

ROCKY REACH FISH FORUM

Draft Meeting Protocols

July 7, 2009

Note: **Bolded** text is copied directly from the Rocky Reach Comprehensive Settlement Agreement (SA) and is not subject to editing. Numbers shown in [] are sections from the SA for cross-reference purposes.

The Rocky Reach Fish Forum (RRFF) is formed pursuant to Section 15 of the Rocky Reach Comprehensive Settlement Agreement (SA) for the operation of the Rocky Reach Hydroelectric Project. The Federal Energy Regulatory Commission (FERC) issued a license for the Project on February 19, 2009 (FERC 2009). The following protocols are intended to provide a framework for coordinating communications and documenting consultation among the RRFF. Where possible, protocols were taken directly from the SA in order to provide consistency with that document.

SECTION 1: PARTIES [SECTION 1]

1.1

[1.1] This Settlement Agreement (Agreement) is entered into this 1st day of February, 2006, between and among Public Utility District No. 1 of Chelan County, Washington (Chelan PUD), the U.S. Fish and Wildlife Service (USFWS), the U.S. Bureau of Land Management (BLM), the Washington State Department of Fish and Wildlife (WDFW), the Washington State Department of Ecology (Ecology), the Washington State Parks and Recreation Commission, the Confederated Tribes of the Colville Reservation (CCT), the City of Entiat, and Alcoa Power Generating Inc.

1.2

[1.2] The following entities are encouraged to sign this Agreement: the Columbia River Inter-Tribal Fish Commission (CRITFC), the Confederated Tribes and Bands of the Yakama Nation (YN), and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). Any of these entities may become Parties to this Agreement by executing a signature page and submitting it to Chelan PUD and to the Federal Energy Regulatory Commission (FERC) within 60 days after the effective date of this Agreement. For the first 60 days after the effective date of this Agreement, each of these entities may participate as members of the forums in the same manner as Parties but shall have no other rights or remedies under this Agreement unless and until they execute a signature page and submit it to Chelan PUD and FERC.

1.3

[1.3] No later than December 31, 2006, additional entities may become Parties to this Agreement with the unanimous consent of all Parties and by executing a signature page and submitting it to Chelan PUD and FERC.

SECTION 2: PURPOSE OF THE ROCKY REACH SETTLEMENT AGREEMENT [SECTION 4]

2.1

[4.1] The Parties agree that the purpose of this Agreement is to resolve all issues related to compliance with all federal and state law applicable to the issuance of a New License for the Project. Subject to the reservations of authority in Section 11 (Reservations of Agency Authority) of this Agreement, this Agreement establishes Chelan PUD's obligations for the protection, mitigation, and enhancement of resources affected by ongoing Project operations under the New License and its obligations to comply with all federal and state law applicable to the issuance of the New License for the Project. It also specifies procedures to be used by the Parties to ensure that the New License is implemented consistent with this Agreement and other law. The Parties agree that this Agreement is fair, reasonable, and in the public interest within the meaning of FERC Rule 602, 18 C.F.R. § 385.602(g)(3).

SECTION 3: RESOURCE FORUMS [SECTION 15]

3.1 Rocky Reach Forums

[15.1] Within 90 days of the effective date of this Agreement, Chelan PUD shall establish four forums: the RRFF, the Rocky Reach Wildlife Forum (RRWF), the Rocky Reach Recreation Forum (RRRF), and the Rocky Reach Cultural Resources Forum (RRCRF).

3.1.1 General Forum Responsibilities and Authorities

[15.1.1] The forums shall serve as the primary means of coordination between Chelan PUD and other Parties regarding the implementation of the Comprehensive Plan. The forums shall meet to share information, coordinate efforts, make recommendations and decisions, and periodically review the relevant chapters of the Comprehensive Plan as necessary to implement the Comprehensive Plan during the term of the New License and any subsequent annual licenses. Each forum shall also have the responsibility and authority to resolve disputes, as provided for in Section 17 of this Agreement. After the effective date of the New License, Chelan PUD shall consult with each forum during development of the annual work plans, due by October 1st of each year. The annual work plans shall describe the scope of work

for the following year, based on the relevant chapters of the Comprehensive Plan; establish the corresponding schedule for the proposed scope of work; and include a tentative forum meeting schedule for the upcoming year. Chelan PUD shall also consult with each forum during preparation of the annual progress reports, due by February 1st of each year following the first year after the effective date of the New License. The annual progress reports shall describe the progress toward meeting the objectives set forth in the Comprehensive Plan. Such annual progress reports shall be filed with FERC by Chelan PUD, and provided to Forum members.

3.1.2 Membership

[15.1.2] Except as provided in Section 15.5 for the RRCRF, all Parties are eligible to be members of any forum. Each eligible Party that elects to participate in a forum shall designate a forum representative, and an alternate, to speak on behalf of its organization.

3.1.3 Participation

[15.1.3] Except as provided in Section 15.5 for the RRCRF, all forum meetings shall be open to the public, and any individual may attend and participate in the discussions. Any member of the forum may request the opportunity to caucus in private with other forum members.

3.1.4 Meeting

[15.1.4] The initial organizational meeting of each forum shall be convened by Chelan PUD within 180 days of the effective date of the Agreement. After the effective date of the New License, each forum shall meet as necessary to conduct its business and to resolve disputes, as provided for in Section 17 of this Agreement. Chelan PUD shall provide administrative staff support and space for forum meetings. At its initial meeting, each forum shall select an acting chair to conduct such meeting and any subsequent forum meetings until a chair is selected. Whenever requested by Chelan PUD or in writing by any other two members of the forum, the chair shall convene a meeting within 21 days or as soon thereafter as practicable. The chair shall be responsible for ensuring that agendas are distributed at least seven business days prior to each meeting. Agendas shall include a description of any issues upon which the forum members will be asked to make a decision or recommendation at the meeting. The chair shall be responsible for ensuring that meeting notes document all decisions, recommendations, assignments, scheduling matters, and action items discussed at forum meetings. The chair shall be responsible for preparing and distributing meeting notes to each member of the forum within 10 business days of the meeting. When a forum member is unable to have either its designated representative or alternate at a meeting, or needs additional time to determine its organization's position on a proposed decision or recommendation, the chair may reschedule final action, one time for each member, on any such decision or recommendation. Each forum may adopt such additional procedural rules for conducting its business as it deems necessary and appropriate.

3.1.5 Decision-Making

[15.1.5] The forums shall make such decisions or recommendations by consensus. For the purposes of the forums, consensus means the unanimous consent of all forum members. A member's abstention or non-participation regarding the decision or recommendation shall not preclude consensus. When the chair of a forum determines it would be helpful in reaching a consensus or avoiding a dispute, the chair may call a special meeting, or form subgroups, to develop recommendations for the full forum.

3.1.6 Initiation of Dispute Resolution Process

[15.1.6]

(a) If the chair determines it is not possible to reach a consensus in a timely manner, the chair, after consulting with the forum members, shall declare an impasse, initiate the dispute resolution process provided in Section 17 of this Agreement, and prepare a written statement describing the disputed issue and the apparent differences among the forum members. The chair's statement shall be distributed to all members of the forum within 10 days of the declaration of an impasse.

(b) If any forum member is unable to join in a decision or recommendation concurred in by at least a majority of the forum when such action is formally called for by the chair, and is sufficiently concerned about, and impacted by, the issue, it may notify the chair within 10 business days of receiving the meeting notes. The notification must: (i) be in writing, on the organization's official letterhead; (ii) be addressed to the chair and distributed to all members of the forum; and (iii) set forth the reasons the organization is unable to join in such decision or recommendation concurred in by the majority. Upon receipt of such notice, the chair shall initiate the formal dispute resolution process as provided in Section 17 of this Agreement. The failure by any forum member to so notify the chair within 10 business days of receipt of the meeting notes shall be deemed to constitute consent to such decision or recommendation.

(c) Where there is a lack of consensus at the forum level, and Chelan PUD and the members of the forum who are also members of the Rocky Reach Policy Committee (RRPC) determine that delay could be deleterious to the achievement of one or more Comprehensive Plan objectives, Chelan PUD, or the Agency needing a proposed action to occur, may proceed with a proposed action pending the outcome of the dispute resolution process.

3.2 Rocky Reach Fish Forum (RRFF)

[15.2] In addition to the provisions of Section 15.1 of the Rocky Reach Comprehensive Settlement Agreement, the following requirements apply to the RRFF.

3.2.1 Specific Responsibilities and Authorities

[15.2.1] The RRFF shall be responsible for meeting to share information, coordinate efforts, and make recommendations and decisions regarding implementation of Chapters 2, 3, 4, 5, and 6 of the Comprehensive Plan, relating to Water Quality, White Sturgeon, Bull Trout, Pacific Lamprey, and Resident Fish, respectively. The RRFF shall also assist Chelan PUD in coordinating Chelan PUD's work plans and efforts with the HCP Coordinating Committee through joint membership and/or other such arrangements as the RRFF and the HCP Coordinating Committee may mutually devise. The RRFF will be responsible for participating in and implementing the Adaptive Management approach employed in the applicable Chapters of the Comprehensive Plan.

In determining whether it is appropriate and reasonable for Chelan PUD to implement a measure, the RRFF shall consider, among other relevant factors: 1) the likelihood and degree to which the biological objectives, other objectives, or water quality or other regulatory standards will be met; 2) the time required to implement the measure; 3) the cost-effectiveness of the measure; and 4) the potential impact of the measure on other resources.

3.2.2 Chair

[15.2.2] The RRFF shall select an independent third party to serve as chair. For the first 10 years of the New License, Chelan PUD shall fund the chair's position as a part-time position compensated on a time and materials basis. The RRFF shall evaluate the chair's performance at least once every three years and may agree, by consensus, to replace the chair, as it deems necessary. At the end of 10 years, the RRFF may agree, by consensus, that a chair is still necessary; if that determination is made, the RRFF shall work together to determine how the chair's position should be funded. If the RRFF cannot agree on funding, the RRFF may select an unfunded, volunteer chair; however, if an unfunded, volunteer chair cannot be agreed upon or enlisted, the RRFF shall move forward without a chair or with an acting chair designated from among the RRFF's members.

3.2.3 Rocky Reach Fish Forum (RRFF) Subcommittees

Subcommittees of the RRFF shall be established to address specific management plan issues i.e., white sturgeon and Pacific lamprey. Subcommittees shall submit plans and recommendations to the RRFF for final decisions regarding subject matter. Each subcommittee shall select a lead to conduct the business of the subcommittee. Communications for conducting subcommittee business shall be directed by subcommittee participants to the subcommittee lead. Subcommittee leads shall be responsible for scheduling and facilitating meetings, recording meeting minutes, action items, and reporting to the RRFF.

3.3 Rocky Reach Policy Committee (RRPC)

[15.6] Within 180 days of the effective date of this Agreement, Chelan PUD shall establish a RRPC

3.3.1 Responsibilities and Authorities

[15.6.1] The RRPC shall be responsible for reviewing and commenting on the annual work plans and progress reports developed by each of the forums, and for reviewing the progress made in implementing the Comprehensive Plan. The RRPC shall serve as the policy-level forum for discussion and resolution of issues and problems that may arise during implementation of this Agreement, including (a) issues that cannot be resolved within the context of a forum; (b) issues arising outside the context of a specific forum; and (c) issues related to coordination with the HCP Policy Committee regarding actions that could have an impact on Plan Species and HCP Agreement programs. The RRPC's role in resolving disputes is provided in Section 17 of this Agreement.

3.3.2 Membership

[15.6.2] The membership of RRPC shall be comprised of one designated representative from each of the following: (a) Chelan PUD; (b) each Agency; and (c) each Tribe that is a Party. Designated representatives shall be individuals more senior within their respective organizations than the representatives serving on the forums, and shall have the authority to direct necessary resources within their organizations to meaningfully participate in the implementation of this Agreement. Each member of the RRPC shall designate an alternate, who shall not be a member of a forum. Each member of the RRPC shall also designate a senior executive, who shall be an individual more senior within the organization than the RRPC representative, and who will be responsible for resolving disputes related to this Agreement should the RRPC fail to do so. Notice of all designations under this Section shall be provided in writing to all Parties.

3.3.3 Participation

[15.6.3] Other entities may attend and, upon request, participate in discussions of the RRPC. The RRPC may also invite representatives of other governments, agencies, or entities to participate in its discussions, as it deems necessary and appropriate. However, any member of the RRPC or the chair may request the opportunity to meet in private with other RRPC members. When the RRPC is acting in its dispute resolution capacity, it may, at the discretion of the chair, conduct its deliberations in a session closed to non-Parties.

3.3.4 Meeting

[15.6.4] The initial organizational meeting of the RRPC shall be convened by Chelan PUD within 180 days of the effective date of this Agreement. After the effective date of the New License, the RRPC shall meet as necessary, but at least once per year in February, to review and comment on the annual work plans and progress reports specified in Section 15.1.1, to review the progress made in implementing the Comprehensive Plan, and to resolve disputes as provided for in Section 17 of this

Agreement. Chelan PUD shall provide administrative staff support and space for meetings of the RRPC.

3.3.5 Procedures

[15.6.5] At its initial meeting, the RRPC shall select an acting chair to: (a) conduct the initial meeting; (b) convene subsequent meetings until the RRPC chair is designated; and (c) receive any notices of disputes that may be forwarded by a forum to the RRPC prior to the designation of an RRPC chair. The RRPC may request that the chair of the RRFF serve as the chair of the RRPC, in which case the funding provided by Chelan PUD for the RRFF chair's position during the first 10 years of the New License shall also include sufficient funding to compensate for the activities of chairing the RRPC. The RRPC may adopt such additional procedural rules for conducting its business, as it deems necessary and appropriate.

3.3.6 Decision-Making

[15.6.6] The RRPC shall make decisions by consensus. For the purposes of the RRPC, consensus means the unanimous consent of all members of the RRPC. A member's abstention or non-participation regarding a decision shall not preclude consensus.

SECTION 4: WRITTEN COMMUNICATION

4.1

All written or electronic communications, which any representative or participant intends to become part of the administrative record, should be sent to Keith Truscott, Natural Resources Program Department Manager, Chelan PUD, P.O. Box 1231, Wenatchee WA. 98802 (email: keith.truscott@chelanpud.org) until such time as the RRFF selects a facilitator. If possible, all correspondence should be sent in electronic format so that it can be posted on Chelan PUD's Rocky Reach Implementation web site. Chelan PUD staff will inform the RRFF and facilitator via e-mail when documents have been posted.

SECTION 5: TELECONFERENCE COMMUNICATION

5.1

Periodic teleconference calls provided by Chelan PUD between representatives and participants may occur on an "as-needed basis." The facilitator, or other RRFF designated party, will be responsible for recording and distributing teleconference minutes to call participants within 10 business days of the call. Comments on the call minutes by call attendees must be submitted within 10 business days after receipt of the draft minutes. Any comments received, together with final versions of such minutes, will be approved and finalized by RRFF representatives within 30 business days of the call and included in the Chelan PUD's website.

Phone calls or meetings for the purpose of a caucus among various representatives and participants may be summarized for the official record by the election of participants on the call. Within 10 business days of the call, teleconference minutes will be distributed to all participants on the call for review and comment. A final approved version of the minutes will be sent by call participants to Chelan PUD for posting on the Rocky Reach Implementation web site.