



December 12, 2007

Today's status conference on federal hydrosystem operations in Judge Redden's court went well, despite the Judge's letter earlier this week that was couched in very alarming terms. That said, he did start by reiterating, as in his letter, that he wonders what more can be done with hydro operations. He stated that he wants more information from the Army Corps on projects to be undertaken at each dam and the costs, whether barging can be accomplished at reservoir minimum operating pools, and specifically mentioned John Day drawdown, etc. He said he understands the possible impacts on irrigation, farmers and the public. He clarified that he knows the federal agencies will not breach the dams, but is still interested to know whether more actions might be possible.

At the conclusion though, the Judge agreed to a schedule where comments on the draft BiOp are due January 4th, and on the final BiOp March 18th. He noted that he thought the collaborative process had worked very well, and more collaboration would be good in reaching a final BiOp. He also reiterated comments he made in his letter and at past status conferences about the need to put in place a BiOp that will survive challenge, otherwise the consequences will be harsh, including operating the system via permanent injunctions. The Judge also continues to indicate that he believes some type of science review will be needed on the final BiOp.

He supported the government's (surprise!) proposal that the 2007 hydro operations agreement, reached last year with the lower river tribes and the Colville Tribe, be "rolled over" to 2008. He strongly encouraged the parties to try to reach agreement on that proposal, and did not appear to support plaintiffs' stated action of bringing a preliminary injunction on 2008 hydrosystem operations. Several parties to the 2007 agreement supported the concept of the operations "roll-over" to 2008, and indicated they wanted to discuss it further with the federal agencies.

Robert Gulley did a nice job addressing the issues raised in the Judge's letter relating to the jeopardy standard being used in the analysis, whether measures are reasonably certain to be funded, highlighting the hydro performance standards and the science basis for the spill/flow proposals in the BiOp. He noted that NOAA Fisheries is asking for independent science review of spill in May and expressed confidence that the best available science is being used.

As you would expect, Todd True disagreed with all the government's assertions. In contrast, the Lower River Tribes were very measured in their comments, noting the current draft BiOp takes an "all-H" approach which they support and thus improves on the 2004 BiOp. They stated that they continue to advance ideas on hydro operations with the federal agencies and disagreed with Todd True's comments that habitat can't provide mitigation for hydro operations. They indicated they felt they were making

progress in their discussions with the agencies and more is needed in habitat and research and monitoring.

In a couple interesting exchanges, Mark Stermitz, representing the coalition which includes RiverPartners, took on the state of Oregon in court directly. (Oregon handed out a chart to the Judge/parties during the proceeding which identified further measures they think are required in a BiOp, based on their science). He pointed out that the Independent Science Advisory Board (ISAB) had already looked at some of Oregon's key issues and found them wanting. He also noted that Oregon had opportunity to provide their information to the participants in the collaborative process and instead, went around the process to negotiate directly with the federal agencies. He commented that Oregon's approach of going directly to the courtroom vs. working in the collaboration was "unwarranted and wrong".

In another interesting exchange, Mike Grossman, Washington state, addressed the U.S. vs. Oregon harvest BiOp issue raised by the Judge in his letter. Grossman commented that the important point is that the FCRPS BiOp needs to have sufficient time to get it done right – and not to accommodate a U.S. vs. Oregon timeline. He noted he was not backing down in any way from any agreements that may have been reached in U.S. vs. Oregon, to which they are a party, but the harvest BiOp should not be forcing the FCRPS schedule and the parties should talk openly and honestly about it. Tim Weaver, representing the Treaty tribes took great exception to his comments and continued to assert that the harvest agreement that has been reached should be included in the FCRPS baseline. There was discussion by Mark Stermitz as well on the harvest issue/BiOp where he noted that the FCRPS is providing the mitigation for the harvest BiOp and should not be driven by its timeline.

On harvest, the Judge did clarify that because he was representing Oregon in the U.S. vs. Oregon proceedings as Attorney General, he cannot address those issues in his courtroom, nor did he want to.

As a last comment, Robert Gulley announced that he will be leaving the Justice Department for personal and professional reasons and will be replaced by Coby Howell.

All-in-all a very interesting status conference in which a thorough and healthy airing of various issues certainly occurred!