

**WASHINGTON STATE ASSOCIATION OF COUNTY ENGINEERS (WSACE)
AND WASHINGTON DEPARTMENT OF FISH AND WILDLIFE (WDFW)
HYDRAULIC PROJECT APPROVAL (HPA) PREAPPLICATION REVIEW
AND PRE-ISSUANCE
DISPUTE RESOLUTION PROCESS**

August 10, 2010

Purpose and Overview. The Hydraulic Project Approval (HPA) Pre Application Review and Pre-Issuance Dispute Resolution Process (PDRP) is a procedure for reviewing complex projects or resolving HPA-related disputes between the WDFW and a local county *before* the HPA is issued or denied. This process is complimentary to the existing HPA processing requirements and is intended to resolve disputes as efficiently as possible, as quickly as possible, and at the lowest possible regulatory level. When disputes cannot be resolved at the local level, personnel from either agency may proceed up their chain-of-command to resolve them before an HPA is issued or denied.

Dispute resolution is a two-tiered process. Steps 1 through 8 modify the normal application review process by adding pre- or post-application review meetings between the County and WDFW, to produce a draft HPA. Steps A through F involve elevating discussions up the chain of command, and are invoked in situations where issues cannot be resolved through application of Steps 1 through 8.

Step 1 - Triggering Project. Staff from either the County or WDFW may request to use the PDRP at any time during the application process. If this process is triggered after a Joint Aquatic Resource Permits Application (JARPA) application has been submitted, then the County must agree to place a hold on the 45-day clock to allow time for this process to occur. It is intended that this process only be applied to standard HPAs involving projects with a high potential for significant disagreements or disputes, or when such disputes arise during the HPA permitting process. Such projects typically include those with one or more of the following characteristics: high degree of complexity; high economic cost; disputed design; disputed mitigation requirements; high potential for damage to fish life and habitat; or, highly controversial for other reasons. Notification of intent to use the PDRP by with the County and WDFW triggers **Step 2**.

Step 2 – Pre-application Conference. If the PDRP is initiated prior to filing of a completed JARPA, WDFW will organize a pre-application conference within 20 calendar days of the request. All agencies with regulatory involvement in the project will be invited and encouraged to attend. The purpose of the pre-application conference is to discuss and come to general agreement on permit process requirements and timelines, plan requirements, project design, BMPs, project timing, mitigation, and any other topic in dispute. All parties should make every effort to come to mutual agreement on these issues. Opportunity to conference shall continue until: 1) both parties agree to proceed directly to either **Step 3** or **Step 6**, 2) the applicant proceeds directly to **Step A- Phase 1 Dispute Resolution Meeting Notification**, or 3) the applicant decides not to submit an application for the proposed project. Written documentation of meeting outcomes (e.g., agreements/ disagreements, information needs, resolved/unresolved issues, etc.) will be

provided for review by WDFW within three working days of the pre-application conference.

Step 3 – DRAFT JARPA/Plan Submittal. Based on the outcome of **Step 2**, the applicant will prepare a DRAFT JARPA and associated plans for submittal to WDFW and other agencies with jurisdiction. The draft JARPA is not considered a formal project application, but is used for negotiation purposes under the PDRP. WDFW will inform the applicant of any deficiencies within 14 calendar days upon receipt of the draft application. The applicant or WDFW may request additional pre-application conferences (return to **Step 2**), or proceed to **Step 4**.

Step 4 – Draft HPA Submittal. The area habitat biologist (AHB) will prepare a draft HPA within 20 calendar days of receiving a draft JARPA. The draft shall be distributed to interested parties for a 10 calendar day review and comment period. The draft HPA shall incorporate and accurately reflect agreements regarding design and mitigation requirements reached through the previous steps. If the draft HPA is acceptable to the applicant, or if mutually agreed upon modifications are made, the process continues to **Step 5**. If the agreements cannot be made and the applicant determines that the draft HPA is unacceptable, **Step A** of the PDRP is initiated (proceed to **Step A** below).

Step 5 – Final JARPA/Plan Submittal. The applicant will prepare and submit a final JARPA and required plans to WDFW and agencies with jurisdiction to formally initiate the permit process. Upon receipt of a final, complete JARPA and associated plans, and completion of any necessary State Environmental Policy Act (SEPA) procedural requirements, the 45-day statutory HPA time clock will be initiated.

Step 6 – HPA Issuance. Based on the outcome of **Step 5**, the AHB issues an HPA within the 45-day regulatory time requirement.

Step 7 – Pre-construction Conference (Optional). If requested by the applicant, the AHB may participate in a pre-construction conference. The applicant and/or designee will contact the appropriate agency staff and arrange the meeting. The purpose of the pre-construction conference is to review all HPA requirements, construction plans and methods, mitigation requirements, and project expectations, prior to start of work.

Step 8 – Project Completion: The applicant shall complete the permitted project in accordance with all HPA requirements. Inspections by the AHB or other agency staff may occur during construction phase or upon completion of work.

DISPUTED DRAFT HPA PROCESS

Step A- Phase 1 Dispute Resolution Meeting Notification: If the parties cannot reach agreement in Steps 1 through 4 and the applicant determines that the draft HPA is unacceptable, the applicant may request a Phase 1 Dispute Resolution Meeting (**Step A**). This request shall be in writing to the AHB and if a final JARPA has been submitted, shall include a request that processing of the HPA be placed on hold until the dispute is resolved, the applicant rescinds the request, or the HPA is issued.

Step B – Phase 1 Dispute Resolution Meeting: Upon notification per **Step A** above, the AHB will schedule a Phase 1 Dispute Resolution Meeting to occur within 20 calendar days of the request. The purpose of the meeting is to present the issues under dispute to a higher level of management, and to attempt to develop mutually acceptable solutions to the issues. This meeting will involve the applicant or designee, the AHB’s immediate supervisor, and other WDFW staff as necessary to resolve the dispute. If the disputes are resolved, **Steps 5 and 6** above are initiated. Written documentation of meeting outcomes (e.g., agreements/ disagreements, information needs, resolved/unresolved issues, etc.) will be provided for review by WDFW within three working days of the Phase 1 Dispute Resolution Meeting.

Step C – Phase 2 Dispute Resolution Meeting: If resolution cannot be achieved in the Phase 1 Dispute Resolution Meeting, the applicant may request a Phase 2 Dispute Resolution Meeting (**Step C**). This request shall be in writing to the AHB, and the meeting must occur within 20 calendar days of the request. The purpose of the meeting is to present the issues that continue to be in dispute, and to attempt to develop mutually acceptable solutions to the issues. In addition to the parties involved with the Phase 1 Dispute Resolution Meeting (**Step B**), this meeting will involve the Regional Habitat Program Manager, Deputy Assistant Director for the Habitat Program, or their policy-level designees and other agency staff as necessary. Additional county staff may also attend this meeting. If the disputes are resolved, **Steps 5 and 6** above are initiated. If resolution cannot be achieved, **Step D** is initiated. Written documentation of meeting outcomes (e.g., agreements/ disagreements, information needs, resolved/unresolved issues, etc.) will be provided for review by WDFW within three working days of the Phase 2 Dispute Resolution Meeting.

Step D – Disputed HPA Issuance: The applicant may submit a JARPA and associated plans to WDFW. An HPA will be issued with the disputed conditions or requirements, in accordance with the required timelines. The applicant may then conduct the project according to the requirements of the HPA, but may also proceed to **Step E**.

Step E – Formal/Informal Appeal: If the applicant disputes or disagrees with a provision, or requirement of the HPA issued by WDFW, then a formal or informal appeal may be filed in accordance with existing statutory requirements and timelines. The outcome of the appeal may result in the HPA being upheld, modified, or withdrawn.

Dispute Resolution Flow Chart

