

**HENRY M. JACKSON PROJECT**  
**FERC Project No. 2157**

**Settlement Agreement**  
**for the**  
**Henry M. Jackson**  
**Hydroelectric Project**

**October 9, 2009**

**Settlement Agreement for  
the Henry M. Jackson Project**

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## **LIST OF APPENDICES**

- Appendix 1 Proposed License Articles for the Jackson Project, FERC No. 2157
- Appendix 2 Authorized Representatives of the Parties
- Appendix 3 Aquatic Resources Committee
- Appendix 4 Early Implementation Actions
- Appendix 5 Settlement Agreement Recreation Resource Management Plan
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- Appendix 7 Forest Service Preliminary 4(e) Terms and Conditions

## **LIST OF ATTACHMENTS**

- Attachment A Lake Chaplain Tract Land Management Off-License Agreement Between the Public Utility District No. 1 of Snohomish County, City of Everett, and Washington Department of Fish and Wildlife
- Attachment B Jackson Off-License Supplementation Agreement (“JOSPA”) Between the Public Utility District No. 1 of Snohomish County, Washington and Washington Department of Fish and Wildlife

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**Henry M. Jackson Project  
FERC Project No. 2157**

**Settlement Agreement for  
the Henry M. Jackson Hydroelectric Project**

This SETTLEMENT AGREEMENT FOR THE HENRY M. JACKSON HYDROELECTRIC PROJECT (“Settlement Agreement”) is made and entered into pursuant to Federal Energy Regulatory Commission (“FERC”) Rule 602, 18 C.F.R. § 385.602, by and among:

Public Utility District No. 1 of Snohomish County (“District” or “Licensee”);  
United States Department of Commerce, National Marine Fisheries Service (“NMFS”);  
United States Department of Agriculture, Forest Service (“USFS”);  
United States Department of the Interior, Fish and Wildlife Service (“FWS”);  
United States Department of the Interior, National Park Service (“NPS”);  
Washington Department of Fish and Wildlife (“WDFW”);  
Washington Department of Ecology (“WDOE”);  
Tulalip Tribes of Washington (“Tribe”);  
Snohomish County;  
City of Everett (“Everett”);  
City of Sultan (“Sultan”); and  
American Whitewater,

each referred to individually as a “Party” and collectively as “Parties.”

**RECITALS**

**WHEREAS,**

- A. The District and Everett are currently co-Licensees for the Jackson Hydroelectric Project, FERC Project No. 2157 (“Project”).
- B. The Project is located on the Sultan River, approximately 24 miles east of Everett, Washington, in south central Snohomish County in Washington State.
- C. The current FERC Project License will expire on May 31, 2011.
- D. On May 29, 2009, the District filed with the Commission a complete and final application (“License Application”) for a new FERC License to continue operating, as sole Licensee, the Project (“Project License”).
- E. The District engaged and collaborated with interested parties through the integrated licensing process. The use of this integrated licensing process was approved by the Commission prior to the District filing its License Application to relicense the Project.

- F. The Parties to this Settlement Agreement have reached resolution of issues related to the relicensing of the Project, as described in this Settlement Agreement.

## **TERMS OF AGREEMENT**

The Parties hereby agree as follows:

### **1 General Provisions**

#### 1.1 Effective Date of Settlement Agreement

This Settlement Agreement shall become effective upon its execution by all Parties.

#### 1.2 Actions by the Licensee

##### 1.2.1 Offer of Settlement

Within 30 days of the Effective Date, the Licensee shall, on behalf of the Parties, file an Offer of Settlement with FERC pursuant to Rule 602 of FERC's Rules of Practice and Procedure, 18 C.F.R. § 385.602. This filing shall consist of an executed copy of this Settlement Agreement, including the Appendices and a Joint Explanatory Statement. The Joint Explanatory Statement shall request that FERC: (i) approve the Offer of Settlement; and (ii) issue a new forty-five (45) year License for the Jackson Project that incorporates – without Material Modification – the Proposed License Articles set forth in Appendix 1 of the Settlement Agreement.

##### 1.2.2 Early Implementation Actions

Prior to issuance of a Project License, the Licensee shall implement the measures stated in Appendix 4 consistent with the applicable schedule.

#### 1.3 Term of Settlement Agreement

The term of this Settlement Agreement shall commence on the Effective Date and shall continue through the term of the Project License including any subsequent annual license(s): (i) unless terminated as provided in section 6.3; or (ii) until the date of any FERC order approving surrender of the Project License; or (iii) until any irrevocable actions by the Licensee to physically decommission the Project after the expiration date of the Project License.

#### 1.4 Definitions

**401 Certification** shall mean the water quality certification pursuant to Section 401 of the CWA, 33 U.S.C. § 1341, issued by WDOE.

**ADR** shall mean the alternative dispute resolution procedure set forth in section 5 of this Settlement Agreement.

**CWA** shall mean the Clean Water Act, 33 U.S.C. §§ 1251 *et seq.*

**CZMA** shall mean the Coastal Zone Management Act, 16 U.S.C. §§ 1451 to 1465.

**CZMA Consistency Determination** shall mean a Coastal Zone Management Act Determination issued by WDOE, pursuant to authority under the CZMA.

**Disputing Party** or **Disputing Parties** shall mean any Party providing Notice of an objection or dispute, any Party alleged to have not performed an obligation, and any other Party that provides Notice of its intent to participate in the dispute resolution.

**Effective Date** shall mean the date set forth in section 1.1 of this Settlement Agreement.

**ESA** shall mean the Endangered Species Act, 16 U.S.C. §§ 1531 *et seq.*

**FERC** shall mean the Federal Energy Regulatory Commission.

**FPA** shall mean the Federal Power Act, 16 U.S.C. §§ 791a *et seq.*

**Licensee** shall mean the District.

**Magnuson-Stevens Act** shall mean the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. § 1801 *et seq.*

**Mandatory Terms and Conditions** shall mean conditions submitted to FERC under Section 4(e) or Section 18 of the FPA, 16 U.S.C. §§ 797(e), 811.

**Material Modification** shall mean: (i) any modification (including additions to or deletions) from the Proposed License Articles; (ii) FERC's expansion of the Project boundary which results in the inclusion of the City of Everett's Lake Chaplain Tract within the Project boundary; *provided*, that such modification(s), individually or collectively, substantially affects a Party's bargained-for benefits under this Settlement Agreement, including but not limited to costs; power generation; regulatory responsibilities; or resource protection measures.

**Material Modification** shall not mean any modification which does not meet the above definition, including (but not limited to) the following examples: (i) the inclusion of standard articles from the L-Form (as defined by 18 C.F.R. § 2.9) in the New Project License; (ii) FERC's insertion of its approval or its reservation of authority to require changes to implementation schedules or plans set forth in any Proposed License Article; (iii) FERC's requirement to file a subsequent License amendment to implement any Proposed License Article; (iv) FERC's removal of language in any of the Proposed

License Articles that sets forth the rationale for the article, provided there are no changes to the obligation contained in the article; (v) terms and conditions in the Incidental Take Statements consisting of Best Management Practices; (vi) FERC's expansion of the Project boundary yielding a result other than that identified in the Material Modification definition above; (vii) the inclusion in any 401 Certification of the WDOE's reservation of authority to reopen its conditions, *provided*, that such reservation of authority is consistent with this Settlement; (viii) FERC's inclusion of a reservation of authority to require the Licensee to undertake additional measures in excess of the agreed-upon monetary payment amounts set forth in Proposed Aquatic License Article 12; and (ix) any statements, writings or other representations regarding future License applications for this Project. The term of the License shall not be considered a material modification.

**NEPA** shall mean the National Environmental Policy Act, 42 U.S.C. §§ 4321 *et seq.*

**Notice** shall mean a written communication that meets the requirements of section 7.11 of this Settlement Agreement.

**Party or Parties** shall mean the signatories to this Settlement Agreement.

**PM&E** shall mean protection, mitigation, and enhancement.

**Project** shall mean the Henry M. Jackson Hydroelectric Project, FERC No. 2157.

**Project License** shall be any License issued by FERC pursuant to Section 15 of the FPA for the Project based upon the filing of this Settlement Agreement.

**Proposed License Articles** shall mean the terms and conditions set forth in Appendix 1 of this Settlement Agreement that the Parties will request that FERC include, without Material Modification, in the Project License.

**Settlement Agreement** shall mean the entirety of this Settlement Agreement document and Appendices 1 through 7. The Settlement Agreement shall not include Attachments A and B, which are related agreements attached for informational purposes.

## **2 Scope of Settlement Agreement**

### **2.1 Purpose**

The Parties have entered into this Settlement Agreement for the purpose of resolving among them issues that have or could have been raised by the Parties in connection with the Commission order issuing a Project License. Pursuant to the Parties' obligations and authorities under the FPA, this Settlement Agreement establishes the Licensee's obligations for the protection, mitigation and enhancement (PM&E) of resources affected by the Project. Each Party intends that this Settlement Agreement is consistent with and satisfies its currently applicable statutory and regulatory rights and responsibilities under the FPA with respect to relicensing of the Project. Each Party intends further that,

subject to the terms of this Settlement Agreement, no resource protection measure or other License provision, other than those provided in Appendix 1, is necessary to be included within the Project License in order to satisfy the FPA. This Settlement Agreement also enhances the mutual benefits of the Project for the Licensee, Project beneficiaries, local communities, and other Parties. It also specifies the procedure to be used among the Parties to ensure that implementation of the Project License is not inconsistent with the Settlement Agreement. The Parties agree that this Settlement Agreement is fair and reasonable, and consistent with the standards under the FPA. The Parties further agree that this Settlement Agreement provides sufficient PM&E measures for FERC to find a balance of beneficial uses and that the Settlement is in the public interest as required under Section 10 of the FPA.

## 2.2 No Precedent for Other Proceedings

This Settlement Agreement is made upon the express understanding that it constitutes a negotiated resolution among the Parties. Accordingly, nothing in the Settlement Agreement shall be construed as a precedent with regard to any other proceeding. This section shall survive any termination of this Settlement Agreement.

## 3 Reservation of Rights and Satisfaction of Legal Responsibilities

### 3.1 Reservation of Rights

Nothing in this Settlement Agreement is intended to, or shall be construed to, affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory, and regulatory responsibilities or to comply with any applicable judicial decision or order. Among other things, as provided in section 1.4 (definition of “Material Modification”), this reservation permits a reservation of authority in a 401 Certification; *provided*, that each other Party reserves its right to contest the exercise of such reservation.

### 3.2 Water Rights

Nothing in this Settlement Agreement is intended to, or shall be construed to, modify or alter any Party's existing, inchoate, reserved or aboriginal water rights, if any, or the City of Everett's pending application for the permitting of a 200 cfs water right (water right application No. 13219, dated 15 December 1954).

### 3.3 Tulalip Tribes of Washington's Treaty Rights

In a separate settlement agreement, the District and the Tribe have settled certain claims against the District pertaining to the Project. Nothing in this Settlement Agreement is intended to, or shall be construed to waive, modify, alter, diminish or otherwise affect the Tribe's treaty rights, or to resolve in whole or in part any claim based on impairment or damage to the Tribe's treaty rights from past, present or future Jackson Project operations. The Tribe reserves all rights to seek relief in any forum (including FERC) to enforce or

protect or redress the Tribe's treaty rights. Nothing in this Section 3.3 shall be construed as superseding any other agreement between the Tribe and any other Party.

#### **4 Settlement Agreement Commitments and Implementation**

##### **4.1 Filings and Submittals Consistent with Settlement Agreement**

Each Party intends that, throughout the term of this Settlement Agreement, none of that Party's filings or other submittals with FERC will propose Material Modifications or otherwise be inconsistent with this Settlement Agreement, unless necessary based on material new information. Any Party who believes another Party has breached this provision must give the breaching Party Notice and a 30-day opportunity to cure the breach prior to initiating ADR under section 5 of this Settlement Agreement.

If a Party files a pleading or other document before FERC or another regulatory agency advocating a Material Modification or a measure otherwise inconsistent with this Settlement Agreement, any other Party may defend by: (a) stating its opposition to the Material Modification or the measure; (b) requesting that FERC or other regulatory agency disapprove the condition or proposed amendment; and (c) explaining what other reasonable conditions should be included in and/or excluded from the Project License if the Material Modification or the measure otherwise inconsistent with this Settlement Agreement is approved. Since the Parties recognize that a dispute that results in the defense described in (c) may threaten the viability of this Settlement, the Parties affirm their commitment to make best efforts to resolve any such dispute in a timely manner to avoid such results.

##### **4.2 Support Adoption of License Terms and Conditions**

All Parties shall support, in all relevant regulatory proceedings in which they participate, incorporation of the Proposed License Articles into the Project License issued by FERC.

###### **4.2.1 Recommendations under Section 10(a) and 10(j) and Comments Filed in the Context of the Relicensing Process**

Recommendations under FPA Section 10(a) and 10(j) shall not contain or recommend a Material Modification. Any information, comments, or responses to comments filed in the context of the relicensing process shall not request a Material Modification.

4.2.2 Mandatory Terms and Conditions that Contain Material Modifications of the Settlement Agreement

4.2.1.1 If any of the Mandatory Terms and Conditions contain a Material Modification of this Settlement Agreement, the Settlement Agreement shall be deemed modified to conform to the Mandatory Terms and Conditions unless a Party provides Notice to the other Parties that it objects and initiates ADR under section 5 of this Settlement Agreement within thirty (30) days after the term or condition is filed with FERC. This section does not limit a Party from asserting any administrative or judicial claims, if necessary to meet a filing deadline, or limit any other Party from timely asserting any defenses to such claims. If the USFS submits final Section 4(e) conditions to FERC that are in all material respects consistent with the draft Section 4(e) conditions attached to this Settlement Agreement as Appendix 7, the Parties agree that those final Section 4(e) conditions will not be considered to contain a material modification.

4.2.1.2 A Disputing Party may, in addition and to the extent provided by applicable law, seek administrative and/or judicial review of any Mandatory Term and Condition that contains a Material Modification of this Settlement Agreement. The Parties shall follow the ADR process set forth in section 5 of this Settlement Agreement to the extent reasonably practicable, in order to consider modification of this Settlement Agreement, while such administrative or judicial review is pursued. If the Parties subsequently agree to modify this Settlement Agreement to conform to the inconsistent provision, the Disputing Party or Parties shall withdraw or dismiss any administrative or judicial action, or recommend such withdrawal or dismissal, as appropriate.

4.2.1.3 Except as provided in section 4.6.2.2 for omissions based on jurisdiction or if this Settlement Agreement is terminated pursuant to section 6 herein, if any of the final Mandatory Terms and Conditions contain a Material Modification after a final and non-appealable administrative or judicial decision, this Settlement Agreement shall be deemed modified to conform to that decision.

4.2.3 Proceedings under the Energy Policy Act of 2005

Regarding any of the Mandatory Terms and Conditions filed with FERC in this License proceeding that do not contain a Material Modification of the Settlement Agreement, each Party waives any right it may have to request an agency trial-type hearing on issues of material fact under Sections 4(e) and 18 of the FPA and

to propose alternatives under Section 33 of the FPA. Under the foregoing circumstances, the Parties shall not support any trial-type hearing requested by any non-Party and will support USFS, FWS, and NMFS, as appropriate, if a trial-type hearing is requested by any non-Party. If a non-Party requests a trial-type hearing, the Parties may intervene to support this Settlement Agreement, and USFS, FWS, and NMFS shall use good faith efforts to defend its challenged Mandatory Terms and Conditions. Notwithstanding the above, regarding any of the Mandatory Terms and Conditions filed with FERC in this License proceeding that do contain a Material Modification of the Settlement Agreement, each Party reserves any rights to challenge the Mandatory Terms and Conditions or request an agency trial-type hearing on issues of material fact under Sections 4(e) and 18 of the FPA and to propose alternatives under Section 33 of the FPA.

#### 4.3 Authorities under the CWA and CZMA

Nothing in this Settlement Agreement is intended to or shall be construed to restrict or affect the authorities of WDOE under the CWA and CZMA and other appropriate requirements of state law.

#### 4.4 ESA and Magnuson-Stevens Act Consultation

##### 4.4.1 Biological Opinion/EFH Conservation Measures

4.4.1.1 Notwithstanding section 2.1, the Parties recognize that FERC will consult with NMFS and FWS pursuant to Section 7 of the ESA, and NMFS and FWS will likely have to prepare Biological Opinions evaluating the effect of FERC's action in response to the measures in this Settlement Agreement and engage in Essential Fish Habitat (EFH) consultation under the Magnuson-Stevens Act. NMFS and FWS are not making a pre-decisional determination of the outcome of any consultation and expressly reserve the right to take such future action or to issue Biological Opinions and Incidental Take Statements as necessary to meet their obligations under the ESA. Further, NMFS is not making any pre-decisional determinations regarding EFH conservation recommendations necessary to meet its obligations under the Magnuson-Stevens Act.

4.4.1.2 If FERC adopts the Proposed License Articles as the proposed action, that federal action shall be the basis for a Section 7 consultation between FERC and NMFS and FWS, and any Biological Opinion relating to relicensing of the Project shall address and evaluate that federal action. Within thirty (30) days of the Effective Date, the Licensee will request to be designated the non-federal representative for purposes of this consultation and preparing a draft biological assessment for consultation related to

the Project License. The Licensee shall prepare this draft biological assessment.

4.4.1.3 Nothing in this Settlement Agreement limits or waives the authority of NMFS and FWS to take whatever action they deem necessary if FERC modifies the Proposed License Articles in a manner causing effects to EFH, listed species or critical habitat not previously analyzed, or fails to adopt as License conditions the terms and conditions in the Incidental Take Statements.

4.4.2 Biological Opinion Inconsistent with Settlement Agreement

4.4.2.1 Consistent with section 4.4.1 of this Settlement Agreement, NMFS and FWS anticipate that it is likely that the measures contained in Appendix 1 of this Settlement Agreement will be adequate to avoid a jeopardy finding for species presently listed as threatened or endangered.

4.4.2.2 If any Biological Opinion or Incidental Take Statement issued pursuant to Section 7 of the ESA contains a Material Modification of this Settlement Agreement, this Settlement Agreement shall be deemed modified to conform to the provisions of the Biological Opinion, unless a Party provides Notice to the other Parties that it objects and initiates ADR under section 5 of this Settlement Agreement within thirty (30) days after the Biological Opinion is filed with FERC. Dispute resolution will consider modifications to the Settlement Agreement, not the disputed Biological Opinion. If any Biological Opinion or Incidental Take Statement issued pursuant to Section 7 of the ESA contains a Material Modification of this Settlement Agreement, a Party may withdraw from this Settlement Agreement after the Parties comply with the ADR process in section 5 of this Settlement Agreement.

4.4.2.3 A Disputing Party may, in addition and to the extent provided by applicable law, seek administrative and/or judicial review of any Biological Opinion that contains a Material Modification of this Settlement Agreement. The Parties shall follow the ADR process set forth in section 5 of this Settlement Agreement to the extent reasonably practicable, in order to consider modification of this Settlement Agreement, while such administrative or judicial review is pursued. If all Parties subsequently agree to modify this Settlement Agreement to conform to the inconsistent provision, the Disputing Party or Parties shall withdraw or dismiss any administrative or judicial action, or recommend such withdrawal or dismissal, as appropriate.

4.4.2.4 Unless this Settlement is terminated pursuant to section 6 herein, if any Biological Opinion contains a Material Modification of this Settlement Agreement after a final and non-appealable administrative or judicial decision, this Settlement shall be deemed modified to conform to that decision.

4.5 CWA 401 Certification and CZMA Consistency Determination

4.5.1 401 Certification and CZMA Determination

4.5.1.1 The Parties recognize that WDOE has not issued a 401 Certification or CZMA Consistency Determination related to the Project License. Pursuant to FERC regulations, the Licensee will request a Section 401 Water Quality Certification from WDOE. By entering this Settlement Agreement, WDOE is not making a pre-decisional determination of the outcome of the 401 Certification and CZMA Consistency Determination.

4.5.1.2 As to the Licensee's application for a 401 Certification, the Parties, other than WDOE, respectfully request that WDOE accept and incorporate, without Material Modifications, as conditions to the Section 401 Certification issued to the District, all Proposed License Articles that are within the WDOE's jurisdiction pursuant to Section 401 of the CWA. The Parties further request that WDOE not include as conditions to the 401 Certification conditions that constitute a Material Modification of the Project License.

4.5.1.3 Consistent with section 4.5.1.1 of this Settlement Agreement, WDOE anticipates, based upon existing analyses and information, that the Proposed License Articles will be consistent with Section 401 of the CWA, the CZMA, the Shoreline Management Act, and Snohomish County Shoreline Management Master Program.

4.5.1.4 WDOE reserves the right to amend its Section 401 Certification by further Administrative Order if it determines that, based upon new information, the provisions hereof are no longer adequate to provide reasonable assurance of compliance with applicable water quality standards or other appropriate requirements of state law. New information may included (but will not limited to) future upstream fish migration barriers in the Sultan River resulting from future landslides, so long as such barriers have a Project nexus and are not modified by Licensee through the implementation of A-LA 12. Amendments shall be appealable to the Pollution Control Hearings Board pursuant to RCW 43.21B.

4.5.2 Section 401 Certification or CZMA Consistency Determination Inconsistent with Settlement Agreement

4.5.2.1 If WDOE denies with prejudice the Licensee's request for a Section 401 Certification or CZMA Consistency Determination, and such denial becomes final or is affirmed by a final and non-appealable administrative or judicial decision, and therefore prevents licensing of the Project, this Settlement Agreement shall terminate.

4.5.2.2 If any Section 401 Certification or CZMA Consistency Determination contains a Material Modification of this Settlement Agreement, this Settlement Agreement shall be deemed modified to conform to the provisions of the Certification or Consistency Determination, unless a Party provides Notice to the other Parties that it objects and initiates ADR under section 5 of this Settlement Agreement within thirty (30) days after the Certification or Consistency Determination is filed with FERC. Dispute resolution will consider modifications to the Settlement Agreement, not the disputed Section 401 Certification or CZMA Consistency Determination. WDOE shall not be required to participate in such dispute resolution. If any Section 401 Certification or CZMA Consistency Determination contains a Material Modification of this Settlement Agreement, a Party may withdraw from this Settlement after the Parties comply with the ADR process in section 5 of this Agreement.

4.5.2.3 A Disputing Party may, in addition and to the extent provided by applicable law, seek administrative and/or judicial review of (i) any denial with prejudice of a Licensee request for Section 401 Certification or CZMA Consistency Determination or (ii) any Section 401 Certification or CZMA Consistency Determination that contains a Material Modification of this Settlement Agreement. The Parties shall follow the ADR process set forth in section 5 of this Settlement Agreement to the extent reasonably practicable, in order to consider modification of this Settlement Agreement, while such administrative or judicial review is pursued. WDOE shall not be required to participate in such dispute resolution. If all Parties subsequently agree to modify this Settlement Agreement to conform to the inconsistent provision, the Disputing Party or Parties shall withdraw or dismiss any administrative or judicial action, or recommend such withdrawal or dismissal, as appropriate.

4.5.2.4 Unless this Settlement is terminated pursuant to section 6 herein, if the final Section 401 Certification or CZMA Consistency

Determination contains a Material Modification of this Settlement Agreement after a final and non-appealable administrative or judicial decision, this Settlement Agreement shall be deemed modified to conform to that decision.

#### 4.6 Project License

##### 4.6.1 Project License that Does Not Materially Modify the Settlement Agreement

The Parties have entered into this Settlement Agreement with the express expectation and condition that FERC shall issue a 45-year Project License that incorporates, without Material Modification, the Proposed License Articles as enforceable License Articles. The Parties agree that if FERC does so, none of the Parties will seek rehearing of the FERC License order as to the Proposed License Articles, or support any such request for rehearing by a non-Party to this Settlement Agreement. Parties may only seek rehearing on issues not covered by the Settlement Agreement or License Articles or License term. Any Party seeking rehearing on any issue shall provide Notice to the Parties as soon as practicable before filing a rehearing request. This provision shall not apply to WDOE if the Project License is inconsistent with the Section 401 Certification or CZMA Determination, and shall not apply to a Party submitting a Mandatory Term and Condition or a term and condition of a Biological Opinion, if the Project License is inconsistent with that Mandatory Term and Condition or Biological Opinion term or condition.

##### 4.6.2 Project License that Materially Modifies the Settlement Agreement

Except as provided in section 4.6.2.2 for omissions based on jurisdiction, if FERC issues a Project License that contains a Material Modification of the Settlement Agreement, this Settlement Agreement shall be deemed modified to conform to the modification unless a Party provides Notice to the other Parties that it objects and initiates ADR under section 5 of this Settlement Agreement within thirty (30) days of the FERC order.

###### 4.6.2.1 Disputing Inconsistencies

The Disputing Party(s) may also petition FERC for rehearing or seek judicial review of any Project License article, or omission of any Proposed License Article, that results in a Material Modification of the Settlement Agreement. The Parties shall follow the ADR process set forth in section 5 of this Settlement Agreement while any such rehearing, appeal or request for stay or extension is pursued. Any Disputing Party(s) may ask FERC or the court to defer action on the merits of any rehearing request or

appeal while ADR is pursued. If all Parties subsequently agree to modify this Settlement Agreement to conform to the inconsistent action, the Disputing Party(s) shall withdraw or dismiss any administrative or judicial action, or recommend such withdrawal or dismissal, as appropriate.

#### 4.6.2.2 Omission Based on Jurisdiction

If the Project License does not contain a Proposed License Article(s) solely because FERC expressly determines that it does not have jurisdiction to adopt or enforce the omitted Proposed License Article(s), this Settlement Agreement shall not be deemed modified to conform to such omission. Within 10 days of License issuance, the Licensee shall notify the Parties as to any omission and the Parties shall meet to discuss the issue and determine an appropriate response. Any Party may seek rehearing and judicial review of such omission. In any event, the Licensee shall implement any Proposed License Article or portions of Proposed License Articles that FERC excludes from the Project License, based on a lack of jurisdiction, unless this Settlement Agreement terminates or unless it would cause the Licensee to otherwise violate the License. Notwithstanding any other provision of this Settlement Agreement, Parties retain any available cause of action for specific performance of obligations addressed in this section.

#### 4.6.2.3 Omission of Aquatic License Article 12 Habitat Enhancement Account

If the Project License does not contain the Habitat Enhancement Account (HEA) specified within Aquatic License Article 12 (A-LA 12), for whatever reason, this Settlement Agreement shall be deemed modified to conform to such omission. Within 10 days of License issuance, the Licensee shall notify the Parties as to the omission and the Parties shall meet to discuss the issue and determine an appropriate response. Any Party may seek rehearing and judicial review of such omission. In any event, the Licensee shall establish the HEA as specified within A-LA 12, unless this Settlement Agreement terminates or unless it would cause the Licensee to otherwise violate the License. Thereafter, throughout the term of the License, the Licensee shall use funds from the HEA to implement projects developed pursuant to A-LA 12 (and/or other aquatic habitat enhancement License Articles). Notwithstanding any other provision of this Settlement Agreement, Parties retain any available cause of action for specific performance of obligations addressed in this section.

#### 4.7 Requests for Stay or Extension of Implementation

If the Project License is challenged, a Party may at its discretion request from FERC or a court a stay or extension of any obligation in the Proposed License Articles for the duration of the administrative or judicial review process. Any other Party may oppose the request for stay or extension.

The requesting Party shall contact the other Parties in advance of seeking a stay or extension and make reasonable efforts to discuss the scope of any request. Any Party that opposes a request for stay or extension shall contact the other Parties and make reasonable efforts to discuss the scope and extent of its opposition, prior to making any filing in opposition to FERC or the court.

#### 4.8 Responsibility for Implementation

The Licensee shall implement its obligations under this Settlement Agreement and the Project License. The Licensee shall not be excused from this obligation due to a failure by any other Party, entity or person to provide funding or carry out a duty, obligation, or responsibility it may have with respect to the Licensee's Project pursuant to other laws or agreements. Notwithstanding, the Licensee shall have no obligation to reimburse or otherwise pay any other Party for its assistance, participation, or cooperation in any activities pursuant to this Settlement Agreement or the Project License unless expressly agreed to by the Licensee or as required by law. In the event of administrative rehearing or judicial review, Parties shall bear their own costs and attorneys' fees, unless otherwise provided by applicable law.

#### 4.9 Availability of Funds

Implementation of this Settlement Agreement by any Party other than the Licensee is subject to the availability of funds. Nothing in this Settlement Agreement shall be interpreted as, or constitute a commitment or requirement that the Federal agencies obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341 and other applicable law. Nothing in this Settlement Agreement is intended or shall be construed to commit a federal official to expend federal funds not appropriated by Congress.

#### 4.10 Permits

The Licensee shall apply for and use active and diligent efforts to obtain in a timely manner and in final form all applicable federal, state, regional, and local permits, licenses, authorizations, certifications, determinations, and other governmental approvals for purposes of implementing the Project License (Permits). Active and diligent efforts include, but are not limited to, seeking appropriate administrative review of permitting decisions and reapplying as necessary. Permit applications shall be consistent with this Settlement

Agreement. The Licensee shall pay all fees required by law related to such Permits. The Licensee shall not be held in breach of this Settlement Agreement if it cannot legally implement an action because all applicable Permits required for that action have been applied for but are not yet obtained, or because a necessary Permit has been denied or includes a Material Modification of the Settlement Agreement.

If a proceeding challenging any Permit required for the action has been commenced, the Licensee shall be under no obligation under this Settlement Agreement to implement the action or any related action until any such proceeding is terminated. If any Permit has been denied or challenged, includes a Material Modification of the Settlement Agreement, or is not obtained in a timely manner, the Parties shall confer to evaluate the effect of such event on implementation of this Settlement Agreement and the Project License and to seek to develop actions to respond to that event.

The Parties recognize that a Permit delay or denial, or a Permit that contains a Material Modification of the Settlement Agreement, in itself does not alleviate the Licensee's responsibility to comply with a License Article but may be the basis for requesting FERC to amend the License. If the Parties do not agree on actions to respond to that event, a Party may initiate ADR pursuant to section 5 to address the issue of necessary actions to respond to Permit delays or denials or Material Modifications. In the event that the Parties do not agree on actions to respond to a Permit delay or denial or Material Modifications, then the Permit delay or denial or Material Modifications may constitute material new information or a basis for withdrawal pursuant to section 6.

Nothing in this section shall be construed to limit the Licensee's right to apply for a Permit before issuance of the Project License, provided that any such applications shall not contain a Material Modification of the Settlement Agreement.

#### 4.11 Reopener or Amendment of the Project License

##### 4.11.1 Reopener by a Party Other than the Licensee

A Party other than the Licensee, may request FERC to reopen the License, or to open an annual license if necessary based on material new information including a substantial error or if required to fulfill statutory, regulatory, or court-ordered responsibilities. Each Party reserves all rights under applicable law to challenge any exercise of reserved authority at the time the agency exercises that authority, including any rights provided under Sections 4(e), 18, and 33 of the FPA, if the action would constitute a Material Modification of the Settlement Agreement or the Project License.

#### 4.11.2 Amendment of Project License by Licensee

##### 4.11.2.1 Amendments that Do Not Contain a Material Modification of the Settlement Agreement

The Licensee may seek amendments of its Project License for operational improvements or efficiencies, routine amendments, or similar Project modifications that do not contain a Material Modification of the Settlement Agreement. Each Party reserves all rights under applicable law to challenge or comment on any application for a License amendment.

##### 4.11.2.2 Amendments that Contain a Material Modification of Settlement Agreement

The Licensee may seek a License amendment as necessary for the Project that would contain a Material Modification of the Settlement Agreement to comply with any FERC directive pertaining to dam safety, flood control, or Project security. The Licensee may seek such License amendment following discussions with the Parties, in an effort to achieve consensus on the amendment proposal, including, if necessary, the initiation of ADR under section 5 of this Settlement Agreement.

Additionally, the Licensee may seek a License amendment that would contain a Material Modification of the Settlement Agreement in response to: (i) material new information; (ii) another Party's proposal to reopen under section 4.11.1; (iii) a non-Party's proposal to reopen the Project License that would contain a Material Modification of the Settlement Agreement; or (iv) a Biological Opinion that would result in a Material Modification of the Settlement Agreement issued after the time period for appeal of the Project License has passed. Any proposal the Licensee may submit under (ii) or (iii) above would be conditional and withdrawn if FERC declines to adopt the other Party or non-Party's initial proposal; and the Licensee shall notify FERC of the conditional nature of its proposed amendment. Other Parties may oppose the Licensee's proposed amendment and comment and/or propose counter-amendments.

Each Party reserves all rights under applicable law to challenge or comment on any application for a License amendment. The provisions of this Settlement Agreement shall remain in effect as unmodified by any amendment until the effective date such amendment is approved by FERC.

#### 4.11.3 Notice and Consultation Requirement for Reopener or License Amendment

Prior to seeking reopener or License amendment under sections 4.11.1 or 4.11.2, a Party shall provide the proposed reopener or License amendment to the other Parties for review and comment at least ninety (90) days before initiating the reopener or amendment process with FERC, and shall consult with the Parties starting at least sixty (60) days before initiating the reopener or amendment process with FERC regarding the need for and purpose of the reopener or amendment.

A Party shall not be required to comply with this 90-day Notice and comment process if it reasonably believes an emergency situation exists or the Parties otherwise agree; and *provided further*, that the Party shall comply with any statutory or regulatory requirements for notice or consultation.

If a Party proposes a reopener or License amendment that another Party believes would contain a Material Modification of the Settlement Agreement or would adversely affect resources under its authority, and objects, then the ADR provisions in section 5 of this Settlement Agreement shall apply, and the objecting Party must invoke ADR during the 90-day Notice period or waive its objection.

#### 4.12 Amendment of Settlement Agreement

In addition to sections 4.2.1 (Mandatory Conditions), 4.4.2.2 (ESA Biological Opinion), 4.5.2.2 (CWA Section 401), 4.6.2 and 4.11, this Settlement Agreement may be amended at any time from the Effective Date throughout its term, by written unanimous agreement of all Parties still in existence, including any successors.

#### 4.13 Project Boundary

The Proposed License Articles are expressly designed so as not to result in an expansion of the Project boundary for the purpose of including the Licensee's actions under any Proposed License Articles. No Party shall expressly request, support or advocate that FERC expand the boundary of the Project to include said actions.

#### 4.14 Cooperation among Parties

The Parties shall cooperate in the implementation of this Settlement Agreement and the Project License.

#### 4.15 Support for Implementation

The Parties shall cooperate in the implementation of this Settlement Agreement and the Project License. Upon the request of the Licensee, the Parties may provide written communications (or orally, in the event written communication is impossible to obtain due to reasons outside a Party's control) of support in any administrative approval process that may be required for implementation of this Settlement Agreement or related articles of the New Project License, subject to available agency resources and agency authority. The preceding sentence shall not apply to a federal or state agency exercising administrative approval authority or to a federal or state agency not participating in the subject proceeding. All Parties are encouraged to intervene in the relicensing proceedings before FERC and support this Settlement Agreement.

#### 4.16 Monetary Payments

Notwithstanding FERC's authority to require the Licensee to undertake additional measures in excess of the agreed-upon monetary payment amounts set forth in Proposed Aquatic License Article 12, the Parties agree not to request FERC to require the Licensee to deposit or otherwise contribute additional funds in excess of the amounts agreed to in such Proposed License Articles. However, nothing in this section precludes Parties from seeking relief from FERC to require completion of a required measure or from seeking a reopener or amendment under section 4.11 of this Settlement Agreement to require the Licensee to undertake additional or different measures related to License Articles other than Proposed Aquatic License Article 12.

### **5 Dispute Resolution**

#### 5.1 General Applicability

The Parties agree to use the following alternative dispute resolution (ADR) process to resolve disputes related to this Settlement Agreement and the Proposed License Articles, unless otherwise specifically provided in this Settlement Agreement or precluded by statute or agency regulation.

The Party initiating dispute resolution under this section 5 shall notify FERC when ADR proceedings are initiated relevant to a proceeding before FERC and related to the Proposed License Articles or Project License.

The Parties agree to devote such time and attention to dispute resolution as necessary and reasonable to attempt to resolve the dispute at the earliest time possible; and each Party will cooperate in good faith promptly to schedule, attend, and participate in dispute resolution. Each Party will promptly implement all final agreements reached, consistent with its applicable statutory and regulatory responsibilities.

The ADR provisions of this Settlement Agreement shall not apply to WDOE insofar as WDOE is exercising its statutory authority to enforce the requirements of a CWA Section 401 Certification, a CZMA consistency determination, applicable water quality requirements, or other appropriate requirements of state law. However, WDOE, in its sole discretion, may choose upon specific request to participate in an ADR process in such circumstances.

## 5.2 ADR Procedures

### 5.2.1 Dispute Initiation Notice

A Party claiming a dispute shall provide timely Notice to the other Parties, describing the matter(s) in dispute and any proposed relief or resolution. For disputes arising under sections 4.2.1, 4.4, 4.5, and 4.7, the specified time for Notice shall apply. Each Party that wishes to participate in dispute resolution shall provide written Notice to the other Parties within twenty (20) days of receiving the dispute initiation Notice.

### 5.2.2 Informal Meetings

The Disputing Parties shall hold at least two (2) informal meetings to resolve the dispute, unless agreed otherwise, commencing within thirty (30) days after the dispute initiation Notice and concluding within sixty (60) days. If the Parties are unable to resolve the dispute, at least one (1) meeting will be held at the management level to seek resolution. The 60-day period may be extended upon mutual agreement of the Disputing Parties. If these meetings fail to resolve the dispute, the Disputing Parties may, by unanimous consent, agree to mediation. The Party claiming the dispute shall be responsible for coordinating all meetings under this section and shall make good faith efforts to coordinate a meeting time and location satisfactory to all Disputing Parties.

### 5.2.3 Mediation

The Disputing Parties shall choose a mediator within thirty (30) days of the conclusion of the meetings. Mediation shall not occur if the Disputing Parties cannot unanimously agree on the allocation of costs or choice of mediator. The mediation process shall be concluded not later than sixty (60) days after the mediator is selected. The above time periods may be shortened or lengthened upon mutual agreement of the Disputing Parties.

#### 5.2.4 Dispute Resolution Notice

The Party initially claiming the dispute shall provide Notice to all Parties of the result of the ADR process.

#### 5.2.5 FERC Filings after Dispute Resolution

If the Licensee is required to make a FERC filing relating to an issue that was not successfully resolved through ADR, such filing will include the Licensee's reasons, based on Project-specific information, for not adopting a Party's recommendation or for seeking FERC approval without obtaining agency approval. Any other Party may oppose or seek modification of the Licensee's filing.

#### 5.2.6 Effect of ADR on Other Proceedings

The ADR process in this section 5 does not preclude any Party from timely filing and pursuing an action for administrative or judicial relief of any FERC order, compliance matter, or other regulatory action related to the Project License; *provided* that any such Party shall initiate ADR pursuant to this section 5 as soon as practicable thereafter or concurrently therewith.

### 5.3 Remedies

This Settlement Agreement does not create a cause of action in contract for monetary damages for any alleged breach by any Party of the Project License or this Settlement Agreement. The Parties reserve all other existing remedies for material breach of the Project License or this Settlement Agreement, including seeking a License amendment or other appropriate relief from FERC.

## **6 Withdrawal from Settlement Agreement**

### 6.1 Withdrawal of a Party from Settlement Agreement

In addition to the withdrawal rights provided by section 4.11, the Party whose interests are adversely affected by a Material Modification or a Party's action that is materially inconsistent with the terms of this Settlement Agreement or Project License may withdraw from this Settlement Agreement. A Party may withdraw under this section or section 4.11 only after the Parties comply with the ADR process in section 5 of this Settlement Agreement. Following completion of the ADR process, the aggrieved Party may provide Notice to the other Parties of its withdrawal from this Settlement Agreement, pursuant to section 7.11.

If the Licensee is required to make a FERC filing addressing an issue(s) not successfully resolved through ADR pursuant to section 5, no Party may withdraw from this Settlement Agreement until FERC issues an order on the Licensee's filing. Any Party materially aggrieved by the FERC order as it relates to the

disputed matter may then withdraw pursuant to this section 6, seek rehearing before FERC, or exercise any other remedy available under applicable law. For issues that do not require a FERC filing, the Disputing Party or Parties may withdraw from this Settlement Agreement following completion of the ADR process set forth in section 5.

#### 6.2 Effective Date of Withdrawal

If ADR is unsuccessful and the aggrieved Party provides Notice of withdrawal, the withdrawal shall become effective ten (10) calendar days after such Notice.

#### 6.3 Termination of Settlement Agreement

Upon expiration of the Project License and any subsequent annual license(s), or upon withdrawal from this Settlement Agreement by the Licensee, or upon a denial of Section 401 Certification as set forth in section 4.5.2.1, this Settlement Agreement shall terminate as to all Parties and have no force or effect, except that all Parties shall continue to be bound by sections 2.2 and 7.1, which shall survive termination. The withdrawal of any Party other than the Licensee does not automatically terminate this Settlement Agreement for the remaining Parties. However, the remaining Parties will meet within ten (10) days to determine the effect of the withdrawal and whether they will continue to operate under the Settlement Agreement. A withdrawing Party shall not be bound by any term contained in this Settlement Agreement, except sections 2.2 and 7.1.

### **7 Miscellaneous**

#### 7.1 Settlement Agreement Negotiations Privileged and Confidential

Unless the Parties agree otherwise, to the extent permitted by law, all discussions, communications, drafts, work papers, and notes relating to this Settlement Agreement are privileged and confidential. This material shall not prejudice the position of any Party or participant taking part in such discussions and negotiations, and shall not be used by any entity in any manner, including but not limited to admission into evidence, as an admission, or in an argument in any forum or proceeding for any purpose, to the fullest extent allowed by law, including but not limited to 18 C.F.R. § 385.606. This provision does not apply to any information that was in the public domain prior to the development of this Settlement Agreement or that became part of the public domain at some later time through no unauthorized act or omission by any Party. This provision does not apply to: (a) any information held by a federal agency that is not protected from disclosure pursuant to the Freedom of Information Act or other applicable law; or (b) any information held by a state or local agency that is not protected from disclosure pursuant to the Washington Public Disclosure Act or other applicable state or federal law. A withdrawing Party shall continue to maintain the confidentiality of all settlement communications to the extent permitted by

applicable law. Nothing in this section 7.1 is intended to or shall be construed as prohibiting the filing of appropriate material in support of this Settlement Agreement with FERC or other regulatory agency. This section shall survive any termination of this Settlement Agreement.

7.2 Relationship to Other Agreements

The Parties recognize that certain Parties to this Settlement Agreement are also Parties to Attachments A and B, and that Proposed License Articles included in this Settlement Agreement may partially satisfy certain provisions of these other agreements. The Parties' obligations under this Settlement Agreement shall be interpreted independent of Attachments A and B. Nothing in this Settlement Agreement is intended or shall be construed to bind any Party to this Settlement Agreement to Attachments A or B. Attachment of these agreements to this Settlement Agreement is for informational purposes and convenience and does not render them part of this Settlement Agreement.

7.3 Severability of Terms of Settlement Agreement

This Settlement Agreement is made on the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire Settlement Agreement. Notwithstanding, if a court rules that any provision in this Settlement Agreement is invalid, the Parties agree to meet and confer regarding the continued viability of this Settlement Agreement.

7.4 No Third Party Beneficiaries

This Settlement Agreement shall not create any right or interest in any member of the public as a third-party beneficiary and shall not authorize any non-Party to maintain a suit at law or equity pursuant to this Settlement Agreement. The duties, obligations and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.

7.5 Successors and Assigns

This Settlement Agreement shall apply to, be binding on, and inure to the benefit of the Parties and their successors and assigns, unless otherwise specified in this Settlement Agreement. Any voluntary assignment by a Party shall not be effective unless approved by the Licensee, which approval shall not be unreasonably withheld. A partial assignment is not permitted. After the Licensee's approval of the assignment, the assignee shall sign this Settlement Agreement and become a Party.

### 7.5.1 Succession

In the event of succession by any Party, whether by statute, executive order or operation of law or contract, or any other means, the successor shall become a Party to and be bound by the terms of this Settlement Agreement, to the extent permitted by law.

### 7.5.2 Continuation of Certain Obligations

Upon completion of a succession or assignment, the initial Party shall no longer be a Party to this Settlement Agreement. It shall continue to be bound by sections 2.2, 7.1, and 7.5. Except as provided in sections 3 and 4 of this Settlement Agreement, the initial Party shall not take any action inconsistent with this Settlement Agreement or the portions of the Project License that incorporate this Settlement Agreement.

No change in ownership of the Project or transfer of the existing Project License by the Licensee shall in any way modify or otherwise affect any other Party's interests, rights, responsibilities or obligations under this Settlement Agreement. Unless prohibited by applicable law, the Licensee shall provide in any transaction for a change in ownership of its Project or transfer of its existing or Project License, that such new owner shall be bound by, and shall assume the rights and obligations of the Licensee under this Settlement Agreement upon completion of the change of ownership and approval by FERC of the License transfer.

### 7.5.3 Notice

The Licensee transferring pursuant to section 7.5.2 or an assigning Party shall provide Notice to the other Parties at least thirty (30) days prior to the proposed effective date of such transfer or assignment.

## 7.6 Extension of Time; Inability to Perform

### 7.6.1 Obligations under Project License

#### 7.6.1.1 Extension of Time

The Licensee may request an extension of time for good cause, consistent with 18 C.F.R. § 385.2008, to fulfill an obligation under its Project License. The Parties acknowledge that FERC's standard for any such request shall apply. Any Party may oppose the request and may seek ADR pursuant to section 5, as appropriate.

#### 7.6.1.2 Inability of Licensee to Perform

If the Licensee is unable to perform an obligation under its Project License, which is also a Proposed License Article in Appendix 1 of the Settlement Agreement, due to an event or circumstances beyond its reasonable control, the Licensee may file with FERC an appropriate request for relief. The Parties acknowledge that FERC's standard for any such request shall apply. Any Party may oppose the request and may seek ADR pursuant to section 5, as appropriate.

#### 7.6.2 Obligations under Section 4.6.2

If the Licensee is unable to perform an obligation under section 4.6.2 of this Settlement Agreement due to an event or circumstances beyond its reasonable control, the Licensee shall not be in breach of this Settlement Agreement.

#### 7.6.3 Notice of Delay or Inability to Perform

In the event of a delay or inability to perform a Project License obligation or an obligation under section 4.6.2, the Licensee shall provide Notice as soon as reasonably practicable. This Notice shall include: (1) a description of the event causing the delay or anticipated delay; (2) an estimate of the anticipated length of the delay; (3) a description of the measures taken or to be taken to avoid or minimize the delay; and (4) a proposed timetable for implementing the measures or performing the obligation. The Licensee shall make all reasonable efforts to promptly resume performance of the obligation and shall provide Notice when it does so.

#### 7.7 Waiver

The failure of any Party to insist, on any occasion, upon strict performance of any provision of this Settlement Agreement shall not be considered a waiver of any obligation, right or duty of, or imposed upon, such Party.

#### 7.8 Governing Law

The Project License shall be governed, construed, and enforced in accordance with federal law and regulation. By executing this Settlement Agreement, no federal agency is consenting to the jurisdiction of a state court unless such jurisdiction otherwise exists. Nothing in this Settlement Agreement shall be construed to waive the sovereign immunity of the Tribe, its officers, directors, employees or agents.

7.9 Elected Officials, Employees and Agents Not to Benefit

No elected officials, employees or agents thereof shall be entitled to any share or part of this Settlement Agreement or to any benefit that may arise from it.

7.10 Relationship of the Parties

Except as otherwise expressly set forth herein, nothing contained in this Settlement Agreement is intended or shall be construed to create an association, trust, partnership or joint venture, or impose any trust or partnership duty, obligation or liability on any Party, or create an agency relationship between or among the Parties or between any Party and any employee of any other Party.

7.11 Notice

Any Notice required by this Settlement Agreement shall be written. If practicable, Notice shall be provided by e-mail or facsimile to all Parties. Notice shall also be sent to all Parties by first-class mail or comparable method of distribution, and as applicable shall be filed with FERC. For the purposes of this Settlement Agreement, and unless otherwise specified, a Notice, including Notice via e-mail or facsimile, shall be effective upon receipt, but if provided only by U.S. Mail, seven (7) days after the date on which it is mailed. When this Settlement Agreement requires Notice in fewer than seven (7) days, Notice shall be provided by facsimile or e-mail and shall be effective when provided.

For the purpose of Notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix 2. The Parties shall provide Notice of any change in the authorized representatives designated in Appendix 2, and the Licensee shall maintain the current distribution list of such representatives. The Parties acknowledge their responsibility to keep the other Parties informed of their current address, telephone, facsimile and e-mail information. Notice obligations under this section 7.11 are in addition to any notice provisions required by applicable law.

7.12 Entire Agreement

Except for Attachment A and Attachment B, this Settlement Agreement contains the complete and exclusive agreement among all of the Parties with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, contracts, agreements in principle, and other writings prior to the Effective Date of this Settlement Agreement, with respect to its subject matter.

7.13 Section Titles for Convenience Only

Section titles in this Settlement Agreement are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any Settlement Agreement provisions or the Parties' intentions.

7.14 Costs

Unless otherwise provided in this Settlement Agreement, each Party shall bear its own costs of implementing this Settlement Agreement.

**8 Execution of Settlement Agreement**

8.1 Signatory Authority

Each signatory to this Settlement Agreement certifies that he or she is authorized to execute this Settlement Agreement and to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such Party.

8.2 Signing in Counterparts

This Settlement Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as if all signatory Parties had signed the same instrument. The signature pages of counterparts of this Settlement Agreement may be compiled without impairing the legal effect of any signatures thereon.

**IN WITNESS THEREOF,**

the Parties, through their duly authorized representatives, have caused this Settlement Agreement to be executed as of the date set forth in this Settlement Agreement.

**Public Utilities District No. 1 of Snohomish County,**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Steven J. Klein, General Manager

**United States Department of the Interior Fish and Wildlife Service,**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Robyn Thorson, Regional Director

**United States Department of Agriculture Forest Service,**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Mary Wagner, Regional Forester

**United States Department of Commerce National Marine Fisheries Service,**

\_\_\_\_\_ Date: \_\_\_\_\_

by: Barry Thom, Acting Regional Administrator Northwest Region

**Washington Department of Fish and Wildlife,**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Philip Anderson, Director

**Washington Department of Ecology,**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Jay Manning, Director

**City of Everett,**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Ray Stephanson, Mayor

**United States Department of Interior National Park Service,**

\_\_\_\_\_ Date: \_\_\_\_\_

by: Jonathan B. Jarvis, Regional Director Pacific West Region

**City of Sultan,**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Carolyn Eslick, Mayor

**American Whitewater,**

\_\_\_\_\_ Date: \_\_\_\_\_

by: Thomas O'Keefe, Pacific Northwest Stewardship Director

**Tulalip Tribes of Washington,**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Melvin R. Sheldon, Jr., Chairman

**Snohomish County,**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Aaron Reardon, County Executive

**APPENDIX 1**

**PROPOSED LICENSE ARTICLES**

**Jackson Hydroelectric Project**

**FERC No. P-2157**



**Relicensing Settlement**

**Compiled Proposed License Articles**

**October 9, 2009**

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**LICENSE ARTICLE ACRONYMS**

A-LA	Aquatic and Fishery Resources License Article
C-LA	Cultural Resources License Article
R-LA	Recreation Resources License Article
T-LA	Terrestrial Resources License Article
W-LA	Water Quality License Article

## **A-LA 1: Aquatic Resource Committee**

Within thirty (30) days of issuance of the License, the Licensee shall establish and convene an Aquatic Resource Committee (ARC) for the purpose of consultation with the Licensee as expressly provided in specific License Articles. The purpose of the ARC is to assist in implementation of the aquatic resource License Articles.

The Licensee shall arrange, administer, and chair all meetings. The Licensee shall provide draft meeting minutes for concurrence by the ARC prior to final distribution. Meeting minutes shall include ARC action items, a summary of issues discussed, decisions reached, and member concerns.

The Licensee shall bear all costs associated with conducting meetings.

For purposes of the License, consultation or consult means that the Licensee shall obtain the views of and attempt to reach consensus among the specified parties or specified committee whenever the License requires the Licensee to consult. Consultation shall not mean consultation under Section 7 of the Endangered Species Act or other federal laws specifically requiring consultation unless specifically provided.

## **A-LA 2: Marsh Creek Slide Modification and Monitoring**

If, based upon monitoring and other available information, the Aquatic Resource Committee (ARC) determines that the use of dynamite, expandable grout, or comparable methods to modify the size and location of specific rocks at the Marsh Creek Slide (MCS) is necessary to enhance fish passage at the Slide, the Licensee shall implement such modifications pursuant to a plan and a schedule approved by the ARC and the Commission and subject to obtaining any necessary regulatory approval. The Licensee shall seek the input of the US Forest Service (USFS) Enterprise Team in developing the plan for such modifications.

Modifications to the MCS shall be designed with the objective of not compromising the stability of the adjacent slope.

The Licensee shall also monitor fish passage at the MCS by continuing to annually monitor escapement in the reach upstream of the Slide, as it has been conducted since the 1990s. The Licensee shall use funds from the Habitat Enhancement Account (HEA) (see A-LA 12) to implement additional similar modifications to the MCS as necessary if the ARC concludes that an additional modification to the MCS is necessary to enhance fish passage and 1) initial or subsequent modifications cause further slides or blockages or 2) the annual escapement of Chinook salmon and steelhead trout in the spawning habitat within the Diversion Dam Index Area (RM 9.2 to 9.7) does not exceed ten (10) percent of the total annual escapement of Chinook or steelhead in all index areas in the Sultan River in any year. Any additional future modifications by the Licensee to the MCS are subject to availability of HEA funds.

To accomplish these commitments, within 180 days of issuance of the License, the Licensee shall file with the Commission, for approval, a Marsh Creek Slide Monitoring and Modification Plan (Marsh Creek Slide Plan). The Marsh Creek Slide Plan shall include: (1) the establishment of a permanent survey control point or benchmark; (2) the methods and schedule for conducting a detailed baseline physical survey at low flow; (3) the method and schedule for using dynamite, expandable grout or comparable methods to modify the size and location of specific rocks to create additional potential passage route(s) and improve passage; (4) the method and schedule for conducting post modification physical surveys of the Marsh Creek Slide; (5) the method and schedule for monitoring fish use and escapement upstream of the Marsh Creek Slide on an annual basis throughout the License term; and (6) the method and schedule for conducting physical surveys of the Marsh Creek Slide subsequent to flow events exceeding 4,000 cfs instantaneous peak as measured at the Diversion Dam or a scheduled process flow pursuant to A-LA 8.

The Licensee shall develop the Marsh Creek Slide Plan in consultation with the ARC. The Licensee shall allow a minimum of thirty (30) days for members of the ARC to comment and make recommendations before submitting the Marsh Creek Slide Plan to the Commission. When filing the Marsh Creek Slide Plan with the Commission, the Licensee shall include documentation of consultation; copies of comments and

## **A-LA 1: Aquatic Resource Committee**

Within thirty (30) days of issuance of the License, the Licensee shall establish and convene an Aquatic Resource Committee (ARC) for the purpose of consultation with the Licensee as expressly provided in specific License Articles. The purpose of the ARC is to assist in implementation of the aquatic resource License Articles.

The Licensee shall arrange, administer, and chair all meetings. The Licensee shall provide draft meeting minutes for concurrence by the ARC prior to final distribution. Meeting minutes shall include ARC action items, a summary of issues discussed, decisions reached, and member concerns.

The Licensee shall bear all costs associated with conducting meetings.

For purposes of the License, consultation or consult means that the Licensee shall obtain the views of and attempt to reach consensus among the specified parties or specified committee whenever the License requires the Licensee to consult. Consultation shall not mean consultation under Section 7 of the Endangered Species Act or other federal laws specifically requiring consultation unless specifically provided.

## **A-LA 2: Marsh Creek Slide Modification and Monitoring**

If, based upon monitoring and other available information, the Aquatic Resource Committee (ARC) determines that the use of dynamite, expandable grout, or comparable methods to modify the size and location of specific rocks at the Marsh Creek Slide (MCS) is necessary to enhance fish passage at the Slide, the Licensee shall implement such modifications pursuant to a plan and a schedule approved by the ARC and the Commission and subject to obtaining any necessary regulatory approval. The Licensee shall seek the input of the US Forest Service (USFS) Enterprise Team in developing the plan for such modifications.

Modifications to the MCS shall be designed with the objective of not compromising the stability of the adjacent slope.

The Licensee shall also monitor fish passage at the MCS by continuing to annually monitor escapement in the reach upstream of the Slide, as it has been conducted since the 1990s. The Licensee shall use funds from the Habitat Enhancement Account (HEA) (see A-LA 12) to implement additional similar modifications to the MCS as necessary if the ARC concludes that an additional modification to the MCS is necessary to enhance fish passage and 1) initial or subsequent modifications cause further slides or blockages or 2) the annual escapement of Chinook salmon and steelhead trout in the spawning habitat within the Diversion Dam Index Area (RM 9.2 to 9.7) does not exceed ten (10) percent of the total annual escapement of Chinook or steelhead in all index areas in the Sultan River in any year. Any additional future modifications by the Licensee to the MCS are subject to availability of HEA funds.

To accomplish these commitments, within 180 days of issuance of the License, the Licensee shall file with the Commission, for approval, a Marsh Creek Slide Monitoring and Modification Plan (Marsh Creek Slide Plan). The Marsh Creek Slide Plan shall include: (1) the establishment of a permanent survey control point or benchmark; (2) the methods and schedule for conducting a detailed baseline physical survey at low flow; (3) the method and schedule for using dynamite, expandable grout or comparable methods to modify the size and location of specific rocks to create additional potential passage route(s) and improve passage; (4) the method and schedule for conducting post modification physical surveys of the Marsh Creek Slide; (5) the method and schedule for monitoring fish use and escapement upstream of the Marsh Creek Slide on an annual basis throughout the License term; and (6) the method and schedule for conducting physical surveys of the Marsh Creek Slide subsequent to flow events exceeding 4,000 cfs instantaneous peak as measured at the Diversion Dam or a scheduled process flow pursuant to A-LA 8.

The Licensee shall develop the Marsh Creek Slide Plan in consultation with the ARC. The Licensee shall allow a minimum of thirty (30) days for members of the ARC to comment and make recommendations before submitting the Marsh Creek Slide Plan to the Commission. When filing the Marsh Creek Slide Plan with the Commission, the Licensee shall include documentation of consultation; copies of comments and

recommendations; and specific descriptions of how comments and recommendations from the ARC are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based upon Project-specific information.

Upon Commission approval, the Licensee shall implement the Marsh Creek Slide Plan.

### **A-LA 3: Temperature Conditioning in Reach 3**

The Licensee shall implement the following program to condition the temperature of the water released at Culmback Dam pursuant to the A-LA 9 Reach 3 instantaneous minimum flow requirements. The program's objective is to provide a seasonally appropriate water temperature regime to improve conditions for salmonids and other aquatic resources (including fish and macroinvertebrates) in Reach 3 (RM 9.7 to 16.1) of the Sultan River.

#### **1. Temperature Conditioning Performance Standards**

In consultation with the Aquatic Resource Committee (ARC), the Licensee shall develop temperature conditioning performance standards for April through October for (1) the water release points and (2) the downstream end of Reach 3. These temperature conditioning performance standards shall be the suitable temperature bands (ranges) for the benefit of salmonids and other aquatic resources (including fish and macroinvertebrates). These temperature conditioning performance standards shall comply with applicable state water quality standards.

#### **2. Temperature Conditioning Monitoring**

The Licensee shall monitor water temperature within Reach 3 for the term of the License. The Licensee shall also monitor the biological response of salmonids and other aquatic resources (including fish and macroinvertebrates) to the temperature conditioning in at least two (2) separate index areas within Reach 3 for the term of the License. The temperature conditioning monitoring shall be done in consultation with the ARC.

#### **3. Temperature Conditioning Program Development**

##### **3.1. Phase One**

Until the earlier of (a) two (2) years after the date that the Licensee completes the Diversion Dam's volitional fish passage modifications, as described in A-LA 13, or (b) January 1, 2020, the Licensee shall implement the temperature condition program within the constraints of the Project's existing piping infrastructure. During Phase One, the Licensee shall make temperature sensor and control valve modifications, as necessary.

The water release points shall be the 10-inch cone valve, the hydro unit, and the 16-inch auxiliary release line. Blending ratios associated with this temperature conditioning program shall be determined by temperature monitoring at the water release points, the downstream end of Reach 3, Spada Lake, and/or other suitable locations.

Phase One of the temperature conditioning program shall be implemented only when (1) reservoir elevations are greater than 1410 feet mean sea level (msl) and (2) the reservoir is stratified (typically April through October).

### 3.2. Phase Two

Prior to the earlier of (a) two (2) years after the date that the Licensee completes the Diversion Dam's volitional fish passage modifications, as described in A-LA 13, or (b) January 1, 2020, and subject to the Commission's approval and obtaining any necessary regulatory approval, the Licensee shall install and operate a temperature conditioning structure (Phase Two Structure). All of the flow components for this structure, except for the valves, shall have a hydraulic capacity to allow the Licensee to provide no less than 165 cfs (at Spada Lake elevation of 1430 feet msl) of temperature conditioned water immediately below Culmback Dam.

When the reservoir is above 1380 feet msl, this structure shall allow the Licensee to temperature condition the flows released from Culmback Dam.

Blending ratios associated with this temperature conditioning program shall be determined by temperature monitoring at the water release points, the downstream end of Reach 3, Spada Lake, and/or other suitable locations.

Phase Two of the temperature conditioning program shall be implemented only when (a) reservoir elevations are greater than 1380 feet msl and (b) the reservoir is stratified (typically April through October).

### 4. Water Temperature Conditioning Plan

Within 180 days of issuance of the License, the Licensee shall file with the Commission, for approval, a Water Temperature Conditioning Plan (WTC Plan). This WTC Plan shall document how the Licensee shall implement a program to condition the temperature of waters released at Culmback Dam. The WTC Plan shall include: (1) the preliminary operation plan for the conditioning of water released from Culmback Dam pursuant to the A-LA 9 minimum flow schedule to achieve temperature conditioning performance standards in Reach 3 during both Phase One and Phase Two; (2) the method and schedule for, and limitations upon, temperature conditioning of water releases; (3) the method, locations, and schedule for monitoring water temperature within Reach 3 and the response of aquatic resources (including fish and macroinvertebrates) to water temperature conditioning; (4) the method and schedule for adjusting the water temperature release schedule based upon temperature monitoring and response of the aquatic resources; (5) the conceptual design drawings of the Licensee's proposed alternatives for the Phase Two Structure; (6) a preliminary operation and maintenance plan for the proposed alternatives for the Phase Two Structure; (7) a schedule for selection, design and construction of the Phase Two Structure; and (8) the temperature conditioning program annual reporting and ARC consultation requirements.

The Licensee shall develop the WTC Plan in consultation with the ARC. The Licensee shall allow a minimum of thirty (30) days for members of the ARC to comment and make recommendations before submitting the WTC Plan to the Commission. When filing the WTC Plan with the Commission, the Licensee shall include documentation of

consultation; copies of comments and recommendations; and specific descriptions of how comments and recommendations from the ARC are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based upon Project-specific information.

Upon Commission approval, the Licensee shall implement the WTC Plan.

## **A-LA 4: Whitewater Boating Flows**

The Licensee shall provide flows for twelve (12) viable whitewater boating events every three (3) years for the duration of the License with sufficient advance notice to whitewater boaters. During each three-year period, the Licensee shall provide a firm water budget of 2,100 acre-feet of water (total, to be allocated over three (3) years) to ensure that twelve (12) viable whitewater events occur. If the 2,100 acre-feet of water budget in combination with controlled and uncontrolled flow releases (i.e. spill) and accretion flows is not sufficient to achieve twelve (12) viable whitewater events during each three (3) year period, the Licensee shall provide a reserve budget of 1,200 acre-feet to ensure that such events occur.

### 1. Whitewater Recreation Plan

Within ninety (90) days after issuance of the License, the Licensee shall file with the Commission, for approval, a Whitewater Recreation Plan (WR Plan). This WR Plan shall document how the Licensee shall implement a program to provide annual higher flows in the Sultan River below Culmback Dam for whitewater boating for the duration of the License.

1.1 The WR Plan shall include the following provisions that describe: (1) the frequency, magnitude, duration, and timing of each whitewater event during the first three-year period and the mechanism for determining such parameters during subsequent years; (2) operational, biological, and other constraints upon whitewater events; (3) the ongoing involvement (including annual meetings) of the Aquatic Resource Committee (ARC) and American Whitewater in implementing the Program; (4) the mechanism for timing whitewater events to coincide with natural rainfall events or coordinate with Project generation or other License Article obligations to achieve greater flow volumes in desired reaches or habitats; (5) mechanism for notifying whitewater boating stakeholders of whitewater boating opportunities during scheduled whitewater events and other high flow events within the Sultan River; (6) mechanism for assessing the boaters' satisfaction during whitewater events and impacts to aquatic and terrestrial resources; (7) mechanism for recording the number of participants, safety incidents, and costs; (8) the timing and other restrictions necessary to minimize impacts to aquatic resources, to not exacerbate flood damage in the City of Sultan; (9) the method and schedule for monitoring flow releases and water budget accounting pursuant to the Plan; (10) the waiver of indemnity for participants in a scheduled flow release; and (11) the mechanism for providing and restricting the whitewater boating stakeholder representatives shuttle vehicle access to Culmback Dam and the Diversion Dam during scheduled whitewater events

1.2 The Licensee shall develop the WR Plan in consultation with the ARC, American Whitewater and National Park Service (NPS). The Licensee shall

allow a minimum of thirty (30) days for members of the ARC, American Whitewater and NPS to comment and make recommendations before submitting the WR Plan to the Commission. When filing the WR Plan with the Commission, the Licensee shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations from the ARC, American Whitewater, and NPS are accommodated by the WR Plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based upon Project-specific information. Upon Commission approval, the Licensee shall implement the WR Plan.

## 2. Whitewater Events

2.1 The twelve (12) whitewater events will be provided either as (1) scheduled events (section 2.3), or (2) viable unscheduled whitewater events (section 2.2).

2.2 Viable Unscheduled Whitewater Events: A viable unscheduled whitewater event is defined as a calendar day (a) occurring between March 15 and November 30 or at times agreed to by the Licensee and American Whitewater in consultation with the ARC, (b) with controlled and uncontrolled flow releases (i.e. spill) and accretion flows between 600 and 2000 for at least three (3) hours, (c) during a time of day that supports whitewater boating, at conditions that allow access to the reach, and (d) with at least 48 hours notice to boaters.

2.3 Scheduled Whitewater Events: Each year, at a minimum two (2) of the whitewater events will be scheduled at least two (2) weeks in advance and shall occur on weekends, with one (1) occurring in September and one (1) occurring in April or May. Each event shall be between 600 cfs and 2000 cfs and at times of the day that support whitewater boating. If the duration of a scheduled whitewater event is scheduled to be longer than three (3) daylight hours, the event will be counted as two (2) events. For purposes of determining compliance, the scheduled whitewater event's magnitude and duration will be measured at the flow gage immediately upstream of the City of Everett's Diversion Dam at River Mile (RM) 9.8.

2.4 So long as the whitewater recreation flow occurs on the noticed day for the whitewater event, the scheduled magnitude and duration of a whitewater event may be achieved through any combination of controlled (including releases to achieve process flow components pursuant to A-LA 8) and uncontrolled flow releases (i.e. spill) and accretion flow. However, only water (above scheduled minimum flows) released from Culmback Dam pursuant to a scheduled whitewater recreation flow event and any downramping associated with such release (as required by A-LA 5) shall be deducted from the 2,100 acre-feet water budget. If a portion of the 2,100 acre-foot water budget remains after the twelve (12) events have been provided, the balance of the

water budget is available for additional releases during that three (3) year period.

2.5 So long as the whitewater recreation flow occurs on the scheduled day, the scheduled magnitude and duration of a whitewater event may be achieved through any combination of controlled (including releases to achieve process flow components pursuant to A-LA 8) and uncontrolled flow releases (i.e. spill) and accretion flow. However, only water released from Culmback Dam pursuant to a scheduled whitewater recreation flow event and any downramping associated with such release (as required by A-LA 5) shall be deducted from the water budget provided in section 1.1.

2.6 The Licensee shall consult with the ARC, NPS and American Whitewater on an annual basis to determine if the WR program is providing a meaningful whitewater experience and if the program should be modified, within the constraints of the water budget. The Licensee in consultation with the ARC and American Whitewater, may request that the Commission temporarily suspend or reduce the WR Program based upon lack of meaningful whitewater boating experience. In the event that the program is temporarily suspended or reduced, the Licensee will consult annually with the ARC, NPS and American Whitewater concerning whether the Program shall be resumed.

### 3. Drought Events

During the course of a water year, if necessary, the Licensee in consultation with the ARC shall develop a drought controlled flow release schedule for whitewater events when: (1) a drought event resulting in advisory reductions in domestic water consumption (as described by the 2007 City of Everett's Drought Response Plan as a Stage 1 response to a drought event ) is occurring; (2) the whitewater events described in this LA require interim modification (including postponing or reductions in flow magnitude) to manage water supply during periods of weather related shortages; and (3) the drought release schedule shall not undermine the purposes of this License Article. The Licensee shall notify the Commission and shall implement the drought release schedule within seven (7) days of providing such notice, unless otherwise directed by the Commission.

### 4. Reservation System

The Licensee shall develop a reservation system for the weekend whitewater events, a scheduled water release may be canceled if less than six (6) whitewater boaters makes a reservation by 5:00 p.m. on the Thursday prior to the scheduled event. Any event cancelled due to insufficient reservations shall be counted as if the event has occurred (with a proportional reduction from the water budget provided in A-LA 4), and the Licensee shall be under no obligation to reschedule the whitewater event.

## **A-LA 5: Downramping Rate Conditions**

The Licensee shall operate the Project within the following downramping rate schedules and downramping frequency limitations. Downramping rate refers to the rate of allowable stage reduction per unit time. The downramping rates do not apply to power-generation equipment failures, forced outages, or when flow releases are exacerbating downstream flood conditions. However, the Licensee shall take steps listed in section 1 below to reduce operational emergencies that may trigger sudden drops in flow below the Powerhouse. The Licensee shall track rates on a 15-minute basis by monitoring U.S. Geological Survey (USGS) Streamflow Gages. No one (1) 15-minute downramping value shall exceed half the hourly rate shown in the schedule. No four (4) consecutive 15-minute downramping rates, in total, shall exceed the hourly rates shown in the schedule.

Day is defined as one (1) hour after sunrise to one (1) hour before sunset. Night is defined as one (1) hour after sunset to one (1) hour before sunrise. If the Licensee downramps during one (1) hour before to one (1) hour after sunrise or sunset and different downramping rates are required for day and night, the Licensee shall follow the lower of the day or night rates.

### **1. Operational Improvements**

To reduce operational emergencies that result in flow fluctuations, the Licensee shall install and use a flow deflector to the existing Pelton wheel units to maintain flow during load rejection events. Until the new Pelton bypass system proves to be operationally effective, the Licensee shall maintain staff at the Powerhouse during potential electrical storms.

### **2. Redd Dewatering Protection**

The Licensee shall institute a salmon ceiling flow of 550 cfs (mean daily discharge measured at the Powerhouse gage) during the September 15 to October 15 period of peak spawning for Chinook salmon, unless natural accretion flows or Spada Lake inflow supersedes the Licensee's hydraulic control of the Project. This ceiling shall ensure that redds remain wetted should Project flows be reduced to minimums of 300 cfs. Furthermore, the Licensee shall use spawner survey information collected to determine the highest elevation at which spawning has occurred during Chinook and steelhead spawning seasons. The Licensee shall attempt to keep redds covered with water until fry emergence has occurred. The spawning flow ceiling and corresponding minimum flow may be adjusted based upon approval by the Aquatic Resource Committee (ARC).

### 3. Downramping Rate Schedules

#### 3.1 Jackson Hydroelectric Project Powerhouse Downramping Rate Schedules

The following schedule as measured at USGS Streamflow Gage No. 12138160 applies to Jackson Hydroelectric Project Powerhouse downramping when the flow is less than 1,500 cfs. When providing flow releases from Culmback Dam (including process flows, special purpose flows, and whitewater recreation flows), the Licensee shall coordinate such releases to ensure compliance with this schedule.

#### **January 1 to May 31**

<b>Flow Range (cfs)</b>	<b>Day</b>	<b>Night</b>
1,500 to 750	4 inches per hour	4 inches per hour
750 to 600	2 inches per hour	2 inches per hour
600 to 300	2 inches per hour	4 inches per hour
300 to Minimum	2 inches per hour	2 inches per hour

#### **June 1 to September 15**

<b>Flow Range (cfs)</b>	<b>Day</b>	<b>Night</b>
1,500 to 750	2 inches per hour	1 inch per hour
750 to 600	2 inches per hour	1 inch per hour
600 to Minimum	2 inches per hour	1 inch per hour

#### **Sept. 16 to Oct. 31**

<b>Flow Range (cfs)</b>	<b>Day</b>	<b>Night</b>
1,500 to 750	2 inches per hour	1 inch per hour
750 to 600	2 inches per hour	1 inch per hour
600 to Minimum	2 inches per hour	2 inches per hour

#### **November 1 to December 31**

<b>Flow Range (cfs)</b>	<b>Day</b>	<b>Night</b>
1,500 to 750	4 inches per hour	6 inches per hour
750 to 600	2 inches per hour	2 inches per hour
600 to Minimum	4 inches per hour	4 inches per hour

From January 1 to September 15, if river flow prior to downramping has exceeded 1,000 cfs for more than 72 hours, the Licensee shall downramp through the 750 cfs to 600 cfs flow range only after holding flow constant between 750 and 850 cfs for at least six (6) hours of daylight and one (1) overnight period.

3.2 Reach 2 (River Mile (RM) 4.5 to RM 9.7) and Reach 3 (RM 9.7 to RM 16.1)  
Ramping Rate Schedule

The following schedule as measured at USGS Streamflow Gage No. 12137800 applies to downramping when the flow is below 300 cfs. The schedule does not apply to actions (such as gravel flushing) which require manual operation of the sluice gate at the Diversion Dam.

<u>Time of Year</u>	<u>Day</u>	<u>Night</u>
January 1 to May 31	3 inches per hour	3 inches per hour
June 1 to September 15	3 inches per hour	1.5 inches per hour
September 16 to October 31	3 inches per hour	3 inches per hour
November 1 to December 31	6 inches per hour	6 inches per hour

For flow releases from Culmback Dam (including process flows, special purpose flows, and whitewater recreation flows) that cause the flow range at USGS Streamflow Gage No. 12137800 to be greater than 300 cfs but less than 1000 cfs, the Licensee shall attempt within the constraints of the Project's existing equipment to limit the downramping rate to no more than 0.5 feet per hour.

4. Downramping Frequency Limitations

The Licensee shall limit Jackson Hydroelectric Project Powerhouse downramping to no more than a total of 48 hours from January 1 through May 31. The Licensee shall limit Jackson Hydroelectric Project Powerhouse downramping to no more than 16 hours of the seasonally allotted 48 allowed in any consecutive 30-day period during this January 1 through May 31 period. The downramping frequency limitations apply when downramping is greater than one (1) inch per hour and river flows as measured at USGS Streamflow Gage No. 12138160 are less than 750 cfs. Ramping as a result of high flow events required by License Articles (process flows, whitewater recreation flows, special purpose flows) is not subject to the downramping frequency limitations.

5. Downramping Report

Within one (1) year of the completion of the side channel enhancement projects pursuant to A-LA 7, the Licensee shall file with the Commission a ramping rate report. The Licensee shall develop this report in consultation with the ARC. The report shall evaluate whether additional ramping rate restrictions are necessary to protect juvenile salmon from stranding.

6. Incident Report

If Project operations result in an exceedance of the above downramping rate schedules (section 3) or downramping rate restrictions (section 4), the Licensee shall notify the members of the ARC and the Commission no later than ten (10) business days after such incident.

## **A-LA 6: Large Woody Debris (LWD)**

Within five (5) years of the Commission's approval of the Large Woody Debris Plan (LWD Plan), the Licensee shall install five (5) to eight (8) large woody debris (LWD) structures in the lower Sultan River (River Mile (RM) 0 to RM 16) subject to gaining regulatory approval and necessary legal access. In addition, starting ten (10) years after License issuance through the remainder of the term of the License, the Licensee shall install up to four (4) additional LWD structures in the Sultan River at a schedule to be determined by the Aquatic Resource Committee (ARC), subject to gaining regulatory approval and necessary legal access. In addition, throughout the License term, the Licensee shall move woody debris accumulated in Spada Reservoir between Culmback Dam and the log boom to areas targeted for restoration decided by the ARC.

Up to five (5) of the initial eight (8) structures shall be main channel LWD structures designed to improve main channel habitat complexity. The Licensee shall design the main channel LWD structures to re-direct flow, carve and create habitat, add diversity, retain and sort sediment, provide salmonid rearing habitat, and/or provide a medium for use by macroinvertebrates.

Up to three (3) of the initial eight (8) structures shall be associated with side channels and designed to improve mainstem / side channel connectivity by re-directing flow into the side channel, as reasonably feasible and appropriate.

Every LWD structure installed pursuant to this License Article shall include a minimum of five (5) and up to thirty (30) structural pieces and where possible, shall be designed to collect additional wood over time. Additionally, each structural piece shall be between 24-inches to 36-inches in diameter (dbh) and approximately 35-feet to 40-feet in length with rootwads intact. The size and length of each structural piece shall be limited by the transportation capacity of moving structures to a staging area by truck. Further limitations shall be imposed for projects relying on the use of helicopter transport of structural pieces. The weight of each structural piece shall be limited by aerial transport capabilities by Chinook helicopter between the staging area and the project site. The structural pieces shall be one of the following species: fir, hemlock or cedar. Structural pieces greater than 36-inches in diameter (dbh) shall be considered subject to availability and the limitations previously described.

In selecting the specific location and design of an LWD structure, the Licensee shall consult with the ARC and consider the probability of structure retention and risk to property.

The Licensee shall use woody debris from Spada Reservoir that accumulates between Culmback Dam and the log boom where possible to support the LWD projects described herein and also to provide materials in support of the Side Channel Enhancement (SCE) projects. The Licensee shall consult with the ARC regarding movement and placement of materials downstream of Culmback Dam.

To accomplish this, within one (1) year of issuance of the License, the Licensee shall file with the Commission, for approval, an LWD Plan. This LWD Plan shall document how the Licensee shall implement a program to install up to eight (8) LWD structures between RM 0 and RM 16 in the Sultan River within five (5) years of Commission approval of the LWD Plan and up to an additional four (4) LWD structures from ten (10) years after License issuance through the term of the License. The LWD Plan shall include provisions that describe: 1) the design and location of each LWD structure; 2) the LWD installation schedule; 3) the restrictions necessary to minimize adverse impacts to public safety and property; 4) the method and schedule for monitoring the effectiveness of the LWD structures; and 5) the method and schedule for moving woody debris accumulated in Spada Reservoir between Culmback Dam and the log boom to areas targeted for restoration decided by the ARC.

The Licensee shall develop the LWD Plan in consultation with the ARC. The Licensee shall allow a minimum of thirty (30) days for members of the ARC to comment and make recommendations before submitting the LWD Plan to the Commission. When filing the LWD Plan with the Commission, the Licensee shall include documentation of consultation; copies of comments and recommendations; and specific descriptions of how comments and recommendations from the ARC are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based upon Project-specific information.

Upon Commission approval, the Licensee shall implement the LWD Plan.

## **A-LA 7: Side Channel Projects**

The Licensee shall enhance the salmonid habitat function of a minimum of 10,000 linear feet of side channel area to provide a minimum of three (3) acres of additional rearing habitat and other habitat functions. This habitat shall be located within the wetted geographic area defined by a flow of 4,100 cfs, within the Sultan River, measured downstream of the Powerhouse. This enhancement shall be achieved through projects that improve flow connectivity or other habitat modification projects. This enhancement shall be subject to obtaining regulatory approval and legal access to any property necessary to carry out the above enhancement.

As part of this commitment, the Licensee shall restore and maintain flow connectivity between the mainstem Sultan River and the five prominent side channels at flows greater than 300 cfs (as measured at the USGS Streamflow Gage No. 12138160). These five prominent side channels are identified in the Preliminary License Proposal (December 2008) at Figure 5.3-12 as Side Channels 1, 2, 3, A, and B. At Side Channels 1, 2, 3, A and B, the Licensee shall excavate the inlets or use other means to redirect and maintain flow to ensure that flow connectivity and habitat value is achieved at flows greater than 300 cfs. The Licensee shall design the excavation or other means utilized in these side channels so that connectivity is self-maintaining. The Licensee shall also design the side channel enhancements to avoid adverse impacts to surrounding properties (including the City of Sultan's recreational properties). If property easements or regulatory approval cannot be obtained, the Licensee shall develop, in consultation with the Aquatic Resource Committee (ARC), other similar projects in the Sultan or Skykomish river systems to meet the linear foot and square foot requirements dictated by this License Article obligation.

The Licensee shall rely upon LiDAR, HEC\_RAS modeling, existing studies and other available information to identify other side channels, swales, backwater and off channel habitats suitable for enhancement as salmonid rearing habitat within the Sultan River downstream of Culmback Dam.

As described in the LWD License Article, the Licensee shall use large woody debris collected at Culmback Dam to add structure and function to side channels.

Within one (1) year of issuance of the License, the Licensee shall file with the Commission, for approval, a Side Channel Enhancement Plan (SCE Plan). This SCE Plan shall document how the Licensee shall implement a program to enhance the salmonid rearing habitat function in a minimum of 10,000 linear feet of side channel area within the wetted geographic area defined by a flow of 4,100 cfs as measured at the USGS gaging station below the Powerhouse within the Sultan River downstream of Culmback Dam. The SCE Plan shall include provisions that describe: 1) the method and schedule for restoring and maintaining year-round flow connectivity between the mainstem Sultan River and Side Channels 1, 2, 3, A, and B; 2) the method and schedule for excavating or utilizing other means to redirect and maintain flow, Side Channels 1, 2, 3, A, and B; 3) the method and schedule for identifying, enhancing and maintaining other

off channel habitat suitable for enhancement; 4) the use of large woody debris or other flow re-direction means to re-direct a portion of the mainstem flow into the side channels, 5) the use of large woody debris collected at Culmback Dam to add structure and function within the side channel; and 6) the method and schedule for monitoring (including reporting requirements) and maintaining side channel enhancements throughout the term of the License.

The Licensee shall develop the SCE Plan in consultation with the ARC. The Licensee shall allow a minimum of thirty (30) days for members of the ARC to comment and make recommendations before submitting the SCE Plan to the Commission. When filing the SCE Plan with the Commission, the Licensee shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations from the ARC are accommodated by the Licensee's plan. If the Licensee does not adopt an individual ARC member's recommendation, the filing shall include the Licensee's reasons based upon Project-specific information.

Upon Commission approval and obtaining any necessary regulatory approvals, the Licensee shall implement the SCE Plan.

## **A-LA 8: Process Flow Regime**

The Licensee shall discharge water from the Project into the Sultan River to ensure that the magnitude, duration, timing and frequency of the process flow components specified within sections 1 through 5 of this License Article are achieved. However, unless otherwise provided by this License Article, the magnitude, duration, timing and frequency of the process flow components may be achieved through any combination of controlled (including whitewater boating releases pursuant to A-LA 4) and uncontrolled flow releases (i.e. spill) and accretion flow.

**A-LA 8 Table 1. Process Flow Components Summary**

<b>Process Flow Component</b>	<b>Magnitude and Duration</b>	<b>Frequency</b>
<p><b>Component 1:</b> Channel Maintenance Flow (measured at USGS Streamflow Gage No. 12138160)</p>	<p>Component Flow achieved when: (a) a target flow of at least 4100 cfs is maintained for twenty-four (24) hours; or  (b) a target flow of at least 4100 cfs is achieved and the Licensee provides a maximum release flow at the time when flow drops below 4100 cfs for a total duration (including the target flow and maximum release) of twenty-four (24) consecutive hours.</p>	<p>Four (4) times every ten (10) years (but not less than once every four (4) years).</p>
<p><b>Component 2:</b> Channel Forming (measured at USGS Streamflow Gage No. 12138160)</p>	<p>Component flow is achieved when: (a) a target flow of at least 6500 cfs is maintained for twenty-four (24) consecutive hours; or  (b) a target flow of 6500 cfs is achieved and the Licensee provides a maximum release flow at the time when flow drops below 6500 cfs for a total duration (including the target flow and maximum release) of twenty-four (24) consecutive hours, or  (c) the Licensee provides a maximum release flow for twenty-four (24) consecutive hours that is timed to achieve, to the extent feasible, a target flow of 6500 cfs.</p>	<p>One (1) time every ten (10) years.</p>

<p><b>Component 3.1:</b> Reach 1 Flushing Flows (measured at USGS Streamflow Gage No. 12138160)</p>	<p>Component flow is achieved when 1500 cfs is maintained for six (6) consecutive hours. If the Spada Reservoir is below 1420 feet, component flow is achieved when a 1200 cfs instantaneous minimum flow is maintained for six (6) consecutive hours.</p>	<p>Two (2) times every year (with one occurring in September and one occurring between April 1 and May 31).</p>
<p><b>Component 3.2:</b> Reach 2 Flushing Flows (measured immediately upstream of Powerhouse at RM 4.7)</p>	<p>Component flow achieved when: (a) a 500 cfs instantaneous minimum flow is maintained for six (6) consecutive hours; or (b) a 700 cfs instantaneous minimum flow is maintained for three (3) consecutive hours.</p>	<p>Two (2) times every year (with one occurring in September and one occurring between April 1 and May 31).</p>
<p><b>Component 3.3:</b> Reach 3 Flushing Flows (measured immediately upstream of City's Diversion Dam at RM 9.8)</p>	<p>Component flow achieved when: (a) a 400 cfs instantaneous minimum flow is maintained for six (6) consecutive hours; or (b) a 600 cfs instantaneous minimum flow is maintained for three (3) consecutive hours.</p>	<p>Two (2) times every year (with one occurring in September and one occurring between April 1 and May 31).</p>
<p><b>Component 4.1:</b> Reach 1 Upstream Migration Flow (measured at USGS Streamflow Gage No. 12138160)</p>	<p>Component flow achieved when a minimum flow between 800 and 1200 cfs as determined by the Aquatic Resource Committee (ARC) is maintained or exceeded for six (6) consecutive hours.</p>	<p>One (1) time per year (occurring in September).</p>
<p><b>Component 4.2:</b> Reach 2 Upstream Migration Flow (measured immediately upstream of the Powerhouse at RM 4.7)</p>	<p>Component flow is achieved when a flow between 400 and 600 cfs instantaneous minimum flow, as determined by the ARC, is maintained for six (6) consecutive hours.</p>	<p>One (1) time per year (occurring in September).</p>

<b>Component 4.3:</b> Reach 3 Upstream Migration Flow (measured immediately upstream of the City's Diversion Dam at RM 9.8)	Component flow achieved when a minimum flow between 300 and 500 cfs as determined by the ARC is maintained or exceeded for six (6) consecutive hours.	One (1) time per year (occurring in September) after completion of Diversion Dam volitional fish passage modification.
<b>Component 5.1:</b> Reach 1 Outmigration Flow (measured at USGS Streamflow Gage No. 12138160)	Component flow is achieved when between 800 and 1200 cfs minimum flow as determined by the ARC is maintained or exceeded for six (6) consecutive hours.	Two (2) times per year (one occurring in April and one occurring in May).
<b>Component 5.2:</b> Reach 2 Outmigration Flow (measured immediately upstream of the Powerhouse at RM 4.7)	Component flow is achieved when between 400 and 600 cfs minimum flow as determined by the ARC is maintained or exceeded for six (6) consecutive hours.	Two (2) times per year (one occurring in April and one occurring in May).
<b>Component 5.3:</b> Reach 3 Outmigration Flow (measured immediately upstream of the City's Diversion Dam at RM 9.8)	Component flow is achieved when between 200 and 400 cfs minimum flow as determined by the ARC is maintained or exceeded for six (6) consecutive hours.	Two (2) times per year (one occurring in April and one occurring in May) after volitional fish passage and the ARC determines need.

The controlled flow releases shall be consistent with the Licensee's obligation pursuant to other License Articles and agreements with the City of Everett pertaining to its municipal water supply needs. The Licensee, in consultation with the Aquatic Resources Committee (ARC), shall schedule the timing of the controlled flow releases for any process flow component to avoid exacerbation of any downstream flood damage, and take into account maintenance and real-time aquatic resource (including fish and macroinvertebrates) concerns.

During the course of a water year, if necessary, the Licensee, in consultation with the ARC, shall develop a drought controlled flow release schedule for process flow components when: (1) a drought event resulting in voluntary reductions in domestic water consumption (as described by the 2007 City of Everett's Drought Response Plan as a Stage 2 response to a drought event ) is occurring; (2) the process flow components described in this LA require interim modification (including changes in timing or reductions in flow magnitude) to manage water supply during periods of weather-related shortages; and (3) the drought release schedule shall not undermine the purposes of this LA. The Licensee shall notify the Commission and shall implement the drought release schedule within seven (7) days of providing such notice, unless otherwise directed by the Commission.

With respect to the maintenance flows (section 1), the flushing (section 3), upstream migration (section 4), and outmigration (section 5) process flow components, for compliance purposes (to account for monitoring imprecision and release equipment variability and accretion flow variability), a component flow is achieved notwithstanding temporary fluctuations of up to ten (10) percent of the required flow levels for so long as the average over the process flow component duration is above the specified process flow component flow level.

Based upon A-LA 17 monitoring and the best available information, in year ten (10) of this License and every ten (10) years thereafter, the Licensee shall file a process flow effectiveness report with the Commission for its approval, after consultation with the ARC. The report will evaluate the effectiveness of each process flow component in achieving its designated objective.

Within ninety (90) days of issuance of the License, the Licensee shall file with the Commission for approval, a PF Plan. This PF Plan shall document how the Licensee shall implement a program for periodic controlled flow releases from the Powerhouse, the outlet pipe located adjacent to the City of Everett's Diversion Dam, and Culmback Dam. The PF Plan shall include provisions that describe: (1) the frequency, magnitude, duration, and timing of process flow components consistent with this License Article; (2) the ongoing involvement of the ARC in implementing this program; (3) the mechanism for timing controlled flow releases (including whitewater boating releases pursuant to A-LA 4) to coincide with natural rainfall events or uncontrolled flow releases to achieve the flow frequency, magnitude, and duration for each of the process flow components; (4) the timing and other restrictions necessary to minimize impacts to aquatic resources, to not exacerbate downstream flood damage in the City of Sultan; (5) the method, locations, and

schedule for monitoring and measuring process flow components; (6) the method and schedule for studying the necessity of flushing flow for supporting the geomorphic process goals; (7) the method and schedule for studying the necessity of upstream migration flow and outmigration flow for providing timely and effective upstream and downstream migration of anadromous fish; and (8) the method and schedule for monitoring the impacts of process flow upon aquatic resources.

The Licensee shall develop the PF Plan in consultation with the ARC. The Licensee shall allow a minimum of thirty (30) days for members of the ARC to comment and make recommendations before submitting the PF Plan to the Commission. When filing the PF Plan with the Commission, the Licensee shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations from the ARC are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based upon Project-specific information.

Upon Commission approval, the Licensee shall implement the PF Plan.

The process flow regime specified by this License Article has the following components:

1. Channel Maintenance Flow: Four (4) times per every ten (10) years (but not less than once every four (4) years) for the term of the License, the Licensee shall discharge water from the Project if necessary to ensure that a channel maintenance flow is achieved. A channel maintenance flow is achieved when (a) a target flow of at least 4100 cfs instantaneous minimum flow is maintained for twenty-four (24) consecutive hours at USGS Streamflow Gage No. 12138160 or (b) a target flow of at least 4100 cfs is achieved and the Licensee provides a maximum release flow from the Powerhouse, the outlet pipe located adjacent to the City of Everett's Diversion Dam, and Culmback Dam (via the Howell Bunger and 42-inch slide valves) at the time when flow drops below 4100 cfs for a total duration (including the target flow and maximum release) of twenty-four (24) consecutive hours as measured at USGS Streamflow Gage No. 12138160.
2. Channel Forming Flow: Once (1) every ten (10) years for the term of the License, the Licensee shall discharge water from the Project if necessary to ensure that a channel-forming flow is achieved. A channel-forming flow is achieved when (a) a target flow of at least 6500 cfs instantaneous minimum flow is maintained for twenty-four (24) consecutive hours at USGS Streamflow Gage No. 12138160 or (b) a target flow of 6500 cfs is achieved and the Licensee provides a maximum release flow from the Powerhouse, the outlet pipe located adjacent to the City of Everett's Diversion Dam, and Culmback Dam (via the Howell Bunger and 42-inch slide valves) for twenty-four (24) consecutive hours at the time when flow drops below 6500 cfs for a total duration (including the target flow and maximum release) of twenty-four (24) consecutive hours as measured at USGS Streamflow Gage No. 12138160, or (c) the Licensee provides a maximum release flow from the Powerhouse, the outlet pipe

located adjacent to the City of Everett's Diversion Dam, and Culmback Dam (via the Howell Bunger and 42-inch slide valves) for twenty-four (24) consecutive hours that is timed to achieve, to the extent feasible, a target flow of 6500 cfs at USGS Streamflow Gage No. 12138160. This channel-forming flow obligation shall be in addition to the channel maintenance flow obligation required by section 1.

### 3. Flushing Flow

3.1. Reach 1 (River Mile (RM) 0.0 to RM 4.5) Flushing Flows: Two (2) times every year for the term of the License, the Licensee shall discharge water from the Powerhouse if necessary to ensure that a flushing flow is achieved. One (1) of the annual flushing flows shall occur in September and one (1) of the annual flushing flows shall occur between April 1 and May 31. A flushing flow is achieved when a 1500 cfs instantaneous minimum flow is maintained for six (6) consecutive hours at USGS Streamflow Gage No. 12138160. In the event that the Spada Reservoir is below 1420 feet at the time of a scheduled flushing flow, a flushing flow is achieved when a 1200 cfs instantaneous minimum flow is maintained for six (6) consecutive hours at USGS Streamflow Gage No. 12138160.

3.2. Reach 2 (RM 4.5 to RM 9.7) Flushing Flows: The Licensee shall discharge water from the outlet pipe located adjacent to the City of Everett's Diversion Dam if necessary to ensure that two (2) flushing flows are achieved. One (1) of the annual flushing flows shall occur in September and one (1) of the annual flushing flows shall occur between April 1 and May 31. A flushing flow is achieved when either (a) a 500 cfs instantaneous minimum flow is maintained for six (6) consecutive hours immediately upstream of the Powerhouse at RM 4.7 or (b) a 700 cfs instantaneous minimum flow is maintained for three (3) consecutive hours immediately upstream of the Powerhouse at RM 4.7.

3.3. Reach 3 (RM 9.7 to RM 16.1) Flushing Flows: The Licensee shall discharge water from Culmback Dam if necessary to ensure that two (2) flushing flows per year are achieved. One (1) of the annual flushing flows shall occur in September and one (1) of the annual flushing flows shall occur between April 1 and May 31. A flushing flow is achieved when either a 400 cfs instantaneous minimum flow is maintained for six (6) consecutive hours immediately upstream of the City of Everett's Diversion Dam at RM 9.8 or b) a 600 cfs instantaneous minimum flow is maintained for three (3) consecutive hours immediately upstream of the City of Everett's Diversion Dam at RM 9.8.

### 4. Upstream Migration Flow

4.1. Reach 1 Upstream Migration Flow: The Licensee shall discharge water from the Powerhouse if necessary to ensure that one (1) upstream migration flow per year is achieved in Reach 1. The upstream migration flow shall occur in September. An upstream migration flow is achieved when a minimum flow between 800 and

1200 cfs as determined by the ARC is maintained or exceeded for six (6) consecutive hours at USGS Streamflow Gage No. 12138160.

- 4.2. Reach 2 Upstream Migration Flow: The Licensee shall discharge water from the Project if necessary to ensure that one (1) upstream migration flow per year is achieved in Reach 2. The upstream migration flow shall occur in September. An upstream migration flow is achieved when a flow between 400 and 600 cfs instantaneous minimum flow, as determined by the ARC, is maintained for six (6) consecutive hours immediately upstream of the Powerhouse at RM 4.7.
- 4.3. Reach 3 Upstream Migration Flow: Upon the date that the Licensee completes the Diversion Dam's volitional fish passage modifications, the Licensee shall discharge water from Culmback Dam if necessary to ensure that one (1) upstream migration flow per year is achieved in Reach 3. An upstream migration flow is achieved when a flow of between 300 and 500 cfs minimum flow as determined by the ARC is maintained or exceeded for six (6) consecutive hours immediately upstream of the City of Everett's Diversion Dam at RM 9.8.

## 5. Outmigration Flow

- 5.1. Reach 1 Outmigration Flow: The Licensee shall discharge water from the Powerhouse if necessary to ensure that two (2) outmigration flows per year are achieved. One (1) of the annual outmigration flows shall occur in April and one (1) of the annual migration flows shall occur in May. An outmigration flow is achieved when between 800 and 1200 cfs minimum flow as determined by the ARC is maintained or exceeded for six (6) consecutive hours at USGS Streamflow Gage No. 12138160. The PF Plan shall address the proportion of the outmigration flow that must occur during nighttime hours to best protect juvenile salmonids from predation.
- 5.2. Reach 2 Outmigration Flow: The Licensee shall discharge water from the outlet pipe located adjacent to the City of Everett's Diversion Dam if necessary to ensure that two (2) outmigration flows per year are achieved. One (1) of the annual outmigration flows shall occur in April and one (1) of the annual migration flows shall occur in May. An outmigration flow is achieved when between 400 and 600 cfs minimum flow as determined by the ARC is maintained or exceeded for six (6) consecutive hours immediately upstream of the Powerhouse at RM 4.7. The PF Plan shall address the proportion of the outmigration flow that must occur during nighttime hours to best protect juvenile salmonids from predation.
- 5.3. Reach 3 Outmigration Flow: Upon Commission approval after the ARC determines that an outmigration flow in Reach 3 is needed for timely and effective anadromous fish outmigration, the Licensee shall discharge water from Culmback Dam if necessary to ensure that two (2) outmigration flows per year are achieved. One (1) of the annual outmigration flows shall occur in April and

one (1) of the annual migration flows shall occur in May. An outmigration flow is achieved when between 200 and 400 cfs minimum flow as determined by the ARC is maintained or exceeded for six (6) consecutive hours immediately upstream of the City of Everett's Diversion Dam at RM 9.8. The PF Plan shall address the proportion of the outmigration flow that must occur during nighttime hours to best protect juvenile salmonids from predation.

## **A-LA 9: Minimum Flows**

The Licensee shall discharge water from the Project into the Sultan River, in accordance with the flow regime required by this License Article. The purposes of this License Article are to protect, mitigate, and enhance fish and wildlife resources, riparian vegetation, aesthetic resources, and water quality in the Sultan River.

During the course of a water year, if necessary, the Licensee in consultation with the Aquatic Resource Committee (ARC), shall develop a drought controlled flow release schedule for minimum flows when: (1) a drought event resulting in voluntary reductions in domestic water consumption (as described by the 2007 City of Everett's Drought Response Plan as a Stage 2 response to a drought event ) is occurring; (2) the release schedule described in this License Article requires interim modification to manage water supply during periods of weather-related shortages; and (3) the drought release schedule shall not undermine the purposes of this License Article. The Licensee shall notify the Commission and shall implement the drought release schedule within seven (7) days of providing such notice, unless otherwise directed by the Commission.

Compliance with the minimum instream flow schedule outlined below shall be monitored at U.S. Geological Survey (USGS) Gaging Stations (12138160 and 12137800) for component releases for Reaches 1 and 2 and calibrated valve curves for Reach 3 Component releases. The Licensee shall commit to funding the operation or operating these two (2) gaging stations in the lower river downstream of Culmback Dam for the License term. For compliance purposes and to account for monitoring imprecision and release equipment variability, the Licensee is allowed temporary fluctuations of up to five percent of the scheduled flow release as measured at USGS Streamflow Gage No. 12138160 for Reach 1 Component releases, USGS Streamflow Gage No. 12137800 for Reach 2 Component releases, and calibrated valve curves for Reach 3 Component releases.

The flow regime required by this Article has three components, described as follows:

1. Reach 1 (River Mile (RM 0 to RM 4.5) Component
  - 1.1 Except as provided in section 1.2, the Licensee shall release water from the Powerhouse to maintain instantaneous minimum flows at USGS Streamflow Gage No. 12138160 at all times of 300 cfs.
  - 1.2 If the Licensee determines in consultation with the ARC that a drought event resulting in advisory reductions in domestic water consumption (as described by the 2007 City of Everett's Drought Response Plan as a Stage 1 response to a drought event) is occurring, the Licensee shall release water from the Powerhouse to maintain instantaneous minimum flows at USGS Streamflow Gage No. 12138160 at all times in accordance with the following:

**From September 15 through October 31:**

<u>Reservoir Level:</u>	<u>Instantaneous Minimum Instream Flow:</u>
Above 1420 ft	300 cfs
Between 1420 ft and 1410 ft	275 cfs
Between 1410 ft and 1405 ft	250 cfs
Below 1405 ft	200 cfs

**From November 1 through September 14:**

<u>Reservoir Level:</u>	<u>Instantaneous Minimum Instream Flow:</u>
Above 1420 ft	300 cfs
Between 1420 ft and 1415 ft	275 cfs
Between 1415 ft and 1410 ft	250 cfs
Between 1410 ft and 1405 ft	225 cfs
Below 1405 ft	200 cfs

2. Reach 2 (RM 4.5 to RM 9.7) Component

The Licensee shall release water from the outlet pipe located adjacent to the City of Everett's Diversion Dam into the Sultan River to maintain instantaneous minimum flows at USGS Streamflow Gage No. 12137800 in accordance with the following schedule:

<u>Date:</u>	<u>Instantaneous Minimum Instream Flow:</u>
November 1 – March 15	100 cfs
March 16 – June 15	140 cfs
June 16 – September 14	100 cfs

**From September 15 through October 31:**

<u>Reservoir Level:</u>	<u>Instantaneous Minimum Instream Flow:</u>
Above 1420 ft	200 cfs
Between 1420 ft and 1415 ft	200 cfs
Between 1415 ft and 1410 ft	175 cfs
Between 1410 ft and 1405 ft	175 cfs
Below 1405 ft	150 cfs

3. Reach 3 (RM 9.7 to RM 16.1) Component

Until 2020, the Licensee shall provide an annual water budget of 20,362 acre-feet for release from the Culmback Dam into the Sultan River.

Starting with the 2020 water budget (July 2020 – June 2021) and for the remaining term of the License, the Licensee shall provide an additional 3,469 acre-feet to the water budget for a total annual water budget of 23,831 acre-feet, unless the ARC decides to delay or postpone this increase to the water budget.

The Licensee shall release the annual water budget as instantaneous minimum flows with a release schedule developed prior to each water budget year (July 1 – June 30) in consultation with the ARC. No later than ninety (90) days prior to the beginning of each water budget year, the Licensee shall prepare and distribute to the ARC a preliminary Flow Report containing a recommended release schedule for the annual water budget for the upcoming water budget year. Following consultation with the ARC, the Licensee shall modify the Flow Report to document the final release schedule determined by the ARC and shall file the finalized Flow Report with the Commission for informational purposes by no later than fifteen (15) days prior to the beginning of each water budget year.

If, during the course of a water budget year, but not more than once every ninety (90) days unless exceptional circumstances exist, the ARC determines that the release schedule described in the Flow Report requires interim modification consistent with the purposes of this Article, the Licensee shall notify the Commission and implement the revised release schedule within seven (7) days of providing such notice, unless otherwise directed by the Commission. Additionally, during the first three (3) water budget years after License issuance, but not more than once every thirty (30) days, if the ARC determines that additional interim modifications are necessary for the purposes of this Article, the Licensee shall notify the Commission and implement the revised schedule within seven (7) days of providing such notice unless otherwise directed by the Commission.

Prior to the 3,469 acre-foot water budget increase and the date that the Licensee completes the Diversion Dam’s volitional fish passage modifications, as described in A-LA 13, in the event that the ARC is unable to reach consensus regarding the release of the water budget by fifteen (15) days prior to the beginning of the water budget year, the following flow regime shall be implemented beginning the first day of the water budget year:

<u>Month:</u>	<u>Default Instantaneous Flow Release Schedule:</u>
July	20 cfs
August	20 cfs
September	20 cfs
October	20 cfs
November	20 cfs
December	20 cfs
January	20 cfs
February	25 cfs
March	30 cfs
April 1- 15	45 cfs
April 16- 30	55 cfs
May 1-15	65 cfs
May 16-31	50 cfs
June	35 cfs

Prior to the 3,469 acre-foot water budget increase but after the date that the Licensee completes the Diversion Dam’s volitional fish passage modifications, as described in A-LA 13, in the event that the ARC is unable to reach consensus regarding the release of the water budget by fifteen (15) days prior to the beginning of the water budget year, the following flow regime shall be implemented beginning the first day of the water budget year:

<u>Month:</u>	<u>Default Instantaneous Flow Release Schedule:</u>
July	30 cfs
August	35 cfs
September 1-15	45 cfs
September 16-30	55 cfs
October 1-15	65 cfs
October 16-31	50 cfs
November	20 cfs
December	20 cfs
January	20 cfs
February	20 cfs
March	20 cfs
April	20 cfs
May	20 cfs
June	25 cfs

After the 3,469 acre-foot water budget increase, in the event that the ARC is unable to reach consensus regarding the release of the water budget by fifteen (15) days prior to the beginning of the water budget year, the following flow regime shall be implemented beginning the first day of the water budget year:

<u>Month:</u>	<u>Default Instantaneous Flow Release Schedule:</u>
July	40 cfs
August	45 cfs
September 1-15	55 cfs
September 16-30	65 cfs
October 1-15	70 cfs
October 16-31	60 cfs
November	20 cfs
December	20 cfs
January	20 cfs
February	20 cfs
March	20 cfs
April	20 cfs
May	30 cfs
June	35 cfs

The Licensee shall discharge water to the Sultan River to achieve the scheduled instream flows specified in this License Article. Water releases exceeding the planned flows shall not be charged to the minimum flow water budget.

## **A-LA 10: Spada Lake Recreational Fishery**

Within one (1) year of License issuance, the Licensee shall file with the Commission, for approval, a Spada Lake Recreational Fishery Plan (SLRF Plan). This SLRF Plan shall document how the Licensee shall implement a program to enhance the Spada Lake recreational resources. The SLRF Plan shall include provisions as follows:

1. The Licensee shall remove existing man-made barriers to fish passage within tributaries along South Shore Road beyond Recreation Site 3. The removal of these barriers shall be done in conjunction with abandonment of portions of the South Shore Road beyond Recreation Site 3.
2. The Licensee shall improve the Recreation Site 2 boat launch by providing boat trailer access. This improvement shall provide better access to the southern part (South Fork arm) of the Spada Lake (an area that has relatively high fish densities and historically good catch rates) and more geographic options to anglers. This improvement shall also provide increased access to an area of the reservoir not subjected to the high winds prevalent in the main body. This improvement shall provide launch access to elevations as low as 1410 feet mean sea level (msl). Throughout the License term, the Licensee shall maintain the boat launch (including repairing ramp structures down to elevation 1410 feet msl) and on an annual basis (before the start of the recreation season) remove debris from the boat launch.
3. Subject to meeting City of Everett water demands and the Licensee's other License Article obligations and power production needs, the Licensee shall attempt to maintain a minimum impoundment elevation at or above approximately 1430 feet msl from July 1 until August 15 to enhance recreational opportunities.
4. The Licensee shall prepare a recreational fishing brochure for Spada Lake that describes effective fishing techniques, including the best times and suggested locations. The Licensee shall make this brochure available on its website.
5. Upon approval of the SLRF Plan and once every five (5) years thereafter, the Licensee shall conduct gill net surveys at Spada Lake. Such surveys shall be conducted in either June or October. The Licensee with the consent of Washington Department of Fish and Wildlife may use alternative non-lethal sampling methods in the event such sampling method become available.

The Licensee shall develop the SLRF Plan in consultation with the Aquatic Resource Committee (ARC). The Licensee shall allow a minimum of thirty (30) days for members of the ARC to comment and make recommendations before submitting the SLRF Plan to the Commission. When filing the SLRF Plan with the Commission, the Licensee shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations

from the ARC are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based upon Project-specific information.

Upon Commission approval and obtaining any necessary regulatory approvals, the Licensee shall implement the SLRF Plan.

## **A-LA 12: Fish Habitat Enhancement Plan**

Within one (1) year of License issuance, the Licensee shall file with the Commission, for approval, a comprehensive Fish Habitat Enhancement Plan (FHE Plan) to enhance fish habitat in the Sultan River basin. The primary purpose of the FHE Plan is to guide the implementation of projects designed to enhance aquatic habitat in the Sultan River basin.

The Licensee shall develop the FHE Plan in consultation with the Aquatic Resource Committee (ARC). The Licensee shall allow a minimum of thirty (30) days for members of the ARC to comment and make recommendations before submitting the FHE Plan to the Commission. When filing the FHE Plan with the Commission, the Licensee shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations from the ARC are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based upon Project-specific information.

Upon Commission approval, the Licensee shall implement the FHE Plan.

The FHE Plan shall consist of the following actions:

1. Habitat Enhancement Account (HEA): The Licensee shall deposit \$2.5 million into an interest-bearing account within thirty (30) days after issuance of the License. In addition, starting the tenth anniversary after issuance of the License and annually for the term of the License, the Licensee shall deposit \$200,000 into this account. All funds are based on 2011 dollars and adjusted annually according to the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, for Seattle-Tacoma-Bremerton (CPI-U). The Licensee shall use this account to fund projects developed pursuant to this License Article. The Licensee shall develop a proposed budget for each project. The Licensee shall use the funds provided within this section to implement only those projects specified and provided for in the budget. The Licensee shall not use the funds provided within this section for its administration or oversight of these projects.
2. Habitat Enhancement Projects: Throughout the term of the License, the Licensee shall, in consultation with the ARC, develop and implement, specific HEA-funded aquatic habitat enhancement and restoration projects within and adjacent to the Sultan River. Such projects shall include annual funding (up to \$3,000 (2011 dollars)) for the National Resources Conservation Service hydrologic monitoring equipment (SNOTEL or other equipment), unless the ARC determines that such funding is no longer necessary. Such projects may include, but not be limited to: (a) instream structure enhancements; (b) side-channel habitat development; (c) removal, maintenance or construction of large woody debris; (d) removal of barriers to upstream migration; (e) gravel augmentation; (f) land purchases related to aquatic habitat enhancement; (g) purchase of additional water (on a willing-buyer, willing-seller basis) for

process or special purpose flows; and (h) other projects that provide for adaptive management in the Sultan basin. However, such projects shall not include projects which the Licensee would otherwise be required to implement pursuant to any other License Article.

3. Use of Funds: The Licensee, in consultation with the ARC, shall use funds from the HEA established in Paragraph (1) to implement the types of projects identified in this section. In addition, throughout the term of the License, if available funds remain within the Account, the Licensee shall implement other appropriate aquatic habitat enhancement and restoration projects developed by the ARC within the Snohomish River Basin; however, any measures identified in the FHE Plan for implementation in a location that is both (a) outside the Sultan River basin and (b) outside of the then-existing Project boundary, shall be limited to actions that do not result in an expansion of the Project boundary. In the event that a future landslide causes a barrier to upstream migration and the Licensee determines in consultation with the ARC that there is a Project nexus with the barrier, the Licensee will prioritize the use of funds from the HEA to study and, if necessary, modify such landslide to remove the barrier to upstream migration. However, the Licensee need not prioritize the use of the fund if the ARC determines that such prioritization of funds is not biologically warranted in light of the potential alternative uses of the fund and such alternative uses would mitigate for Project impacts. The availability of funds in this account shall not prevent the exercise of reserved authority by Ecology.
4. Threatened Species Take Minimization Measures: The Licensee shall implement measures to minimize the take of Puget Sound Chinook salmon, Puget Sound Steelhead, and bull trout associated with in-water work during development of any physical structures and facilities pursuant to other PM&Es, consistent with the agencies' incidental take statements [attached as Appendices \_\_ and \_\_ to this order]. The Licensee shall not use funds from the HEA to implement such measures.
5. FHE Plan Implementation Schedule: The Licensee shall include a schedule for implementing the FHE Plan, evaluating the success of the enhancement and restoration projects, and modifying the plan, if needed.
6. FHE Report: The Licensee shall file with the Commission, by June 30 of each year, an annual report fully describing its implementation of the FHE Plan during the previous calendar year and a list of planned projects for the current calendar year. The ARC shall have at least thirty (30) days to review and comment on the draft report prior to filing with the Commission. The Licensee shall provide copies of the annual report to the ARC.

## **A-LA 13: Diversion Dam Volitional Passage**

1. Pursuant to the limitations and schedules prescribed below the Licensee shall provide for the construction, maintenance, and operation of safe, timely, and effective upstream and downstream volitional fish passage at the City of Everett's Diversion Dam through structural modifications to the Diversion Dam or sluice way. The Licensee's obligation to construct, maintain, and operate such fishways is subject to the U.S. Fish and Wildlife Service (Service) and the National Marine Fisheries Service (NMFS) determining, in consultation with the Aquatic Resource Committee (ARC), that spawning escapement of either Chinook salmon or steelhead trout within the Diversion Dam Index Area (DDIA) equals or exceeds in any one (1) year ten percent (10 %) of the combined total spawning escapement for either Chinook salmon or steelhead trout within the four (4) index areas of the Sultan River, downstream of the Diversion Dam ("passage trigger") and the Licensee obtaining any necessary regulatory approvals.

2. Upon the Service and NMFS determining, in consultation with the ARC, that the spawning escapement above the Diversion Dam exceeds six (6) anadromous redds in any one (1) year, the Licensee shall not reverse flow (divert) or authorize the reverse flow of water from the Sultan River into the Diversion Dam outlet pipe unless required for the City of Everett's water supply needs. If this water supply requirement is triggered, the Licensee shall in consultation with the ARC take appropriate measures to protect Endangered Species Act listed fish. Notwithstanding, in the event that the District installs and operates a fish screen at the outlet pipe, the District may resume reverse flow (divert) or may authorize the reverse flow of water from the Sultan River into the Diversion Dam outlet pipe. Such fish screen shall conform to the National Marine Fisheries Service (NMFS) 2008 Anadromous Salmonid Passage Facility Design Manual, prepared by the NMFS Northwest Region Hydro Division, dated February 8, 2008 (NMFS Design Manual).

### 3. Diversion Dam Volitional Passage Design Drawings

The Licensee's design for modifying the Diversion Dam to provide upstream and downstream volitional fish passage shall conform to the NMFS Design Manual, while continuing to meet the City of Everett's water supply requirements.

### 4. Schedule for Providing Diversion Dam Volitional Passage

4.1 Within twelve (12) months after license issuance, the Licensee shall file with the Commission the conceptual design drawings and cost estimates of the proposed Diversion Dam modifications required for achieving volitional fish passage, which may include modifications to the Dam's sluiceway or sluice gate

4.2 Within six (6) months after the fish passage trigger prescribed at 1.0 above occurs, the District will file with the Commission the final design for the Diversion Dam modifications and apply for all necessary permits. Prior to filing the final design with the Commission, the Licensee shall prepare detailed design

drawings at the thirty percent (30%)(functional design), fifty percent (50%) and ninety percent (90%) completion stage and consult with the ARC at each stage.

4.3 The Licensee shall not begin construction of the Diversion Dam modifications until the Service and NMFS, in consultation with the ARC, and the Commission approves the final design and plan, and the Licensee has obtained all necessary permits.

4.4 The Licensee shall complete the Diversion Dam modifications no later than two (2) full construction seasons after the Commission approval of the final design and plan and obtaining all necessary permits. For purposes of this prescription for fishways, the construction season is defined as August 1 to August 31.

5. Diversion Dam Volitional Passage Plan

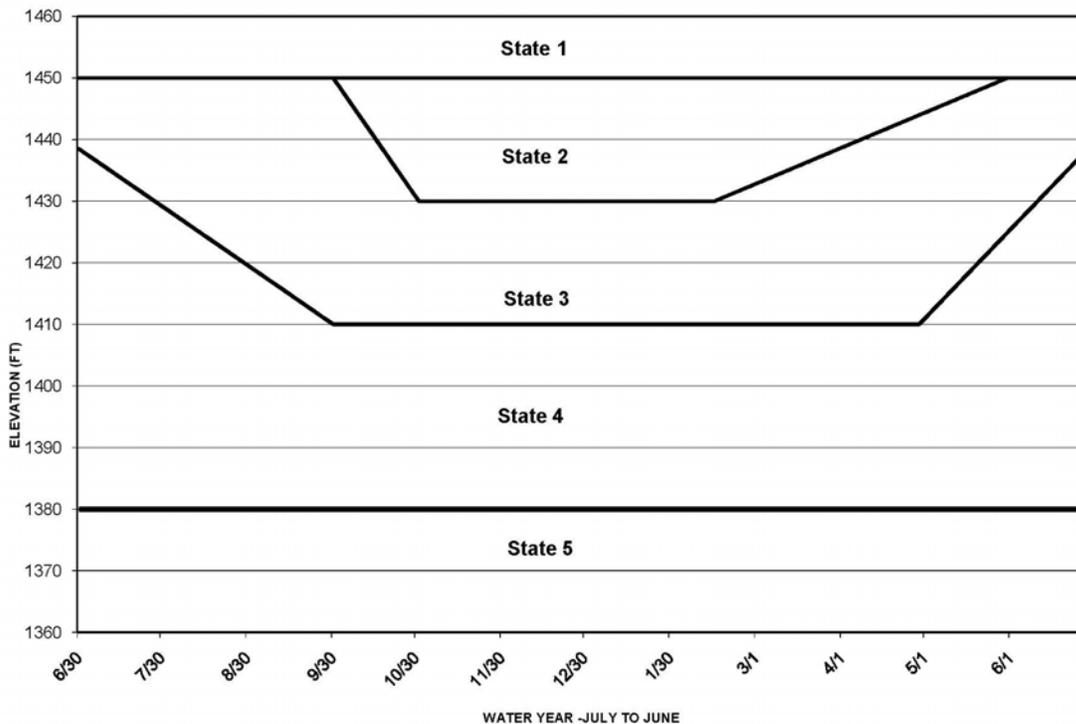
5.1 Within one (1) year after License issuance, the Licensee shall file for Commission approval, a Diversion Dam Volitional Passage Plan (DDVP Plan). The DDVP Plan shall include: (1) the conceptual design drawings and cost estimates of the Licensee's proposed Diversion Dam modifications for achieving upstream and downstream volitional fish passage; (2) the method and schedule for implementing the Diversion Dam proposed modifications in the event that the passage trigger prescribed at 1.0 above occurs; (3) the method and the schedule for monitoring annual spawning escapement within the Diversion Dam Index Area and above the Diversion Dam, as well as, annual spawning escapement within other existing index areas in the Sultan River; (4) the method and schedule for testing and verifying fish passage effectiveness at the Diversion Dam through the use of spawning surveys and/or visual digital recordings; and (5) the program annual monitoring and reporting and ARC consultation requirements.

5.2 The Licensee shall develop the DDVP Plan in consultation with the ARC. The District will allow a minimum of thirty (30) days for members of the ARC to comment and make recommendations before submitting the DDVP Plan to the Commission. When filing the DDVP Plan with the Commission, the Licensee will include documentation of consultation; copies of comments and recommendations; and specific descriptions of how comments and recommendations from the ARC are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing will include the Licensee's reasons based upon Project-specific information. Upon Commission approval, the Licensee will implement the DDVP Plan.

## A-LA 14: Reservoir Operations

### 1. Rule Curves for Reservoir Operations

The Licensee shall operate the Project consistent with the Spada Lake Reservoir Rule Curves (“Rule Curves”) as shown in Figure 1. The purpose of the Rule Curves is to allow the Licensee to provide a balance of reliable municipal water supply, instream flows, incidental winter flood storage, higher lake levels for early summer recreation, and prevention or reduction of risk of spill following Chinook fall spawning and Steelhead spring spawning. The Rule Curves were developed based on the physical storage capacity of Spada Lake and the hydrology of the Sultan Basin. The Rule Curves divide Spada Lake into five states that shift throughout the water year (July through June). This operational water year is used to minimize the change in storage from year to year.



**FIGURE 1. SPADA LAKE RESERVOIR OPERATIONAL RULE CURVES**

State 1 – Zone of Spill. Above elevation 1450 feet msl, Spada Lake shall be in a state of spill. Therefore, the Licensee shall operate the Powerhouse to withdraw at least 1,300 cfs through the power tunnel.

State 2 – Zone of Potential Spill. The Licensee shall operate the Powerhouse to withdraw at least 1,300 cfs through the power tunnel unless inflow forecasts show that there is minimal risk of spill.

State 3 – Zone of Discretionary Operation. The Licensee shall operate the Powerhouse consistent with the operation objectives described in section 2.

State 4 – Zone of Water Conservation. The Licensee shall operate the Powerhouse to satisfy the requirements of its water supply obligations to the City of Everett and the instream flow requirements of the Sultan River. The Licensee shall operate the Project to meet the Licensee’s other License Article obligations (including minimum instream flows and process flows) and to conserve water unless inflow forecasts and snow pack measurements indicate higher power production is warranted.

State 5 – Zone of Tunnel Protection. Below elevation 1380 feet msl the Licensee shall operate to withdraw water through the Powerhouse only in so far as vortexing does not occur in the power tunnel. Vortexes could cause power tunnel collapse from the negative hydraulic pressures of spiral flow. The Licensee shall satisfy instream flow and water supply requirements at Culmback Dam, the Diversion Dam, and the Powerhouse by releasing water from the exit valves at the base of Culmback Dam. The exit valves are at elevation 1220 feet msl.

## 2. State 3 Operation Priorities and Reservoir Elevations Targets

- 2.1. State 3 Reservoir Elevation Targets. The Licensee shall attempt to maintain a minimum impoundment elevation in Spada Lake Reservoir above 1430 feet msl between July 1 and August 15. Until the temperature conditioning structure described in section 3.2 of A-LA 3 is installed and operational, the Licensee shall target to maintain a minimum impoundment elevation in Spada Lake Reservoir at or above 1420 feet msl from August 16 to September 15. After the temperature conditioning structure described in section 3.2 of A-LA 3 is installed and operational, the License shall attempt to maintain a minimum impoundment elevation in Spada Lake Reservoir above 1415 feet msl from August 16 to September 15.

These minimum impoundment surface elevations targets may be temporarily modified if required by operating emergencies beyond the control of the Licensee. If an impoundment water surface elevation target is so modified, the Licensee shall notify the Aquatic Resource Committee as soon as possible but no later than two (2) business days after each such incident. The Licensee shall document the modification in its annual operations report to the FERC.

- 2.2. State 3 Operation Objectives. During State 3, the Licensee shall manage Project operations: (1) to allow the Licensee to provide for the City of Everett’s water demands; (2) to meet the Licensee’s other License Article obligations (including its minimum instream flow pursuant to A-LA 9 and temperature conditioning obligations pursuant to A-LA 3); (3) to meet its power production needs; (4) to provide for Spada Lake reservoir recreation;

(5) to provide for the interests of dam safety; and (6) to reduce the risk of flooding in the City of Sultan.

## **A-LA 15: Adaptive Management Plan**

Within 180 days of License issuance, the Licensee shall file with the Commission, for approval, an Adaptive Management Plan (AM Plan). This AM Plan shall document how the Licensee shall: (1) address water use issues, specifically from Spada Lake Reservoir, when refill, Project operations, flow releases and Spada Lake Reservoir water surface elevations may conflict; and (2) address the process for evaluating and adaptively managing within the constraints of the specific License Articles.

The Licensee shall develop the AM Plan in consultation with the Aquatic Resource Committee (ARC). The Licensee shall allow a minimum of thirty (30) days for members of the ARC to comment and make recommendations before submitting the AM Plan to the Commission. When filing the AM Plan with the Commission, the Licensee shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations from the ARC are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based upon Project-specific information.

Upon Commission approval, the Licensee shall implement the AM Plan.

## **A-LA 16: Steelhead Planting Program**

Until the Licensee completes the Diversion Dam's volitional fish passage modifications, as described in A-LA 13, the Licensee shall annually reimburse the Washington Department of Fish and Wildlife for the reasonable costs associated with its annual planting of roughly 30,000 steelhead smolts in the Sultan River.

## **A-LA 17: Fisheries and Habitat Monitoring Plan**

Within one (1) year after License issuance, the Licensee shall file with the Commission, for approval, a Fisheries and Habitat Monitoring Plan (FHM Plan) for the Sultan River. The Licensee shall implement the FHM Plan throughout the term of the License, in consultation with Aquatic Resource Committee (ARC).

The Licensee shall develop the FHM Plan in consultation with the ARC. The Licensee shall allow a minimum of thirty (30) days for members of the ARC to comment and make recommendations before submitting the FHM Plan to the Commission. When filing the FHM Plan with the Commission, the Licensee shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations from the ARC are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based upon Project-specific information.

The purpose of the FHM Plan is to inform the implementation of other aquatic License Articles. The FHM Plan shall include a schedule for the Licensee's: (1) implementation of the plan consistent with this License Article; (2) consultation with the ARC regarding the results of the monitoring and a schedule for providing preliminary monitoring data; and (3) filing of results, comments, and the Licensee's response to these comments with the Commission.

Implementation of the plan shall not commence until the Licensee is notified by the Commission that the filing is approved. Upon Commission approval, the Licensee shall implement the plan.

The Licensee shall file with the Commission, by June 30 of each year, an annual report fully describing the monitoring efforts of the previous calendar year. By December 1 of each year, the Licensee shall file with the Commission a notice describing the monitoring activities required under the plan for the following year. The ARC shall have at least thirty (30) days to review and comment on the draft report prior to filing with the Commission. The Licensee shall provide copies of the annual report to the ARC.

As provided below, the ARC may modify the monitoring program methods and frequencies of data collection and reporting requirements to more effectively meet the specific purpose of a monitoring activity.

The following guidelines shall be used in developing and implementing the FHM Plan: (a) monitoring and studies shall be relevant to the License, (b) monitoring and studies shall be chosen and conducted so that they provide useful information for Project management decisions or establishing compliance with License conditions, and (c) monitoring and studies shall be cost-effective in meeting the specific purpose of the monitoring activity.

For purposes of implementing the FHM Plan, each year is defined on a calendar year basis (i.e., January through December). Except as provided in other License Articles, this Plan covers monitoring and studies to be conducted by the Licensee during all years through the term of the License. Monitoring of A-LA 12 habitat projects shall be addressed within the Plan for such projects. Where years are specified, Year 1 is the first year after the Plan is approved.

The FHM Plan shall consist of monitoring the following:

1. Fish Habitat in the Sultan River

1.1. Riverine Habitat

1.1.1. Purpose

The purpose of the riverine fish habitat monitoring program is to characterize and quantify habitat types (including side channel, riparian, and flood plain) in the Sultan River to determine how habitat restoration efforts and Project operations affect fish habitat conditions over the life of the License. Because the majority of the restoration efforts are focused in the alluvial portion of Reach 1, the habitat monitoring program shall focus primarily on habitat changes in the Sultan River downstream of River Mile (RM) 2.7.

1.1.2. Method

The Licensee shall assess the quantity and quality of fish habitat in the lower Sultan River by employing standard Timber, Fish and Wildlife (TFW) Agreement (*Pleus et al 1999*) or comparable methods, consistent with the recent assessment of the Sultan River conducted under relicensing Study Plan 18. The Licensee shall assess habitat units, such as pools, riffles and glides, substrate composition, gradient, channel exposure, woody debris, bank stability, and riparian vegetation content. The Licensee shall use a statistically-valid approach consistent with the TFW methods in assessing both the quantity and quality of habitat, and in enabling detection of changes to habitat condition between sampling events. The Licensee shall also use digital photography to document conditions at a series of fixed permanent photo points. The Licensee shall conduct surveys during late summer to assess conditions under low flows and for consistency between surveys.

The river channel of interest is already divided into distinct process reaches based on channel morphology and habitat types consistent with existing baseline habitat information. Analysis and data summarization shall be performed consistent with these reach boundaries.

1.1.3. Frequency

The initial habitat survey as part of the relicensing studies (Study Plan 18) shall constitute the initial baseline for all subsequent surveys.

During Year 1 through Year 10, if there is a high flow event or other major event causing change, the Licensee shall perform a subsequent habitat survey. From Year 11 throughout the term of the License, the Licensee shall perform habitat surveys once every five (5) years (starting in Year 16) unless the frequency of such surveys is modified by the ARC.

## 1.2. Water Temperature

### 1.2.1. Purpose

The purpose of water temperature monitoring is to document temperature regimes in the Sultan River. This data is needed to help analyze the biological information collected through separate monitoring efforts (i.e., spawning timing, emergence timing, juvenile size or growth rates, distribution, habitat utilization, and species interactions).

### 1.2.2. Method

The Licensee shall install thermographs to monitor water temperatures on an hourly basis in the Sultan River at the South Fork Sultan River, the base of Culmback Dam, upstream and downstream of the Diversion Dam, upstream and downstream of the Powerhouse, at the confluence with the Skykomish River, and in the Skykomish River immediately upstream and downstream of the confluence with the Sultan River.

### 1.2.3. Frequency

The Licensee shall deploy, operate and maintain thermographs at the above-listed locations in the Sultan River continuously throughout the term of the License, unless the frequency of monitoring or locations are modified by the ARC.

## 2. Fish Populations in the Sultan River

### 2.1. Spawner Abundance, Distribution, and Timing in the Sultan River

#### 2.1.1. Purpose

The purpose of assessing spawner abundance, distribution, and timing is to evaluate trends in adult salmon and steelhead escapement and habitat utilization over the term of the License.

#### 2.1.2. Method

The Licensee shall conduct surveys using standard methods employed in the region to assess spawner abundance, spawner distribution, spawning timing, and species composition.

Such surveys shall enumerate redds and/or fish (live and dead) depending on species and location within the river. Such surveys shall be conducted using one or more of the following techniques depending on species and location within the river: foot surveys, raft surveys, and snorkel surveys. Where possible and for data

consistency and compatibility, these surveys shall use the same index areas and procedures used under the current License and in place since 1991. It is expected that methods and procedures that work best to achieve the purpose shall be evaluated during the first several years of the License. Once the methods have been evaluated and the most appropriate ones selected, they shall be applied consistently over the term of the License, unless modified by the ARC.

The Licensee shall collect, compile, and report the following: (1) spawner abundance by species, production origin (hatchery versus wild), and location; (2) species distribution; and (3) spawning timing.

The Licensee shall include in the FHM Plan provisions for appropriate and reasonable analysis of data from the above surveys. The Licensee shall implement such provisions.

#### 2.1.3. Frequency

The Licensee shall conduct assessments annually during the spawning seasons for each species throughout the term of the License.

### 2.2. Juvenile Production, Distribution, and Habitat Utilization in the Sultan River

#### 2.2.1. Purpose

The purpose of assessing juvenile production, distribution, and habitat utilization in the Sultan River is to evaluate reproductive success and species behavior over the term of the License.

#### 2.2.2. Method

The Licensee shall install and operate a juvenile trap in the lower Sultan River to assess natural salmonid production in the Sultan River.

The Licensee shall collect, compile, analyze and report the following juvenile trap data by species and life stages: numbers of fish caught, timing, fish population estimates, hatchery and wild composition, size distribution, and trap efficiency.

Under circumstances defined in the monitoring plan, the Licensee shall conduct supplemental assessments using snorkeling and/or backpack electrofishing surveys, subject to obtaining appropriate permits, to evaluate such things as rearing, fish distributions, relative abundance, habitat utilization, size, and life stage survival.

#### 2.2.3. Frequency

The Licensee shall operate the juvenile trap to assess juvenile production annually in the Sultan River for the first six (6) years after License issuance and then two (2) out of every six (6) years thereafter for the term of the License.

The Licensee shall operate the trap during the period that juveniles are expected to emigrate from the Sultan River. During Years 1 and 2, the Licensee shall operate the trap beginning February 1 through June 30. Based upon the results obtained during Years 1 and 2, thresholds to reduce sampling days and periods shall be developed by the ARC for subsequent years. The goal is to have sampling sufficient to encompass at least 90 percent of the out-migration period.

The Licensee shall operate the trap between 30 and 40 percent of the hours in any given week and follow standard procedures employed by WDFW and the Tulalip Tribes, except that the trap shall not be operated during severe flow events. During Years 1 and 2, such operations shall include weekends. After such time, unless the sampling results indicate such operations are necessary, the trap shall not be operated on weekends. Traps shall be scheduled to fish for four (4) day and four (4) night periods per week. Each fishing period shall last a minimum of six (6) hours. This operation schedule may be adjusted by the ARC if an alternative sampling schedule produces acceptable data for assessing juvenile production. Also, during periods when few fish are emigrating, trapping frequency can be reduced to fewer days per week. Exact scheduling shall be determined by the ARC.

## **A-LA 18: Water Supply**

Subject to compliance with all other License Articles, the Licensee shall operate the Project so that the City of Everett's water supply and quality requirements shall have precedence over power generation to the extent specified within the Supplemental Agreement Between Public Utility District No. 1 of Snohomish County and the City of Everett, Washington October 17, 2007, Part E. 1. and Exhibit 1.

## **C-LA 1: Historic Properties Management Plan**

The Licensee shall implement the Historic Properties Management Plan (HPMP). The HPMP is attached as Appendix 6 to the Settlement Agreement.

## **R-LA 1: Recreation Resources Management Plan**

The Licensee shall implement the Settlement Agreement Recreation Resource Management Plan (RRMP). The RRMP is attached as Appendix 5 to the Settlement Agreement.

## **T-LA 1: Terrestrial Resources Management Plan**

The Licensee shall implement the Licensee's Terrestrial Resource Management Plan (TRMP). The TRMP is attached as Appendix E to the Project's Final License Application (FLA) (May 29, 2009).

## **T-LA 2: Noxious Weed Plan**

The Licensee shall implement the Licensee's Noxious Weed Management Plan (NWMP). The NWMP is attached as Appendix D to the Project's Final License Application (FLA) (May 29, 2009).

### **T-LA 3: Marbled Murrelet Habitat Protection Plan**

The Licensee shall implement the Marbled Murrelet Habitat Protection Plan (MMHPP). The MMHPP is attached as Appendix G to the Project's Final License Application (FLA) (May 29, 2009).

## **W-LA 1: Water Quality Protection Plan**

Within 180 days of issuance of the FERC License, the Licensee shall file with the Commission, for approval, a Water Quality Protection Plan (WQPP). This WQPP shall document how the Licensee will implement a program to ensure compliance with Washington State water quality standards (as codified in WAC 173-201A) in the Sultan River. At a minimum WQPP shall include following components:

- (1) water quality protection measures related to Project construction or maintenance activities (includes Best Management Practices (BMPs) for in-water and upland construction and maintenance activities);
- (2) spill prevention and containment procedures;
- (3) procedures for application of herbicides, pesticides, fungicides, and disinfectants; and
- (4) compliance monitoring and reporting procedures for select water quality parameters, such as stream flow, temperature, turbidity etc..

The WQPP shall follow the Guidelines for Preparing Quality Assurance Project Plans (QAPP) for Environmental Studies (July 2004 Ecology Publication Number 04-03-030) or its successor. The WQPP shall contain, at a minimum, a list of water quality parameter(s) to be monitored, a map of sampling locations, and descriptions of the purpose of the monitoring, sampling frequency, sample type or number of samples, sampling procedures and equipment, analytical methods, quality control procedures, data handling and data assessment procedures, and reporting protocols.

The Licensee shall prepare an annual report based on data collected. The Licensee shall review and update the WQPP as needed.

The Licensee shall allow a minimum of thirty (30) days for members of the Aquatic Resource Committee (ARC) to comment and make recommendations before submitting the WQPP to the Commission. When filing the WQPP with the Commission, the Licensee shall include documentation of consultation; copies of comments and recommendations; and specific descriptions of how comments and recommendations from the ARC are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based upon Project-specific information.

Upon Commission's approval, the Licensee shall implement the WQPP.

## APPENDIX 2

### AUTHORIZED REPRESENTATIVES OF THE PARTIES

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## APPENDIX 3

### AQUATIC RESOURCE COMMITTEE

#### 1. Purpose of the Committee

The purpose of the Aquatic Resource Committee (ARC) is to advise the Licensee on fisheries and habitat issues as specified in the Project License for the Jackson Hydroelectric Project (Federal Energy Regulatory Commission Project No. 2157).

#### 2. Committee Membership and Meeting Participation

2.1 The ARC shall be comprised of the following members: the Licensee, National Marine Fisheries Service, U.S. Fish and Wildlife Service, U.S. Forest Service, Washington Department of Fish and Wildlife, Washington Department of Ecology, the City of Everett, the Tulalip Tribes, Snohomish County, the City of Sultan, and American Whitewater. The ARC, by unanimous agreement, may grant any other entity membership status on the ARC. Any new member must agree in writing to be bound by the terms of the Settlement Agreement.

2.2 Each member should designate a primary representative to the ARC within 30 days after the Effective Date (as defined in Settlement Agreement), and may change their representative at any time thereafter. Designation shall be by Notice to the Parties in accordance with section 7.11 of the Settlement Agreement. Each member or category of members may name alternate representatives to the ARC. Failure to designate a representative shall not prevent the ARC from convening or conducting its functions in accordance with the time schedules set forth in specific License Articles in the Project License or as otherwise established in the Settlement Agreement.

2.3 Each member should select a representative who has relevant training or experience with natural resource management.

2.4 Committee participation by state or federal agencies does not affect their statutory responsibilities and authorities. Issues involving the exercise of agencies' specific authorities can be discussed, but decisions are not delegated to the ARC. The ARC does not provide consensus advice to any federal agency.

#### 3. Meeting Provisions

3.1 The Licensee shall establish the ARC not later than 30 days after Commission issuance of the Project License.

3.2 The Licensee shall arrange, administer, and chair all meetings, unless otherwise agreed. The ARC shall establish protocols for ARC meetings such as agenda development, subcommittee involvement, and timely distribution of materials, location and scheduling.

3.3 Scheduling of meetings should be informed by milestone events contained within specific License Articles. The ARC will meet quarterly for the term of the Project License and any annual licenses or as needed to meet the consultation requirements of the License Articles.

3.4 The Licensee shall make the ARC meeting schedule and meeting agenda available on its web site. During meetings, prior to committee deliberations, the ARC will allow stakeholders to address the ARC and provide comments on each agenda topic being discussed.

3.5 The Licensee shall bear all costs associated with conducting meetings. Each member shall bear its own cost of attendance. A member's ongoing participation on the ARC is subject to that member's budget and resource constraints.

3.6 The role and procedures of the ARC shall be evaluated five (5) years after issuance of the Project License at which time the ARC shall determine if it should remain the same, be modified or discontinued. The ARC will reevaluate its role and procedures as needed and at least every five years thereafter, throughout the term of the Project License and any annual licenses.

3.7 ARC members shall first use the dispute resolution process of the settlement agreement to resolve disputes arising from ARC deliberations, prior to seeking remedies in any other forums.

#### 4. Committee Deliberations

4.1 The ARC shall seek to reach consensus. Consensus is achieved when all ARC members cast a supportive or neutral vote or have abstained from the decision. When any vote is taken at a meeting, the Licensee shall provide the results to and seek the vote of non-present members within three (3) working days. ARC members not present must inform the Licensee of their vote within ten (10) working days after the meeting or they shall be deemed to have abstained from the decision. Alternatively, a vote may be cast by proxy.

4.2 Agencies do not waive or relinquish in any respect any approval authorities under the Federal Power Act or other applicable law through its participation in the ARC consensus process and any subsequent ADR process. While the goal of the ARC is consensus decision-making where possible, nothing in the Settlement is intended to transfer legal authority or jurisdiction from any party to any other.

4.3 The Licensee shall implement any action where consensus by the ARC has been reached, subject to the requirements of the Project License (such as filing for Commission approval) and any necessary regulatory approval. Subject to section 4.4 below, in the absence of consensus, the Licensee may proceed to file plans or make any required filings necessary to meet a License deadline. Unless otherwise noted, the Licensee shall file with the Commission any plans or other required actions within seven (7) days of ARC approval or of an agency decision in case of dispute resolution. Prior to implementing a plan or other required action, the Licensee shall obtain the Commission's approval and any necessary agency approval.

4.4 The Licensee shall file with the Commission documentation of all consultations with the ARC or specific agencies as required by a specific License Article in the Project License, any member's concerns and responses thereto, and any other written comments provided to the Licensee. Consultation shall not mean consultation under Section 7 of the Endangered Species Act or other federal laws requiring consultation unless specifically provided.

4.5 Unless otherwise noted in a specific License Article in the Project License, the Licensee shall allow a minimum of thirty (30) days for ARC member comments and recommendations before submitting the document to the federal agencies for approval. When filing the document with the Commission, the Licensee shall include documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations from ARC members are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons based on Project-specific information.

4.6 The Licensee may seek review from the ARC participants individually on matters in which they have expertise prior to seeking consensus of the ARC.

## 5. Dispute Resolution

ARC members shall first use the dispute resolution process of Settlement Agreement section 5 to resolve disputes arising from ARC deliberations, prior to seeking remedies in any other forum.

## APPENDIX 4

### EARLY IMPLEMENTATION MEASURES

The Parties agree to the following early implementations measures:

1. Aquatic Resource Committee

- 1.1 Within 45 days of the Effective Date of the Settlement Agreement, the Licensee shall establish and convene the Aquatic Resource Committee (ARC) for the purpose of consultation with the Licensee as expressly provided in section 2 and section 3 and, upon issuance of the Project License, as expressly provided in specific License Articles.
- 1.2 Within 15 days of the Effective Date, the Settlement Parties who are ARC members shall designate a primary representative to the ARC and provide Notice to the Settlement Parties of such designation. The Settlement Parties who are ARC members shall attend ARC meetings concerning the development of the plans listed in section 2.1 and the actions described in section 3.

2. LA Plan Development

- 2.1 Within forty-five (45) days of the Effective Date, the Licensee shall begin developing the following plans:
  - Marsh Creek Slide Monitoring and Modification Plan (Marsh Creek Slide Plan) (A-LA 2);
  - Water Temperature Conditioning Plan (WTC Plan) (A-LA 3);
  - Whitewater Recreation Flows (WR Plan) (A-LA 4);
  - Process Flow Regime (PF Plan) (A-LA 8); and
  - Fisheries and Habitat Monitoring Plan (FHM Plan) (A-LA 17).
- 2.2 The Licensee shall target to complete the Marsh Creek Slide Plan and the WTC Plan within one-hundred and eighty (180) days of the Effective Date. The Licensee shall target to complete the WR Plan, the PF Plan, FHM Plan within one (1) year of the Effective Date. These target dates depend upon the ARC achieving consensus on each plan and may be revised in consultation with the ARC.
- 2.3 The Licensee shall develop these plans in consultation with the ARC. The Licensee shall allow a minimum of thirty (30) days for the members of the ARC to comment and make recommendations before submitting a plan to the Commission. When filing a plan with the Commission, the Licensee shall include documentation of consultation; copies of comments and recommendations; and

specific descriptions of how comments and recommendations from the ARC are accommodated by the Licensee's plan.

- 2.4 If the ARC achieves consensus on a plan, the Licensee shall file such plan with the Commission within thirty (30) days of achieving consensus. When filing the plan, the Licensee shall request that the Commission issue a License Article that requires the Licensee to implement the plan in lieu of the applicable Proposed License Article. For example, with respect to the Marsh Creek Slide Plan, the Licensee shall request that such plan replace [A-LA 2]. Upon Commission issuance of a Project License, the Licensee shall implement the plan. Any License Article that requires the Licensee to implement a plan developed prior to issuance of the Project License shall not be considered a Material Modification to the Settlement Agreement so long as the ARC achieved consensus on such plan.
- 2.5 In the event that the ARC cannot achieve consensus on a plan prior to issuance of the License, the Licensee shall file the plan within ninety (90) days after the issuance of the License, unless the License Article obligation is stayed or extended consistent with Settlement Agreement section 4.7. The Licensee shall allow a minimum of thirty (30) days for the members of the ARC to comment and make recommendations before submitting a plan to the Commission. When filing a plan with the Commission, the Licensee shall include documentation of consultation; copies of comments and recommendations; and specific descriptions of how comments and recommendations from the ARC are accommodated by the Licensee's plan. If the Licensee does not adopt a recommendation of an ARC member, the filing shall include the Licensee's reasons based upon Project-specific information.

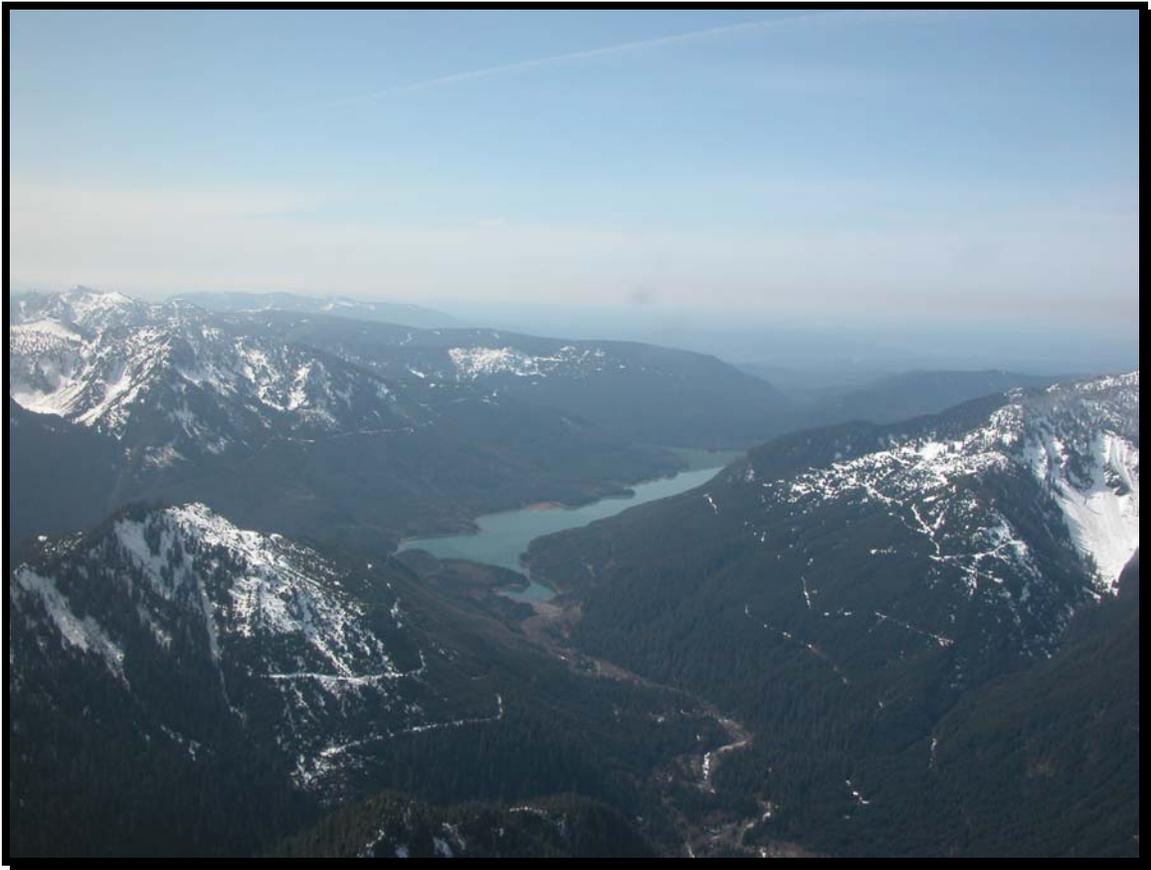
### 3. Marsh Creek Slide

- 3.1 Within one year of the Effective Date of the Settlement Agreement, the Licensee shall (1) establish a permanent survey control point or benchmark at the Marsh Creek Slide and (2) conduct a detailed baseline physical survey at low flow.
- 3.2 The License shall consult with the ARC in undertaking the measures described in section 3.1.

**APPENDIX 5**

**SETTLEMENT AGREEMENT  
RECREATION RESOURCE MANAGEMENT PLAN (RRMP)**

# **Settlement Agreement Recreation Resource Management Plan**



**Henry M. Jackson Hydroelectric Project  
FERC No. P-2157**



**Public Utility District No. 1 of Snohomish County**

**August 2009**

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## List of Acronyms

City	City of Everett
District	Public Utility District No. 1 of Snohomish County
DNR	Washington State Department of Natural Resources
DOH	Washington State Department of Health
ESA	Endangered Species Act
FERC	Federal Energy Regulatory Commission
FPS	Forest Practice Standards
HPMP	Historic Properties Management Plan
I&E	Interpretation and Education
NPS	National Park Service
NRCA	Natural Resources Conservation Area
O&M	Operation and Maintenance
ORV	Off-Road Vehicle
PM&E	Protection, mitigation and enhancement measure
RCO	Recreation and Conservation Office
RCW	Revised Code of Washington
RM	River Mile
RNA	Recreation Needs Analysis
RRG	Recreation Resources Group
RRMP	Recreation Resource Management Plan
TRMP	Terrestrial Resources Management Plan
USFS	U.S. Forest Service
WDFW	Washington State Department of Fish and Wildlife

## Recreation Site Name Cross-Reference

Recreation Site Name under RRMP	Recreation Site Name under 1991 Recreation Plan	Site Number under 1991 Recreation Plan
Olney Pass	Olney Pass	1
South Fork	South Fork	2
South Shore	South Shore	3
Nighthawk	Nighthawk	4
Bear Creek	Bear Creek	5
<i>Not proposed as a site under RRMP</i>	Culmback Dam <sup>1</sup>	6
<i>Not proposed as a “site” under RRMP – area for directional signage</i>	Pilchuck Entry	7
North Shore	North Shore	8
<i>New Recreation Site (unnamed to-date)</i>	<i>not applicable</i>	<i>not applicable</i>

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<sup>1</sup> Per FERC Order dated June 28, 2006, Culmback Dam Recreation Site (No. 6) was removed from the Recreation Plan.

## **1.0 INTRODUCTION**

### **1.1 Background**

The Public Utility District No. 1 of Snohomish County (District) will be the sole licensee for the Henry M. Jackson Hydroelectric Project (Project) under a new license term. The Project is located on the Sultan River in Snohomish County, Washington, near the city of Sultan. The Project was originally licensed in 1961 and amended in 1984. In 1961, Culmback Dam was constructed to create Spada Reservoir – the source of the majority of drinking water supplied to Snohomish County by the City of Everett. In 1984, the hydroelectric project was constructed. The Project includes a 262-foot high rock-fill dam (Culmback Dam); a 1,870-acre reservoir (Spada Lake or Spada Reservoir) operated for City of Everett’s water supply, fisheries habitat enhancement, hydroelectric power, and incidental flood control; a Powerhouse and various other facilities; wildlife mitigation lands; and several developed and undeveloped recreation and river access sites. The original interim recreation plan was approved by the Federal Energy Regulatory Commission (FERC) in 1987; a revised recreation plan was approved in 1994 and amended in 2006 by FERC.

During the relicensing process, the District developed this Recreation Resource Management Plan (RRMP) based on results of the Recreation Needs Analysis (EDAW 2008), subsequent development of protection, mitigation, and enhancement (PM&E) measures, and in consultation with Project stakeholders and the Recreation Resource Group (RRG). The RRMP was prepared in consultation with the City of Everett, Washington (City); U.S. Forest Service (USFS), State of Washington Departments of Health (DOH), Natural Resources (DNR), Fish and Wildlife (WFDW); Recreation Conservation Office (RCO); National Park Service (NPS); and non-governmental organizations, among others. Comments received from the consulted parties are included in Appendix 1.

On [Insert Date], the District, USFS, NPS, National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service, Washington Department of Fish and Wildlife (WDFW), Washington Department of Ecology, Tulalip Tribes of Washington (Tribe), Snohomish County, City of Sultan, and American Whitewaters (collectively “Parties”) entered into a comprehensive relicensing Settlement Agreement. The purpose of the Settlement Agreement is to resolve among them issues that have or could have been raise by the Parties in connection with the Commission’s order issuing a new project license. The Parties agreed that the Settlement Agreement is fair and reasonable, consistent with the standards under the FPA. The Parties also agreed that the settlement agreement provides sufficient protection, mitigation and enhancement (PM&E) measures for FERC to find a balance of beneficial uses and that the Settlement is in the public interest as required under Section 10 of the FPA.

The Settlement Agreement requests that the Commission issue a new license for the Jackson Project that incorporates – without material modification – the proposed license

articles set forth in Appendix 1 of the Settlement Agreement. Proposed Recreational License Article 1 as set forth in Appendix 1 requires that the License implement this Settlement Agreement Recreation Resource Management Plan.

## **1.2 Purpose and Organization**

This RRMP for the Project is submitted to the FERC to assist in their assessment of the District's proposed recreation resources PM&Es and to fulfill the future requirement to have and implement a recreation resources management plan to consistently implement recreation related PM&Es over the term of the new license. The Plan provides a description of each developed recreation site, including the types of amenities provided at each site, proposed recreational development, and conceptual drawings that show the location of each existing and proposed developed site. The RRMP also includes a description of public access to the Sultan River.

The RRMP details recreation-related PM&E measures and guides recreation management in the Project area through the term of the new FERC license. The RRMP organizes PM&E measures into four programs: (1) Recreation Sites and Use Areas Program, (2) Operations and Maintenance Program, (3) Recreation Monitoring and Reporting Program, and (4) Interpretation and Education Program. Each of these programs and their associated PM&E measures are detailed below. In addition to these proposed programs, the RRMP supports the City's water quality protection measures (e.g., no overnight use, non-contact reservoir-based activities only, no combustion engines, etc.) and the District's and surrounding landowners' protection of the natural resources (e.g. minimizing litter and vandalism, maintaining natural setting and native plant vegetation, etc.).

The District developed these RRMP programs in consultation with the Recreation Resource Group (RRG) and believes that they meet the needs of the recreation community in balance with other resource and landowner objectives.

## **1.3 Issues and Circumstances**

The RRMP was developed based on several factors driving the direction of recreation in the Sultan Basin:

- results of the Recreation Needs Analysis (RNA). Among other things, the RNA identified a need for additional trails, and determined that capacity at existing recreation sites would not be exceeded through the term of the new license, (EDAW 2008);
- consultation efforts with the RRG. This group identified, among other things, a need for additional trails in the Project area;
- costly requirements to upgrade roads to Forest Practice Standards (FPS) by 2015 (David Evans 2008). Multiple culverts would need to be upgraded in size to meet the FPS for a road system, if not abandoned and/or converted to trails;
- lands adjacent to District ownership at Spada Lake are in the DNR's Morning Star Natural Resources Conservation Area (over 26,000 acres). These lands

surround to the north, east and south and are managed for habitat protection, to provide opportunities for environmental education, and to allow low impact public use.

- other existing recreational opportunities in the Project area;
- protection of water quality of Spada Lake Reservoir as it provides storage of approximately 80% of the drinking water for Snohomish County; and
- protection of natural resources in this remote area. District-owned lands are managed for wildlife habitat and other terrestrial resources under plans associated with the Project license. Many of the recreation sites lie in close proximity to the Morning Star Natural Resources Conservation Area, old-growth forests, and occupied or suitable habitat for the Endangered Species Act (ESA)-listed marbled murrelet.

## **2.0 ROLES, PLANNING and COORDINATION**

### **2.1 Roles and Responsibilities**

The District has the responsibility to implement the RRMP as required by a new license issued by FERC and accepted by the District. The District will be responsible for:

- providing the funding to carry out the capital improvements and annual maintenance as described herein;
- coordinating with surrounding landowners regarding land management in or near the Project boundary that may affect or be affected by the recreational opportunities provided;
- consulting with appropriate agencies, tribes and FERC as needed;
- monitoring recreational use, resource impacts, vandalism; and
- reporting to FERC per Form 80 requirements.

### **2.2 Resource Integration and Coordination**

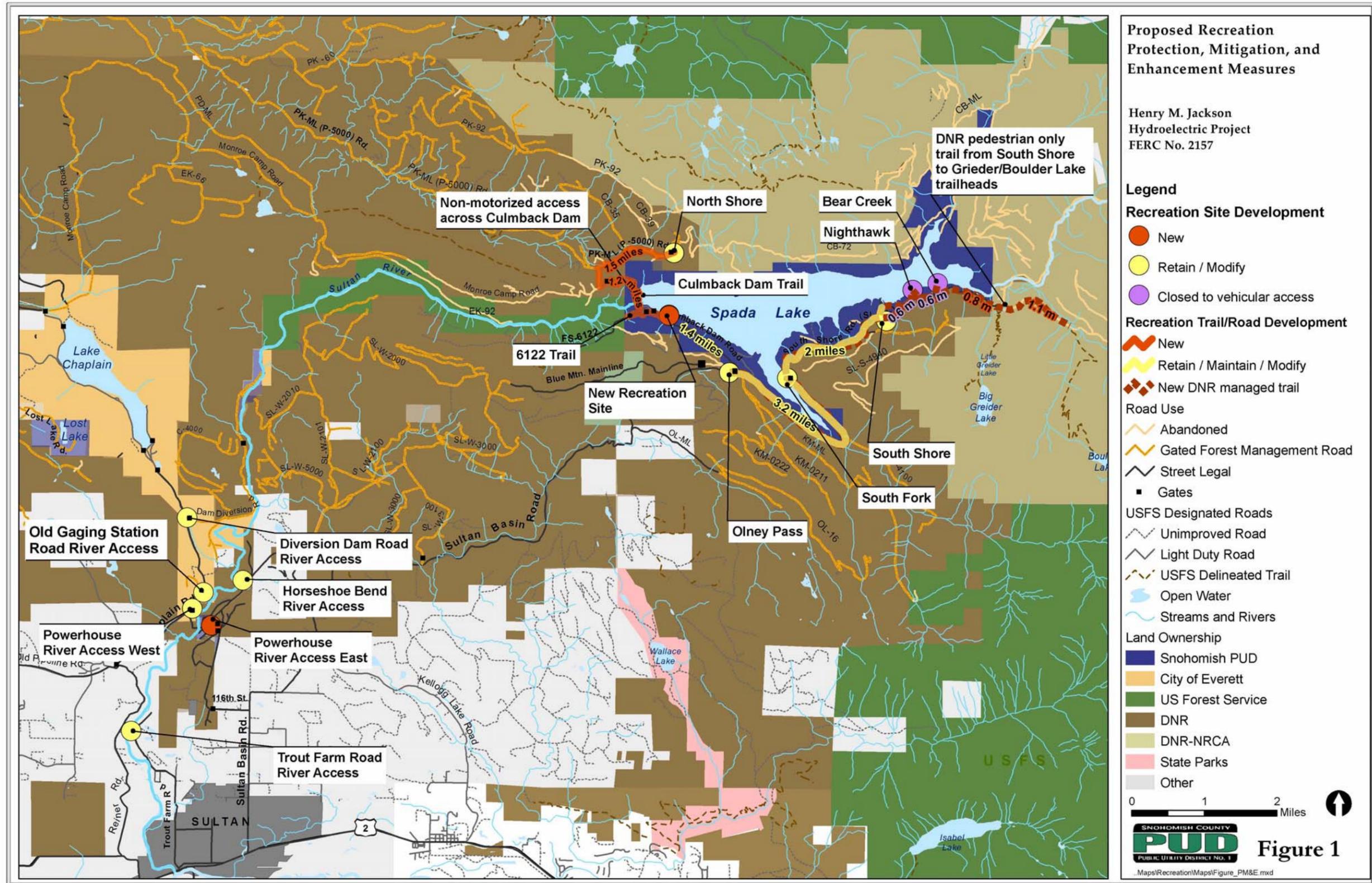
Due to the natural setting of the Project recreation facilities and access sites, other resources affect recreation resources and vice versa. The District will coordinate the actions of the RRMP with the actions of the various Project resource management plans including the Noxious Weed Management Plan, Marbled Murrelet Habitat Protection Plan, Terrestrial Resources Management Plan, and Historic Properties Management Plan. Resource specialists will be consulted prior to new construction, enhancements and/or major repairs to recreation facilities. Operational staff will be trained on the unique requirements of the RRMP.

The District is cognizant of the surrounding agency and landowner resource management objectives. Current landownership in the Sultan Basin is identified in Figure 1. District staff will coordinate with surrounding resource management agencies and landowners on a periodic basis to discuss upcoming implementation of recreation actions and other relevant issues. The District will coordinate with DNR regarding abandonment and conversion to trail of the South Shore Road between the South Shore Recreation Site and the Bear Creek Recreation Site (See Section 3.3.1).

### **2.3 Supporting Documents**

The RRMP and its associated PM&E measures do not include proposed recreation flow and other enhancement measures for whitewater boaters, which will be described in a separate document. At Spada Lake, the District either owns the roads that lead to the proposed recreation sites or has an existing easement for use of DNR roads that lead to District recreation sites (DNR, Agreement for Exchange of Real Property, Easement, May 1991). This agreement includes measures that while related to recreation in the Project area, are considered “multi-purpose” serving purposes beyond the Project. This 1991 agreement is documented independently and is not for inclusion in the RRMP or new license.





### **3.0 RECREATION SITES and USE AREAS PROGRAM**

This section presents a brief overview of existing (as of 2009) and proposed Project-related recreation development and use areas. The intent is to describe the baseline recreation conditions and identify planned enhancements during the new license term. Conceptual site plans for existing and planned Project-related developed recreation sites are provided in Appendix 2.

The District owns approximately 4,500 acres of land adjacent to and including Spada Lake, Project facilities and Lost Lake. These lands are open to the public with the exception of Project operation facilities. These lands are managed to protect water quality, provide wildlife habitat and for public use.

The District provides several developed recreation sites (Olney Pass; South Fork; South Shore; Nighthawk; Bear Creek; and North Shore) and one site with directional signage only (Pilchuck Entry) adjacent to Spada Lake; and one undeveloped, low-impact site at Lost Lake. All sites are for day use only. The sites vary in their amenities; including parking lots, scenic overlooks, boat launching areas, trails, picnic areas, trash containers and vault toilets. No drinking water is provided at any of the sites. Sites have been enhanced by plantings of native vegetation to provide a natural setting. Several of the sites contain interpretive signs. Public access is provided to the Sultan River at several locations; amenities at these sites vary and include scenic views, trails, trash containers and a boat launch. Each site is described in more detail in Section 3.3.

#### **3.1 Use Regulations**

Many of the authorized uses and restrictions emphasize and prioritize the protection of Spada Lake Reservoir water quality which supplies approximately 80 percent of the water supply to Snohomish County. The Washington State Department of Health also supports the protection of the source water quality in Spada Lake. Therefore, Spada Lake is a non-contact (no bodily contact activities such as swimming, wading) reservoir. Only non-motorized and non-combustion engine watercraft may be used on the reservoir. Recreation sites and river access sites are for day use only.

Additional authorized uses and restrictions are periodically updated by various sources. These sources include the District's Board of Commissioners through resolutions, the District General Manager through directives, the Snohomish County Board of Commissioners through county ordinances, and the Everett City Council through city ordinances. Use regulations that outline approved uses of Project lands are posted to the District's web site, on Project signage, and by other means as discussed in section 6.

The District assumes no responsibility for injuries, theft or vandalism occurring to the public or their property while using Spada Lake or adjacent lands.

The District will advise the public of use regulations. Major incidents are reported to the Snohomish County Sheriff's Department by the District or the City's watershed patrolmen. District employees do not have policing power. The City's watershed patrol has policing power in matters of water quality and public use regulations.

### **3.2 Public Access**

Visitors using District lands surrounding Spada Lake are required to register at the Olney Pass Recreation Site. Roads leading to Spada Lake are available for public use year-round but may be closed by Snohomish County during periods of heavy snowfall or when other safety issues arise. The public is allowed access from dawn to dusk, to Project lands throughout the year, with the exception of lands around facilities as detailed in the use regulations. Designated recreation sites will be maintained by the District from about April 15 to October 31 to coincide with the fishing season. Olney Pass will be open and maintained year-round.

Certain activities such as hunting and fishing are seasonal per WDFW regulations.

The District will allow pedestrian and/or bicycle access across Culmback Dam and pedestrian access across the Powerhouse bridge year-round during daylight hours.

The District may temporarily close Culmback Dam or the Powerhouse bridge to public access based on the National Threat Advisory. Public access may also be restricted if other security, weather or operational concerns are identified. Public access to lands adjacent to Spada Lake, and to Spada Lake itself, may be restricted due to fire hazard, public health and safety concerns, poor weather/road conditions, maintenance and repair, and/or security risk.

There are gates at the entrance to the South Shore Road and the Culmback Dam Road that are left open except when operational, security or safety reasons warrant closure. These roads are frequently closed to vehicular traffic in the winter due to snow related safety conditions. Gates at the entrance to Spada Lake recreation sites will remain open and unlocked from approximately April 15 through October 31, except during public access closures of the area or if significant vandalism of the sites occurs. The gate just off Culmback Dam Road at the entrance to the 6122 Road (to be converted to a trail) will be locked year-round; gate keys will be provided to the USFS and DNR for administrative access and other parties (e.g. mineral claimants) as requested for legitimate access. The Lake Chaplain Road gate is open from 6:00 a.m. to 6:00 p.m. year-round; access is controlled by City personnel for protection of the Lake Chaplain watershed and City property. The 116<sup>th</sup> Street gate and Powerhouse bridge gate (pedestrian only) will be kept open year-round to provide greater access to the Sultan River at the Powerhouse. Vehicles may park outside the gate just above the Powerhouse and walk the short distance to the Powerhouse bridge. The Trout Farm Road River Access gate will be left open during the fishing season. If vandalism becomes a problem at any of the recreation sites or use areas, or safety or operational issues warrant, access may be restricted via locked gates. Anyone wishing to gain access to a locked gate can contact the District.

### **3.3 Recreation Sites and Enhancements**

Recreation sites and opportunities can be divided into three categories: 1) those surrounding Spada Lake; 2) those along the Sultan River; and 3) at Lost Lake. Existing conditions and proposed enhancements are described below and depicted in Figure 1 and Appendix 2.

#### **3.3.1 Spada Lake**

##### ***Olney Pass Recreation Site***

Vehicular access to the Olney Pass Recreation Site is via the Sultan Basin Road. Olney Pass is the first site encountered as visitors enter the basin from the south side of the Spada Lake Reservoir. Visitors could park at Olney Pass for an approximately 1.4-mile-long one-way hike or bike ride west to the New Recreation Site and could continue on to the North Shore Recreation Site. Another option would be to head east for an approximately 3.2 –mile-long one-way hike or bike ride to the South Fork Recreation Site and they could continue another 2.0 miles to the South Shore Recreation site. From the South Shore Recreation Site they could continue hiking east to additional District or DNR recreation sites. The District leases the Olney Pass Recreation Site lands from DNR and will continue to do so under the new license term provided that reasonable terms for access rights can be obtained.

Amenities:

- Registration station and signage
- parking spaces (6)
- vault toilets
- trash receptacles

**Planned enhancements:** The District will maintain Olney Pass Recreation Site as currently configured. Aging signage will be replaced and toilets will be upgraded for barrier-free access.

##### ***South Fork Recreation Site***

Vehicular access to the South Fork site is via the South Shore Road; it is approximately 3.2 miles east from Olney Pass. Barrier-free facilities are available (parking, paths, picnic tables, and vault toilets).

Amenities:

- car-top boat launch
- parking spaces (over 20)
- internal access trail
- picnic areas
- vault toilets
- trash receptacles

**Planned enhancements:** The District will improve the existing boat ramp at the South Fork Recreation Site to accommodate trailered-boat launching and improved access to Spada Lake during the fishing season (typically mid-April through the end of October). Additional parking will be constructed to accommodate vehicles with boat trailers; the District may reduce parking for vehicles without trailers (currently under-utilized) to accommodate these new facilities.

### ***South Shore Recreation Site***

Vehicular access to the South Shore Recreation Site is via the South Shore Road; it is approximately 5.2 miles east of the Olney Pass Recreation Site. Barrier-free facilities are available (parking, paths, and vault toilets).

Amenities:

- gravel boat launch
- parking for boat/trailer combinations (6) and vehicles (over 20)
- vault toilets
- picnic areas
- trash receptacles

**Planned enhancements:** The District will maintain South Shore Recreation Site. Picnic tables will be added and aging signage will be replaced. The District will improve the boat ramp and parking to accommodate an increase of visitor use of this site.

### ***Nighthawk Recreation Site***

Access to the Nighthawk Recreation Site is via the South Shore Road; it is approximately 5.8 miles east of Olney Pass.

Amenities:

- internal access trail
- toilets
- trash receptacles
- picnic areas

**Planned enhancements:** Nighthawk Recreation Site access will be via pedestrian access per the DNR's road abandonment strategy along South Shore Road. The District will relocate and/or remove facilities away from the reservoir shoreline to reduce potential water quality impacts. In consultation with the City and other recreation agencies, the District will remove the lower vault toilets and may remove the upper vault toilets and replace them with another accepted form of sanitation facility. The concrete boat ramp will be removed. Fire pits, firewood shelters, and shelters over picnic tables will be removed to minimize the potential for forest fires and to maintain the site for day use only. Four to five picnic tables will remain at this site. The District will revegetate areas where facilities are removed.

### ***Bear Creek Recreation Site***

Access to the Bear Creek Recreation Site is via the South Shore Road; it is approximately 6.4 miles east of Olney Pass. The Bear Creek site offers two scenic overlooks.

Amenities:

- internal access trail
- trash receptacles
- picnic area
- toilets

**Planned enhancements:** Bear Creek Recreation Site access will be via pedestrian access per the DNR's road abandonment strategy along the South Shore Road. In consultation with the City and other recreation agencies, the District may remove the vault toilets and replace it with another accepted form of sanitation facility. Improvements at this site will be construction of new guardrails, adding picnic tables, benches and signage.

### ***North Shore Recreation Site***

Access to the North Shore Recreation Site is available via hiking and/or bicycle along the Pilchuck Mainline (to the west). Non-motorized access across Culmback Dam will allow access from the south. The District leases this recreation site's lands from DNR and will continue to do so under the new license term provided that reasonable terms for access rights can be obtained. The site offers two scenic overlooks.

Amenities:

- internal access trail
- picnic areas
- vault toilets
- trash receptacles

**Planned enhancements:** The District will maintain North Shore Recreation Site as currently configured and replace aging signage and railing.

### ***Pilchuck Entry***

Access to the North Shore Recreation Site passes by the Pilchuck Entry. The Pilchuck Entry site provides no amenities and only contains directional signage. This area will be a part of the Identification & Enhancement program for providing directional signage rather than be considered a recreation site under this RRMP.

**Planned enhancements:** Replace aging signage.

### ***Culmback Dam Access Enhancement***

The District will reopen Culmback Dam to pedestrian/bicycle access during daylight hours for access to the north side of Spada Lake. The District may temporarily close the Culmback Dam road to non-motorized public access based on the status and level of the

National Threat Advisory. Public access may also be restricted if other security, operational or weather related concerns are identified.

### ***New Recreation Site Development***

The District will develop a new recreation site along Culmback Dam Road near the intersection with the 6122 Road. This new recreation site will provide parking (approximately 6 parking spaces), picnic tables (approximately 2 to 4), and a trailhead for non-motorized access to the North Shore Recreation Site and the new Culmback Dam Trail. Additional overflow parking will be available just east of the site. The new recreation site and the Culmback Dam area will provide a location for shuttle use (e.g., boater drop-off, turn around, etc.) and interpretive signs. The heated toilets near this Site at Culmback Dam will be upgraded for barrier-free access.

### ***Culmback Dam Trail Development***

The District will provide and maintain pedestrian-only access trail to the Sultan River from Culmback Dam along the alignment of the auxiliary release line or another location on District property near the dam; the District will install and maintain hand railing and enhanced footing on this trail. The trail will be accessible during daylight hours and will be sited to minimize natural resource impacts. The new trail will provide access for whitewater boaters and operational staff to the upper Sultan River.

### ***6122 Road Conversion to Trail***

The District will formally abandon (following State Forest Practice Standards) the portion of the 6122 Road that is located on District land (approximately 0.5 miles) and will convert it to a trail for hiking and access to National Forest System land. This trail will accommodate off-road vehicle (ORV) use for non-Project miners and administration/maintenance. During the term of the license, the District will maintain the converted road to trail, to an ORV standard.

### ***Sultan River Canyon Trail***

The District will develop and maintain a trail from the boundary of National Forest Service Land (NFSL) and the District-owned land along the 6122 Road to the Sultan River. The first portion of the trail on the 6122 Road will allow mining claimants and administrative ORV access, as well as bicycle access to a beginning point for a pedestrian-only trail that leads down to the Sultan River. The Licensee shall design, construct and maintain the trail on NFSL consistent with the USFS current trail standards from the Licensee's property line on the proposed trail converted from the 6122 Road to the Sultan River. During the term of the license, the District will maintain the trail. The converted road portion of the trail will be maintained to an ORV standard, to the point of the beginning of the pedestrian-only portion of the trail.

The Sultan River Canyon Trail will provide multi-purpose public access to the Sultan River and Sultan River Canyon, as determined by Project recreational goals, and consistent with USFS standards (e.g., hiking, recreational mining, wildlife viewing, whitewater boating access, etc.). The trail will be gated at the Culmback Dam Road. Mining claimants, and USFS, DNR, District and City personnel requiring administrative

access would be able to open the gate for ORV use. The specific location of the pedestrian-only access trail that leads down to the Sultan River shall be determined in cooperation with the USFS in order to locate the trail in the most stable and safe location and prevent impacts to occupied marbled murrelet habitat. The Marbled Murrelet Habitat Protection Plan for the Jackson Project will be adhered to regarding trail location and trail construction.

### **3.3.2 Lost Lake**

Access to Lost Lake is via hiking only. This area is primarily a wildlife management area and managed under the District's Terrestrial Resource Management Plan.

The Lost Lake area contains sensitive habitat; therefore, this is a low-impact only recreation use area. Fishing is allowed at the platform or from carry-in inflatable boats.

Amenities:

- floating fishing platform

**Planned Enhancements:** The District will maintain this low-impact recreation use area in its current configuration.

### **3.3.3 Sultan River**

#### ***Trout Farm Road River Access Site***

This site is located off the Trout Farm Road, north of the city of Sultan, on the east side of the Sultan River (river left) at RM 2.5. This site is the furthest downstream Project-provided river access site.

Amenities:

- parking area
- boat launch
- picnic area
- trash receptacle

**Planned enhancements:** The District will enhance this lower river access site by better defining the parking area and expanding parking for trailered-boat parking, removing boulders that inhibit boat launching, reconfiguring the driveway and boat launch entrance, installing wildlife plantings, conducting noxious weed management, and improved signage.

#### ***Powerhouse West River Access Area***

This site is located on the Lake Chaplain pipeline right-of-way, on the west side of the Sultan River (river right) at RM 4.3. This area is accessed using the Lake Chaplain Road which is gated open from 6:00 a.m. to 6:00 p.m. year round. A parking area for approximately 20 vehicles is provided adjacent to the Lake Chaplain Road. The road/trail down to the river is gated and public access is hike-in only for approximately ½ mile.

**Planned enhancements:** The District will maintain access to this site in its current configuration.

### ***Powerhouse East River Access Area***

This site is located off 116<sup>th</sup> Street, on the east side of the Sultan River (river left) at RM 4.3. The road extends north of 116<sup>th</sup> Street and winds down to the Powerhouse and the Powerhouse bridge. The 116<sup>th</sup> Street gate is kept open to provide vehicular access to the Horseshoe Bend River Access Area and to this site. Vehicles may park outside the gate just above the Powerhouse and walk the short distance to the Powerhouse bridge.

**Planned enhancement:** The Powerhouse bridge gate will be modified to allow for pedestrian access to the river year-round. The 116<sup>th</sup> Street gate will continue to be kept open year-round unless operations or safety issues warrant closure.

### ***Old Gaging Station Road River Access Area***

This site is located at the Old Gaging Station Road on the west side of the Sultan River (river right) at RM 4.8. The road down to the river is gated and provides an approximately 1-mile hike to the river. This area is accessed using the Lake Chaplain Road which is gated open from 6:00 a.m. to 6:00 p.m. year round. Parking is provided at the Powerhouse West River Access Site (about 0.1 miles away) or along the Lake Chaplain Road.

**Planned enhancements:** The District will maintain access to this site in its current configuration.

### ***Horseshoe Bend River Access Area***

This site is located near the Horseshoe Bend Placer Claim on the east side of the Sultan River (river left) at RM 6.8 and accessed via the 116<sup>th</sup> Street. Parking is available along the pipeline right-of-way and a number of user defined trails can be used to access the river near the Horseshoe Bend. The 116<sup>th</sup> Street gate is kept open to provide vehicular access to this site.

**Planned enhancements:** The District will maintain access to this site in its current configuration and will continue to keep the 116<sup>th</sup> Street gate open year-round unless operations or safety issues warrant closure.

### ***Diversion Dam River Access Area***

This site is located on the west side of the Sultan River (river right) via the Lake Chaplain Road and Diversion Dam Road. Access in this area is between RM 6.5 through RM 9.7 (at the terminus of the Diversion Dam Road). Access at the Diversion Dam Road is hike-in only. Parking is available at the gate adjacent to the Lake Chaplain Road for approximately 10 vehicles. The Lake Chaplain Road is gated open from 6:00 a.m. to 6:00 p.m. year round.

**Planned enhancements:** The District will maintain access to this site in its current configuration.

## **4.0 OPERATIONS & MAINTENANCE PROGRAM**

This program describes the District's Operation and Maintenance (O&M) responsibilities at Project recreation sites and use areas. The District will provide routine maintenance at its developed recreation sites at Spada Lake (Olney Pass, South Fork, South Shore, Nighthawk, Bear Creek, North Shore, and the proposed new recreation site; informal recreation area at Lost Lake; Trout Farm Road; and other defined river access sites.

### **4.1 Rounds**

Rounds will be performed as needed (typically weekly) to inspect Project recreation sites; document maintenance needs; document evidence of vandalism, infractions of regulations, or natural resource damage; collect visitor registration cards; and remove garbage.

### **4.2 Signage**

Vandalized signs will be repaired and/or replaced as needed. The District will evaluate signage effectiveness in conjunction with new interpretation and education (I&E) signage and kiosks.

### **4.3 Boat Launches**

Boat launches will be kept free of debris. Maintenance which can be performed without closure of the boat launches will be performed as soon as practicable. Major maintenance will be performed prior to the opening of each recreation site each year to the extent possible. Boat launches may be blocked when recreation sites are closed to deter ORV use in the drawdown zone or other activities that could potentially affect water quality.

### **4.4 Trails**

Trails will be routinely cleared of litter and fallen trees and maintained for proper drainage to reduce erosion problems. Maintenance which can be performed without closure of the trails will be performed as soon as practicable. Unsafe and fallen vegetation will be removed at the earliest available time each year. Trails within hazard areas will be closed to the public until they are repaired.

### **4.5 Recreation Site Entrance Roads**

District -owned access roads at recreation sites will be maintained from about April 15 through October 31 each year. Access roads, ditches, and culverts will be kept free of debris. Maintenance which can be performed without closure of roads will be performed as soon as practicable. Major maintenance will be performed prior to the opening of each recreation site each year to the extent possible. However, shutdowns may occasionally occur during the recreation season for major maintenance or repairs as needed or for safety reasons.

### **4.6 Picnic Areas**

Picnic areas will be kept free of debris. Tables and benches will be repaired as soon as practicable.

#### **4.7 Parking Lots**

Parking lots will be kept free of litter and fallen trees. Abandoned or disabled cars will be subject to towing. Maintenance which can be performed without closure of parking lots will be performed as soon as practicable. Major maintenance will be performed prior to the opening of each recreation site each year or during periods of low recreation use, to the extent possible.

#### **4.8 Trash Receptacles**

Trash receptacles will be bear-proof and emptied as needed. All recreation areas will be kept free of debris that could spill from the trash receptacles. Minor maintenance will be performed as time permits. Major maintenance will be performed prior to the opening of the recreation sites each year to the extent possible.

At recreation sites where no trash receptacles are provided, the District will encourage a pack-in/pack-out approach to keeping sites clean.

#### **4.9 Toilets**

Vault toilets or other sanitation facilities will be pumped or emptied as needed, but at least once per year. Supplies will be replenished and the toilets will be cleaned on a regular basis. Maintenance will be performed as soon as practicable. Major maintenance and a visual inspection of the vault liner will be performed prior to opening of the recreation sites each year.

During any planned high-use events (such as derbies, electric boat races), the District will supplement the existing facilities with additional portable toilets to accommodate the increase in visitors.

#### **4.10 Vegetation**

Unsafe and/or fallen vegetation at the recreation sites will be removed as soon as practicable. Vegetation in the landscaped areas at each recreation site will be maintained by the District's staff or its contractors. Damaged or dead vegetation in the landscaped areas will be replaced as soon as practicable. New landscape vegetation that is proposed will be coordinated for consistency with the Terrestrial Resource Management Plan. The Noxious Weed Plan will be implemented as needed.

#### **4.11 Enforcement**

The District will adequately advise the public of all use regulations and will provide enforcement. Major incidents will be reported to the Snohomish County Sheriff's Office by District staff or City Watershed Patrolmen. District employees do not have policing power. The City watershed patrol has policing power in matters of water quality and public use regulations.

The District currently has an agreement with the Snohomish County Sheriff's Office for patrol of the Jackson Project area and anticipates maintaining a similar agreement throughout the license term.

## **5.0 RECREATION MONITORING & REPORTING PROGRAM**

This program describes how recreation use levels and potential impacts are monitored over the term of the new FERC license.

### **5.1 User Counts**

Public use of the area will be documented by means of visitor registration, patrol reports and staff observations. Visitor registration data from the Olney Pass and Powerhouse West kiosks will be tallied on an annual basis; use levels along the Sultan River and Lost Lake will be periodically monitored to coincide with FERC Form 80 requirements. This information will be used in evaluation of existing use, sites, funding, budgeting estimates and projection of future needs.

### **5.2 Resource Impacts**

The District will periodically monitor potential impacts from recreation use during its rounds described in section 4.1. Monitoring for potential recreation impacts will be focused primarily in dispersed/lightly developed areas, as they tend to be more susceptible to impacts, and may be coordinated with terrestrial and/or aquatic resource monitoring programs.

### **5.3 Reporting, Plan Review and Updates**

The District will report recreation use levels on the FERC's Form 80 every six years and offer to hold a recreation group meeting to discuss use levels, resource impacts, demand, etc. If after two cycles (12 years) or more of collecting and analyzing FERC Form 80 data, significant changes to Project recreational use levels are identified, the RRMP may be modified to address future needs. The District, in consultation with appropriate agencies/tribes/stakeholders, will periodically review and revise elements of the RRMP, if needed. Significant change would include exceeding Project recreation facility capacity as defined by FERC Form 80 updates.

## **6.0 INTERPRETATION & EDUCATION PROGRAM (I&E)**

This program describes potential signage and themes/topics that may be interpreted in the Project area during the new license term. Locations for I&E displays, kiosks, and/or signage are depicted in Appendix B.

### **6.1 Signage**

#### ***Informational & Directional***

Informational signage will be included at each of the developed recreation sites identifying the use regulations pertinent to that site, and identifying information in conformance with 18 CFR Part 8. A map of the Project's area may be provided at each of the recreation sites and trailheads around Spada Reservoir. Signage will be kept to a minimum to not disrupt the visual aesthetics of the area.

A visitor's bulletin board will be provided at Olney Pass. Recreation information will be posted on the board, and may include the following items: District regulation signs, map of Project recreation sites and nearby recreation destinations, Project brochure, site or road closure information, WDFW hunting and fishing regulations, and maintenance work currently being performed.

The District will provide information at Olney Pass and at the junction of the 6122 Road (converted to trail) and the Culmback Dam road with a map that shows the Sultan River Canyon Trail and Sultan River access points, including river ratings for kayaking, and warnings that abrupt changes in river flows and velocities could occur.

Directional signage will be included at the Pilchuck Entryway identifying a route to the North Shore Recreation Site and to the route across Culmback Dam.

#### ***Educational***

Educational signage depicting the natural resources of the area and/or Project benefits will be provided at several recreation sites. Topics may include wildlife, wetlands, fish, hydroelectric power generation, drinking water supply, or other similar themes.

### **6.2 Kiosks**

The District will maintain registration kiosks at Olney Pass and the Powerhouse West kiosk site. Kiosks will contain registration forms, recreation facility information, and use regulations.

### **6.3 Web site**

The District will maintain a web site (or similar technology) that will identify the Project recreation sites, location, and open/closed status, among other informational items. The District will also post on the web site the elevation of the reservoir pool level, river flow and rain gage data; along with information regarding whitewater boating opportunities.

#### **6.4 Brochures**

The District will periodically update educational brochures of the Project recreational sites and facilities and will provide these brochures to interested parties (Chamber of Commerce, businesses) as requested. Topics for educational brochures will be similar to those identified in section 6.1. Brochures will also be posted on the District's web site.

## **7.0 IMPLEMENTATION SCHEDULE**

From the issuance of the license by FERC, the District will:

- Update its web site as stated in Section 6.3 within 1 year;
- Begin implementation of its I&E program within 2 years;
- Install new gate at Powerhouse bridge within 2 years;
- Install enhanced security measures at Culmback Dam and allow non-motorized access within 2 years;
- Construct the Culmback Dam Trail as stated in Section 3.3 within 2 years;
- Construct the new recreation site and 6122 Road Trail as stated in Section 3.3 within 3 years; and
- Modify recreation sites as stated in Section 3.3 within 4 years.

## **8.0 REFERENCES**

David Evans and Associates. 2008. Rough Order Magnitude Cost Estimates for Road Maintenance and Abandonment Plans. Prepared for Snohomish County PUD.

EDAW. 2008. Recreation Needs Analysis (RSP13) Final Technical Report. Prepared for Snohomish County PUD.

Snohomish County PUD. 1991. Final Recreation Plan.

Snohomish County PUD. 2008. Preliminary Licensing Proposal.

## Appendix A: Record of Consultation

### Overview

The District has actively engaged with recreation stakeholders throughout the relicensing process – from study plan development, study result reporting, PM&E development, and RRMP review and comment – through meetings, workshops, telephone and email communications, and written comment periods. A list of consultation on the development of this RRMP and supporting meeting summary documents are included below. Responses to stakeholders' comments to the draft RRMP are also provided in this appendix. Further descriptions of recreation stakeholder consultation on the RNA can be found in the RNA and consultation on the study plan development can be found in FERC filings.

<b>Date</b>	<b>Type</b>	<b>Description</b>
7/13/09	Written Comments	Written comments regarding draft Settlement Agreement RRMP
5/6/2009	Written Comments	Written comments regarding draft RRMP
4/15/2009	Meeting	Review questions/comments on draft RRMP
3/31/2009	Written Comments	Written comments regarding PLP
2/5/2009	Meeting	Discuss recreation PM&Es identified in PLP
9/25/2008	Meeting	Discuss study results with recreation stakeholders and proposed PM&Es

**Response to Comments**

<i>Number</i>	<i>Comment</i>	<i>District Response</i>
<b>Andy Bridge via email dated May 4, 2009</b>		
AB-1	<p>As noted previously in the Recreation Needs Analysis there is a strong need for additional trails in the Spada basin. This is challenging due to the planned shortening of the South Shore Road which means much longer hikes for the existing Greider and Boulder lake trails as well as the DNR's desire to form the Morning Star NRCA which precludes additional hiking trails. The PUD along with the City of Everett has a strong concern to protect the drinking water quality.</p> <p>These three issues all point to further enhancing and directing recreational use downstream of Culmback Dam. This is out of the NRCA and has no effect on drinking water quality.</p>	<p>Additional trails are being provided in the basin by the partial conversion of the South Shore Road and District's portion of the 6122 Road to trail. Additionally, the District has proposed to allow pedestrian access across Culmback Dam to access the North Shore Recreation Site.</p> <p>Collectively, these measures will create an approximate additional 7 miles for hiking. Hiking is a low impact recreation activity and allowed under the Morning Star NRCA. When compared to vehicular access, hiking to the recreation sites will have fewer impacts on the water quality for water supply and aquatic resources.</p>
AB-2	<p>The District has proposed a Culmback Dam Trail to the base of the dam. Quite honestly with the exception of a handful of occasional whitewater kayakers this trail is useless for recreation. It is very dangerous to venture into the gorge due to the many cliffs, rapids, etc and is simply not appropriate for most hikers. This trail would not allow easy access to any old growth forest. It would also encourage vandalism on the dam and/or increase liability issues for the District. If the District is interested in enhancing recreation downstream of Culmback Dam I would encourage working with the USFS on how best to provide trail access and to which areas.</p>	<p>Comment noted. The District has reviewed several options for trails to the upper Sultan River, in terms of potential options and impacts to operations, terrestrial, cultural and other resources. Additionally, the District considered the topography and geology of the area - the upper river gorge is highly unstable and flashy with many landslides occurring. The Culmback Dam trail creates the least impact (none) to old growth forests and surrounding ESA-listed marbled murrelet occupied habitat on USFS lands downstream of Culmback Dam. Based on our analysis, the Culmback Dam trail provides the best option for accessing the upper river. The utility of the Culmback Dam trail (for recreation and operational access) will be reevaluated after</p>

<i>Number</i>	<i>Comment</i>	<i>District Response</i>
		the 3-year trial period for whitewater boating.
AB-3	I would like to see the District create a joint plan with the USFS for the 6122 road/trail conversion.	The District and USFS have discussed coordinating efforts for the 6122 Road to trail conversion.
AB-4	The proposed 6 parking spaces at the new 6122 Recreation Site seems low to me. I realize that site is topographically challenging to work with. I still feel that more parking is needed somehow.	The six parking spots are an estimate at this point; more or fewer parking spaces may become realized after the site is thoroughly evaluated and construction plans developed. Additional parking will be available just east of the site and along the widened portion of the Culmback Dam Road. Collectively, there is parking for over 20 vehicles at or near the new recreation site.
AB-5	The RNA Study identified Trout Farm Road Site has nearing overcapacity at times. The District owns 5 acres at this site and should add additional parking spaces to a specified number. The RRMP does not give a number of parking spaces.	The RNA (page 90) indicates that the Trout Farm Site is approaching capacity due to the types of uses it receives (vandalism, dumping, partying, soil compaction) not the amount of use. (Facility capacity for parking is at 13% (RNA page 82) and for visitors is at 4% (RNA page 83).) To address the ecological/social capacity concern, per the RRMP, the site is being enhanced by the reconfiguration of the boat ramp and parking area and revegetation efforts. These enhancements will increase the visibility to the lower portion of the site near the river; thus, reducing vandalism and ecological impacts to the site. The site will be monitored for use and reported on the FERC Form 80. Any capacity concerns will be addressed in conjunction with the consultation process identified in the RRMP.
AB-6	A well planned trail route from a new year round Rec. Site will create new opportunities for almost year round hiking	The District has met and consulted with the Recreation Resource Group (RRG) on many occasions addressing

<b>Number</b>	<b>Comment</b>	<b>District Response</b>
	when many other higher elevations trails are blocked by snow. This would be a very valuable addition to the hiking trails in the area.	Project-related recreation concerns and enhancements; the proposed plan has been vetted with the RRG and addresses Project-related recreation needs.
<b>Patti Leppert, FERC via email dated May 6, 2009</b>		
FERC-1	(in Section 3.0, Recreation Sites and Use Areas Program) clearly list the seven existing project recreation sites: Olney Pass; South Fork; South Shore; Nighthawk; Bear Creek; North Shore; and Culmback Dam access, instead of stating “The District provides several developed recreation sites adjacent to Spada Lake”....	Modified based on suggestion.
FERC-2	When I mentioned seven existing project recreation sites, I included Culmback Dam because the District’s amended Recreation Plan, filed December 15, 2005, lists the recreation facilities at Culmback Dam as Recreation Site 6. However, the draft Recreation Resource Management Plan (RRMP) at Section 4.0., page 8, lists six existing recreation sites, and the proposed new site. A final RRMP for the Jackson Project should be very clear with the total number and the names of the existing project recreation sites.	The Culmback Dam recreation site (Site No. 6) was removed from the recreation plan and access restricted across Culmback Dam by FERC Order Modifying and Amending Recreation Plan dated June 28, 2006 due to its close proximity to the dam and associated facilities and to protect the security of the facilities. Thus, Site 6 is not a Project facility under the current license.  The RRMP reflects the current and proposed recreation sites (which does not include the Culmback Dam recreation site No. 6).
FERC-3	The Preliminary Licensing Proposal (PLP) and the amended Recreation Plan identify a recreation site by a name and number ( <i>i.e.</i> , Olney Pass Recreation Site (Site 1)); however, the draft RRMP identifies the recreation site by name only ( <i>i.e.</i> , Olney Pass Recreation Site). Because this difference could lead to confusion I suggest a	The District prefers to refer to the recreation sites by one name only under the new RRMP reducing confusion about name versus number; thus, selected to refer to the recreation sites via name only. A Recreation Site Name Cross-Reference table has been added prior to Section 1.0 of the RRMP to identify the recreation site name with the number

<i>Number</i>	<i>Comment</i>	<i>District Response</i>
	consistency in identifying the project recreation sites.	used in the past.
FERC-4	The amended Recreation Plan identifies Recreation Site 7 (Pilchuck Entry), but I do not find this site in the draft RRMP.	Under the 1991 Recreation Plan, the Pilchuck Entryway Site No. 7 is identified as a “recreation site”; however, it does not provide any amenities beyond directional signage. For the RRMP, this “site” is being included as a point for directional signage under the I&E program and will not be referred to as a recreation site to avoid confusion with the other recreation sites that actually do include amenities.
FERC-5	With regard to the North Shore Recreation Site (page 4) and the Culmback Dam Access Enhancement (page 5), I suggest inserting the sentence, “Visitors could park at Olney Pass (for an approximately 4.0-mile-long one-way hike or bike ride) or at the proposed new day use site (for a 2.7-mile one-way trip)” - - taken from the PLP, page 227, North Shore Recreation Site (Site 8) and North Shore Access Trail - - wherever you find it appropriate. The sentence is a nice lead-in to the proposed new recreation site.	Modified based on suggestion.
FERC-6	With regard to Culmback Dam Trail Development (page 5), I have a concern with the wording “...down the face of Culmback Dam”. Is there another way to characterize it? I did not find this measure in the PLP.	Modified the language. This measure was not proposed in the PLP but is included in the FLA to provide access to the upper Sultan River for recreational and administrative purposes.
FERC-7	For those recreation sites discussed under Lost Lake (Section 3.3.2) and Sultan River (Section 3.3.3) please be clear whether the recreation site is a project recreation facility and whether the recreation site is located within or	With the exception of the Trout Farm Road River Access site, all other sites (Lost Lake and river access sites) are informal/undeveloped access sites. They are Project sites but not part of the current Project boundary. Please see

<i>Number</i>	<i>Comment</i>	<i>District Response</i>
	outside the current Jackson Project boundary. This clarity also should be reflected in Section 4.0 (Operations & Maintenance Program).	Exhibit G, submitted with the FLA, for detail on the new Project boundary.
FERC-8	With regard to Section 8.0, I was not sure whether you want to list the various plans that you identify in Section 2.2. I'll defer to you.	The management plans have not yet been approved by the FERC and may periodically be updated through the term of the new license. For these reasons the District is opting not to cite them specifically to avoid confusion regarding the appropriate version that should be consulted.
<b>Eric Ozog, USFS via emailed memo dated May 6, 2009</b>		
USFS-1	<b>Figure 1</b> <ul style="list-style-type: none"> <li>the proposed vehicle gate on Road 6122 (on PUD land at the Culmback Road junction) should be shown.</li> </ul>	Added to figure as suggested.
USFS-2	<b>Section 3.2 Public Access</b> <ul style="list-style-type: none"> <li>It is our understanding that a proposed vehicle gate across Road 6122 at the Culmback Road junction would be installed and maintained by the PUD. We proposed that the PUD manage access through the gate, and distribute keys to other landowners (USFS, DNR), whitewater boaters, and the mineral claimants, if desired for ORV access. The general public would be allowed to walk or ride a bicycle beyond the gate on the converted road, and the gate should be signed to inform the public of this recreation opportunity.</li> </ul>	Added wording to address the 6122 road gate access.

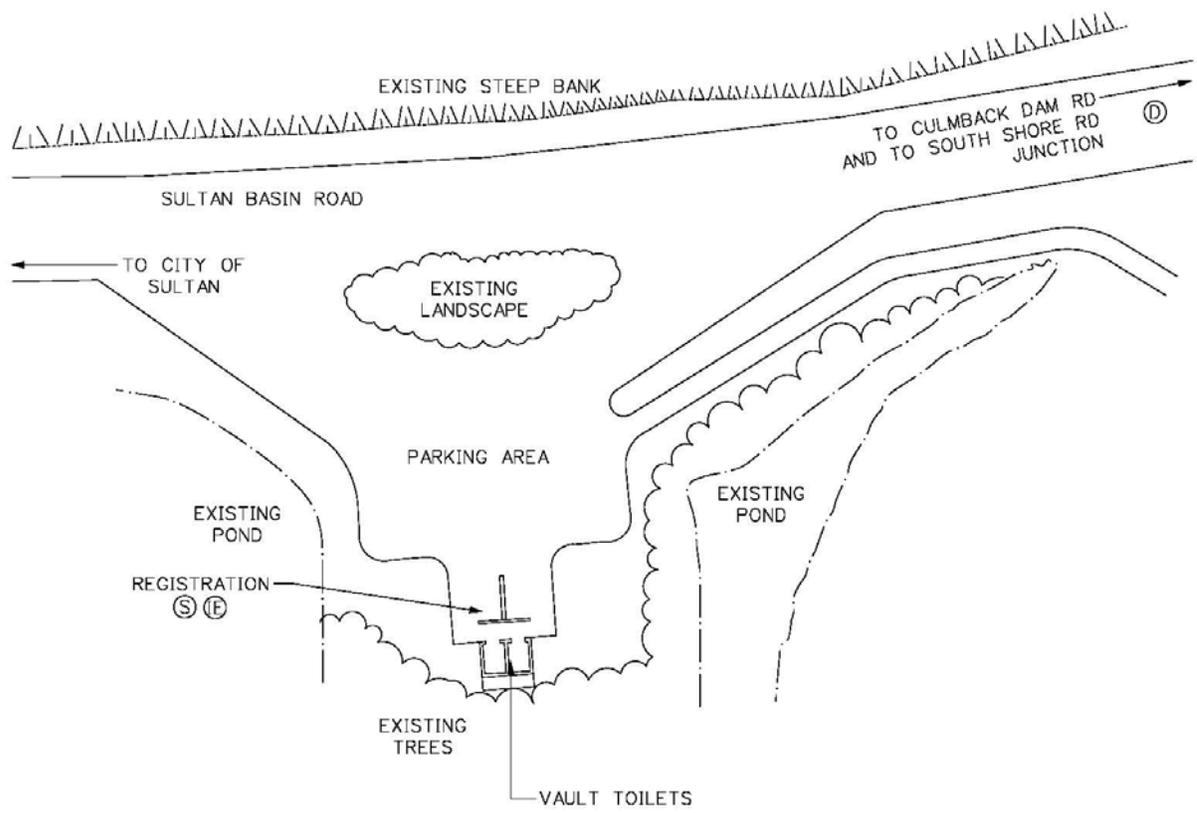
<i>Number</i>	<i>Comment</i>	<i>District Response</i>
USFS-3	<ul style="list-style-type: none"> <li>It is our understanding that the existing toilet near Culmback Dam will be utilized for this site and it is about 1/8 mile from the proposed parking lot. There is also a need to ensure that the toilet provided meets Americans with Disabilities Act (ADA) standards including the access route to the toilet, and that the access route is adequately signed. During scheduled whitewater release events additional toilets (i.e. sani-kans) would be needed. Trash receptacles need to be provided, and these should be “bear-proof” to keep bears and other animals, like crows out of the trash, which is of particular concern at this site due to the documented presence of marble murrelet nearby.</li> </ul>	The RRMP has been updated to state that the toilet will be barrier-free, the trash facilities will be “bear-proof”, and additional toilet facilities will be brought in during planned high-use events. Resource impacts (including to the marbled murrelet habitat) will be monitored and considered during future review of Project-related recreation use.
USFS-4	<p><b>Section 3.3.3 Recreation Sites and Enhancements, Sultan River</b></p> <p>This would be a more appropriate section to include the proposals for the Culmback Dam trail, and 6122 Road to trail conversion.</p>	These recreation site descriptions were left under the Spada Lake section due to their close proximity to Spada Lake and since they serve multiple purposes beyond access to the Sultan River.
USFS-5	<p><b>Section 4: Operations and Maintenance Program</b></p> <ul style="list-style-type: none"> <li><b>Section 4.1 Rounds:</b> There may need to increase frequency if trash cans fill up more than weekly. Most of our recreation sites (i.e. picnic areas) have at least 2 visits per week.</li> </ul>	Comment noted. Frequency will depend on site use which depends on the time of year; rounds will be conducted on a weekly basis or more/less frequently during high/low periods of use.
USFS-6	<ul style="list-style-type: none"> <li><b>Section 4.8 Trash Receptacles:</b> Can these all be</li> </ul>	Updated RRMP as suggested.

<i>Number</i>	<i>Comment</i>	<i>District Response</i>
	"bear-proof"?	
USFS-7	<p><b>Section 5: Recreation Monitoring and Reporting Program</b>            We agree that a monitoring report interval of every six years, with updates to the RRMP every 12 years for significant changes in Project use levels, would be acceptable. However, provisions should also be built into the License to allow changing recreation facilities or activities to accommodate changed use levels.</p>	Comment noted.
USFS-8	<p><b>Section 6: Interpretation &amp; Education (I&amp;E):</b></p> <ul style="list-style-type: none"> <li>• <b>Section 6.1 Signage:</b> Signage should display the Sultan River Canyon Trail and the Sultan River showing river access points downstream at the map at Olney Pass and also on a map at the 6122 junction trailhead. River ratings for the Sultan River should also be displayed at river access points, so users know the difficulty of the particular river reaches that they will be boating.</li> </ul>	The District will engage with the USFS in the development of the I&E plan consulting on the various sign locations and verbiage. The RRMP is left at a high-level as the signage needs may change over the course of the license and allows flexibility in sign placement and content.
USFS-9	<ul style="list-style-type: none"> <li>• <b>Section 6.3 Web site:</b> The web site also needs to include notification of scheduled whitewater releases and river rating information.</li> </ul>	Modified RRMP to provide information on whitewater boating opportunities.
<b>Walt Dortch, USFS via email dated August 3, 2009</b>		

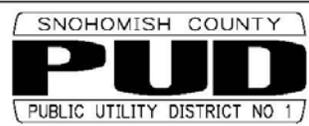
<i>Number</i>	<i>Comment</i>	<i>District Response</i>
USFS-10	<ul style="list-style-type: none"> <li>• <b>Section 3.3:</b> Under the heading "6122 Road Conversion to a Trail", can it be clarified that "During the terms of the license, the District will continue to maintain the converted road as a trail, to an ORV standard, from the Culmback Road junction to the point of beginning of the pedestrian only Sultan Ravier Canyon Trail."</li> </ul>	Added the District's commitment to maintain the District's portion of the 6122 Road and the USFS's portion of the 6122 Road up to the pedestrian only point as an ORV trail for the term of the license in section 3.3.1.
USFS-11	<ul style="list-style-type: none"> <li>• <b>Section 3.3:</b> Under the heading "Sultan River Canyon Trail", end of 1st paragraph: can this wording be deleted: "(this trail would supplement the existing user-defined river access trail off of the 6122 Road)." The reason is, this wording may imply that the existing user-defined miner's trail could still be used by the general public, which the USFS wants to discourage due to user conflict, and that the trail is not designed or was constructed to accommodate public use. The purpose of the proposed Sultan River Canyon trail is to serve as the officially designated public recreational pedestrian access to the river kayak put-in, as it would be designed with appropriate grades and width for kayak portage &amp; general public.</li> </ul> <p>Otherwise, the wording the PUD highlighted in yellow allows for flexibility in jointly locating the Sultan River Canyon trail in a stable location and to minimize tree removal and effects on marbled murrelet habitat.</p>	<p>Deleted the wording as recommended in section 3.3.1.</p> <p>The District looks forward to working with USFS in jointly locating the new trail in a stable location, minimizing tree removal and minimizing effects to marbled murrelets and their habitat.</p>

<i>Number</i>	<i>Comment</i>	<i>District Response</i>
USFS-12	<ul style="list-style-type: none"> <li>• <b>Section 6:</b> Suggested wording for signage: The District will provide information kiosks at Olney Pass and at the junction of Road 6122 and Culmback Dam road with a map that shows the Sultan River Canyon Trail and Sultan River access points, including river ratings for kayaking, and warnings that abrupt changes in river elevational flows and velocities could occur.</li> </ul>	Added wording as recommended under section 6.1.

## **Appendix B: Conceptual Site Plan**

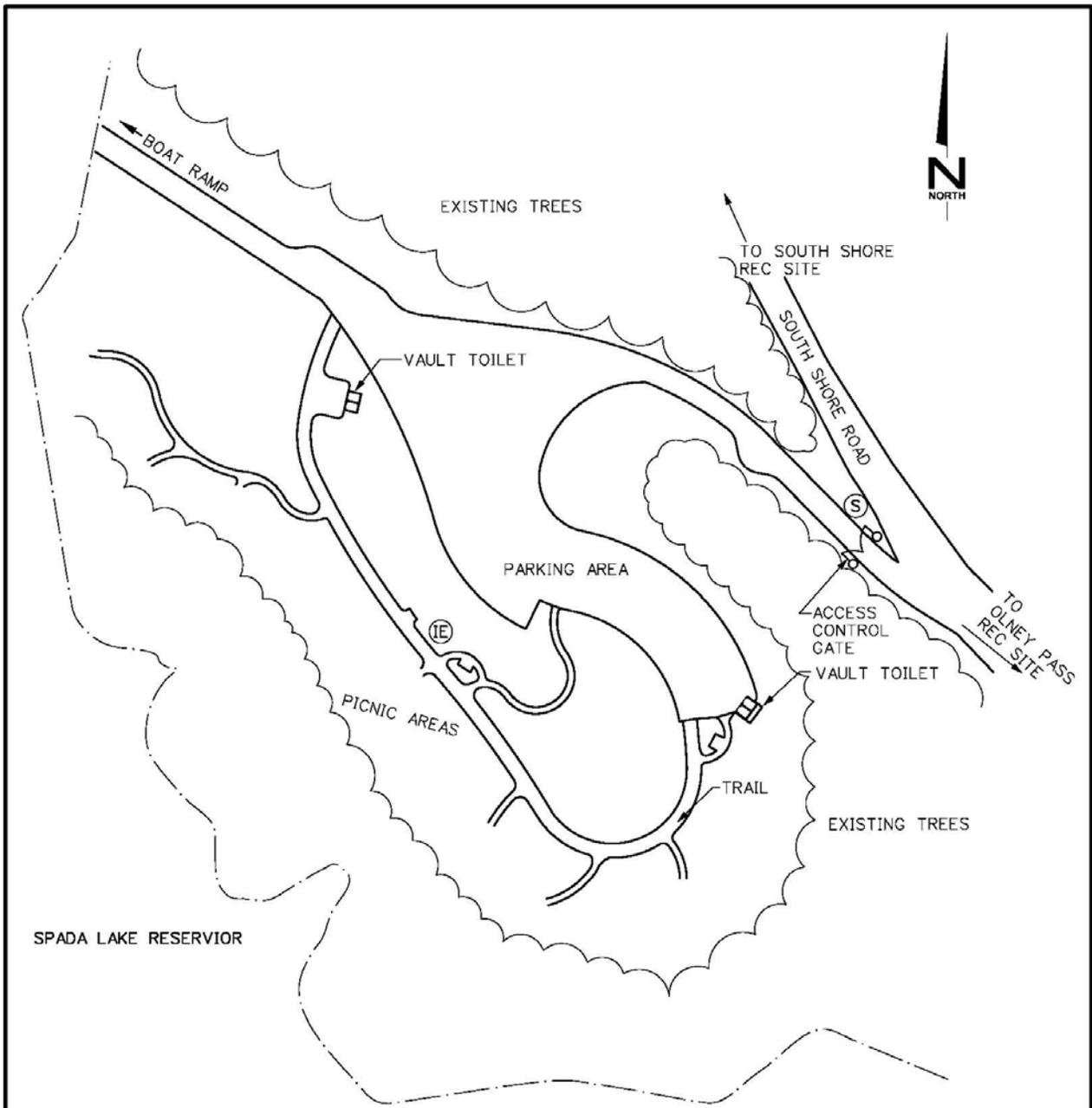


LEGEND SIGNAGE	
ⓓ	DIRECTIONAL
Ⓢ	PROJECT INFORMATION
Ⓜ	INTERPRETATION & EDUCATION



# OLNEY PASS RECREATION SITE

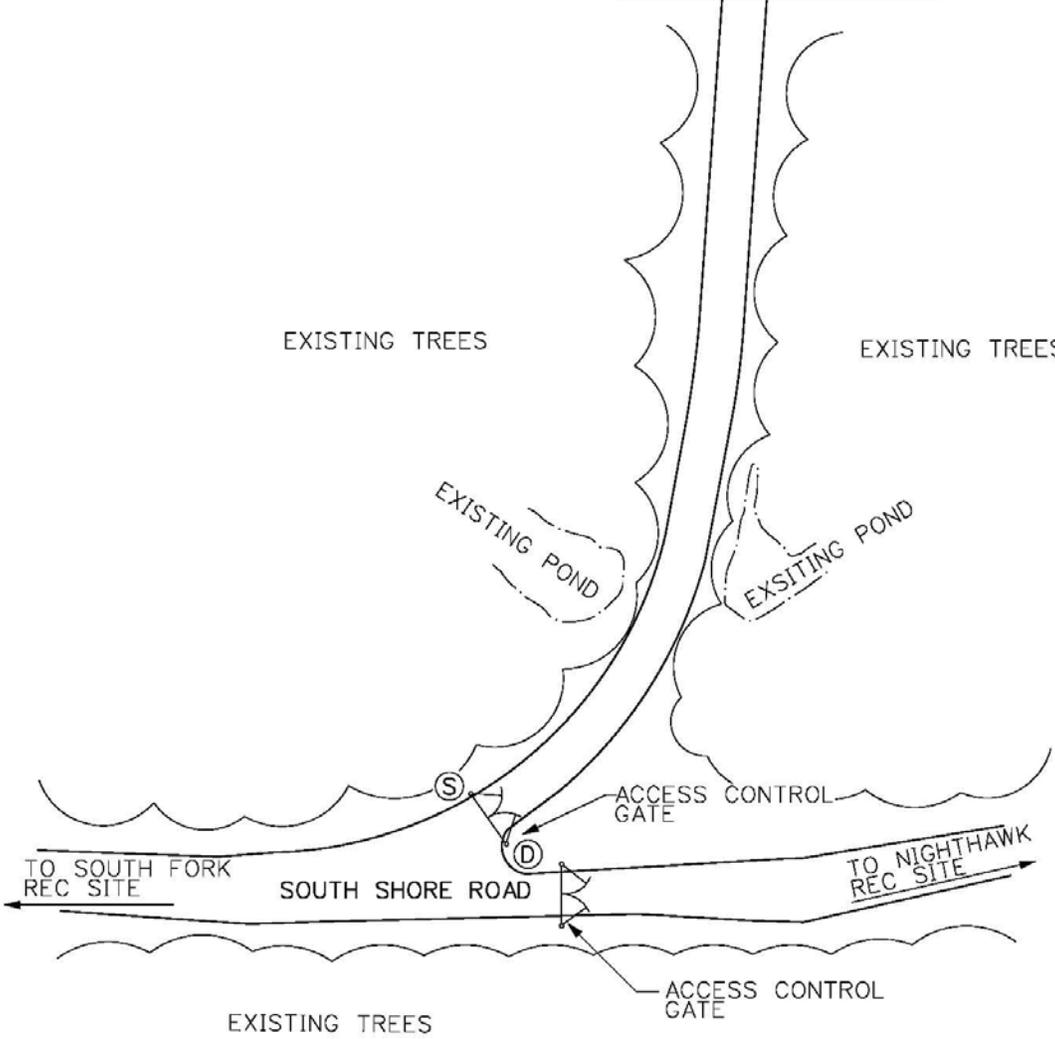
DATE: MARCH 2009



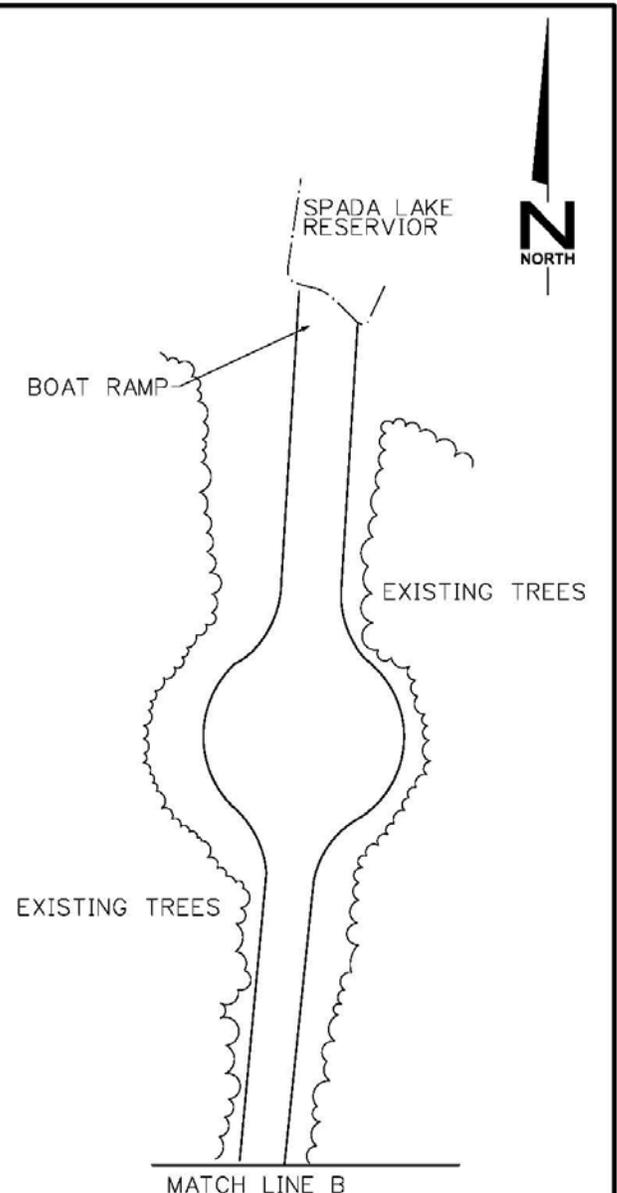
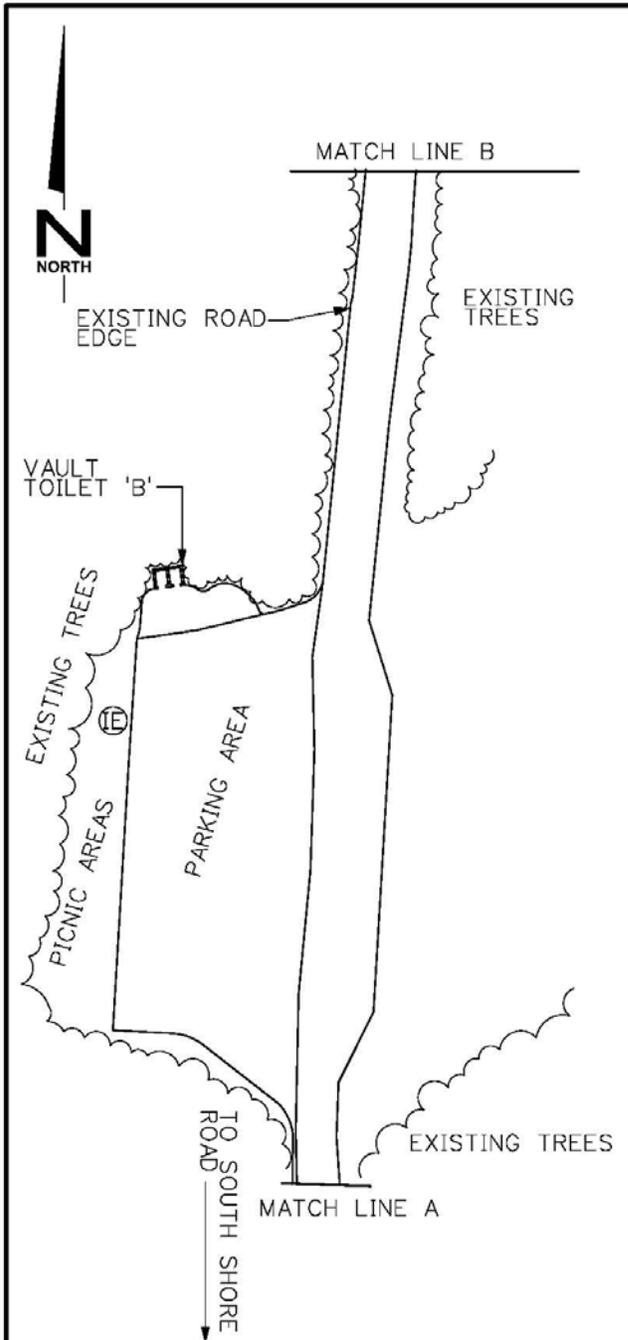
LEGEND SIGNAGE	
(D)	DIRECTIONAL
(S)	PROJECT INFORMATION
(IE)	INTERPRETATION & EDUCATION



MATCH LINE A  
(SHEET 4)

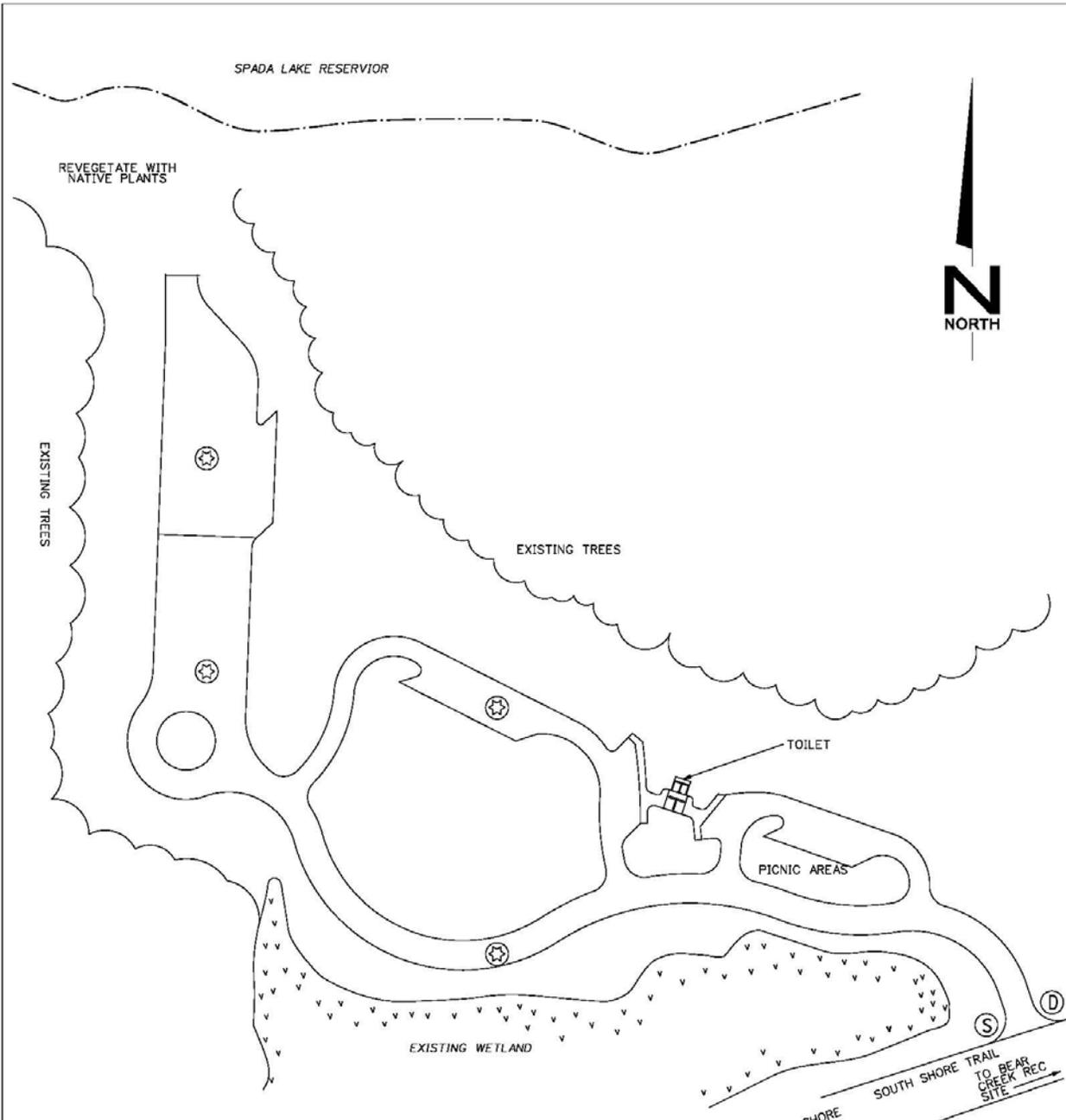


LEGEND SIGNAGE	
(D)	DIRECTIONAL
(S)	PROJECT INFORMATION
(E)	INTERPRETATION & EDUCATION



LEGEND SIGNAGE

(D)	DIRECTIONAL
(S)	PROJECT INFORMATION
(E)	INTERPRETATION & EDUCATION



**LEGEND SIGNAGE**

(D) DIRECTIONAL

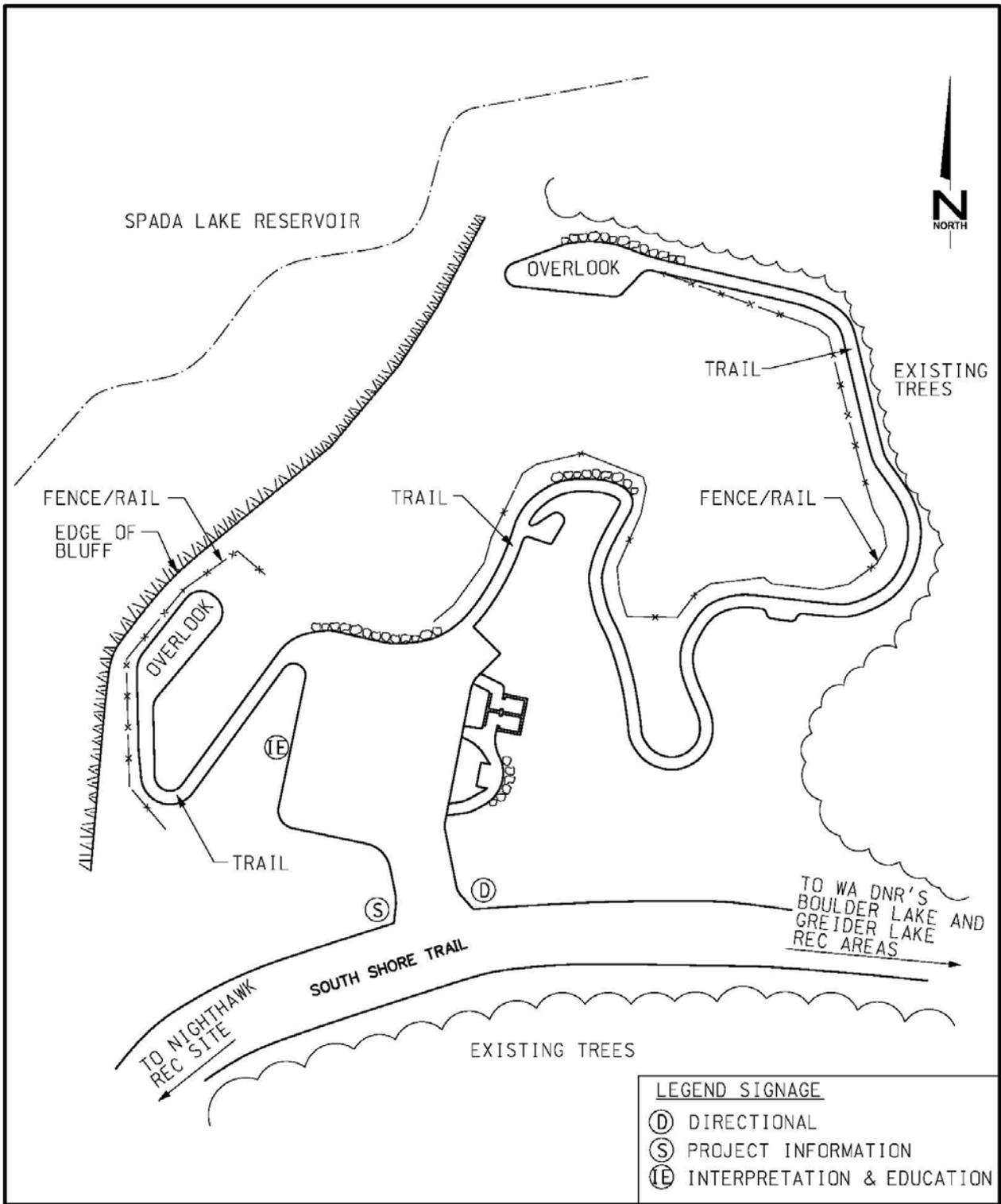
(S) PROJECT INFORMATION

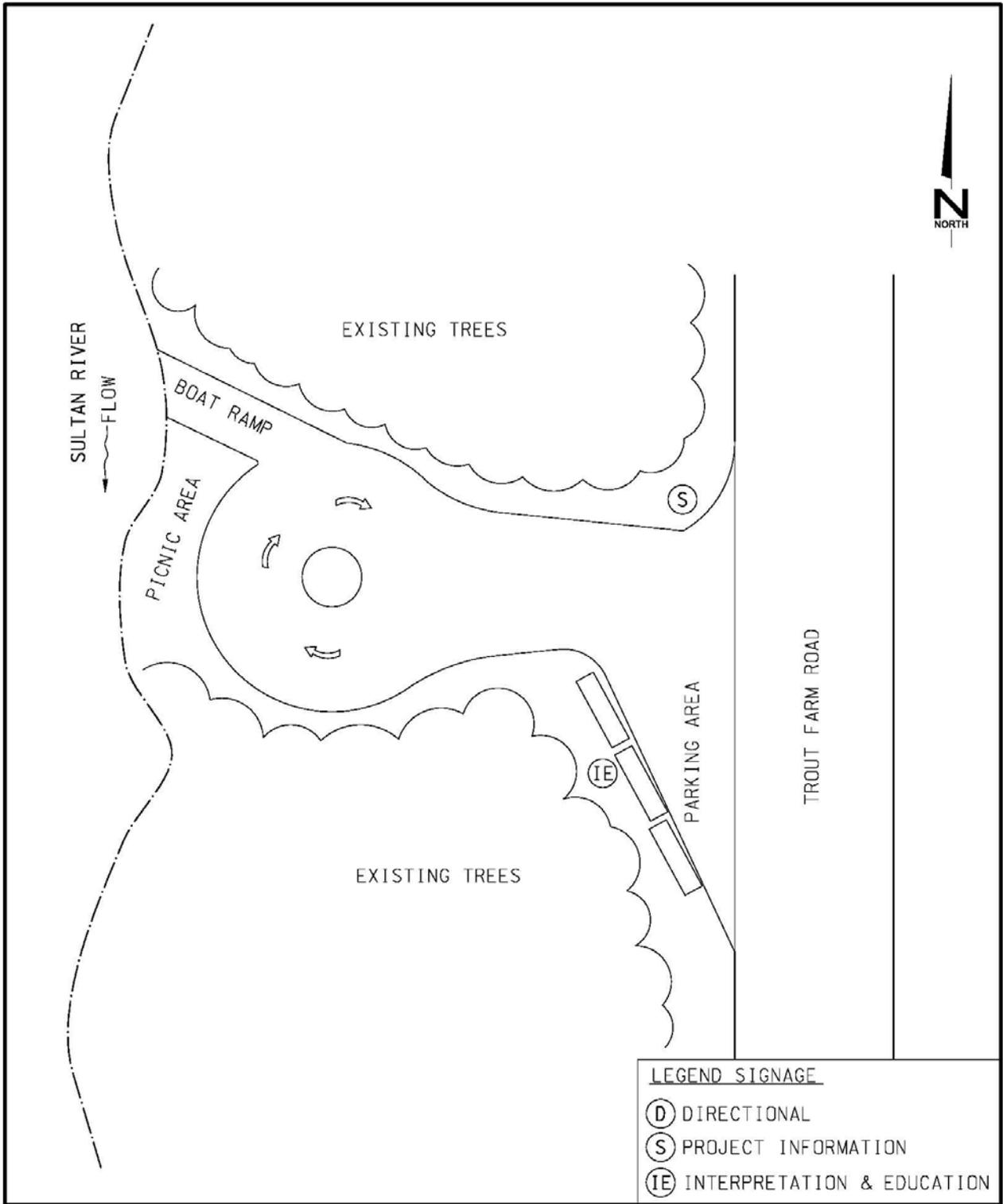
(\*) THE DISTRICT MAY REMOVE ASPHALT IN COORDINATION WITH CITY OF EVERETT TO ADDRESS WATER QUALITY CONCERNS

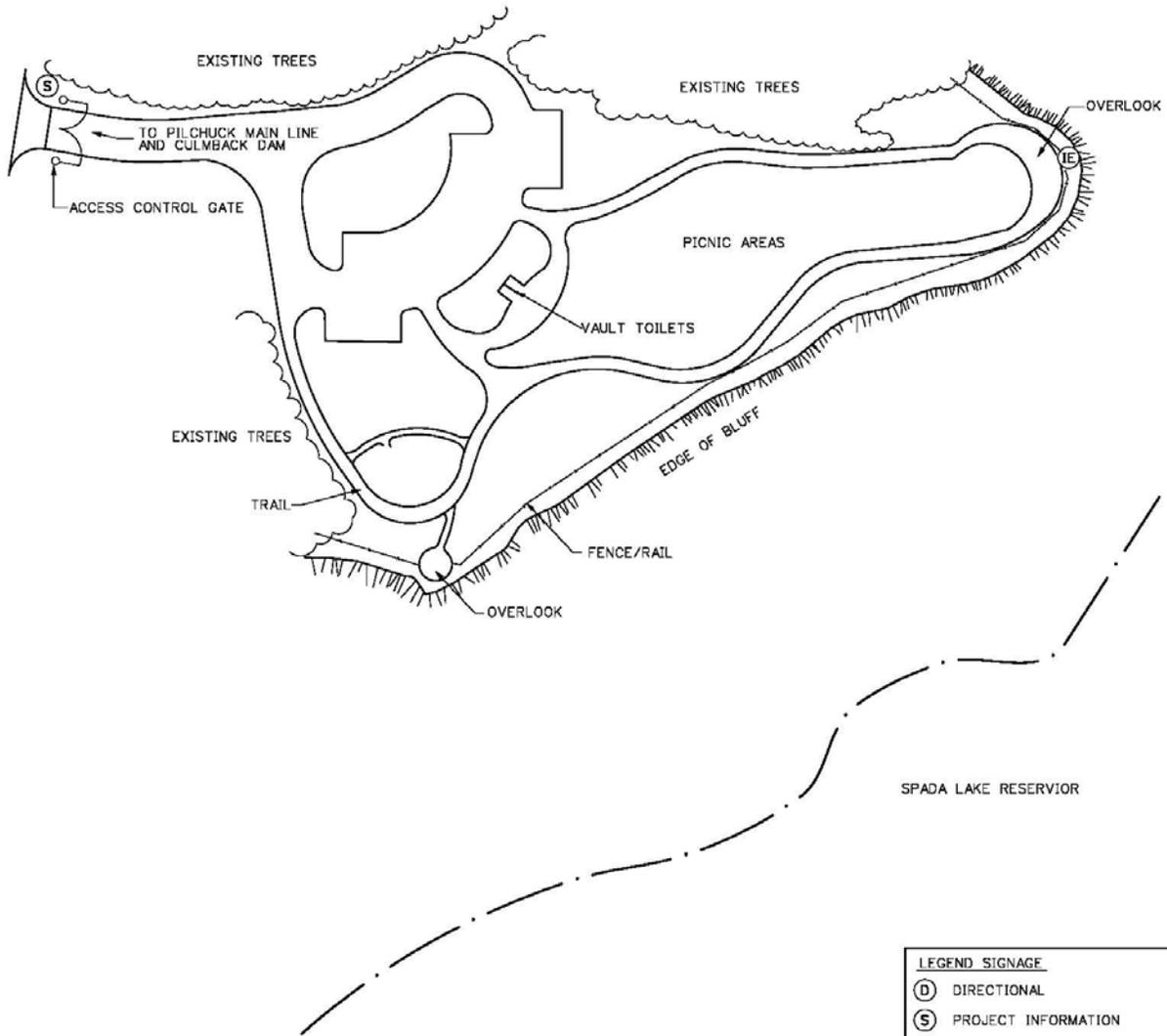
SNOHOMISH COUNTY

**PUD**

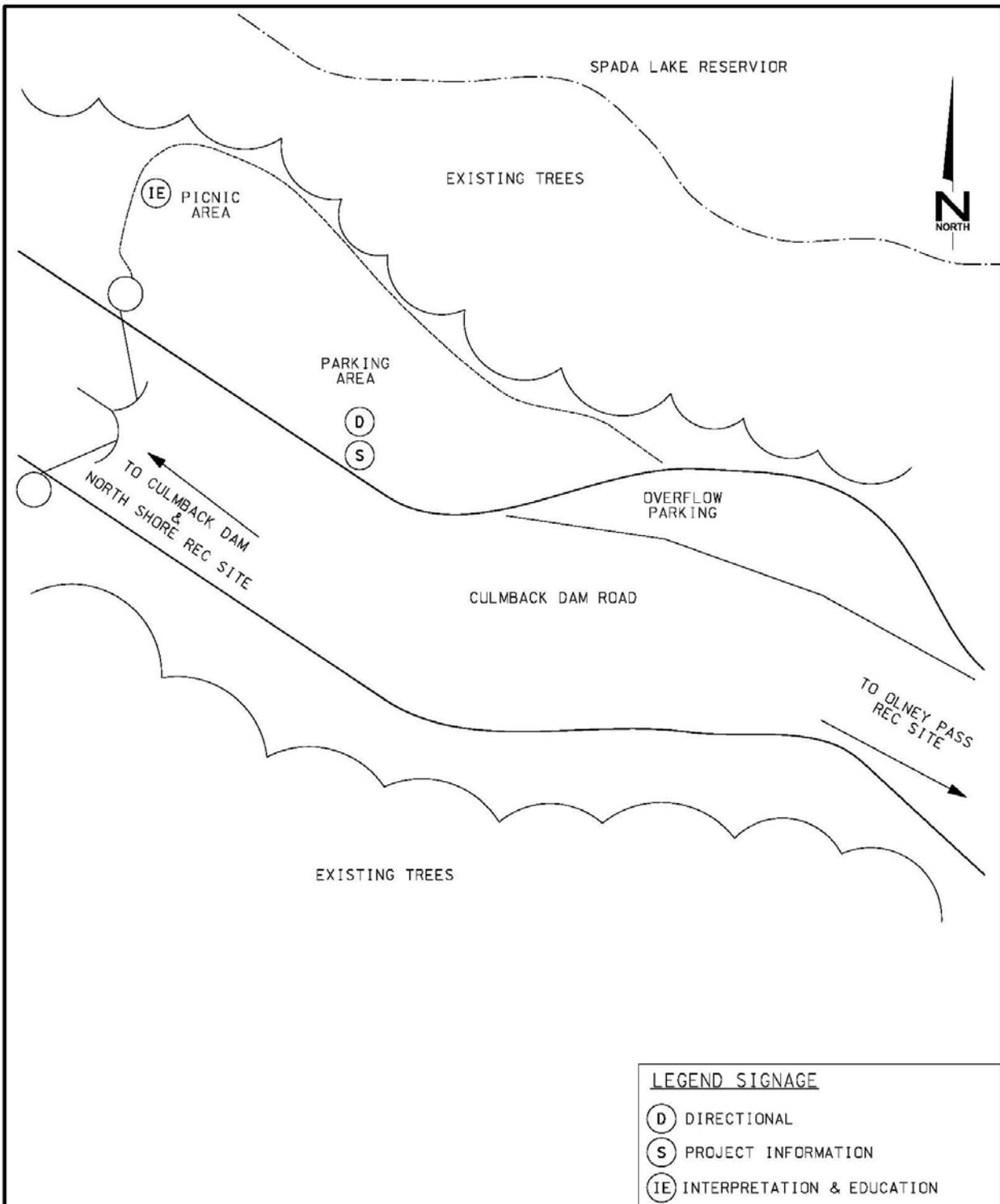
PUBLIC UTILITY DISTRICT NO 1







LEGEND SIGNAGE	
(D)	DIRECTIONAL
(S)	PROJECT INFORMATION
(IE)	INTERPRETATION & EDUCATION



LEGEND SIGNAGE	
(D)	DIRECTIONAL
(S)	PROJECT INFORMATION
(IE)	INTERPRETATION & EDUCATION

**APPENDIX 6**

**SETTLEMENT AGREEMENT  
HISTORIC PROPERTIES MANAGEMENT PLAN (HPMP)**

*NON-PUBLIC  
DO NOT DISCLOSE*

## APPENDIX 7

### DRAFT FOREST SERVICE PRELIMINARY 4(E) TERMS AND CONDITIONS

#### **Henry M. Jackson Hydroelectric Project Public Utility District No. 1 of Snohomish County Enclosure I.**

#### **Pacific Northwest Region USDA Forest Service**

### **PRELIMINARY 4(e) TERMS AND CONDITIONS**

LICENSE CONDITIONS NECESSARY FOR PROTECTION AND UTILIZATION OF THE MT. BAKER-SNOQUALMIE NATIONAL FOREST IN CONNECTION WITH THE APPLICATION FOR LICENSE AND SETTLEMENT AGREEMENT FOR THE HENRY M. JACKSON HYDROELECTRIC PROJECT, FERC PROJECT NO. 2157.

#### **I. GENERAL (Standard Form L-1)**

License articles contained in the Federal Energy Regulatory Commission's (Commission) Standard Form L-1 issued by Order No. 540, dated October 31, 1975, cover those general requirements that the Secretary of Agriculture, acting by and through the USDA Forest Service, considers necessary for adequate protection and utilization of the land and related resources of the Mt. Baker-Snoqualmie National Forest. Under authority of section 4(e) of the Federal Power Act (16 U.S.C. 797(e)), the following terms and conditions are deemed necessary for adequate protection and utilization of National Forest System lands and resources. These terms and conditions are based on those resources enumerated in the Organic Administration Act of 1897 (30 Stat. 11), the Multiple-Use Sustained Yield Act of 1960 (74 Stat. 215), the National Forest Management Act of 1976 (90 Stat. 2949), and any other law specifically establishing a unit of the National Forest System or prescribing the management thereof (such as the Wilderness Act or Wild and Scenic Rivers Act), as such laws may be amended from time to time, and as implemented by regulations and approved Land and Resources Management Plans prepared in accordance with the National Forest Management Act. Therefore, pursuant to section 4(e) of the Federal Power Act, the following conditions covering specific requirements for protection and utilization of National Forest System lands shall also be included in any license issued for the Henry M. Jackson Hydroelectric Project (Project).

The USDA Forest Service reserves the authority to add to, delete from, or modify the preliminary terms and conditions contained herein in the event that the licensee, the USDA Forest Service or other Parties withdraw from the Settlement Agreement under the procedures identified in Section (6) of the Settlement Agreement prior to the Commission's issuance of a new license for the Project.

## **II. USDA FOREST SERVICE TERMS AND CONDITIONS**

### **Condition 1 – Reservation of Authority in the Event the Settlement Agreement is Materially Modified or not accepted by the Commission**

USDA Forest Service preliminary terms and conditions are premised on two requirements:

1. The Commission's acceptance and incorporation of the Settlement Agreement license articles without material modification into the new Project license.
2. The licensee's implementation of its obligations in accordance with the Settlement Agreement Appendix 4.

In the event either of these requirements are not met, the USDA Forest Service reserves the authority to supplement or modify these terms and conditions at a later time.

### **Condition 2 – Implementation of Settlement Agreement License Articles**

The licensee shall implement Settlement Agreement License Articles:

- A-LA 1: Aquatic Resources Committee (DG)
- A-LA-3: Temperature Conditioning in Reach 3 (MB)
- A-LA-4: Whitewater Boating Flows (WD)
- A-LA 6: Large Woody Debris (LWD) (DG)
- A-LA 8: Process Flow Regime (MB)
- A-LA 9: Minimum Flows (MB)
- A-LA 12: Fish Habitat Enhancement Plan (WD)
- A-LA 15: Adaptive Management Plan (WD)
- A-LA 17: Fisheries and Habitat Monitoring Plan (DG)
- C-LA-1: Historic Properties Management Plan (WD)
- R-LA-1: Recreation Resources Management Plan (WD)
- T-LA-1: Terrestrial Resources Management Plan (WD)
- T-LA 2: Noxious Weed Plan (WD)
- T-LA 3: Marbled Murrelet Habitat Protection Plan (WD)

### **Condition 3 – Implementation of Activities on NFS lands**

The Licensee shall not commence implementation of habitat or ground-disturbing activities on National Forest System (NFS) lands until the USDA Forest Service has approved site-specific project designs and issued a notice to proceed.

Additional NFS Lands. If long term occupancy of NFS lands is required for Project related purposes and such occupancy is not authorized by including such lands within the FERC Project boundary, the Licensee shall obtain a special-use authorization for occupancy and use of such NFS lands from the USDA Forest Service. Before conducting any habitat or ground-disturbing activities on such NFS lands, the Licensee shall obtain from the USDA Forest Service and file with the Commission a special-use authorization for occupancy and use of NFS lands.

Additional lands authorized for use by the Licensee in a new special-use authorization shall be subject to laws, rules, and regulations applicable to the NFS. The terms and conditions of the USDA Forest Service special-use authorization are enforceable by the USDA Forest Service under the laws, rules, and regulations applicable to the NFS. Should additional NFS lands be needed for this Project over the License term and such lands not included within the FERC Project Boundary, the special-use authorization shall be amended to include any additional NFS lands.

Approval of Changes on NFS Lands after License Issuance. Notwithstanding any License authorization to make changes to the Project, the Licensee shall receive written approval from the USDA Forest Service prior to making changes in the location of any constructed Project features or facilities on NFS lands, or in the uses of Project land and waters on NFS lands, or any departure from the requirements of any approved exhibits for Project facilities located on NFS lands filed by the Licensee with the Commission. Following receipt of such approval from the USDA Forest Service, and at least 60 days prior to initiating any such changes or departure, the Licensee shall file a report with the Commission describing the changes, the reasons for the changes, and showing the approval of the USDA Forest Service for such changes. The Licensee shall file an exact copy of the report with the USDA Forest Service at the time it is filed with the Commission.

Coordination with Other Authorized Uses on NFS Lands. In the event that portions of the Project area are under federal authorization for other activities and permitted uses, the Licensee shall consult with the USDA Forest Service to coordinate such activity with authorized uses before starting any activity on NFS land that the USDA Forest Service determines may affect another authorized activity.

Site-Specific Plans. The Licensee shall prepare site-specific plans subject to review and approval by the USDA Forest Service for habitat and ground-disturbing activities on NFS lands required by the License, including activities contained within resource management plans required by the License prepared subsequent to License issuance. The Licensee shall prepare site-specific plans for activities one year in advance of implementation dates required by the License or as otherwise agreed to by USDA Forest Service and the License.

Site-specific plans shall include:

1. A map depicting the location of the proposed activity and GPS coordinates.
2. A description of the USDA Forest Service land management area designation for the location of the proposed activity and applicable standards and guidelines.
3. A description of alternative locations, designs and mitigation measures considered including erosion control and implementation and effectiveness monitoring designed to meet applicable standards and guidelines.
4. Draft biological evaluations or assessments including survey data as required by regulations applicable to habitat or ground-disturbing activities on NFS lands in existence at the time the plan is prepared.
5. An environmental analysis of the proposed action consistent with the USDA Forest Service policy and regulations for implementation of the National Environmental Policy Act (NEPA) in existence at the time the plan is prepared for FERC Licensed projects on NFS lands. This analysis may incorporate as appropriate any environmental analysis completed by the Commission.

Surveys and Land Corners: The licensee shall avoid disturbance to all public land survey monuments, private property corners, and forest boundary markers. In the event that any such land markers or monuments are destroyed by an act or omission of the licensee, in connection with the use and/or occupancy authorized by the license, depending on the type of monument destroyed, the licensee shall reestablish or reference same in accordance with (1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Land of the United States," (2) the specifications of the County Surveyor, or (3) the specifications of the USDA Forest Service. Further, the licensee shall ensure that any such official survey records affected are amended as provided for by law.

Cost Reimbursement. The Licensee shall provide funding to the USDA Forest Service for USDA Forest Service costs associated with implementation of the License on NFS lands including but not limited to analysis, plan review, inspection, monitoring and administration required for implementing habitat and ground-disturbing activities on NFS lands required by the License. Funding shall be provided through the use of a Collection Agreement or other instrument consistent with USDA Forest Service regulations in effect at the time the License is issued. Funding shall be provided according to the schedule attached as Appendix A.

**Henry M. Jackson Hydroelectric Project  
Public Utility District No. 1 of Snohomish County  
USDA Forest Service  
Preliminary 4(e) Conditions**

**Appendix A.  
Cost Reimbursement Schedule**

The Licensee shall make funds available according to the following schedule. Funds shall be made available at the end of the License year for years 1-5 of the new license and at the beginning of the License year for years 6-45 of the new license.<sup>1</sup> A License year for years 1-5 is defined as the 365 day period commencing on the date of license issuance by the Commission. A license year for years 6-45 is defined as the year beginning on the anniversary of the date the license was issued. Payment dates and amounts may be adjusted by mutual agreement of USDA Forest Service and the Licensee. All funds are based on 2011 dollars and shall be adjusted annually according to the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, for Seattle-Tacoma-Bremerton (CPI-U). Funds that shall be provided are displayed in Table A. Funds remaining as of the date of new license expiration (including any annual licenses) shall be refunded by USDA Forest Service to the Licensee.

**Table A**

<b>License Years</b>	<b>Not to Exceed Funding Amount<sup>1</sup></b>	<b>Method</b>
1-2	\$30,000/year	Based on billed USDA Forest Service costs
3-5	\$20,000/year	Based on billed USDA Forest Service Costs
6-45	\$7,500/year	Annual Lump Sum Payment

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<sup>1</sup>The annual lump sum payment amount, indexed for inflation, for license years 6-45 shall continue should the Commission issue a new license with a term greater than 40 years and at the beginning of any annual licenses issued by the Commission at the expiration of the new project license.

<sup>2</sup>Funding limits established in License Years 1-4 which are not expended by USDA Forest Service in a License year will be carried over into the following License year until the end of License Year 5. Annual lump sum payments will then begin in License Year 6.

**ATTACHMENT A**

**LAKE CHAPLAIN TRACT LAND MANAGEMENT OFF-LICENSE AGREEMENT  
BETWEEN THE PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY,  
CITY OF EVERETT, AND WASHINGTON DEPARTMENT OF FISH AND WILDLIFE**

This Lake Chaplain Tract Land Management Off-License Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2009, by and between the Public Utility District No. 1 of Snohomish County (“District”), City of Everett (“City”), and Washington Department of Fish and Wildlife (“WDFW”) (collectively “Parties”) with respect to the relicensing of the Henry M. Jackson Hydroelectric Project, No. 2157 (the “Project”), by the Federal Energy Regulatory Commission (“FERC” or “Commission”) and the future management of the Lake Chaplain Tract.

**RECITALS**

**WHEREAS,**

- A. The Project is located on the Sultan River, approximately 24 miles east of Everett, Washington, in south central Snohomish County in Washington State.
- B. Under the current FERC Project License, the Lake Chaplain Tract is managed pursuant to the Wildlife Habitat Management Plan for the Henry M. Jackson Hydroelectric Project, dated May 1988 (the “WHMP”).
- C. The WHMP addresses the mitigation of wildlife impacts resulting from the construction and operation of the Project and was prepared by the City and the District in cooperation with United States Department of Interior Fish and Wildlife Service, WDFW, United States Department of Agriculture Forest Service, and the Tulalip Tribes.
- D. The current FERC Project License will expire on May 31, 2011, and on May 29, 2009, the District filed with the Commission a complete and final application (“License Application”) for a new FERC License to continue operating the Project (“New License”).
- E. The Lake Chaplain Tract is not proposed by the District to be within the Project boundary.

**TERMS OF THE AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the Parties, intending to be legally bound, do hereby agree as follows:

1. Purpose of the Agreement

This Agreement establishes by contract the City's obligation to manage the Lake Chaplain Tract, and the District's support of such management obligations. The Parties agree that as long as the City manages the Lake Chaplain Tract pursuant to the wildlife habitat objectives in this Agreement, wildlife resources on the Lake Chaplain Tract will be adequately protected. The Parties agree that the performance of this Agreement satisfies and is intended to fulfill any and all existing statutory, regulatory or contractual obligations of the City and the District relating to the Lake Chaplain Tract.

2. Management of the Lake Chaplain Tract and Other Tracts

2.1 Lake Chaplain Tract. This Agreement and all obligations herein pertain solely to the management of the Lake Chaplain Tract. The Lake Chaplain Tract, which is located 6 miles north of the town of Sultan, Washington, consists of a 441-acre reservoir and 2,198 acres in and adjacent to the City of Everett's Lake Chaplain Watershed (see Map 1). (The Project features located within the Lake Chaplain Tract boundary are delineated on Map 1 and are not part of the Lake Chaplain Tract.) The Lake Chaplain Tract is owned by the City. Additional description of the Lake Chaplain Tract can be found in Section 3.1 of the WHMP. Subject to sections 4.1 and 4.3.2 below, in the event that FERC includes a portion of the Lake Chaplain Tract in the Project boundary, the Lake Chaplain Tract shall include only those lands that were not included within the Project boundary.

2.2 Lake Chaplain Tract Land Management Obligations

2.2.1 Pursuant to this Agreement, the City agrees to manage the Lake Chaplain Tract towards achieving the management objectives and habitat priorities of the WHMP as described in WHMP Section 1.2 and the WHMP annual reports from 1989 through 2008 for 50-years from the Effective Date. Upon the expiration of 50-years from the Effective Date, this Agreement shall be automatically renewable on the request of any Party for a second 50-year term, provided that the Parties shall at that time identify the measures to be implemented under the renewed Agreement. To that end, the Parties shall at that time meet and confer to identify such measures. Should the Parties not agree on the measures to be implemented over the term of the renewed Agreement, the provisions of the WHMP, as modified and implemented and in force on June 25, 2009, shall control.

2.2.2 The City agrees to implement the WHMP sections and requirements of the WHMP reasonably applicable to the Lake Chaplain Tract. Specifically, the City agrees that, to the extent applicable, the Lake Chaplain Tract will be managed consistent with the WHMP habitat enhancement methods (WHMP Section 2.1 – 2.8), management tract prescriptions (WHMP Section 3.1), and monitoring program provisions (WHMP Sections 4.1 – 4.10), as modified in the WHMP annual reports from 1989 through 2008. The City further agrees that this management of the Lake Chaplain Tract

will include creation of an appropriate number of snags and pre-commercial and commercial thinning on a site specific basis.

- 2.2.3 The City further agrees that the City will, within six months of the Effective Date, develop a Lake Chaplain Tract Wildlife Habitat Management Plan (LCT Plan). The LCT Plan will be developed in consultation with the other Parties. The LCT Plan will identify the harvest management techniques (including uneven-aged harvesting, even-aged harvesting, and thinning) that will be used for identified areas within the Lake Chaplain Tract (see Map 2). The LCT Plan will also include provisions that describe how the City will meet the objectives of the LCT Plan, which include: 1) manage for a diversity of species; 2) manage for a higher percent of trees older than sixty (60) years of age; 3) conduct legacy tree retention and snag creation to allow for snags to be kept over time (recognizing the need to avoid locations where snags present safety concerns); 4) limit clearcut size to less than 26 acres; 5) increase the number of stands with multiple canopy layers by increasing the number of uneven-aged harvest units; 6) continue to provide understory habitat for deer and other species; 7) apply adaptive management principles to the management of the Lake Chaplain Tract; and 8) implementation based upon due consideration of the needs of wildlife habitat, water quality, and economics.
- 2.2.4 During the time the LCT Plan is in effect, the theory and practice of wildlife habitat management may change. The LCT Plan will be based on current theory and practice and would have limited long-term value if not open to future change. For that reason, the LCT Plan will be designed to accommodate changes, including but not limited to unanticipated events and improvements in wildlife habitat management. The overall objectives of the LCT Plan have been adapted from the WHMP. These objectives will continue to serve as a guide for all future adaptive management. New techniques will be substituted for existing ones if they are more effective and economically feasible, but all changes will be made within the constraint of meeting the objectives of the LCT Plan.
- 2.2.5 Throughout the term of this Agreement, unless otherwise agreed, the City shall use the District's wildlife biologist staff, or other qualified wildlife biologist(s) under the supervision of the District, for the oversight of the biological aspects of implementation and monitoring of the LCT Plan. Notwithstanding the foregoing undertaking, the City remains wholly responsible for the implementation and monitoring of the LCT Plan.
- 2.2.6 Reporting. Within 12 months after issuance of the Project License and annually thereafter, the City, in consultation with the District, shall develop and provide the other Parties, a report fully describing management actions for the prior year and identifying those planned for the next year for the Lake Chaplain Tract. The report shall include a) a

summary of forest management measures; b) documentation of habitat enhancement measures; c) a summary of the results of the monitoring program during the prior year; d) a description of activities planned for the next year; and e) a discussion of implementation or monitoring problems or proposed changes.

2.2.7 Meetings. Following issuance of the reports described above, the Parties will be offered the opportunity to meet to discuss the reports and implementation of the program. The City shall provide no fewer than ten (10) days prior notice of any meeting. The City will provide draft meeting minutes for comment by the Parties prior to final distribution. Meeting minutes will include action items, a summary of issues discussed, decisions reached, and Party representatives' concerns. For the sake of convenience, meetings may occur in conjunction with meetings relating to implementation of terrestrial lands articles in the New License. Each Party will bear its own cost of attendance.

2.3 Management of Other Tracts. Management of the tracts described in Section 3.2 through 3.5 of the WHMP (the "Other Tracts") is specifically excluded from this Agreement. The management of the Other Tracts is distinct from management of the Lake Chaplain Tract. The Parties anticipate that the District's management of the Other Tracts after issuance of the New License will be governed by the new Project License. The proposed details for future management of the Other Tracts are specified in the Settlement Agreement's Proposed License Articles.

### 3. Implementation of the Agreement

3.1 Parties' Obligations Prior to New License Issuance. Within sixty (60) days of the date that this Agreement is fully executed by all of the Parties, or as otherwise agreed by the Parties, WDFW and the City shall each notify FERC that it supports Commission approval of the TRMP as part of the New License without material modification.

3.2 Parties' Obligations after License Issuance. Each Party agrees that so long as this Agreement remains in effect it will refrain from taking any position publicly or privately that indicates the inclusion of the Lake Chaplain Tract within the New License Project Boundary is necessary for Project purposes.

3.3 Disputes during the Term of this Agreement. If any Party takes any action inconsistent with the terms of this Agreement during its term, any Party may initiate dispute resolution in accordance with Section 3.4 of this Agreement.

3.4 Dispute Resolution. In the event of any dispute between the Parties concerning the interpretation or implementation of any aspect of this Agreement, the Parties agree to engage in good faith negotiations for a period of at least ninety (90) days in an effort to resolve the dispute. Notification of the dispute must be in writing to the other Party/Parties, and the 90-day negotiating period will begin upon

notification as described in Section 4.5. During the 90-day period, any Party may request the services of a professional mediator to assist in resolving the dispute, with such mediator to be selected by the disputing Parties. The Party requesting such services shall cover the costs unless there is an agreement among the disputing Parties to share costs. In the event that a mediator is selected by the Parties the dispute resolution negotiating period will be extended for an additional 60 days. If resolution cannot be reached within the negotiating period, then a Party may seek a remedy for alleged violations as described in Section 3.5. Provided, that this section 3.4 shall not be construed to limit any Party from timely filing and pursuing any administrative or judicial remedy.

- 3.5 Remedy for Alleged Violations. Aside from any actions to make timely filings for any judicial or administrative relief as noted in Section 3.4, no Party shall seek relief in any other forum for noncompliance with this Agreement unless and until the requirements of Section 3.4 have been met. If dispute resolution is not successful, any Party may seek judicial enforcement of the terms of this Agreement. Each Party agrees that monetary damages shall not be a remedy for breach of this Agreement, provided, however, that civil damages shall be a potential remedy against the City solely for instances in which the City has acted in violation of applicable law and of the terms of this Agreement. A Party shall otherwise be entitled to seek injunctive or other equitable relief to remedy any breach of this Agreement. Nothing in this Agreement shall be construed as a waiver of any rights, jurisdiction, or immunities, including sovereign immunity.

#### 4. General Provisions

- 4.1 Effective Date. Except as specified in Section 3.1, this Agreement shall become effective upon the final FERC order issuing a New License, unless 1) the New License requires inclusion of the Lake Chaplain Tract, or a portion thereof that results in a substantial additional financial or regulatory impact upon the City, within the Project boundary or 2) the District obtains a stay of all or any portions of the New License. In the event that the District obtains such a stay, the City's and District's existing obligations pursuant to the WHMP shall continue pending the completion of the Project's relicensing.
- 4.2 Term. The term of this Agreement shall begin on the Effective Date and, unless terminated earlier as provided in this Agreement, shall remain in full force and effect for 50 years, and shall be renewable automatically for the duration and on such terms as are determined pursuant to Section 2.2.1 above.
- 4.3 Termination
- 4.3.1 This Agreement may be terminated at any time by mutual written consent of all of the Parties.
- 4.3.2 This Agreement may be terminated by the District or the City, if a final FERC order amending the New License includes the Lake Chaplain Tract,

or a portion thereof that results in a substantial additional financial or regulatory impact upon the City, within the Project boundary.

- 4.3.3 This Agreement shall be terminated if the District obtains from FERC a Final Order for Surrender and Decommissioning of the Project.
- 4.3.4 This Agreement may be terminated by the District, in its sole discretion, if a *Force Majeure* permanently and irrevocably prevents the continued operation of or requires decommissioning of the Project.
- 4.3.5 Upon termination, this Agreement shall become null and void, and there shall be no liability or obligation pursuant to this Agreement on the part of any Party (or any of their respective elected and appointed officials, officers, directors, employees, agents and attorneys).
- 4.4 Modification. This Agreement may only be modified upon the unanimous written consent of the Parties. A Party's address listed in Section 4.5, Notification or Correspondence, may be unilaterally modified by providing written notice to all Parties.
- 4.5 Notification or Correspondence. Any notice required by this Agreement or any correspondence from one Party to another relative to this Agreement shall be delivered to the following respective addresses, and shall be effective upon receipt:

If to the District:

Assistant General Manager, Generation and Water Resources  
Public Utility District No. 1 of Snohomish County, Washington  
2320 California Street  
PO Box 1107  
Everett, WA 98206-1107  
(425) 783-1000

If to the City:

Utilities Director  
City of Everett  
3200 Cedar Street  
Everett, WA 98201  
(425) 257-8800

If to Washington Department of Fish and Wildlife:

Major Projects Manager, Habitat Program  
Washington Department of Fish and Wildlife  
1125 Washington St. SE  
PO Box 40100  
Olympia, WA 98504-0100  
(360) 902-2542

5. Miscellaneous

- 5.1 Entire Agreement. This Agreement contains the complete and exclusive agreement of the Parties with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, contracts, agreements in principle, and other writings prior to the Effective Date of this Agreement, with respect to its subject matter.
- 5.2 Non-Severable Terms of Agreement. The terms of this Agreement are not severable one from the other. This Agreement is made in the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire Agreement. If a court of competent jurisdiction rules that any provision in this Agreement is invalid, this Agreement is deemed modified to conform to such ruling, unless a Party objects. If a Party objects, the other Parties agree to meet and confer regarding the continued viability of this Agreement. If agreement cannot be reached, any Party may terminate this Agreement.
- 5.3 No Third Party Beneficiaries. Without limiting the applicability of rights granted to the public pursuant to applicable law, this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, and shall not authorize any entity other than the Parties to maintain a suit at law or equity pursuant to this Agreement. The duties, obligations and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.
- 5.4 Expenses. Each Party shall use its own resources in asserting its rights and performing its obligations under this Agreement, and no Party shall be required to reimburse any other Party for any expense or cost incurred hereunder.
- 5.5 Successors and Assigns. This Agreement shall apply to, and be binding on, and inure to the benefit of each of the Parties and their successors and assigns, unless otherwise specified in this Agreement.
- 5.6 Change in Ownership of Projects. No change in ownership of the Project or the Lake Chaplain Tract, or transfer of the Project License by the District, shall in any way modify or otherwise affect any other Party's interests, rights, benefits, responsibilities or obligations under this Agreement.
- 5.7 Notice of Delay or Inability to Perform – Force Majeure. No Party shall be in breach of its obligations or liable to any other Party for breach of this Agreement as a result of a failure to perform if said performance is made impracticable due to an event of *Force Majeure*. The term "*Force Majeure*" means any cause reasonably beyond the Party's control, whether unforeseen, foreseen, foreseeable, or unforeseeable, including but not limited to: acts of God, fire, war, insurrection, civil disturbance, explosion; adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work

activities; restraint by court order or order of public authority; inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable applications, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority; or labor disputes or strikes which are reasonably beyond the control of the Party seeking excuse from performance. The Party whose performance is affected by *Force Majeure* shall notify the other Party as soon as reasonably practicable. This notice shall include: (1) a description of the event causing the delay or anticipated delay; (2) an estimate of the anticipated length of the delay; (3) a description of the measures taken or to be taken to avoid or minimize the delay; and (4) a proposed timetable for the implementation of the measures or performance of the obligation. The affected Party shall make all reasonable efforts to promptly resume performance of the obligation. It shall provide verbal and written Notice when it resumes performance of the obligation.

- 5.8 Waiver. The failure of any Party to insist, on any occasion, upon strict performance of any provision of this Agreement shall not be considered a waiver of any obligation, right or duty of, or imposed upon, such entity.
- 5.9 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.
- 5.10 No Changes to Existing Contracts and Agreements. Upon the Effective Date, the City will manage the Lake Chaplain Tract pursuant to the terms of this Agreement. As noted above, the terms of this Agreement incorporate by reference certain WHMP provisions, which shall thus remain effective, but solely as part of this Agreement. Therefore, upon the Effective Date, the WHMP itself shall have no independent, continuing legal effect. This Agreement does not affect other obligations or releases contained within or provided by preexisting contracts other than the WHMP.
- 5.11 Section Titles for Convenience Only. The titles for the Sections of this Agreement are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any of the provisions of this Agreement or the intentions of the Parties. This Agreement has been jointly drafted by the Parties and therefore shall be construed according to its plain meaning and not for or against any Party.
- 5.12 Execution of Agreement. Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to legally bind the entity he or she represents, and that such entity shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

IN WITNESS THEREOF,

the Parties, through their duly authorized representatives, have caused this Agreement to be executed as of the date set forth in this Agreement.

**Public Utility District No. 1 of Snohomish County,**

---

By: Steven J. Klein, General Manager

**City of Everett,**

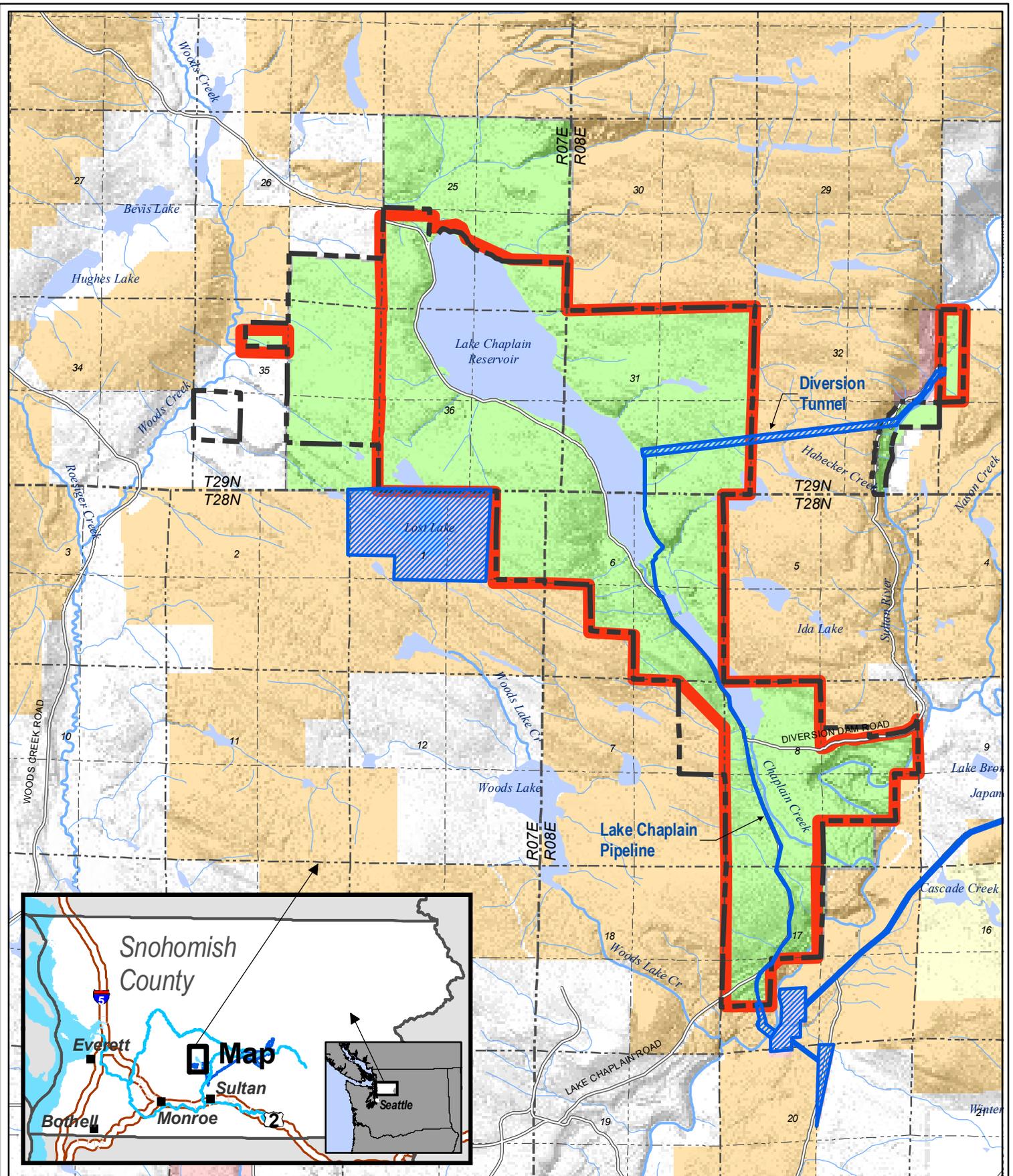
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By: Ray Stephanson, Mayor

**Washington Department of Fish and Wildlife,**

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By: Philip Anderson, Director

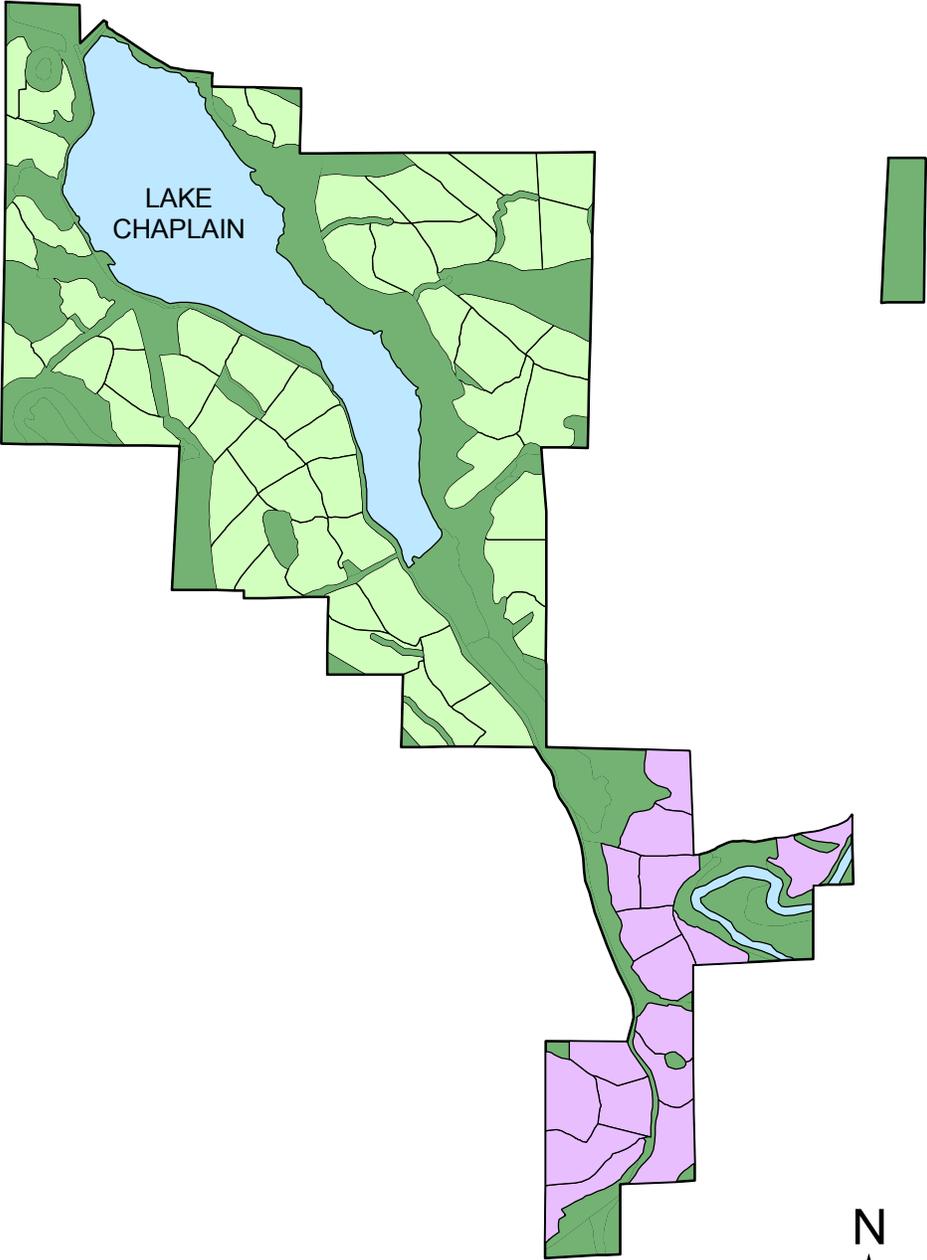


### Map 1 Lake Chaplain Tract & Vicinity

- Lake Chaplain Tract Bdry
- Project Features
- City of Everett Property
- Everett City Limits
- Other Government Property
- City of Sultan
- PUD
- DNR/State Managed

Note: Project Lands to the East Not Shown.  
 This Data has been Produced using the Best Information Available.  
 However, The City of Everett in no way guarantees its accuracy.  
 \* Other Government Ownership based on Snohomish Assessor  
 and DNR Managed Land Parcels datasets.

# Map 2 LCT Management



## Legend

-  Even-Aged Harvest Units
-  Uneven-Aged Harvest Units
-  Existing Set-Asides
-  Lakes & Rivers



**ATTACHMENT B**

**JACKSON OFF-LICENSE SUPPLEMENTATION PROGRAM AGREEMENT  
BETWEEN  
PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH COUNTY, WASHINGTON AND  
WASHINGTON DEPARTMENT OF FISH AND WILDLIFE**

This Jackson Off-License Supplementation Program Agreement (“JOSPA”) is entered into between the Public Utility District No. 1 of Snohomish County, Washington (“District”) and Washington Department of Fish and Wildlife (“WDFW”) in connection with the relicensing and operation of the Jackson Hydroelectric Project, FERC Project No 2157 (“Project”).

**RECITALS**

**WHEREAS,**

- A. The Project is located on the Sultan River, approximately 24 miles east of Everett, Washington, in south central Snohomish County in Washington State, and includes a freshwater impoundment referred to as the Spada Reservoir.
- B. Prior to the phased construction of the Project, Spada Lake provided a popular recreational fishery. Since construction of the last phase of the Project, Spada Reservoir, at times has provided a very popular and quality recreational fishery for naturally produced resident trout.
- C. Recently, the resident trout population has become much less productive, and as a result, the recreational trout fishery has diminished in quality and popularity.
- D. Spada Reservoir, in addition to providing storage for the Project, also serves as the primary drinking water supply for the City of Everett. The City of Everett has indicated that implementing a fish supplementation program in Lake Spada is inconsistent with its primary use as a drinking water supply. Neither the District nor the City desire to plant Spada Reservoir with trout to rebuild the populations or provide for recreational fishing purposes.
- E. The current FERC Project License will expire on May 31, 2011, and on May 29, 2009, the District filed with the Commission a complete and final application (“License Application”) for a new FERC License to continue operating the Project (“New License”).
- F. The District and WDFW are signatories to the Licensing Settlement Agreement for the Jackson Hydroelectric Project (“Settlement Agreement”) executed concurrently with this agreement and made and entered into pursuant to FERC Rule 602, 18 C.F.R. § 385.602, by and among the District; the City of Everett (“Everett”); United States Department of Commerce National Marine Fisheries Service (“NMFS”); United States Department of Agriculture Forest Service (“FS”); United States Department of the Interior Fish and Wildlife Service (“FWS”); United States Department of the

Interior National Park Service (“NPS”); WDFW; Washington Department of Ecology (“WDOE”); American Whitewater; Snohomish County; and the City of Sultan. This JOSPA is Attachment B to the Settlement Agreement, and the JOSPA will be submitted to FERC for informational purposes only with the Settlement Agreement.

- G. In addition to the improvements to Spada Reservoir contained in the Settlement Agreement, WDFW desires that the District mitigate the reductions in the trout population and the loss of recreational fishing, however the District recognizes FERC’s internal policy may make it uncertain whether FERC will require mitigation actions outside of the Project boundary.
- H. The District and WDFW are entering into this JOSPA as part of the overall settlement process leading to issuance by FERC of a New License and continued operation of the Jackson Hydroelectric Project. The District and WDFW acknowledge that the creation of the JOSPA is intended as an element of a comprehensive settlement for the Jackson Project; however, due to its independent nature, the JOSPA is intended to operate on its own. Therefore, nothing in the administrative provisions for the Settlement Agreement are intended to, or shall be construed to, modify in any manner provisions in the JOSPA. Likewise the parties’ obligations under the JOSPA shall be interpreted independently of the Settlement Agreement except as may be provided herein.
- I. The District and WDFW agree that FERC’s full adoption of the Settlement Agreement and the parties’ performance of the Project License, this JOSPA, and the Lake Chaplain Tract Land Management Off-License Agreement (Attachment A of the Settlement Agreement) resolve all issues between the District and WDFW pertaining to the relicensing of the Project.

### **TERMS OF AGREEMENT**

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. General Provisions

1.1 Effective Date

This JOSPA shall become effective upon the Commission’s issuance of a New License that incorporates the Proposed License Articles set forth in Appendix 1 of the Settlement Agreement, unless the District obtains a stay or extension of the New License.

1.2 Term of JOSPA

Unless terminated as provided herein, the term of the JOSPA shall commence on the Effective Date and shall continue through the term of the New License including any subsequent annual

license(s), or until the date of any FERC order approving surrender of the License, whichever is earlier.

2. Purpose of JOSPA

The Parties agree that the District's satisfaction of the obligations in this JOSPA will protect and mitigate for certain impacts of the Project on resident fish resources and recreational opportunities on those resources. WDFW and the District enter into this agreement separately from the FERC settlement because, while the Parties agree these commitments are appropriate, certain resident fish plant lakes may be at distances from the Jackson Project. As such, to ensure that the commitments agreed to within the agreement are fulfilled and in consideration of WDFW's support for the continued operation of the Jackson Project and the New License, WDFW and the District have entered into this binding contract.

3. District Payments to WDFW for Resident Fish Program

Starting on January 1 in the year after the Effective Date and annually on January 1 for the term of the JOSPA, the District shall provide an annual payment to WDFW to reimburse WDFW for a portion of WDFW's expense incurred in providing increased recreational angling opportunities in Snohomish County. The first annual payment shall be \$20,000. All payments are based on 2011 dollars and adjusted annually according to the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index, All Urban Consumers, for Seattle-Tacoma-Bremerton (CPI-U).

4. WDFW Release

Except as provided in JOSPA paragraph 5.2, Parties' Actions upon Termination, and as provided in Aquatic License Article 13, this JOSPA shall constitute a complete and final settlement of all claims and demands by WDFW pertaining to any obligation based upon the FERC Licensing of the Project to stock or otherwise release any food or game fish (as defined by Chapter 77 RCW) or to fund or otherwise contribute to the stocking or release of such fish during the term of the New License and any annual license. Except for (1) claims and demands related to performance of the measures contained in this JOSPA, (2) claims and demands related to performance of measures contained in Aquatic License Article 13, or (3) as provided in JOSPA paragraph 5.2, Parties' Actions upon Termination, during performance of this JOSPA WDFW agrees to waive and release the District and its officers, employees and agents from any and all rights, demands, actions, causes of action, suits, liabilities, damages, costs, attorneys' fees or any other expenses whatsoever, of whatever kind or nature, in law, equity or otherwise, it may have had, may now have, or may have during the term of the Agreement related to any obligation based upon the FERC licensing of the Project to stock or otherwise release any food or game fish (as defined by Chapter 77 RCW) or to fund or otherwise contribute to the stocking or release of such fish.

## 5. Termination of Agreement

### 5.1 Termination

5.1.1 This Agreement may be terminated at any time by mutual written consent of the District and the WDFW.

5.1.2 This Agreement may be terminated by the District, in its sole discretion, if subsequent to the effective date of this Agreement FERC or a regulatory agency imposes a new material obligation to the License through a License amendment or a regulatory action, and for that reason, the District then terminates the Licensing Settlement Agreement. A material obligation shall mean individually or collectively, substantially affecting the District's obligations relating to Project operations, including but not limited to costs; power generation; regulatory responsibilities; or PM&E measures.

5.1.3 This Agreement may be terminated by either Party, in its sole discretion, if subsequent to the effective date of this Agreement, the Licensing Settlement Agreement terminates.

### 5.2 Parties' Actions upon Termination

Upon Termination, this Agreement shall become null and void and there shall be no liability or obligation based upon this agreement on the part of any Party (or any of their respective officers, directors, commissioners, employees, agents or other representatives or Affiliates). Provided however, nothing in this section precludes WDFW from asserting prospective claims for mitigation of Project impacts.

## 6. Miscellaneous

### 6.1 Entire Agreement

This JOSPA contains the complete and exclusive agreement of the District and WDFW with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, contracts, agreements in principle, and other writings prior to the Effective Date of this JOSPA, with respect to its subject matter.

### 6.2 Non-Severable Terms of JOSPA

The terms of this JOSPA are not severable one from the other. This JOSPA is made in the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire JOSPA. If a court of competent jurisdiction rules that any provision in this JOSPA is invalid, this JOSPA is deemed modified to conform to such ruling, unless the District or WDFW objects. If the District or WDFW objects, the other agrees to meet and confer regarding the continued viability of this JOSPA. If agreement cannot be reached, any Party may terminate this JOSPA.

### 6.3 Dispute Resolution

In the event of any dispute between the Parties concerning the interpretation or implementation of any aspect of this JOSPA, the Parties agree to engage in good faith negotiations for a period of at least thirty (30) days in an effort to resolve the dispute. Notification of the dispute must be in writing to the other Party, and the 30-day negotiating period will begin upon notification as described in paragraph 6.5. During the thirty-day period, any Party may request the services of a professional mediator to assist in resolving the dispute, with such mediator to be selected by the disputing Parties. The Party requesting such services shall cover the costs unless there is an agreement among the disputing Parties to share costs. In the event that resolution cannot be reached within the 30-day negotiating period, then either Party may seek remedy for alleged violations as described in paragraph 6.4.

### 6.4 Remedy for Alleged Violations

No Party shall seek relief in any other forum for noncompliance with this Agreement unless and until the requirements of section 6.3 have been met. If dispute resolution is not successful, any Party may seek judicial enforcement of the terms of this Agreement. Each Party agrees that monetary damages shall not be a remedy for breach of this Agreement and that a Party shall be entitled to seek injunctive or other equitable relief to remedy any breach of this Agreement.

### 6.5 Notice

Unless otherwise provided herein, all notices given by any Party to the other in connection herewith shall be in writing and shall either be delivered in person or by facsimile to the facsimile number listed below with telephonic confirmation. Notice delivered in person shall be deemed to have been properly given and received on the date delivered, so long as delivered during normal business hours. Notice delivered by facsimile is complete on transmission when made prior to 5:00 p.m. on a business day. Notice delivered by facsimile made on a Saturday, Sunday, holiday, or after 5:00 p.m. on any other day shall be deemed complete at 9 a.m. on the first business day thereafter. Notification of changes in the contact person must be made in writing and delivered to all other contact persons.

#### **For the District:**

Keith Binkley  
Senior Environmental Coordinator, Fisheries Biologist  
Jackson Hydroelectric Project  
2320 California Street  
PO Box 1107  
Everett, WA 98206-1107  
Tel: (425) 783-1000

**For WDFW:**

Mark Hunter  
Washington Department of Fish and Wildlife  
1125 Washington St. SE  
PO Box 40100  
Olympia, WA 98504-0100  
Tel: (360) 902-2542

6.6 No Third Party Beneficiaries

Without limiting the applicability of rights granted to the public pursuant to applicable law, this JOSPA shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, and shall not authorize any entity other than the District and WDFW to maintain a suit at law or equity pursuant to this JOSPA. The duties, obligations and responsibilities of the District and WDFW with respect to third parties shall remain as imposed under applicable law.

6.7 Expenses

Each Party shall use its own resources in asserting its rights and performing its obligations under this JOSPA, and no Party shall be required to reimburse the other Party for any expense or cost incurred hereunder.

6.8 Successors and Assigns

This JOSPA shall apply to, and be binding on, and inure to the benefit of the District and WDFW and their successors and assigns, unless otherwise specified in this JOSPA.

6.9 Change in Ownership of Projects

No change in ownership of the Project or transfer of the Project License by the District shall in any way modify or otherwise affect WDFW's interests, rights, benefits, responsibilities or obligations under this JOSPA.

6.10 Notice of Delay or Inability to Perform – Force Majeure

No Party shall be in breach of its obligations or liable to any other Party for breach of this Settlement as a result of a failure to perform if said performance is made impracticable due to an event of Force Majeure. The term "Force Majeure" means any cause reasonably beyond the Party's control, whether unforeseen, foreseen, foreseeable, or unforeseeable, including but not limited to: acts of God, fire, war, insurrection, civil disturbance, explosion; adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; restraint by court order or order of public authority; inability to obtain, after exercise of reasonable diligence and timely submittal of all applicable application, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any

governmental agency or authority; or labor disputes or strikes which are reasonably beyond the control of the Party seeking excuse from performance. The Party whose performance is affected by Force Majeure shall notify the other Party as soon as reasonably practicable. This notice shall include: (1) a description of the event causing the delay or anticipated delay; (2) an estimate of the anticipated length of the delay; (3) a description of the measures taken or to be taken to avoid or minimize the delay; and (4) a proposed timetable for the implementation of the measures or performance of the obligation. The affected entity shall make all reasonable efforts to promptly resume performance of the obligation. It shall provide verbal and written Notice when it resumes performance of the obligation.

#### 6.11 Waiver

The failure of the District or WDFW to insist, on any occasion, upon strict performance of any provision of this JOSPA shall not be considered a waiver of any obligation, right or duty of, or imposed upon, such entity.

#### 6.12 Governing Law

This JOSPA shall be governed by and construed in accordance with the laws of the State of Washington.

#### 6.13 No Changes to Existing Contracts and Agreements

This JOSPA is entirely separate from and independent of other contracts and agreements among the District and WDFW. This JOSPA does not and will not be deemed to change any rights or obligations under previously executed contracts or agreements between or among the District and WDFW except as may be provided herein.

#### 6.14 Section Titles for Convenience Only

The titles for the Sections of this JOSPA are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any of the provisions of this JOSPA or the intentions of the District and WDFW. This JOSPA has been jointly drafted by the District and WDFW and therefore shall be construed according to its plain meaning and not for or against any Party.

### 7. Execution of JOSPA

Each signatory to this JOSPA certifies that he or she is authorized to execute this JOSPA and to legally bind the entity he or she represents, and that such entity shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such entity.

IN WITNESS THEREOF,

The District and WDFW, through their duly authorized representatives, have caused this JOSPA to be executed as of the date set forth in this JOSPA.

**Public Utility District No. 1 of Snohomish County, Washington**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Steven J. Klein, General Manager

**Washington Department of Fish and Wildlife**

\_\_\_\_\_

Date: \_\_\_\_\_

by: Philip Anderson, Director