

October 27, 2004

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Re: Cooper Lake Project (FERC No. 2170); Schedule for commenting on Draft License Application (Cooper Creek aspects) and revised draft study reports, and implications for settlement negotiations

Cooper Lake Project Relicensing Settlement Working Group:

Chugach would like to respond to the recent concerns that have been expressed regarding the review/comment schedule for the Cooper Creek Instream Flow Study report (“instream flow report”) and related portions of the Draft License Application, and the implications for the relicensing settlement negotiations. We recognize that all parties involved in the relicensing process as well as the recently initiated settlement negotiations are on a very tight time schedule, and we share the general interest in ensuring that decision making be based on sufficient and scientifically sound information. We are doing our very best to accommodate everybody on a variety of fronts, but we are finding this attempt at accommodation to be an increasingly complicated task.

Discussion and Agreement at the October 14, 2004, Settlement Negotiations Meeting

First, we would like to reiterate what we believed we heard were the concerns and general consensus of the Settlement Working Group (SWG) at the October 14 negotiations session. The initial concerns as we understood them to be at the time were:

- (a) Comments on the Cooper Creek related aspects of the DLA could not be prepared until the final instream flow report had been issued (originally scheduled as December 15, with a revised draft issued November 15).
- (b) The next version of the instream flow report would need additional review/comment by the agencies participating in that study.
- (c) Therefore, it was not going to be possible to provide Cooper Creek related DLA comments by December 15, as Chugach had requested.
- (d) Settlement discussions on Cooper Creek would be premature before parties had provided the related DLA comments.

As Chugach explained at the time, the constraints resulting from these concerns created the additional concern that:

- (e) Settlement discussions on Cooper Creek — agreed by all parties to be the single most critical issue in the relicensing — could not begin until January, which would make it nearly impossible to reach an agreement in principle in time to be reflected in Chugach’s final license application.

After further discussion regarding potential solutions to this dilemma, the SWG reached the following general consensus (as we understood it):

- It would be acceptable for the next version of the instream flow report to be a final report — given that (a) there was general agreement that the interpretation of the results and study conclusions would not be affected by any of the requested modifications to the report, and (b) the additional information that had been requested at the October 12 Instream Flow Review Team meeting was all to be distributed within the next week or so.
- To facilitate having a final report issued by November 15, participants would provide all remaining comments to Jason Kent (HDR study lead) no later than November 1.
- With a final instream flow report issued by November 15, it would be acceptable to provide comments on Cooper Creek related aspects of the DLA to Chugach by December 9.
- The December 9 comment deadline would allow all parties a brief but sufficient amount of time to consider all of the comments and be prepared to negotiate in earnest on issues related to Cooper Creek at the December 14–15 SWG meeting.
- Because of the recognized importance and complexity of Cooper Creek related issues, it would be best for a preliminary discussion of these issues to begin at the November 16–17 SWG meeting; the discussion time devoted to this topic at this meeting would be limited to 2 hours.

Subsequent Comments and Proposed Solution

Within the last week and a half, following issuance of correspondence relating the above decisions and schedule, some parties have indicated they are not comfortable with either a November 15 issuance of the final instream flow report (i.e., with no further opportunity to comment on the report itself) or initiation of settlement discussions on Cooper Creek in November. The effect would be to delay comments on the Cooper Creek aspects of the DLA beyond December and to entirely postpone settlement discussions related to Cooper Creek until early next year.

Again, the overarching concern this raises for Chugach is that to have any reasonable chance of reaching an agreement in principle in time to influence the licensing proposal in Chugach's final license application, we simply cannot afford to wait until January to receive DLA comments or begin negotiations on Cooper Creek. Further, at the October 14 SWG meeting there appeared to be general agreement that, in fact, it would be illogical to begin serious negotiations on *any* issue before negotiations on Cooper Creek issues were at least underway. Therefore, it would appear the outcome of modifying the review/comment/negotiations schedule as requested would be, for all practical purposes, to miss the opportunity to include an agreement in principle in the final license application. This would leave Chugach with no choice but to base the final license application on its own licensing proposal, which we believe would put us all on the track of an extended contested case at FERC. If this occurs there simply will not be sufficient resources to pursue that course as well as settlement negotiations.

Given the above considerations, Chugach continues to believe that it is in the best interest of all parties to hold to the critical-path items of the schedule as we have described it in our previous communications. However, we also recognize that parties strongly feel it is equally critical to be able to ensure there has been no perceived infringement of the opportunity to provide comments on the instream flow report before it is finalized. In our continued efforts to accommodate the interests of all parties to the extent reasonable, we propose the following schedule as a compromise (also see attached table):

- The instream flow model itself is being provided to R2 Resource Consultants, as requested by the Forest Service, for confirmation modeling runs. R2 has the model in hand. A final draft of the instream flow report will be issued on November 15 for final review and comment, as requested.
- The schedule for issuance of all 2004 revised draft study reports is as shown in the attached summary table. As shown in this table, the revised draft reports (with the exception of the Cultural Resources Study report, which receives limited distribution to protect sensitive archaeological information) will all be available on the relicensing website by November 15. Comments on all these revised draft reports will be due no later than December 15, except for the instream flow report, as discussed below.
- The compromise we are requesting from the settlement parties in return for one final opportunity to comment on the instream flow report is:
 - Settlement discussions regarding Cooper Creek will as earlier proposed begin at the November SWG meeting — in preliminary fashion. Again, the intent would be to have a time-limited discussion (2 hours) for the purposes of clarification of issues and identification of action items toward preparing for more in-depth discussion at the December SWG meeting.
 - Comments on the final draft instream flow report and the Cooper Creek related aspects of the DLA would be due no later than December 9, as previously planned.
 - FERC-required dispute resolution meeting and continued, more in-depth negotiations on Cooper Creek issues will be on December 14–15.

We appreciate your efforts to help continue to move the relicensing settlement negotiations process forward in the collective hope that the result will be a new FERC license that meets the interests of all parties to a far greater extent than would be likely in the absence of the negotiations.

Sincerely,



Burke Wick, PE
Plant O&M Supervisor, and
Cooper Lake Relicensing Project Manager

Cooper Lake Project Relicensing (FERC No. 2170)

Overall Relicensing/Negotiations Schedule, November–December.

Nov. 15	All 2004 revised draft study report completed and posted on the relicensing website (except as noted on detailed summary table, next page)
Dec. 15	Due date for comments on 2004 revised draft study reports (see detailed summary table, next page)

Cooper Lake Project Relicensing (FERC No. 2170)

List of Revised Draft reports containing 2004 data. All reports will be available on the relicensing website by November 15, unless otherwise noted. Comments on 2004 revised draft reports will be due no later than December 15, 2004.

Recreation Study	Revised draft dated June 2004; posted on relicensing website	Dec. 15
Sensitive Plants Survey	(Revised 2003 draft on website; revised draft with 2004 results forthcoming)	Dec. 15
Exotic Plants Study	(Revised 2003 draft on website; revised draft with 2004 results forthcoming)	Dec. 15
Cooper Creek Fish Resources Study		Dec. 15
Cooper Lake Fish Resources Study		Dec. 15
Cooper Creek Instream Flow Study	Comments on revised draft due Nov. 1; <u>new</u> revised report to be posted by Nov. 15	Nov. 1; Dec. 9
Road and Access Route Condition Survey		Dec. 15
Cultural Resources Study: 2003 Inventory and Assessment of Archeological and Historical Resources	(Limited distribution because of sensitive information; will not be posted on website; issuance date TBD)	TBD

Relicensing website address: chugachelectric.com/relicensing