energy), and believes the settlement's package of commitments serves to

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adequately and equitably address all of the issues raised by the settling parties. For these reasons, WDFW recommends that the Federal Energy Regulatory Commission (FERC) adopt the settlement's proposed license articles, without change, as the license articles for the next long term license for the Baker River Project.

Our agency has a long history of involvement in the Skagit River and Baker River watersheds. Our records show WDFW's predecessor agencies have been active in the Baker River watershed since at least the 1890s. Whether through habitat protection, hatchery production, or fish resource harvest, WDFW has a long history of continually being involved with and managing natural resource issues in the Baker and Skagit areas.

Increased focus on the Baker River resource issues took a higher prominence in 1985 when, in response to the extremely low return of Baker River sockeye (99 adults), WDFW joined with Puget Sound Energy, Upper Skagit Indian Tribe, Swinomish Indian Tribal, Sauk-Suiattle Indian Tribe, National Marine Fisheries Service, U.S. Fish and Wildlife Service, U.S. Forest Service, and the National Park Service to create the Baker River Committee. Since the Baker River Committee was formed WDFW has participated in the efforts of that committee to restore and improve the Baker River fish populations. Because of its large footprint on the Baker river watershed, a major focus of attention was the impact of the Baker River Project.

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When Puget Sound Energy began the relicensing process WDFW, early on, made a substantial commitment in time and energy to participate in the process. We were involved in developing appropriate studies, interpreting the study results, developing mitigation actions, and negotiating the final settlement. We have participated in numerous meetings since 1999 regarding the relicensing of this hydroelectric facility. In the past year alone, we have attended more than 105 Baker River Project relicensing meetings to address issues associated with wildlife, fish, recreation, and the language of the settlement agreement. The relicensing process has been a very open and collaborative process, with give and take among the parties accomplished at the negotiating table. Through the years of meetings, most parties in the process have developed an understanding of the needs of the other participants. Through this process we have developed several problem solving teams. These teams have developed good working relationships, and are effective in solving the problems before them. This process, while time consuming and difficult, lead to a comprehensive detailed settlement signed by all of the parties. We believe that this settlement agreement is a comprehensive agreement that addresses the fish, wildlife, and all other issues associated with this project.

Our agency participated, by video conference, in the FERC staff technical conference scheduled on December 8, 2004. We appreciate the opportunity to join with Puget Sound Energy and the numerous other parties, to present and recommend the settlement agreement to the FERC staff. At the conference, WDFW briefly explained WDFW's role

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in the negotiations and its support for the settlement package.

Through the technical conference WDFW understands the FERC staff are interested in the parties' viewpoints as to the nexus between the settlement commitments and the impacts of the Baker River Project. Our view is that the proposed license articles for fish and wildlife protection, mitigation, and enhancement have been negotiated as directly addressing Baker River Project impacts on natural resources. We are confident an appropriate record to support the proposed license article measures has been provided or will be available to the FERC in support of the settlement agreement.

As to some potential confusion resulting from December 8<sup>th</sup> oral comments made by Skagit County regarding provisions for flood control, the settlement agreement filed with the FERC reflects the parties agreement and understanding. Throughout the licensing process there were difficult issues that were required to be addressed. One of these difficult issues was Skagit County's desire to have additional flood storage at the Baker River Project. As represented by the county's signing of the settlement agreement, it is our understanding that the language in the settlement agreement is satisfactory to the county. The language of the settlement agreement represents WDFW's understanding of how the parties' agreed additional flood storage will be addressed. In part, this understand is derived from the past experience with the flood storage process at the Baker River Project, the language in the present license, and multiple statements by the Army

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Corps of Engineers (Corps) that the additional flood storage would be required to go through the Corps' National Environmental Policy Act (NEPA) review.

In addition, in developing the timing commitments of deliverables in the settlement's proposed license articles, the parties did not anticipate a significantly extended FERC NEPA process. While WDFW anticipates the FERC staff will undertake a full and legally appropriate environmental review of the settlement, the expectation was that the context would relate to the existing record developed about the Baker River Project, the settlement agreement, and other related necessary information. A NEPA analysis addressing the scope of the county's oral statements would be substantially different in time of production and vastly enlarged in scope of issues addressed.

Regarding the process of increasing required flood storage, it is our clear understanding that before the Corps can endorse the additional flood storage at the Baker River Project that the following must occur: 1) the Corps economic and environmental studies must be completed, and 2) the Corps must complete their NEPA analysis. Then the Corps must make a recommendation to Congress. Only after approval by Congress and the President of the United States of the additional flood storage measures, and provisions are made for reimbursing Puget Sound Energy, may the Corps implement the additional flood storage identified in the settlement agreement.

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The parties to the Baker negotiations know that the Corps is considering options for flood protection in the Skagit River basin, and has begun a process for reviewing and evaluating options. It is our understanding that in their environmental review the Corps will address potential environmental impacts of the additional flood storage proposal. At this time there are several environmental issues that have not yet been addressed. These were not taken up in the licensing proceeding because the uncertainty associated with whether the Corps will endorse the additional flood storage proposal. Because the additional flood storage requires several significant approvals outside of the authority of the Federal Power Act before it will become a reality, it is WDFW's view that the proposed license language for additional flood storage is a place holder that allows for a future possibility of an action by the Corps.

The settlement agreement does not include mitigation for the impacts of the additional flood storage at the Baker River Project. Based on how flood storage was dealt with in the current Baker River Project license; the many statements in relicensing meetings by the Corps that they, in the future, would analyze and address the impacts associated with flood storage; the fact that the Corps has not yet decided whether they will pursue additional flood storage at the Baker River Project; and statements by Puget Sound Energy that additional flood storage was not part of their proposal unless someone else addressed the costs; it is WDFW's expectation that the NEPA analysis for the additional flood storage will be conducted by the Corps upon completion of their environmental

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studies. Thus the parties anticipated that through the Corps process, impacts and benefits of additional flood control could be identified, as would impacts and benefits to other resources, namely fish and wildlife. Just as the county is concerned with flood impacts, WDFW has identified and continues to have concerns about the potential for impacts from additional flood control. We are confident that the anticipated Corps process will provide all of the parties the opportunity to identify possible opportunities, issues and potential resolutions.

For these reasons all of the impacts of additional flood storage were not considered during the relicensing proceeding. The only impacts of additional flood storage that were considered in the relicensing were if flow management under normal operations would be impacted. No analysis of the impacts to flow management under the conditions of dam modification for the additional flood storage were included, due to the uncertainty associated with whether additional flood storage will be a alternative the Corps decides to pursue. In addition, there are a number of other potential environmental impacts from additional flood storage that have not been analyzed in the relicensing proceeding. Some of the potential impacts of additional flood control include:

1. Impacts to flow management during dam modification.
2. Reduction of habitat for fish rearing in the reservoirs.

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3. Reduction in fish food supply in the reservoirs.
4. Increased predation on fish in the reservoirs.
5. Ability to meet minimum stream flows.
6. Reduction in fish passage.
7. Increased predation on fish in tributaries in the draw down zone.
8. Increased predation on terrestrial animals in the draw down zone.
9. Increased turbidity.
10. Decrease in foraging success of avian species.
11. Spawning success for fish that spawn in draw down zone, both on the shore and in tributaries.
12. Age composition of smolts.
13. Recreation opportunities.
14. Amphibian impacts.
15. Riparian vegetation impacts (particularly if draw down begins earlier).
16. Modification of wetlands.
17. An increase in invasive weeds.

While Skagit County did submit a document to the Baker Policy Team (dated Sept. 8, 2004) addressing some of these impacts, some of the information in that document is misleading. In some cases, the County's analysis of potential environmental impacts did not include current data, nor other relevant information.

The settlement agreement represents a carefully crafted delicate balance of measures and timing, including early implementation of some measures. Inclusion of a complete flood control analysis in the FERC NEPA document could result in delay in issuance of the license, which could require renegotiation of significant parts (e.g. flow implementation, fish passage, and habitat acquisition) of the settlement agreement. The FERC should proceed with a NEPA analysis focusing on the Baker River Project relicense and the related comprehensive settlement agreement. It is appropriate to defer the NEPA

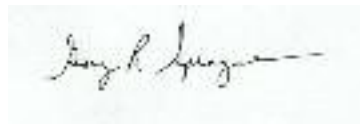


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analysis of the additional flood storage to the Corps, when it will be timely and relevant to the Corps flood control process and after the Corps environmental studies have been completed. We urge the FERC to complete the required NEPA process related to the FERC's decision on rehearing and leave the process and NEPA analysis of the additional flood storage to the Corps.

Thank you for the opportunity to provide comments regarding the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement. Please contact me if you have any questions. I can be reached at the letterhead address, via phone at 360 902-2539, or via email at [spraggrs@dfw.wa.gov](mailto:spraggrs@dfw.wa.gov) .

Sincerely,



Gary R. Sprague  
Major Projects Section Manager  
Habitat Program

Enclosure (1)

cc FERC Service list

## Service List for P-2150-000 - Puget Sound Energy, Inc.

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