

**From:** Will W. Honea  
**Sent:** Monday, June 02, 2008 1:52 PM  
**To:** [MULTIPLE RECIPIENTS]  
**Subject:** PSE, Additional Flood Storage and Corps GI Process

**All,**

I write to follow up on the issue of additional flood storage, raised during the May 29, 2008 Skagit FACT field trip to PSE's Baker River Hydroelectric Project.

As you are likely aware, Skagit County supports the US Army Corps of Engineers' General Investigation ("GI") process, at least to the extent it is supported by adequate federal funding and reasonable forward progress appears likely. Through the GI process, the Corps investigates the river basin holistically rather than piecemeal, and recommends a basin-wide approach to flood control that takes engineering feasibility, economic viability, and environmental concerns into account. Federal funding for projects comes only after the "due diligence" afforded by the GI process. Moreover, Tribal representatives have repeatedly made clear that they will not support flood control projects that do not flow from a GI study. For some of these reasons, our Congressional delegation has been urging our community to stick with the GI process.

And one issue, perhaps not yet fully understood, is that PSE takes the position there will be no additional flood storage behind the Baker Dams absent the GI process.

In various Skagit FACT meetings, in the [April 23, 2008 flood control presentation to the Mount Vernon City Council](#), etc., there has been a great deal of discussion by Mount Vernon, Burlington and dike district representatives about (i) moving forward decisively with efforts to secure additional flood storage behind the Baker Dams and (ii) potentially abandoning the US Army Corps of Engineers General Investigation (GI) study. But during the May 29, 2008 Skagit FACT field trip, PSE Hydro Contracts Manager Paul Wetherbee made clear PSE's position that there will be no additional flood storage unless it is shown to be necessary and warranted as a result of the Corps GI process. **To be clear: the entity that owns the Baker River dams (i.e., Puget Sound Energy) says there will be no additional flood storage without the GI process.**

PSE's position is a product of the Baker River [Comprehensive Settlement Agreement](#) (CSA), Article 107 in particular. The Federal Power Act requires dam operators to obtain a license from the Federal Energy Regulatory Commission (FERC) every 50 years. The relicensing can be accomplished through an alternative stakeholder-based process, which is what PSE did. The CSA is the negotiated culmination of that process. (You can see the list of the parties PSE brought to the table in the first page of the CSA excerpt attached to this email.) Speaking in general terms, the CSA lists out the various things PSE must do for the local community by way of its FERC license mitigating conditions. The CSA is also a contract binding on its parties, much like an interlocal agreement.

For your convenience, I have attached the first page as well as Article 107 of the CSA to this email. Specifically, Article 107(b) deals with the prospect of obtaining up to 29,000 acre/feet of additional flood storage. As you can see, PSE can only be compelled to provide the additional flood storage "at the direction of the...Corps of Engineers...subject to...arrangement that are acceptable to the Corps of Engineers...only after suitable arrangements have been made to compensate [PSE] for the 29,000 acre-feet of storage for flood regulation..." From PSE's perspective (and the Corps' perspective as I understand things), this means that the additional 29,000 acre-feet of storage must first be deemed necessary and warranted by the Corps through the GI process, and payment arrangements made to compensate PSE for the lost power generation capacity. To the extent federal dollars are to fund those payment arrangements, it further demands completion of the GI process.

We understand that the cities were unsupportive of the prior County Commission's signature of the CSA in November 2004, apparently believing at the time that the County should have held out for more robust

flood control provisions in the FERC license. The cities of Mount Vernon and Burlington did not sign the original CSA in 2004, and objected to the fact Skagit County did so. The cities of Mount Vernon and Burlington continued to pursue an independent challenge against PSE on their own, challenging a shoreline permit, one of the necessary components of the FERC license. As I understand it, the cities recently settled their grievances with PSE for a sum of money, promising under their settlement agreement not to interfere with the terms of PSE's FERC license for its duration. So whatever the past disagreements between County and city leadership about the merits of the CSA, the agreements signed and now in place would seem to be final, controlling, and binding.

The County has made clear to PSE our view that Article 107 contains an implicit obligation for PSE to proactively assist the County in lobbying for funding to move the GI process forward, and to assist our community in seeking additional flood storage in a manner consistent with Article 107. Putting it another way, it would be unreasonable for any party to the CSA to construe Article 107(b) as a hollow promise with no chance of coming to fruition; otherwise, it is a mere illusory promise and thus probably unenforceable.

That being noted, PSE's Wetherbee assured me during the recent Skagit FACT field trip that PSE plans to increase its efforts to help our community move the GI process forward, and indicates PSE will be providing more information to that end in the near future. We thank PSE in advance, and look forward to moving the GI process forward toward potential additional flood storage consistent with Article 107.

To the extent our community hopes to obtain the 29,000 acre-feet of additional flood storage behind the Baker Dams, it would appear that coalescing behind an effort to move the GI process forward is the only likely pathway by which that additional flood storage will happen. Plans that propose abandoning the GI process should probably take this into account.

Please advise if you have any questions, comments or concerns.

**Best Regards,**

**Will Honea  
Chief Civil Deputy  
Skagit County Prosecuting Attorney**