

**THE EFFECTS OF URGENCY TO REACH AGREEMENT ON
THE PROCESS AND OUTCOME OF MULTI-PARTY NATURAL
RESOURCE NEGOTIATIONS**

Berton Lee Lamb, Jonathan G. Taylor,
Nina Burkardt and Shana C. Gillette*

ABSTRACT. We studied seven hydropower license consultations to examine the role of a *sense of urgency* to reach agreement. Hydropower licensing consultations were studied because the statutory requirement for consultation encourages negotiation, all such consultations are similar, and a negotiated settlement is not a foregone result. Cases selected for analysis met screening criteria. Structured interviews were conducted with participants after the negotiations had been concluded. Respondent recollections were checked against the documentary record. A sense of urgency to reach agreement was a significant factor in the completion of these negotiations; where there was no shared sense of urgency, purposeful delay adversely affected the negotiations. Although a sense of urgency was experienced by at least one party in each case, only a shared sense of urgency at the end of the process proved significant. Delay did not prevent ultimate agreement but a shared sense of urgency brought speedier agreement and greater satisfaction with the negotiation.

INTRODUCTION

Natural resource negotiations often entail complex, multi-organizational conflicts in which the parties to the negotiation have mixed motives for participating (Burkardt, Lamb & Taylor, 1997; Pruitt & Carnevale, 1993). While these parties may wish to cooperate with one another, negotiations typically become contentious because participants have conflicting values, preferences, and organizational missions. Parties may seek to avoid costs

** Berton Lee Lamb, Jonathan G. Taylor, Nina Burkardt and Shana C. Gillette are research social scientists, Fort Collins Science Center, U.S. Geological Survey. Their research interests are multi-agency conflict resolution and instream flow policy.*

imposed by regulatory requirements, protect or improve environmental conditions, avoid harm to agency mission, promote altruistic purposes, or correct problems interpreted as past errors. A sense of urgency to reach agreement might help break an impasse over these competing concerns. We studied seven cases of hydropower licensing to examine how a sense of urgency might affect multi-party bargaining.

The consultations required by the Federal Energy Regulatory Commission (FERC) are an example of multi-party, environmental bargaining in which a sense of urgency may contribute to successful outcomes. Whenever non-federal hydroelectric power producers apply for a new or renewed license to operate hydropower projects, they are required by law to consult with representatives of federal and state wildlife and fisheries agencies, state health departments, Native American tribes, and the general public over such issues as flow releases, fish passage, habitat protection, and mitigation for other deleterious environmental effects of hydroelectric power projects. Applicants may be utilities, power companies, municipalities, or other non-federal entities. In preparing a license application, the FERC requires applicants to conduct one of two consultation processes. The traditional process requires documented input from a wide range of stakeholders, but there is no requirement for collaboration. The alternative licensing process encourages the parties to work together toward achieving a mutually accepted license application (18 CFR Parts 4 and 375).

Whether as part of the traditional or alternative licensing process, there are some issues on which agencies such as the U.S. Fish and Wildlife Service (FWS) or U.S. Forest Service (USFS) may mandate license conditions. For example, on the issue of fish passage (e.g., installation and operation of fish ladders) the Secretaries of the Departments of Commerce and the Interior have the authority to issue mandatory conditions for a license; these are conditions that the FERC must include (16 U.S.C. Sec. 811). However, these mandatory conditions are subject to court challenge after the FERC decision (Pizzi, 1997; *Escondido Mutual Water Co. v. La Jolla* 466 U.S. 765 [1984]). There is an opportunity to achieve greater benefits and more certainty for the parties through negotiation even under circumstances wherein some agencies have the ability to prescribe conditions.

In hydropower licensing negotiations, resource agencies are charged with managing and protecting fish and wildlife resources and habitat,

recreation, water quality, and other natural resource and environmental

values and are expected to seek optimal levels of protection. Citizen groups, such as homeowner's associations, chambers of commerce, and environmental interest groups seek to protect local interests (e.g., recreation access, fishing opportunities, clean water, lake levels, and property values). Applicants typically seek an expeditious licensing process with a minimum of regulatory requirements, limited construction or operating costs, and competitively priced electricity delivered to customers.

These goals often seem incompatible in a given setting (Jung, 1995). For example, providing flows for fish can reduce the cost-efficiency of hydroelectric facilities, and fish passage structures add significant costs. As a consequence, consultations among applicants and public agencies can be contentious. Issues left unresolved during the consultation are ultimately decided by the FERC, which is required to balance conflicting interests (16 U.S.C. Sec. 797[e]; Pizzi, 1997). However, allowing the FERC to decide unresolved issues has not been completely satisfactory to either resource protection or development interests (Cochran, 1994).

During the period 1980-1993, it was not unusual for the FERC to grant either a series of one-year licenses or even the final (up to 50-year) license with the requirement that further specific studies be completed and the consultation process continue (Kerwin, 1990; Abrams, 1992). Consultations until the mid-1990s were aimed toward achieving agreement on a set of conditions for joint recommendation to the FERC. Since the early 1990s, the FERC has strongly encouraged parties to work toward agreement on license applications (Burkardt & Lamb, 2004). We expected to find that a sense of urgency had a significant affect on such negotiations.

SENSE OF URGENCY IN NEGOTIATIONS

We defined a sense of urgency as a party's strong feeling that an agreement must be reached. This definition of urgency is similar to the construct *bargaining persistence* (Friend, Laing & Morrison, 1977), and is usually associated with the perception of time pressure (Carnevale, O'Connor & McCusker, 1993). Experimental studies have manipulated time pressure in a variety of ways including varying the cost of continued negotiation, limiting available time for negotiation, and various combinations of these two experimental conditions (Carnevale, O'Connor & McCusker, 1993). The observed results in experiments suggest that time pressure in negotiations leads to more moderate demands, earlier concessions, and more expeditious arrival at agreement (Carnevale,

O'Connor & McCusker, 1993; Pruitt & Carnevale, 1993). However, under high time pressure, "negotiators will be just as reluctant to concede as under low time pressure, but they will feel greater urgency about doing so. This will encourage reluctant concession making, accompanied by a great deal of ambivalence" (Pruitt & Carnevale, 1993, pp. 59-60). Also, if a sense of urgency to reach agreement is not symmetric across negotiation participants, those parties with stronger urgency will make more concessions and settle for a less preferable outcome than parties without urgency (Komorita & Barnes, 1969).

Urgency to reach agreement has typically been addressed by the presence or absence of a deadline (Bingham, 1986, Delli Priscoli, 1987, Wondolleck, 1988). A sense of urgency is not necessarily brought about by a deadline, but may instead arise because of the severity of the problem, impending new regulations, or the costs associated with prolonged bargaining. In cases examined by Bingham (1986), the presence or absence of a deadline was not uniformly associated with the success of negotiations. She suggested, "that the parties' sense of urgency, which can be created not only by deadlines but also by other factors, is more relevant than the presence of a deadline" (pp. 107-109). Other than time pressure, sense of urgency factors might include the presence or absence of a good alternative to negotiation, the quality of the other party's offer, and the mix of personal factors affecting bargainers engaged in the negotiation.

Time Pressure

The concept of time pressure includes the presence of deadlines. Without a deadline for reaching agreement, some participants may purposefully delay (Harter, 1982; Stuhlmacher & Champagne, 2000). The strategy of delay "can contribute to a breakdown in the negotiation if it leads the other party to become discouraged and break off" (Pruitt, 1983, p. 172). If one or more parties benefits from the status quo, delaying a decision can pay off.

To ensure that delay is not used, Cormick (1980, p. 29) suggested imposing "a realistic deadline for the negotiations." Time pressure created by a deadline can discourage delay and encourage problem solving (Pruitt, 1983). As noted by Pritzker (1990, p. 51), "A deadline for completion of negotiations," whether imposed by statute, regulation, or circumstances, "may lend a degree of urgency that can aid the negotiators in reaching a consensus."

Time pressure can also be a factor during the closing stages of a negotiation. For example, agency representatives may want to achieve a resolution before changes occur within their own organization that tighten the time pressure by challenging the existing agency strategy. The closing stages of bargaining can be marked by urgency to agree because the parties have already invested so much in the process, parties mutually reinforce norms of collaboration, or there is a perceived need to agree before a precedent can be set by a similar or concurrent negotiation.

Best Alternative to a Negotiated Agreement (BATNA)

It is commonly argued that non-agreement alternatives have an effect on urgency to reach agreement (Fisher, Ury & Patten, 1991; Bell, 2002). The concept of Best Alternative to a Negotiated Agreement (BATNA) might be expressed in terms of strong and weak alternatives, certainty of alternatives, and variation in the ability to evaluate alternatives. A strong BATNA might lead to urgency by encouraging a strong party to push for settlement. Delays might be cast as expensive, and settlement may be seen as a method of cost avoidance. A weak BATNA might increase urgency because the weak party might seek an agreement before other parties recognize the situation. Certainty becomes a cause for urgency when a party faces an alternative that may evaporate within a short time. Finally, parties may not have the ability needed to evaluate alternatives to negotiation. They may consequently experience urgency in order to reduce evaluation costs or decrease uncertainty.

Quality of the Other Party's Offer

The quality of an offer may affect the sense of urgency in one of three ways. First, the other party's offer might demonstrate that a potential agreement may be better than expected. In this scenario, there would be urgency to accept a good offer to maximize the payoff. Second, the other party's offer may be better than the status quo. The offer would engender urgency to reach agreement if the status quo was either unstable or unfavorable. Third, urgency might follow from the uncertain status of the other party's offer. For example, a sense of urgency might ensue if it seemed possible that another agency's offer might be withdrawn or obviated by circumstances.

Personal Factors

Urgency might result from factors affecting individual negotiators. For example, a busy negotiator might experience a sense of urgency to resolve one conflict in order to focus on others in which he/she is involved. In another example, a negotiator might experience urgency in order to meet a career milestone or compete for a promotion. On the other hand, negotiators whose agencies do not tend to reward conflict resolution efforts, who are on a temporary or rotating assignment, or who have been granted only limited decision authority may experience little sense of urgency.

METHODS

In 1992-1993 and again in 2001-2002, we examined negotiation cases using a Most Similar Systems Design (Przeworski & Teune, 1970). This design requires that cases chosen are as similar as possible, with remaining differences among the cases believed to be explanatory about the outcome or behavior being examined. The seven cases we investigated each met comparability criteria established in advance. Candidates for the 1992-1993 cases were nominated by FWS Division of Ecological Services field offices in the northwestern and northeastern United States, and the 2001-2002 North Umpqua case was nominated by the USFS National Hydropower Assistance Team.

All but one of the cases we studied were relicensings of existing FERC projects in which applicants either wanted to upgrade or expand their facilities, and their 50-year licenses had expired or were about to expire. One case, Koma Kulshan in western Washington, was a new project. Of the six relicensings, three were located in the northeast--Cataract in southern Maine, Oswegatchie in New York, and Eastman Falls in southern New Hampshire. Three cases were located in the northwest--Ashton-St. Anthony in southern Idaho, Pit 3,4,5 in northern California, and North Umpqua in western Oregon. The principal issues involved in all of these FERC negotiations included fish passage and instream flow.

Data collection involved two major tasks. First, we reviewed records obtained from the FWS or USFS. Second, we conducted structured personal interviews with project participants. We used the documentary records to develop a chronological outline of each negotiation. The outline was provided to each interviewee to prompt memories of events. The interviews were tape recorded and transcribed. To reduce the effect of reliance on respondent recollection, interview data were checked against the

documentary record for each case. In the 1992-1993 cases, we interviewed representatives of all involved organizations and in the North Umpqua case we interviewed only representatives of the USFS, other federal agencies, and state agencies.

The sense of urgency to reach agreement was assessed by asking respondents a set of questions (Table 1). We asked respondents to describe their sense of urgency, to indicate what was happening when urgency was experienced, and to identify what stood in the way of reaching agreement. We expected that because of the regulatory nature of the process, negotiations in which the parties substantially agreed on the contents of a license application would be marked by a mutual sense of urgency throughout the negotiations.

TABLE 1
Questions Used to Assess Urgency among Participants for Each Phase of the FERC License Consultations

Question Number	Question Wording
Question 1.	Describe (your organization's) sense of urgency to reach agreement on the issues being discussed during this phase.
Question 2.	When did you sense a real urgency to get issues resolved, to reach agreement? Describe what was happening at that time.
Question 3.	What stood in the way of reaching agreement? How did you deal with getting to the objectives?
North Umpqua	What would you identify as key points in the consultation process when you felt a strong need to reach agreement? What was the cause of the urgency? How did [your agency] react when there was pressure to reach agreement?

RESULTS

Time Pressure

The pressure of time, in the form of deadlines and context, did not create a sense of urgency in three of the cases we studied. In Cataract, Eastman Falls, and Pit 3,4,5 the consultation occurred over a very long period of time (more than 10 years). Neither FERC-imposed deadlines nor internal organizational pressures created a compelling sense of urgency.

Cataract and Pit 3,4,5 were cases in which the FERC issued a license that required further consultation. Even in those circumstances, as one applicant's representative observed, "We got into a phase that, responding to the FERC order there were deadlines involved. So whenever there was a deadline the company had to file something. But we weren't really negotiating."

In another of these cases, a resource agency representative said, "So I guess the urgency would be more reflective of the utility's, not us." The applicant wanted to receive the license and then comply with its terms, and as another agency representative said "Once the license was issued, there was a time frame in which the company had to construct the facilities [or complete studies]," but the applicant's representative said: "It went on for so long and there were so many things changing—whether it was legislation or people's perceptions—that from our perspective we lost the urgency. So maybe you can have too much time available."

However, time pressure was present in the other four negotiations we studied. For example, in Koma Kulshan there were deadlines imposed by the FERC process itself, especially when the license application was being submitted. These deadlines, along with considerable cost uncertainties, the possibility that a competitor might try for the license, and a perception of inevitability created a sense of urgency.

First, cost uncertainties created urgency on the part of the utility. According to one utility representative, "The agencies never knew it, but my role was to try to kill the project" if the costs were too high or the likelihood of receiving a license was low. He said, "We were just dying for that license. We wanted to see what those terms and conditions were gonna be. We were ... spending dollars every month and those were risk dollars. You don't see them again if the project doesn't get built." This also meant "you hope to God that you got all the studies done [that the agencies and FERC] were gonna want to see before winter came in with a vengeance." Translating that sense of urgency to the agencies was an important negotiation task for the utility.

Second, competition was a factor. The representative of another utility said that competition created a flurry of urgency: "There was a lot of competition. Somebody would file a preliminary permit, somebody else would ... file under the 500 megawatt exemption.... A circus atmosphere attended a lot of these projects." Finally, the sense of inevitability was a factor in increased urgency. An agency representative noted that as soon as

it became clear that the project was viable, there was urgency to identify and address all of the remaining issues. Another agency representative said, “We wanted [the studies] done well and in the right time frame. We were trying to close as many loopholes as early as possible” within the time frame of the application process. In short, the utility felt a sense of urgency and successfully translated that concern into urgency on the part of the agencies because, as one agency representative said, “we were being pushed up against construction deadlines, monetary deadlines and application deadlines.”

Urgency experienced in the North Umpqua case was occasioned by a deadline imposed by the FERC. Late in the process, the Commission indicated that it would no longer wait and imposed a deadline by which time the special licensing conditions had to be submitted. This action had the effect of spurring the USFS toward reaching agreement. Other elements of this case may also have contributed to a sense of urgency. For example, in the middle phase the context of the negotiation changed. The USFS continued to press for a dam removal option, the company changed lead negotiators, the Presidential election loomed, and finally the company declared that it had withdrawn from the consultation. These circumstances were the occasion for much urgency on the part of state and federal agencies and were marked by a change in negotiators and intervention by the Governor’s office. But this urgency was directed more toward restarting or rejuvenating the negotiations than to reaching agreement.

The only urgency experienced in the Ashton-St. Anthony case was in the pre-license phase of consultation. As one utility representative noted, “The company...was not as urgent in certain phases. The reason was that prior to [passage of the Electric Consumer’s Protection Act] ECPA no one had any idea as to how long the license process was going to take.” The same representative said, conducting and critiquing studies “was more a matter of clarifying where the agencies were going and what commitments were on the company...there was probably not a sense of urgency to reach agreement as there [would later be] with filing an application, due to the deadline.” The sense of urgency changed as the parties approached the time for license application. At this point, an agency representative said, “The [utility] became anxious about the issues in the license and could see that these issues could potentially hold up relicensing. At the same time, the FERC process was changing [because of ECPA] and they needed to resolve many of the points to get their license.” The license was ultimately issued with the requirement that the parties continue to consult over issues that

remained unresolved. Urgency diminished after the license was issued. An agency representative said, “We felt less need to negotiate when [the utility] got the license issued; they also felt less need to negotiate. So time passed very easily, with nothing happening, because there was no time line involved.” As an agency representative remarked, after the license was issued “the rules had no rules. The license said ‘you guys will do a study and then you’ll work it out and agree to something for mitigation, whenever you feel like it.’ The negotiation was just frustrated and stalled. They tried to pick apart the data or just plain didn’t respond. I tried to get the license articles modified, tried to get a deadline in there, otherwise I could see it going on forever.”

Best Alternative to a Negotiated Agreement

Participants understood that they could either negotiate license conditions or independently submit recommendations to the FERC. In some circumstances parties had the option to take the dispute to formal hearings before the Commission or to court—especially if the FERC did not accept a recommendation. The possibility also existed for some agencies to mandate license conditions, but at the time of the 1992-1993 cases the enforceability of those orders was in dispute. Rarely, parties contacted political leaders to help resolve disputes. Even so, the most common perception among the parties was that they had few viable options but to negotiate (Table 2).

In the Koma Kulshan case, the parties believed negotiation was their only practical option, but this belief did not seem to be the source of their urgency. The agencies understood that the project would probably go forward if they did not reach agreement, and the utility did not consider alternatives to negotiation. In Eastman Falls, the utility at first saw a strong alternative by turning to court to resolve a dispute over fish passage. But in later stages, all the parties believed negotiation was the only viable alternative. In Oswegatchie all the parties perceived the status quo was a strong alternative to negotiation, and it was not until the FERC intervened that the parties resorted to bargaining. Although the perception of a strong alternative was associated with low urgency, the sense of urgency increased for all parties after the FERC intervention. Cataract was a case in which urgency increased as alternatives evaporated or became more uncertain. It became important to continue negotiations because there were few options, and future consultations were perceived to be contingent upon the parties’ behavior in this case.

TABLE 2
Best Alternative to a Negotiated Agreement Summarized from the
Transcribed Interviews

Case	Strong Alternative	Weak Alternative	Uncertain Alternative	Inability to Evaluate Alternative
Koma Kulshan			All parties saw negotiation as only viable option, alternatives not investigated--low urgency.	
Eastman Falls	Pre-application: Court option open to utility--low urgency.	Pre- and Post-license: Agencies no alternative; other cases; Post-license: utility no alternative--low urgency.		
Oswegatchie	Pre-application: all parties favored status quo -- low urgency; after FERC forced the consultation utility felt supported by FERC -- low urgency.	After FERC forced the consultation, agencies felt low support from FERC-- high urgency.		
Cataract	Pre-application: all parties saw independent recommendations to FERC--low urgency.	Post-license: all parties saw no alternatives—high urgency.	Post-license: regulatory uncertainty; future negotiations—high urgency.	

TABLE 2 (Continued)

Case	Strong Alternative	Weak Alternative	Uncertain Alternative	Inability to Evaluate Alternative
Ashton-St. Anthony	Post-license: utility preferred avoidance alternative—low urgency.	Pre-application: All saw no alternative—low urgency.		Limited agency evaluation of alternatives; more explicit utility evaluation of alternatives.
Pit 3,4,5		Pre- and Post-license: Agencies believed in potential for independent recommendations to FERC—low urgency.	Pre- and Post-license: uncertainty about FERC process—low urgency.	Limited agency evaluation of alternatives.
North Umpqua	Federal agencies and state health department mandatory conditions.			Federal agencies explicitly evaluated alternatives.

The Ashton-St. Anthony consultation was marked by a lack of urgency for all parties related to negotiation alternatives. Uncertainties about the FERC process encouraged the parties to interact but not bargain. Although the consultation continued for some time after the license was issued, the utility had a strong alternative to negotiation (i.e., inaction), which reduced its sense of urgency. In that case, the agencies considered but rejected political alternatives as essentially unavailable to them. Parties in Pit 3,4,5 believed they had to bargain, but they also believed that a possible alternative was to present independent recommendations to the FERC. This assessment of alternatives was associated with low urgency to reach agreement. In fact, the parties finally resorted to independent flow recommendations, without achieving an agreement. Because it was mainly conducted after questions about the enforceability of mandatory conditions had been resolved, federal agencies in the Umpqua case believed they had a

strong alternative to negotiation. This belief was a reason respondents indicated low levels of urgency to reach agreement.

Quality of the Other Party's Offer

The Koma Kulshan was viewed as a “good” project by the resource agencies. The project was located in a watershed with other significant developments that affected instream flows, resident fish were not present at the project site, impacts on anadromous fish (i.e., species that live in the ocean but return to fresh water for spawning) were minor, and water quality concerns could be mitigated. From the utility's perspective the resource agencies made reasonable requests for studies and mitigation. As one agency representative said, the project was “maybe the only one of just a few that ever turns to gold in terms ... of the terrain, water, and physical characteristics.” As another agency representative noted, “it comes back to project siting, pick a good project site to begin with.” A utility representative remarked that the important point came when the agencies agreed there was no need for fish screens because the stream contained few if any fish: “As soon as we got to the ‘no need for fish screens’ I think we felt we had a project ... we really recognized that these guys were working with us.” The participants in this case did not express a sense of urgency to reach agreement because of these better than expected offers (Table 3).

Eastman Falls was similar in that the parties felt they had received better than status quo offers in the form of a Comprehensive Plan for Fish Passage that included other locations on the stream and development of a constructive negotiating relationship for the future. The utility's offer to use an acceptably modified flow recommendation method was seen as a better than expected offer. As one agency representative indicated, “they were using our method...other approaches could have been used but they decided to use our method...in a sense that gave us some power.” But as with Koma Kulshan, this level of cooperation was accompanied by low urgency to reach agreement.

The urgency to reach agreement was generally not associated with the quality of offers in the Oswegatchie case. Quality of offer was better than expected in the sense that the parties found mutual benefit in avoiding expensive studies in favor of professional judgment about flow conditions. As compared to recent experience on another project, this was considered a better than expected offer: flow recommendations “just basically came in on

TABLE 3
Quality of Other Party's Offer as a Source of Urgency

Cases	Offer Better than Expected	Offer Better than Status Quo	Offer Uncertain or Unacceptable
Koma Kulshan	Reasonable offers from all; low environmental impacts—low urgency.		
Eastman Falls	Constructive negotiating relationship; shared method—low urgency.	Comprehensive plan for river—low urgency.	
Oswegatchie	Using professional judgment rather than expensive studies was positive compared to other cases—urgency increased over time.		
Cataract			Offers seen as unacceptable—low urgency.
Ashton-St. Anthony			Pre-license: Offers to study were acceptable but vague; Postlicense: offers were unacceptable—low urgency.
Pit 3,4,5			Offers to study and recommended flows were unacceptable—low urgency.
North Umpqua		Utility offer probably better than status quo—low urgency.	Agency offer of dam removal unacceptable—low urgency.

their professional judgment and nobody challenged it. Everyone was satisfied” (utility representative). This satisfaction with offers on study methods seems to have increased the sense of urgency to reach agreement, which became more of a priority for everyone when reasonable agreements were thought to be within reach: “As it got more involved, we were very committed...because we were starting to see something happen...with real...accomplishments” (agency representative).

In Cataract the offers from all sides were seen as unacceptable, politically motivated, or non-responsive to needs. A similar situation prevailed in North Umpqua, where the agency’s demand for dam removal was a stumbling block to negotiation and urgency remained low (except the agencies felt urgency when the utility withdrew from the consultation and later when the FERC issued a deadline). In Ashton-St. Anthony, before the license was issued, the offers to conduct studies were vague—which later led to disagreements—and all parties viewed later offers as unacceptable. Negotiations were contentious—with disputes over the quality of studies conducted and proposed—but not urgent. In Pit 3,4,5 the agencies believed that the utility was making concessions that were of minor significance. As one agency representative said, “we’d continue to negotiate up to a point of impasse [until] we felt that we had established a bottom line below which we could not go. When that did not meet what the Company was offering, we left it in...the hands of FERC.” For the utility’s part, “the problem was that the agencies’...fishery proposals never made sense to me from a fishery standpoint.”

Personal Factors

Although our interviewers did not ask specific questions about personal factors, we were able to observe several individual issues. For example, in the Ashton St. Anthony case all the participants were busy with other problems, often including negotiations outside of the FERC arena. In that case, the parties often chose to focus elsewhere, resulting in a reduced sense of urgency. In the Cataract case the company’s first representative to the negotiation was apparently out of touch with the company’s bargaining policy. A sense of urgency did not develop until the company assigned a new representative. For a time during the Koma Kulshan negotiation, one agency’s representative did not seem to be personally committed to the process—perhaps because of the press of other business, a temporary or rotating assignment, or limited decision authority. Most of the other Koma Kulshan parties experienced a sense of urgency to reach agreements that

would somehow bind that agency. The sense of urgency persisted until that representative was replaced. By far the most common personal factor was that—usually due to the length of the consultations—agency and company representatives often changed during the process. Sometimes this occurred more than once for the same parties. The result was a reduced sense of urgency as the parties collectively struggled to keep the process on track.

DOES URGENCY MATTER?

The sense of urgency fluctuated as negotiations progressed. Change in the sense of urgency was most often associated with altered circumstances. Changed circumstances presented themselves in the form of new issues (Shea, 1980) or crises. Introduction of new issues was followed by instances of low urgency among agencies in the six 1992-1993 cases. But crises, for example in the North Umpqua case when the applicant withdrew from the consultation, prompted a sense of urgency. Much of that urgency was devoted to getting the negotiation back on track rather than to reaching ultimate agreement.

Sources of Urgency to Reach Agreement

Urgency for Applicants

Deadlines and cost were the two major sources of urgency for license applicants. Although the pressure of FERC deadlines was the most commonly stated source of urgency--mentioned in five of six cases (Table 4)--another important source of urgency for applicants came from financial issues. For example, urgency related to cost was particularly important in the Koma Kulshan case, the only new project among the seven we studied. The applicant had invested increasing financial resources into a project that was not yet built. Moreover, the applicant's plans relied on receiving tax breaks, but there was no assurance that a license would be issued with acceptable conditions. Delays might result in the loss of the tax breaks, and this threatened the applicant's investment in the project.

Less often mentioned sources of urgency among the applicants included the uncertainty surrounding the potential effect of new regulations. In the context of FERC licensing, the ECPA increased the roles of state, federal, and tribal resource entities, and created a new standard requiring that conservation interests be given "equal consideration" with developmental interests (16 U.S.C. 791a-825s: Section 4(e); Johansen, 1994, p. 14). New regulations, for which there was no track record and few comparable

precedents, were a source of uncertainty for applicants. That uncertainty increased the urgency to reach agreement.

Another source of urgency mentioned by applicants was inexperience with the process. In consultations such as Eastman Falls and Cataract, applicants believed they faced important and precedent-setting consultations with little experience to guide them. Lack of experience resulted in a desire to push for an agreement that would limit uncertainty. But potential precedent worked in reverse for Pit-3, 4, 5 where resource agencies were seeking remediation for past damages to fish and wildlife resources. In that case, the need to avoid a bad precedent reduced the urgency to agree.

Finally, applicants mentioned the mobilization of interest groups as an incentive to reach agreement with resource agencies. There was a sense that if conservation groups became involved, delays were probable and their presence would add weight to resource agency positions. Under those circumstances it was deemed better to conclude the consultation before new parties became involved.

Urgency for Resource Agencies

Resource agencies were less motivated by financial considerations, but their representatives often mentioned a public service orientation that included responsiveness to laws and FERC mandates (Table 4). They expressed a clear desire for closure. A number of interviewees stated a desire to complete the consultations, because as public servants they felt a need to "get the work out."

On the other hand, lower urgency to agree was associated with several factors. Resource agency representatives often viewed the relicensing consultations as a rare opportunity to push for solutions to long-standing fisheries problems and they were not inclined to reach agreement until these problems could be worked out. They wanted to keep bargaining to correct a wrong or set a favorable precedent. As with the applicants, the bargaining behavior of agency representatives was affected by uncertainty over changing regulations. Despite the increased influence that came with some new regulations, uncertainty over implementation and a lack of trust in how the FERC would handle agency inputs reduced the urgency to agree. Other less frequently mentioned factors that augured against an urgency to agree were the inevitability of the process. For example, one interview respondent

TABLE 4
Sources of Urgency in FERC Consultations ^a

Actors	Internal Sources	External Sources
Applicants	<ol style="list-style-type: none"> 1. Financial costs of delay (3 cases) 2. Construction timing (1 case) 3. Policy window (1 case) 4. Maintain eligibility for tax breaks (1 case) 	<ol style="list-style-type: none"> 1. FERC deadlines (5 cases) 2. Uncertainty due to impending rules implementing ECPA (2 cases) 3. Avoid having more parties get involved (1 case) 4. Avoid "collection agreement of USFS" (1 case) 5. Precedent-setting re-licensing (1 case)
Resource Agencies	<ol style="list-style-type: none"> 1. "Policy window" (4 cases)^b 2. Desire for closure (3 cases) 3. Impending turnover/loss of personnel (2 cases) 	<ol style="list-style-type: none"> 1. FERC deadlines (4 cases) 2. Uncertainty due to impending rules implementing ECPA (2 cases) 3. Transferred from applicant (1 case) 4. Need for agreement among resource agencies (2 cases) 5. Mobilization of interest groups (1 case) 6. Impending financial collapse of one of the applicants (1 case) 7. Precedent-setting re-licensing (1 case) 8. Public opinion & political involvement (2 cases)

Notes: ^a Numbers in parentheses, e.g. (1 case), indicate the number of studies in this project for which the factor was mentioned by one or more participants.

^b For example, a policy window was suggested by respondent statements indicating opportunities to push for solutions to long-standing problems.

observed, "the train was leaving the station and we needed to be on it," which indicated more a need to be part of the process than an urgency to agree. Public opinion favorable to agency positions and the mobilization of environmental interest groups were both associated with a lack of urgency among agency representatives.

Increasing Sense of Urgency

Although applicants generally reported a greater sense of urgency than did agencies, urgency to agree increased as the consultations proceeded. In

general, urgency was lowest during information-gathering and when decisions seemed a long way off. When issues became clearer, respondent recollections of urgency increased. At times, the urgency to agree was highest and most widely shared among the parties just as the dimensions of divisive issues became clear. A mutual sense of urgency to agree was often higher at this mid-point than at the final stage of the consultations.

Urgency to agree was most asymmetrical when the FERC had issued a license featuring temporary conditions. In these cases, agencies very urgently needed to reach agreement on final operating rules so that resources would benefit as compared to the temporary conditions in the license. But applicants experienced little urgency to agree in those situations. Applicants' greater sense of urgency seemed associated with situations when costs were increasing without certainty of outcome.

Policy Window

Beyond deadlines and new regulations, the "policy window" was the most important source of urgency for resource agencies. A policy window is an occasion for agencies to achieve long-sought goals for resource management. "The policy window is an opportunity for advocates of proposals to push their pet solutions, or to push attention to their special problems" (Kingdon, 1984, p. 173). Policy windows typically present themselves for short periods of time, and may be the result of cyclical factors such as annual reviews of budgets and programs, or the rare opportunity to make changes to a hydropower license. "If the participants cannot or do not take advantage of these opportunities, they must bide their time until the next opportunity comes along" (Kingdon, 1984, p. 175). Representatives of resource agencies often saw the consultation process as a unique opportunity to right a long-standing wrong or establish a long-lasting solution.

Role of Delay

Delay was a factor to varying degrees in all the negotiations we studied (Table 5). The negotiations sometimes dragged on simply because participants had other tasks and other responsibilities demanding their immediate attention. However, delay was also a strategic consideration. Delay was associated with two distinct strategies: contending and inaction.

Delays can occur when one or more parties assumes the strategy of contending, or trying to persuade others to accept alternatives that favor the

contending party's own interests (Pruitt, 1983). If other parties do not yield, such strategies can lead to protracted negotiations and a spiraling of conflict without ultimate resolution (Pruitt & Carnevale, 1993). "When two parties negotiate without any deadlines, they may get trapped in a standoff equilibrium, in which bargaining drags on . . ." (Myerson, 1991, p. 84). In such cases, the parties are likely to maintain extreme positions and will be reluctant to moderate them.

Delays can also result from the strategy of inaction (i.e., allowing the passage of time to increase the cost [Rubin, 1991]). Strategic inaction in negotiations occurs when a participant is unconcerned about the outcomes of a negotiation for themselves or other parties in the negotiation (Pruitt, 1983). Such conditions can occur if one party has no incentive to negotiate, such as when failed negotiations will likely maintain a status quo that is favorable to the party. Delays related to inaction may raise doubts about whether the parties really want to reach agreement (O'Neill, 1991). We found that delays were caused by both applicants and resource agencies (Table 5).

TABLE 5
Delay in FERC Consultation Case Studies

Actors	Sources	Tools
Applicants	<ol style="list-style-type: none"> 1. Advantageous status quo/ costs of mitigation 2. Lack of deadlines/no time pressure 3. License already issued 	<ol style="list-style-type: none"> 1. Requests for more studies and critique of study quality 2. Non-responsiveness and stonewalling
Resource Agencies	<ol style="list-style-type: none"> 1. Lack of deadlines meant no time pressure 2. Low on list of priorities 	<ol style="list-style-type: none"> 1. Requests for more studies 2. Non-responsiveness

Although deferral of resolution is not always attributable to bad faith or conscious foot-dragging, the strategy of inaction often benefits one side more than others (Miller & Colosi, 1989). In the consultations we studied, delays resulting from inaction worked to the benefit of parties that were satisfied with the status quo, usually project applicants. Resource agencies were motivated to impose new requirements on existing facilities, primarily having to do with fish passage and instream flows. These requirements were usually expensive and/or reduced the efficiency of power generation.

Delay was not always due to the license applicants. Resource agencies were criticized by applicants for adopting a contentious strategy labeled as "representing the resource" rather than responding to the process and considering the financial commitments made by applicants. This contentious strategy was apparent in North Umpqua, Pit 3,4,5, and early on in the Koma Kulshan consultation.

CONCLUSION

Sense of urgency was an important part of all the negotiations we studied. Applicants experienced urgency in all cases, and by resource agencies in more than half of the cases. An important finding was the importance of FERC deadlines in engendering a feeling of urgency to reach agreement among both resource agencies and applicants. A mutual sense of urgency was present in cases where there was agreement on the contents of the license application.

In Eastman Falls and North Umpqua, agency sense of urgency was high, and in Koma Kulshan urgency was strongly experienced by all parties. These consultations were influenced by outside factors: a pre-existing river-wide agreement in the case of Eastman Falls, a new license application for Koma Kulshan, the ultimate deadline imposed by the FERC in the North Umpqua case.

The opposite of a sense of urgency is not simply a lack of urgency, but rather inaction as a negotiation strategy. Urgency, therefore, fits on a continuum of negotiation, with concerted effort to resolve problems and reach agreement at one end and strategic inaction at the other. In short, disincentives to negotiate (i.e., incentives to delay) can work effectively for individual parties to achieve specific ends within a negotiation.

The policy environment has an important influence on whether factors such as time pressure and BATNA have an effect on a party's urgency to reach agreement. If the policy environment is currently favorable to a negotiating party, but exhibits uncertainty due to anticipated changes in regulation, political positions, or increased political pressure from new parties to the negotiating scene, then factors such as time pressure and BATNA have greater effect on a party's sense of urgency. When the policy environment is unfavorable, these factors have less impact on a party's sense of urgency due to strategic inaction.

REFERENCES

- Abrams, R. H. (1992). "Is the FERC Going with the Flow?: A Comment on the Upper Ohio Basin Litigation." *Rivers*, 3: 202-207.
- Bell, D. C. (2002). "Environmental Negotiation Primer." Paper presented at the Environmental Negotiation Workshop. Port Hueneme, CA: Environmental Training Division, Naval School, Civil Engineer Corps Officers.
- Bingham, G. (1986). *Resolving Environmental Disputes: A Decade of Experience*. Washington, DC: The Conservation Foundation.
- Burkardt, N., Lamb, B. L., & Taylor, J. G. (1997). Power Distribution in Complex Environmental Negotiations: Does Balance Matter? *Journal of Public Administration Research and Theory*, 7: 247-275.
- Burkardt, N., & Lamb, B. L. (Forthcoming). "Deriving Implementation Cues from an Evolving Regulatory Process: Hydropower Licenses." *American Review of Public Administration*.
- Carnevale, P. J., O'Connor, K. M., & McCusker, C. (1993). "Time Pressure in Negotiation and Mediation." In O. Svenson and A. J. Maule (Eds.). *Time Pressure and Stress in Human Judgment and Decision Making* (pp.117-127). New York: Plenum.
- Cochran, C.H. (1994). "Environmental Enforcement at FERC: A Bird's Eye View." *Natural Resources and Environment*, 8 (14-16): 56-57.
- Cormick, G. W. (1980). "The 'Theory' and Practice of Environmental Mediation." *The Environmental Professional*, 2: 24-33.
- Delli Priscoli, J. (1987). "Conflict Resolution for Water Resource Projects: Using Facilitation and Mediation to Write Section 404 General Permits." *Environmental Impact Assessment Review*, 7: 313-326.
- Fisher, R., Ury, W. , & Patton, B. (1991). *Getting to Yes: Negotiating Agreement without Giving In* (2nd ed.). New York: Penguin Books.
- Friend, K. E., Laing, J. D., & Morrison, R. J. (1977). "Bargain Processes and Coalition Outcomes: An Integration." *Journal of Conflict Resolution*, 21: 267-298.
- Harter, P. J. (1982). Negotiating regulations: A cure for malaise. *Georgetown Law Journal*, 71: 1-118.
- Johansen, J. A. (1994). "Is Hydropower an Endangered Species?" *Natural*

- Resources and Environment*, 8 (13-16): 50-51.
- Jung, R. A. (1995). "Negotiating Fish and Wildlife Agreements: The Rock Creek-Cresta Hydroelectric Project." *Rivers*, 5:159-169.
- Kerwin, C. M. (1990). "Transforming Regulation: A Case Study of Hydropower Licensing." *Public Administration Review*, 50(1): 91-100.
- Kingdon, J. W. (1984). *Agendas, Alternatives, and Public Policies*. New York: Harper Collins.
- Komorita, S. S., & Barnes, M. (1969). "Effects of Pressures to Reach Agreement in Bargaining." *Journal of Personality and Social Psychology*, 13: 245-252.
- Miller, J. G., & Colosi, T. R. (1989). *Fundamentals of Negotiation: A Guide for Environmental Professionals*. Washington, DC: Environmental Law Institute.
- Myerson, R.B. (1991). "Analysis of Incentives in Bargaining and Mediation." In H. P. Young (Ed.). *Negotiation Analysis* (pp: 67-85). Ann Arbor, MI: University of Michigan Press.
- O'Neill, B. (1991). "Conflictual Moves in Bargaining: Warnings, Threats, Escalations, and Ultimatums." In H. P. Young (Ed.). *Negotiation Analysis* (pp: 87-107). Ann Arbor, MI: University of Michigan Press.
- Pizzi, L. (1997). "Implications of the Bangor Hydro Decision on FERC Relicensings." *Rivers*, 6: 103-115.
- Przeworski, A., & Teune, H. (1970). *The Logic of Comparative Social Inquiry*. New York: Wiley Interscience.
- Pritzker, D. M. (1990). "Working Together for Better Negotiations." *Natural Resources and Environment*, 5: 29-32: 51-53.
- Pruitt, D. G. (1983). "Strategic Choice in Negotiation." *American Behavioral Scientist*, 27: 167-94.
- Pruitt, D. G., & Carnevale, P. J. (1993). *Negotiation in Social Conflict*. Pacific Grove, CA: Brooks/Cole Publishing Co.
- Rubin, J. Z. (1991). "The Timing of Ripeness and the Ripeness of Timing." In L. Kriesberg and S. J. Thorson (Eds.). *Timing the De-Escalation of International Conflicts* (pp: 237-246). Syracuse, NY: Syracuse University Press.

- Shea, G. P. (1980). "The Study of Bargaining and Conflict Behavior: Broadening the Conceptual Arena." *Journal of Conflict Resolution*, 24: 706-741.
- Stuhlmacher, A. F., & Champagne, M. V. (2000). "The Impact of Time Pressure and Information on Negotiation Process and Decisions." *Group Decision and Negotiation*, 9: 471-491.
- Wondolleck, J. (1988). "The Role of Training in Providing Opportunities for Environmental and Natural Resource Dispute Resolution." *Environmental Impact Assessment Review*, 8: 233-248.