

SKAGIT RIVER IMPACT PARTNERSHIP – EXECUTIVE COMMITTEE MINUTES

February 16, 2006

Present: Bud Norris, Charles Bennett, Jon Aarstad, John Schultz, Gary Jones, Kevin Rogerson, Scott Thomas, Chal Martin, Jana Hanson, David Brookings, Lorna Ellestad and Harry Hosey,

Call to order

Mayor Bud Norris called the meeting to order at 8:00 am.

Chal Martin recapped the review comments by Will Thomas Jr. on behalf of FEMA. PIE is preparing a cost estimate for the County to respond to the FEMA evaluation. **Martin** explained that from FEMA's perspective, the difference in hydrology is not significant in that it will not affect the downstream flood elevations much whether the 100-year event is 174,000 cubic feet per second (County hydrology), or 230,000 cubic feet per second (COE hydrology). That is because the FEMA process models the 100-year flood event as if there is 1) no left bank levee, and then 2) no right bank levee for the purpose of setting the flood elevation. Since we know that the current levee system capacity is only about 150,000 cubic feet per second, any flood event larger than that, whether 174,000 cfs or 230,000 cfs, will have a similar modeled effect downstream, especially in Mount Vernon. There was also a discussion regarding the continuation of the COE GI Study. It was suggested that if the County authorizes the continuation of the COE's GI study, the same data used to support COE hydrology will be used which will significantly overstate conditions and therefore any measures for flood protection. It is also more likely that, using the COE hydrology, and after a significant additional expenditure of money and time, that the flood storage at Baker Dam is will not meet the cost benefit ratio and will therefore not be required.

Harry Hosey indicated that we can manage a flood flow of 174,000 cfs but not the 235,000 cfs that the Corps and FEMA estimate. **Hosey** described that the request from the County to FEMA was for FEMA to review the hydrology and hydraulics prepared by PIE. FEMA, however, compared the PIE's peak flow calculations to those of the Corps and then found "only" a 13% difference between the findings. According to FEMA this difference is not significant enough to warrant a technical review from an independent party. This is the same rationale used by the USGS and the COE to justify leaving the peak flow values unchanged. However, this difference is significant to the County and cities in that the cost associated with flood protection measures designed to handle the CORPS peak flows is significantly more than the cost to contain the peak flows calculated by using the County's hydrology. **Hosey** explained that in his opinion, the Partnership will need to follow two tracts to challenge FEMA's determination:

- 1) Legal challenge

- 2) Present the breakdowns for flood waters and allow for projects to take areas out of the flood plain such as the Mount Vernon Downtown plan.

Hosey explained how under the COE hydrology, flood waters would overtop the levees up river so that by the time the peak flows reached the downtown Mount Vernon reach, the difference in difference in the water surface profiles would about 5 to 6 inches. In other words the measures designed to provide protection to downtown Mount Vernon would only be in 5-6 inches in additional height than the elevation of those measures if they were designed to provide protection for the County flood peaks.

Lorna Ellestad stated that the FEMA maps and model will be released to the county later this month and that the new FIRM **will** be available in October or November of this year for public comment. There was general discussion regarding the increased area that will be included in the FEMA 100 year flood plain that is presently out of the flood plain.

Discussion ensued over the cost benefit analysis for flood protection measures to protect against the flows modeled by the Corps. The expense would be too high for the community and therefore unbuildable. **Martin** expressed his hope for a county wide levy for flood protection. At eight cents on every \$1000 of property valuation the potential revenue is \$1million/year. This is still not enough to meet our 35% contribution, however, for a project under the Corps model.

1.2 Kevin Rogerson carefully outlined the legal appeal process for the FEMA determination on the new flood plain maps. However, there is as of yet no trigger to require any legal appeal. The Thomas report is not the same as a formal FEMA determination, and that trigger point is probably 18 months away or so. .

Gary Jones asked how we would address dike districts that will likely be aggrieved as a result of the new maps lowering taxes received from the districts. **Rogerson** stated that the law/code does not address dike districts. They would likely have standing, however further research will be necessary to address this question. **Rogerson** stated that the COE would determine if appeals are valid. The basis for appeal is narrow; it must be scientifically and technically based and must address errors that are specifically defined. The Administrator has 3 choices: 1) Work with the local agencies to resolve the differences; 2) seek independent review or appoint appropriate federal agency as reviewer; 3) hold hearing which consists of 3 members, one appointed by FEMA Director and this individual then appoints the other two. After the hearing, the 3 appointees send their report to the Director who makes the final determination. This is appealable to District Court.

John Schultz commented that the administrative process is basically a rubberstamp, once we get to district court then the judge looks at the substantive evidence. The important argument is with the board that reviews the information. There was further discussion regarding the political influences over the process and

the fact that FEMA still has not done what we have asked which is to provide a technical review of our H & H study.

1.3 The group also discussed enlisting outside legal counsel to assist with any appeal efforts. **Jones** offered to research experienced firms and get back to the group with his findings.

Dave Brookings stressed the importance of continuing the dialogue with Carl Cook and Chuck Steel and to look to them on how to proceed.

Norris indicated that he would initiate the contact and include Chal Martin in on any meetings.

1.4 Martin stated that the estimated cost to respond to FEMA's letter is \$7,700. The request to spend this additional money on PIE to prepare the response letter will be taken to the BCC (this request was denied by the BCC the following week).

1.5 Norris suggested that the cities withhold the annual funds for flood protection that is given to the county in the event the Partnership needs to fund any work to address the FEMA issue. It was stated that we cannot use state funds for legal support.

2.0 Hosey provided an overview of the COE press release stating that the President's budget did not include money for the Skagit River Study. This is the 2nd year that it was unfunded. This confirms what has been said over and over again regarding the COE process and GI Study. We need to, as a group, come up with alternative ways to fund measures to provide flood protection. The cost to continue to fund the COE is too much and we receive nothing in return. This is a good opportunity to request that the GI Study be suspended since there is not money to fund it.

There was general discussion regarding the GI Study and it was agreed that each entity should send the Commissioners a letter requesting they suspend the GI Study and to support congressional direction to amend the manual and direct the COE to manage the dam during a flood event. We need to educate the commissioners and all others about the GI process and speak with one voice on this issue.

4.0 Schultz presented the proposed settlement agreement and asked for feedback from the committee. Both **Schultz** and **Rogerson** discussed the enforcement power that FERC has over any agreement with PSE.

Norris suggested a letter from the SRIP that puts PSE on notice that we are aware that they have the ability to manage the dam during a flood event that will protect people and property and that we are aware of their position to not do so and to put them on notice, along with the COE that we hold them responsible for any damage from a flood event that could have been prevented with additional dam storage and management. The FERC has known that Baker Dam storage is a major factor in flood prevention since 1962. Kevin Rogerson was directed to draft a letter from the

SRIP regarding the liability issue with PSE, citing their duty to operate dams per FERC when given notice by the County and their failure to follow reasonable protocol to protect the county.

Martin stated that because of the work that has been done we know more regarding the value of the storage at Baker Dam. **Schultz** indicated that he felt that a summary judgment would find PSE in the wrong if they are aware of the threat of flood and their ability to help protect lives and property during a flood event. Regarding the PSE relicensing settlement agreement, flood control and protecting lives and property should be a priority along with environmental enhancement. With respect to the cooperation with PSE, two operatives that should be in place while the issue regarding the GI Study and or amending the manual are decided, is to allow PSE and the County to operate flood control as we've done in the past; then go back to DC to request congressional delegation to order the COE to operate lower Baker like they do upper Baker.

Bennett asked if we could add the language to the Upper Baker Dam agreement rather than separately. It was indicated that we needed a separate agreement to address the storage issue.

Hosey explained that once the County and PSE agree on the agreement then we should start the congressional process which will likely take two years. There was discussion of whether we should bring up the spillway with our federal delegation and it was determined that we should wait until PSE is on board.

3.0 Martin discussed the itinerary for DC. It was suggested that Jeff Morris be enlisted to support the SRIP and Gary Jones offered to call Morris.

4.0 WSDOT Funding – No report at this time

Norris stated that the Mayor of Concrete has indicated that Concrete will likely abrogate their shoreline authority to the DOE or Whatcom or Skagit County.

Meeting Adjourned at 11:00.