
ROCKY REACH SETTLEMENT AGREEMENT

Final

**ROCKY REACH HYDROELECTRIC PROJECT
FERC Project No. 2145**

February 3, 2006



**Public Utility District No. 1 of Chelan County
Wenatchee, Washington**

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Rocky Reach Hydroelectric Project Settlement Agreement

SECTION 1: Parties

- 1.1 This Settlement Agreement (Agreement) is entered into this 3rd 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), U.S. National Park Service, 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 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 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.
- 1.4 This Agreement shall be binding on, and inure to the benefit of, the above-listed Parties and their successors and assigns, unless otherwise specified in this Agreement.

SECTION 2: Recitals

- 2.1 The Rocky Reach Hydroelectric Project (Project) is located on the Columbia River in Chelan and Douglas Counties, Washington, approximately seven miles upstream of Wenatchee, Washington. The Project generally consists of the Rocky Reach Dam, spillway, powerhouse, non-overflow structures; upstream and downstream fish passage facilities, visitor facilities at the dam, recreational facilities on the Project reservoir, and waters and lands within the Project boundary. The run-of-river concrete gravity dam is 130 feet high and includes a spillway with 12 gates, each 50 feet wide, which regulate the surface elevation of the reservoir. The powerhouse is 1,088 feet long, 210 feet wide

and 218 feet high and contains eleven generating units, with an installed capacity of 865.76 megawatts.

- 2.2 On July 11, 1957, the predecessor to the FERC, the Federal Power Commission, issued the existing 50-year Project license, made retroactive to July 1, 1956. The dam was completed and the initial seven generating units were placed in commercial operation on November 1, 1961. The license will remain in effect until June 30, 2006.
- 2.3 On September 1, 1966, Chelan PUD filed an application with the Federal Power Commission to amend the Project license for the addition of four generating units. The Federal Power Commission issued the license amendment on May 23, 1968. The second phase of construction was completed on December 1, 1971.
- 2.4 In March 1979, in response to petitions from tribes and other entities, FERC initiated a consolidated proceeding on juvenile fish protection for the Mid-Columbia hydroelectric projects, including the Project. Under the Mid-Columbia Proceeding, Chelan PUD agreed to a series of interim settlement agreements that provided for spill, hatchery compensation, and studies to improve fish protection. The last interim settlement for the Project, the Fourth Revised Interim Stipulation, expired on December 31, 1996. In 1993, Chelan PUD and others parties to the Mid-Columbia Proceeding began discussing the possibility of developing a long-term, comprehensive program for managing fish and wildlife in the Mid-Columbia River Basin. As a result, in April 2002, Chelan PUD, the National Marine Fisheries Service (NMFS), USFWS, WDFW, and the CCT signed the Rocky Reach Anadromous Fish Agreement and Habitat Conservation Plan (HCP Agreement).

The HCP Agreement was designed to protect Mid-Columbia River Basin spring Chinook and steelhead, summer and fall Chinook, sockeye, and coho salmon, and intended to “contribute to the rebuilding of tributary habitat production capacity and basic productivity and numerical abundance” of such species (HCP Agreement at 1). The HCP Agreement was submitted to FERC on November 24, 2003, and on June 21, 2004, FERC issued an order (HCP Order, 107 FERC ¶ 61,281) approving the HCP Agreement as an offer of settlement and adopting it as an amendment to the existing Project license. In doing so, FERC found the HCP Agreement “will serve the public interest by putting into place a long term program to aid in the recovery of threatened and endangered species and to help prevent other salmonids from becoming listed.” (HCP Order at 1).

- 2.5 On October 25, 1999, FERC approved Chelan PUD’s request to use the collaborative alternative relicensing procedures for the preparation of its license application for the Project, and to use an applicant-prepared preliminary draft environmental assessment (PDEA) in lieu of the Exhibit E environmental report. As part of the alternative licensing process, more than 1600 entities, including the Parties to this Agreement, have requested relicensing-related information from Chelan PUD, and over 60 individuals have directly participated to varying degrees in the settlement process. To manage the process, Chelan PUD and interested stakeholders formed technical working groups to address water quality issues, wildlife and botanical issues, recreation issues, cultural and

historic issues, and fisheries issues (including sub-working groups to address resident fish, bull trout, white sturgeon, and Pacific lamprey).

- 2.6 Settlement negotiations formally began on June 23, 2003. With the assistance of a facilitator selected and approved by the relicensing stakeholders, the Parties were actively engaged in settlement meetings on a regular and increasingly frequent basis throughout 2004 and 2005. In addition to settlement meetings, the technical working groups collectively have held more than 85 meetings since January, 2004, to identify and analyze ongoing Project-related impacts and develop comprehensive management plans to address such impacts.

Chelan PUD filed an application for a New License and a PDEA with FERC on June 29, 2004. On January 12, 2005, FERC issued a notice accepting Chelan PUD's application to relicense the Project. This notice set a 60-day period during which interventions and comments, as well as terms, conditions, prescriptions, and recommendations, could be filed. The following entities filed comments, terms and conditions, prescriptions, recommendations, and/or motions to intervene: U.S. Department of Agriculture (USDA), U.S. Department of the Interior, NMFS, WDFW, the Entiat School District No. 127, City of Entiat, Washington, Alcoa Power Generating Inc., American Rivers, Avista Corporation, CRITFC, CTUIR, Ecology, YN, and Portland General Electric Company.

Chelan PUD filed responses to the comments, terms, conditions, prescriptions, and recommendations on April 27, 2005; May 11, 2005; and July 15, 2005, and FERC issued a Draft Environmental Impact Statement in August, 2005.

SECTION 3: Definitions

- 3.1 "Adaptive Management" means an iterative and rigorous process used to improve decision-making in the face of uncertainty. In the context of the Rocky Reach relicensing, it is intended to improve the management of natural resources affected by ongoing Project operations, in order to achieve desired goals and objectives as effectively and efficiently as possible, within the provisions of this Agreement. The process has seven steps:
- a) Develop initial hypotheses regarding any ongoing Project impacts and potential remedial measures;
 - b) Develop goals and objectives for addressing any such impacts;
 - c) Develop and implement appropriate and reasonable measures in accordance with an established schedule;
 - d) Develop or identify monitoring and evaluation methodologies for determining whether such goals and objectives have been achieved;
 - e) Monitor and evaluate the implementation of such measures and their effectiveness toward achieving such goals and objectives;
 - f) Review monitoring and evaluation efforts; and
 - g) Confirm that such goals and objectives have been achieved or, if not achieved, evaluate additional or revised measures, including those

previously considered in the Comprehensive Plan, and implement any additional or revised appropriate and reasonable measures, or explain why such goals and objectives cannot be achieved. If such goals and objectives have not been achieved, the Rocky Reach Fish Forum (RRFF; see Section 15) may reevaluate and revise such goals and objectives.

- 3.2 “Agency” or “Agencies” means USFWS, WDFW, BLM, and Ecology.
- 3.3 “Agreement” means this document, as well as the Proposed License Articles attached as Attachment A, the Comprehensive Plan, attached as Attachment B, and the Clean Water Act (CWA) Section 401 certification issued by Ecology. In the event of a conflict between this document and either the Proposed License Articles or the Comprehensive Plan, this document shall control. In the event of a conflict between the Proposed License Articles and the Comprehensive Plan, the Comprehensive Plan shall control.
- 3.4 “Comprehensive Plan” means the comprehensive plan proposed by the Parties to FERC in this Agreement, and contained in Attachment B hereto.
- 3.5 “Consensus” is defined in Section 15.1.6 and 15.6.6.
- 3.6 “Estimated Cost” means an amount of money that the Parties anticipate will be necessary to complete an identified activity or measure. The dollar figure provided shall be adjusted for inflation and serve as one of the guides to the scope of work intended by the Parties, in the event that the Parties disagree as to the intended scope of work during the term of this Agreement. The Estimated Cost does not define the total cost of the work, establish a limit on the costs necessary to accomplish the intended scope of work, or limit the Parties’ obligations to comply with this Agreement.
- 3.7 “FERC” means the Federal Energy Regulatory Commission.
- 3.8 “HCP Agreement” means the Rocky Reach Anadromous Fish Agreement and Habitat Conservation Plan approved by FERC on June 21, 2004, (HCP Order, 107 FERC ¶ 61,281) as an amendment to the original Project license.
- 3.9 “Licensee” means Public Utility District No. 1 of Chelan County, Washington or any successor to whom the New License is transferred.
- 3.10 “Make available” means that Chelan PUD shall provide funds to an Agency or other specified entity pursuant to a mutually acceptable payment agreement entered into pursuant to the requirements of Section 18.
- 3.11 “New License” means the license to be issued by FERC for the continued operation and maintenance of the Project, pursuant to the Federal Power Act (FPA).
- 3.12 “Parties” means the entities that sign this Agreement.

- 3.13 “Plan Species” means spring, summer and fall Chinook salmon (*Oncorhynchus tshawytscha*), sockeye salmon (*O. nerka*), coho salmon (*O. kisutch*), and steelhead (*O. mykiss*).
- 3.14 “Project” means the Rocky Reach Hydroelectric Project, licensed to Chelan PUD by FERC as Project No. 2145.
- 3.15 “Proposed License Articles” means license articles proposed by the Parties to FERC in this Agreement, and contained in Attachment A hereto.

SECTION 4: Purpose, Effect, and Limitations of this Agreement

- 4.1 **Purpose.** 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 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).
- 4.2 **Effect: Satisfaction of Relicensing Requirements.** Subject to the reservations of authority in Section 11 of this Agreement, the Parties intend that Chelan PUD’s performance of its obligations under this Agreement and the CWA Section 401 certification will satisfy all federal and state law applicable to the issuance of a New License for the Project.
- 4.3 **Limitations.**
- 4.3.1 **No Precedent.** The terms of this Agreement establish no precedent regarding any other pending or future licensing proceeding in which any Party may participate, and this Agreement shall not be offered in evidence in any pending or future proceeding in which a Party participates, except in a proceeding to establish the existence or validity of, or to defend, implement, or enforce, this Agreement. This Section 4.3.1 shall be binding on any Party that withdraws from this Agreement, and shall survive termination of this Agreement.
- 4.3.2 **Federal Trust Responsibility and Treaty Rights.** Nothing in this Agreement abridges, limits, creates, expands, diminishes, abrogates, adjudicates, acknowledges, or resolves any Tribal or Indian right reserved or protected in any treaty, executive order, statute, court decree, federal trust responsibility, or other federal law.

- 4.3.3 **Federal Water Rights.** Nothing in this Agreement affects any federal reserved or state-based water rights that the United States may have in the Columbia River or its tributaries.
- 4.3.4 **Disclaimer.** The Parties have conducted a sufficient review of the facts to execute and support this Agreement consistent with their statutory obligations. However, the Parties do not necessarily approve of all the statements or analyses (including, without limitation, interpretations of data, studies, and law) contained in the Comprehensive Plan and documents referenced therein. This disclaimer does not provide any Party a basis for withdrawing from or seeking to modify this Agreement.
- 4.3.5 **No Predetermination of Outcome.** This Agreement shall not be interpreted to predetermine the outcome of any Agency's environmental review or regulatory process.
- 4.3.6 **Trial-Type Hearing.** Each Party reserves any right it may have to a trial-type hearing pursuant to Sections 4(e) and 18 of the FPA, or to propose alternative conditions or prescriptions under Section 33 of the FPA, if an Agency (a) exercises any authority it may have under Sections 4(e) or 18 of the FPA in a manner that is materially inconsistent with this Agreement, or (b) exercises any reserved authority it may have under Sections 4(e) or 18 of the FPA after the New License is issued. However, no Party may propose alternative conditions or prescriptions pursuant to Section 33 of the FPA as to terms and conditions that are consistent with this Agreement. In addition, no Party may seek a trial-type hearing regarding material facts relating to any condition or prescription that is consistent with this Agreement. Upon submittal of this Agreement to FERC, Chelan PUD's Alternative Section 18 Prescription to the Department of the Interior, dated December 19, 2005, shall be deemed withdrawn.

SECTION 5: Term of License and this Agreement

Chelan PUD will seek a license term of 50 years. The Parties other than Chelan PUD agree to support a license term of 47 years, and to not oppose a license term longer than 47 years. The term of this Agreement shall be the same as the term of the New License (including any subsequent annual licenses), unless this Agreement is terminated sooner pursuant to Section 16.

SECTION 6: Effective Dates

- 6.1 **Effective Date of the Agreement.** Sections 8, 9, 15, 16.1 and 17 of this Agreement shall take effect immediately upon the signature of all Parties listed in Section 1.1, and the remaining provisions of this Agreement shall take effect upon the effective date of the New License.

- 6.2 **Effective Date of the New License.** The effective date of the New License shall be the date that FERC issues the New License, unless the order issuing the New License or any part thereof is later stayed, in which case the effective date of the New License or that part which was stayed shall be the date such stay is lifted, unless otherwise specified by FERC.

SECTION 7: Parties Bound

The Parties shall be bound by this Agreement for the term of the New License, including any subsequent annual licenses, unless this Agreement is sooner terminated pursuant to Section 16. A Party that withdraws from this Agreement shall not be bound following such withdrawal, except as provided in Section 4.3.1.

SECTION 8: Licensee Obligations to Support this Agreement

Within 30 days after the effective date of this Agreement, Chelan PUD shall file with FERC an offer of settlement pursuant to Rule 602 consisting of a fully executed copy of this Agreement and an explanatory statement. Chelan PUD shall request that FERC incorporate, without modification, the Proposed License Articles contained in Attachment A to this Agreement as conditions of the New License. Chelan PUD shall use reasonable efforts to obtain a FERC order approving this Agreement and issuing the New License in a timely manner. Chelan PUD shall also: (a) submit a statement in support of this Agreement to NMFS and USFWS, as part of any comments in the Endangered Species Act (ESA) Section 7 consultation process; (b) ensure that any supplemental information, comments, or responses to comments filed by it with FERC in the context of the relicensing process are consistent with this Agreement; (c) in the event of an appeal of the Project's CWA Section 401 certification, submit a statement in support of this Agreement to the Washington Pollution Control Hearings Board (PCHB) and any court reviewing a decision of the PCHB; and (d) actively support incorporation of the Proposed License Articles into the New License in all other relevant regulatory proceedings.

SECTION 9: Party Obligations to Support this Agreement

- 9.1 Except as provided in Sections 4.3.5, 9.2, 9.3, 9.4 and 11.3, each Party shall support this Agreement by ensuring that all documents filed by it with FERC or any other agency or forum are consistent with this Agreement. Such documents include:
- (a) Any recommendations, conditions and/or prescriptions, or any terms and conditions;
 - (b) As to Parties other than the USFWS, any ESA Section 7 consultation documents or comments on such documents;

- (c) As to USFWS, any ESA Section 7 consultation documents, or comments on such documents, or any biological opinions, shall be consistent with Section 11.3; and
 - (d) Any supplemental information, comments, or responses to comments.
- 9.2 In the event that a Party receives or develops new information, data, or analyses that it intends to file with FERC or any other agency or administrative body, such Party shall consult with the appropriate forum pursuant to Section 15 of this Agreement, to the extent practicable, and shall notify all Parties as soon as practicable.
- 9.3 If, prior to the effective date of the New License, a Party proposes a condition and/or prescription based upon new information, data, or analyses that would create a material change to the terms of this Agreement, any affected Party may initiate dispute resolution pursuant to Section 17.
- 9.4 If, after the effective date of the New License, a Party proposes a license condition and/or prescription based upon new information, data, or analyses, the Party must comply with the procedures of Section 11.

SECTION 10: Relationship of this Agreement to the Habitat Conservation Plan

- 10.1 **Effect of Signing.** By signing this Agreement, the Parties agree to support the inclusion of proposed License Articles attached as Attachment A, including Proposed License Article 10, in the New License. However, signing this Agreement does not make such Party a signator to the HCP Agreement, nor does it confer on such Party any of the rights or responsibilities conferred on signators to the HCP Agreement.
- 10.2 **Decision-making Authority.** As provided in the HCP Agreement, the decision-making authority of the HCP Coordinating Committee, the HCP Tributary Committee, and the HCP Hatchery Committee shall be limited to matters relating to Plan Species (as defined in Section 13.20 of the HCP Agreement). Other species shall be the responsibility of the RRFF, pursuant to the provisions of this Agreement.
- 10.3 **Coordination.** The RRFF shall coordinate with the HCP Committees to achieve common objectives in any manner they deem appropriate.
- (a) In the event that a conflict arises between actions required under this Agreement for non-plan species and actions required under the HCP Agreement for Plan Species, the RRFF shall request to meet with the HCP Coordinating Committee as soon as practicable to address such conflict and seek to reach a resolution that is acceptable to both the RRFF and the HCP Coordinating Committee, and is consistent with applicable law.
 - (b) If a resolution between the HCP Coordinating Committee and the RRFF is not reached within 20 days of the initial meeting, any member of either entity may

- request that the matter be referred to a joint meeting of the RRPC and the HCP Policy Committee, which shall be convened within 30 days;
- (c) If a resolution between the RRPC and the HCP Policy Committee is not reached within 60 days of the initial meeting of the policy committees, any Party may pursue any other rights or remedies as may be available.

SECTION 11: Reservations of Agency Authority

11.1 Federal Power Act.

11.1.1 FPA Sections 4(e), 10(j), and 10(a). Each Party reserves any authority it may have pursuant to Sections 4(e), 10(j), and 10(a) of the FPA in the event that: (a) this Agreement is not filed with FERC; (b) the Party withdraws from this Agreement pursuant to the procedures set forth in Section 16; or (c) this Agreement is terminated pursuant to Section 16. Chelan PUD reserves the right to contest the existence and/or exercise of any such authority.

11.1.2 FPA Section 18.

- (a) USFWS may exercise its reserved authority under Section 18 of the FPA regarding Plan Species covered by the HCP Agreement only as provided in the HCP Agreement. In the event that the HCP Agreement is terminated and NMFS or USFWS exercise authority under Section 18 of the FPA regarding Plan Species, the RRFF shall consider whether the exercise of that authority is consistent with measures in this Agreement. In addition, the RRFF may make recommendations to NMFS and USFWS regarding how the exercise of such authority can be accomplished in a manner consistent with this Agreement. In the event that the RRFF does not reach consensus regarding such recommendations, the dispute resolution provisions of Section 17 of this Agreement shall apply.
- (b) To the extent practicable, USFWS shall provide notice to the RRFF before exercising any reserved authority under Section 18 of the FPA regarding species covered by this Agreement (i.e., species other than Plan Species), and the RRFF may then make recommendations to USFWS regarding how the exercise of such authority can be accomplished in a manner consistent with this Agreement. In the event that the RRFF does not reach consensus regarding such recommendations, the dispute resolution provisions of Section 17 of this Agreement shall apply.
- (c) In the event that either NMFS or USFWS exercises its authority under Section 18 of the FPA regarding Plan Species while the HCP Agreement remains in effect, or exercises such authority regarding either Plan Species or species other than Plan Species in a manner that is materially inconsistent with this Agreement, any other Party may withdraw pursuant to Section 16 of this Agreement.

11.2 Clean Water Act.

- 11.2.1 **Reservation of Authority.** Nothing in this Agreement affects any authority Ecology may have to enforce the CWA Section 401 certification, state water quality standards, or other appropriate requirements of state law, or to amend the Section 401 certification. Chelan PUD reserves the right to contest the existence and/or exercise of any such authority.
- 11.2.2 **Procedure for Exercise of Authority.** In exercising any authority reserved in Section 11.2.1, Ecology shall consider any conflicts that arise between or among designated and/or existing beneficial uses, and reconcile such conflicts consistent with applicable state and federal law. Prior to issuing an order exercising such authority, Ecology agrees to issue a notice of intent to exercise its authority unless it determines, in its sole discretion, that the situation requires expeditious action to maintain and protect water quality, including existing, designated, or beneficial uses. An Agency with relevant authority or Chelan PUD may, within 30 days of the issuance of a notice of intent, or within 30 days of the issuance of an order if no notice of intent is issued, initiate dispute resolution pursuant to Section 17 of this Agreement. However, Ecology's authority to proceed with issuance and/or enforcement of an order shall not be affected by the dispute resolution process if it does not participate in, or withdraws from, such process pursuant to Section 17.9 of this Agreement. Prior to exercising any such authority, Ecology may seek public comment.
- 11.3 **Endangered Species Act (ESA).** This Agreement does not affect the terms of the HCP Agreement regarding the authority of NMFS or USFWS under the ESA regarding Plan Species, nor does it affect the authority of either Agency to take any action it may deem necessary to meet its obligations under the ESA regarding species other than Plan Species. However, the Parties have worked collaboratively to develop measures in this Agreement to address the specific needs of ESA-listed species. USFWS anticipates that the measures in this Agreement will be adequate to avoid a jeopardy finding, and to minimize incidental take of ESA-listed species covered by this Agreement. In addition, USFWS shall use reasonable efforts to exercise its authority under the ESA in a manner that allows this Agreement to be fulfilled. If FERC requests a draft biological opinion, the USFWS shall provide one to FERC. If, in its consultation with FERC pursuant to Section 7 of the ESA, the USFWS requests any measures that are materially inconsistent with the terms of this Agreement, any Party may invoke the dispute resolution provisions of Section 17 of this Agreement.
- 11.4 **Reservation of Authority.** In the event that FERC, on its own initiative, includes a standard reservation of authority for fishways for the Department of Interior, or includes the reservation of authority for the Department of the Interior submitted by USFWS in its June 1, 2005 fishway prescriptions, the inclusion of such a license article shall not be considered to be materially inconsistent with this Agreement; provided that each Party shall be deemed to have reserved the right to contest the exercise of such authority at any time in the future. If FERC includes such standard reservation of authority, USFWS shall exercise its reserved authority only in a manner consistent with its June 1, 2005 fishway prescriptions and this Agreement.

SECTION 12: Licensee Responsibility for Operations and Costs of Project

By signing this Agreement, none of the Parties, except for Chelan PUD, accept any responsibility for the operation or costs of the Project.

SECTION 13: Availability of Funds

Implementation of this Agreement by the federal Agencies is subject to the requirements of the Anti-Deficiency Act, 31 USC §§ 1341-1519, and the availability of appropriated funds. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the federal Agencies shall not be required under this Agreement to expend any appropriated funds unless and until an authorized official of the relevant federal Agency affirmatively acts to commit to such expenditures in writing. Implementation of this Agreement by the state Agencies is subject to the availability of appropriated funds. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of Washington. The Parties acknowledge that the state Agencies shall not be required under this Agreement to expend any appropriated funds unless and until an authorized official of the relevant state Agency affirmatively acts to commit to such expenditures in writing.

SECTION 14: Force Majeure

14.1 **No Liability for Force Majeure.** No Party shall be liable to any other Party for breach of this Agreement as a result of a failure to perform or for delay in performance of any provision of this Agreement if, based on evidence provided by the non-performing Party to the other Parties, such performance is delayed or prevented by Force Majeure. In the event of an enforcement action, the non-performing Party bears the burden of proving by a preponderance of the evidence the existence of Force Majeure, including the absence of negligence. The term “Force Majeure” means any cause reasonably beyond the performing Party’s control, which could not be avoided with the exercise of due care, and which occurs without the fault or negligence of the Party whose performance is affected by the Force Majeure. Force Majeure events may be unforeseen, foreseen, foreseeable, or unforeseeable, including without limitation natural events; labor or civil disruption; breakdown or failure of Project works not caused by failure to properly design, construct, operate, or maintain; new regulations or laws that are applicable to the Project; orders of any court or agency having jurisdiction over the Party’s actions; delay in a FERC order becoming final; or delay in issuance of any required permit. Ecology is

reviewing the use of Force Majeure in future agreements and this provision should not be viewed as precedent for other future agreements.

14.2 **Process for Responding to Force Majeure Event.**

- 14.2.1 **Notice.** The Party whose performance is affected by Force Majeure shall notify the other Parties in writing within 24 hours, or as soon thereafter as practicable, after becoming aware of any event that such Party contends constitutes Force Majeure. Such notice shall identify the event causing the delay or anticipated delay, estimate the anticipated length of delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of the measures. The affected Party shall make all reasonable efforts to promptly resume performance of this Agreement and, when able, resume performance of its obligations and give the other Parties written notice to that effect.
- 14.2.2 **Dispute Resolution.** Any Party may request that the Parties engage in dispute resolution under Section 17 of this Agreement to formulate an appropriate response to the circumstances created by the Force Majeure event.
- 14.2.3 **Chelan PUD to Confer with USFWS.** If Chelan PUD is unable to perform any obligation pursuant to any provision of this Agreement as a result of Force Majeure and that inability to perform has the potential to effect species listed as endangered or threatened, it shall, within three business days after notifying the other Parties of the existence of an event constituting Force Majeure, confer with USFWS to avoid jeopardy and minimize any incidental take of such listed species. In the event the circumstances resulting from the Force Majeure event cannot be resolved without amendment to this Agreement, amendment of the New License, or re-initiation of consultation pursuant to 50 C.F.R. § 402.16, Chelan PUD shall notify all Parties and seek agreement regarding actions or measures needed to address the circumstances arising from the Force Majeure event, using the dispute resolution procedures contained in Section 17 of this Agreement.

SECTION 15: Resource Forums & Policy Committee

- 15.1 **Rocky Reach Forums.** 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 Forum (RRCF).
- 15.1.1 **General Forum Responsibilities and Authorities.** 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.

- 15.1.2 **Membership.** Except as provided in Section 15.5 for the RRCCF, 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.
- 15.1.3 **Participation.** Except as provided in Section 15.5 for the RRCCF, 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.
- 15.1.4 **Meetings.** 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.

15.1.5 Decision-Making. 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.

15.1.6 Initiation of Dispute Resolution Process.

(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.

15.2 Rocky Reach Fish Forum (RRFF). In addition to the provisions of Section 15.1, the following requirements apply to the RRFF.

15.2.1 **Specific Responsibilities and Authorities.** 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.

15.2.2 **Chair.** 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.

15.3 **Rocky Reach Wildlife Forum (RRWF).** In addition to the provisions of Section 15.1, the RRWF shall be responsible for meeting to share information, coordinate efforts, and make recommendations and decisions regarding implementation of Chapter 7 of the Comprehensive Plan, relating to wildlife resources within and adjacent to the Project Boundary.

15.4 **Rocky Reach Recreation Forum (RRRF).** In addition to the provisions of Section 15.1, the RRRF shall be responsible for meeting to share information, coordinate efforts, and make recommendations and decisions regarding implementation of Chapter 9 of the Comprehensive Plan, relating to recreational resources within the Project reservoir and its tributaries.

15.5 **Rocky Reach Cultural Forum (RRCF).** In addition to the provisions of Section 15.1, the following requirements apply to the RRCF:

- 15.5.1 **Specific Responsibilities and Authorities.** The RRCF shall be responsible for meeting to share information, coordinate efforts, and make recommendations and decisions regarding implementation of Chapter 8 of the Comprehensive Plan, relating to historic properties and cultural resources within the area of potential effect defined in Chapter 8 of the Comprehensive Plan.
- 15.5.2 **Membership.** The following entities may designate a member to the RRCF: National Park Service, USDA Forest Service, BLM, Bureau of Indian Affairs, Washington State Parks, YN, CCT, the Washington State Office of Archaeology and Historic Preservation, FERC, and Chelan PUD.
- 15.5.3 **Confidentiality.** Due to the confidential nature of the information discussed by the RRCF, only members of the RRCF may attend meetings. Nonmembers may attend with permission from the RRCF and upon signing a confidentiality agreement. Meeting times and dates will be recorded and made available to the public; however the substance of the meeting will not be disclosed unless the RRCF agrees to do so. All meeting minutes will be marked confidential.
- 15.6 **Rocky Reach Policy Committee (RRPC).** Within 180 days of the effective date of this Agreement, Chelan PUD shall establish a RRPC.
- 15.6.1 **Responsibilities and Authorities.** 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.
- 15.6.2 **Membership.** 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.

- 15.6.3 **Participation.** 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.
- 15.6.4 **Meetings.** 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.
- 15.6.5 **Procedures.** 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 RRF serve as the chair of the RRPC, in which case the funding provided by Chelan PUD for the RRF 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.
- 15.6.6 **Decision-Making.** 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 16: Withdrawal Procedure If Agreement or Proposed License Articles Are Materially Changed.

- 16.1 **Right to Withdraw Prior to the Effective Date of the New License.** Prior to the effective date of the New License, a Party may withdraw from this Agreement under the following circumstances:
- 16.1.1 If any of the following actions occur and cannot be resolved after complying with the procedures set forth in section 16.3:

- a) FERC issues a New License that is materially inconsistent with this Agreement;
 - b) An Agency or NMFS files final terms and conditions under the FPA that are materially inconsistent with the Agreement;
 - c) The CWA Section 401 certification is appealed and/or amended, resulting in a certification that is materially inconsistent with this Agreement;
 - d) A biological opinion developed pursuant to the ESA requires measures materially inconsistent with this Agreement; or
 - e) A Total Maximum Daily Load (TMDL) determination is issued that has the effect of requiring measures that are materially inconsistent with this Agreement;
- 16.1.2 A Party takes any other action that is materially inconsistent with this Agreement and the inconsistency cannot be resolved after completion of the dispute resolution process provided in Section 17 of this Agreement; or
- 16.1.3 Unsuccessful completion of the dispute resolution process described in Section 17 of this Agreement regarding any other issue not related to a material inconsistency.
- 16.2 Right to Withdraw After the Effective Date of the New License.** After the effective date of the New License, a Party may withdraw from this Agreement under the following circumstances:
- 16.2.1 If any of the following actions occur and cannot be resolved after complying with the procedures set forth in Section 16.3:
- a) FERC issues a New License that is materially inconsistent with this Agreement;
 - b) A rehearing or judicial review regarding the FERC order issuing the New License results in an order that is materially inconsistent with this Agreement;
 - c) The CWA Section 401 certification is appealed and/or amended, resulting in a certification that is materially inconsistent with this Agreement;
 - d) A biological opinion developed pursuant to the ESA requires measures materially inconsistent with this Agreement;
 - e) A TMDL determination is issued that has the effect of requiring measures that are materially inconsistent with this Agreement; or
 - f) FERC, a federal or state agency other than FERC, or a federal or state court, issues an order that is materially inconsistent with this Agreement;
- 16.2.2 A Party takes any other action that is materially inconsistent with this Agreement or the New License and the inconsistency cannot be resolved after completion of the dispute resolution process provided in Section 17 of this Agreement;

- 16.2.3 Unsuccessful completion of the dispute resolution process described in Section 17 of this Agreement regarding any other issue not related to a material inconsistency; or
- 16.2.4 Alcoa Power Generating Inc. may withdraw from this Agreement effective 30 days after providing written notice to the Parties of its intent to do so. Alcoa Power Generating Inc.'s withdrawal from this Agreement shall not be grounds for any other Party to withdraw from this Agreement.
- 16.2.5 If FERC issues the New License for a term of between 47 and 50 years, such term shall not constitute a material inconsistency to this Agreement, and shall not provide a basis for withdrawal from this Agreement.
- 16.2.6 If FERC partially or wholly omits Proposed License Articles 7 (a) and (b) from the New License, or modifies the measures contained in such articles to reduce the level of protection, mitigation, or enhancement, such omission or modification shall not provide a basis for withdrawal from this Agreement.
- 16.3 **Procedures for Responding to Material Inconsistencies.** Subject to Section 16.4, if any of the actions listed in section 16.1 or 16.2 occur, this Agreement shall be deemed modified to conform to the action unless a Party provides written notice to the other Parties within 30 days that it objects to the material inconsistency and initiates the dispute resolution procedures under Section 17.
- 16.4 **Provisions Omitted from New License.** If FERC partially or wholly omits from the New License any of the protection, enhancement, or mitigation measures (including monitoring or studies that relate to such measures) included in the proposed License Articles, or modifies such measures to reduce the level of protection, mitigation, or enhancement, the Parties agree to be bound by the entire Agreement, including the provisions omitted or modified by FERC, unless a Party provides written notice within 15 days that the omitted or modified measures create a material inconsistency with this Agreement or, in the case of Chelan PUD, that it lacks authority under state law to implement measures omitted from the New License. If such notice is given and a Party requests that a rehearing petition be filed, Chelan PUD and the affected Parties shall work together in an effort to restore the omitted or modified measures through a request for rehearing to FERC. Upon the request of one or more members of the RRPC, Chelan PUD shall participate in a further appeal of a rehearing order to the court of appeals to restore the omitted or modified measures. Such participation shall include, at Chelan PUD's option, joining in such appeal and/or providing a brief in support of such appeal. Upon the request of one or more members of the RRPC, a Party other than Chelan PUD shall also participate in a further appeal of a rehearing order to the court of appeals to the extent practicable. Such participation shall include, at a minimum, making reasonable efforts to obtain the necessary authorization to register its official support for the appeal through a joint or separate filing at the court of appeals. If, at the conclusion of such effort, any such measures (other than those identified in Section 16.2.6) remain omitted or modified, any Party may withdraw from this Agreement after completion of the

dispute resolution process provided in Section 17, and this Agreement shall be deemed modified for the remaining Parties.

- 16.5 Stay of New License or Extension of Time to Resolve Material Inconsistency.** Except as provided in Section 16.6, in the event FERC issues a New License that is materially inconsistent with this Agreement, any Party that has filed or intends to file a motion to stay such New License, or any part thereof, or an extension of time to perform any obligation under the New License, may request in writing that other Parties confer (either in person or by phone) with such Party within 10 business days regarding the willingness of such other Parties to support such motion for stay or for extension of time.
- 16.6 Deferral of Capital Expenditures Pending Rehearing or Judicial Review.** If FERC issues a New License but the order issuing the New License is the subject of rehearing or judicial review, and such rehearing or judicial review could result in a material inconsistency with this Agreement, the Parties shall, at the request of Chelan PUD, work together to agree on a plan to defer major capital expenditures by Chelan PUD (as well as associated annual funding made available by Chelan PUD) during the pendency of such rehearing or judicial review. The deferral plan shall be limited to Chelan PUD expenditures in an amount approximately equal to the additional costs that could reasonably be expected to be imposed as a result of the rehearing or judicial review, and such deferral plan shall continue in effect until such rehearing or judicial review is concluded. If the Parties cannot reach agreement on a deferral plan within 30 days of such request, the matter shall be subject to dispute resolution pursuant to Section 17. If, pending such rehearing or judicial review, Chelan PUD has filed or intends to file a motion to stay the New License, or to extend the time to perform any obligation under the New License, the Parties shall support such motion with respect to deferrals agreed to in the plan.
- 16.7 CWA Section 401 Certification Issued; With Appeal.** If Ecology's CWA Section 401 certification, or an amendment thereto, is appealed to the PCHB, and such appeal, or any subsequent court appeal, leads to a result that is materially inconsistent with this Agreement, the Parties shall then work together in an effort to resolve the issue through the dispute resolution process provided in Section 17. During this process, a Party may seek reconsideration of the PCHB order, or rehearing of a court order, to meet procedural time limits; however, the request for such reconsideration or rehearing shall be withdrawn if consensus is reached on modifying this Agreement to conform to the order. Any Party may also seek judicial review of a PCHB decision that is materially inconsistent with this Agreement.
- 16.8 Effect of Withdrawal.** In the event that a Party other than Chelan PUD withdraws from this Agreement, the remaining Parties may choose to continue to be bound by this Agreement. Alternatively, except as provided in Section 16.2.4, any remaining Party may choose to withdraw from this Agreement, following: (1) written notice to the other Parties of the intention to withdraw and, (2) if requested by any other Party, completion of the dispute resolution process provided in Section 17. If Chelan PUD withdraws, this Agreement shall be deemed null and void.

SECTION 17: Dispute Resolution

17.1 Good Faith Commitment to Resolving Disputes. The Parties agree to devote such time, resources, and attention as are needed to attempt to resolve disagreements concerning this Agreement at the earliest time possible. In the event that any disagreement arises among the Parties concerning this Agreement, including disagreements regarding the meaning of, or any Party's compliance with, this Agreement, or any proposed decision or recommendation pending before a forum, the Parties shall first attempt to resolve such disagreements on an informal basis. Each Party participating in formal dispute resolution shall cooperate in good faith to promptly schedule, attend, and participate in the dispute resolution process to the extent resources allow.

17.2 Dispute Resolution Process.

17.2.1 Disagreements Arising Within a Forum. In the case of disagreements arising within a forum, the dispute resolution process may be initiated as provided in Section 15.1.6 of this Agreement. Once initiated pursuant to such Section, the forum chair may convene one or more meetings within 21 days, open only to forum members, in a focused attempt to resolve the dispute. If the chair determines that the forum is unable to reach consensus in resolving a dispute after such meeting or meetings, or if the chair, after consulting with the forum members, elects to not hold such a meeting because the chair determines that the RRPC is the appropriate entity to consider and resolve the dispute, the disagreeing Party or Parties shall provide notice to all Parties within three business days after such determination by the chair. The notice must: (a) be in writing, on the organization's official letterhead; (b) be addressed to the chair of the RRPC and distributed to all members of the RRPC and all other Parties; and (c) describe the issues in dispute.

17.2.2 Disagreements Arising Outside a Forum. In the case of any other disagreement arising outside the context of a forum, any Party may initiate the formal dispute resolution process provided in this section if the relevant Parties cannot resolve the disagreement informally after good faith efforts to do so. To initiate the formal dispute resolution process, a requesting Party shall provide notice to all Parties. The notification must: (a) be in writing, on the organization's official letterhead; (b) be addressed to the chair of the RRPC and distributed to all members of the RRPC and all other Parties; and (c) describe the issues in dispute.

17.3 Elevated Formal Dispute Resolution Process.

17.3.1 RRPC. Upon receiving notice of a formal dispute, the chair of the RRPC shall convene a meeting of the RRPC within 30 days, or as soon thereafter as practicable, to consider the dispute. All Parties shall be allowed to participate in RRPC dispute resolution discussions, pursuant to Section 15.6.3, but decisions regarding resolution of disputes shall be made by consensus of the members of

the RRPC. At its initial meeting to consider the dispute, the RRPC may: (a) resolve any or all issues in dispute; (b) refer any or all issues in dispute back to the originating forum with specific instructions and a deadline for reporting back to the RRPC; or (c) institute any other alternative dispute resolution procedures it deems useful under the circumstances, including using a neutral mediator or facilitator, initiating a fact-finding process, or seeking the advice of consultant(s) and/or expert(s). The RRPC shall agree on the terms and a time limit for any such alternative dispute resolution procedures it undertakes. If the RRPC, or the forum to which it remanded the dispute, fails to resolve the dispute within 30 days of the meeting convened to consider the dispute, or within the time period designated by the RRPC, the RRPC shall prepare a revised statement of the outstanding issues for submission to the RRPC members' executives as soon as practicable.

17.3.2 RRPC Members' Executives. Upon receipt of the revised statement of the outstanding issues from the RRPC, or upon determination by the chair of the RRPC that no such revised statement will be forthcoming within a reasonable time period, the chair of the RRPC shall schedule a meeting or conference call of the RRPC members' designated executives, designated pursuant to Section 15.6.2, to be held within 30 days of referral from the RRPC, or as soon thereafter as practicable. The RRPC members' designated executives may: (a) resolve any or all issues in dispute by consensus; (b) refer any or all issues in dispute back to the RRPC with specific instructions and a deadline for reporting back to the designated executives; or (c) institute any other alternative dispute resolution procedures they deem useful under the circumstances. The designated executives shall agree on the terms and a time limit for any such alternative dispute resolution procedures they undertake. Abstention or non-participation by a designated executive in a decision resolving a dispute shall not preclude consensus of the remaining designated executives.

17.4 Completion of Dispute Resolution Process. In the event the RRPC members' designated executives fail to confer or schedule a meeting within 30 days of referral, or a dispute is not resolved within the time period established by the designated executives, the dispute resolution process shall then be deemed completed and any Party may withdraw from this Agreement. Upon completing the dispute resolution process, the designated executives shall prepare a joint statement of the remaining issues in dispute, which may also include a discussion of how to resolve such issues consistent with this Agreement.

17.5 Miscellaneous. In the event the chair of the RRPC fails to convene a meeting as required by Section 17.3.1, 17.3.2, or 17.8, any member or members of the RRPC may convene such meeting. Any of the time periods specified in this section may be reasonably extended or shortened by agreement of the disputing Parties, or as necessary to conform to the procedure of FERC or any court with jurisdiction over the dispute or to respond expeditiously to time-sensitive issues. Unless otherwise agreed among the Parties, each Party shall bear its costs for its own participation in any alternative dispute resolution process selected by the Parties and shall equally share the costs of any neutral

mediator, facilitator, or other consultant(s) and/or expert(s) engaged to assist in the resolution of disputes. Pending resolution of any dispute, and subject to the authority of FERC or other Agency to order otherwise, Chelan PUD may continue operating the Project in the manner it was operating prior to the time the dispute arose.

- 17.6 **Actions after Dispute Resolution.** Each Party shall promptly implement all final agreements reached through the dispute resolution process, consistent with its applicable statutory and regulatory responsibilities. For disputes within FERC's jurisdiction that remain unresolved at the completion of the dispute resolution process, any Party may file such unresolved dispute with FERC. For disputes not within the jurisdiction of FERC (other than disputes arising under the CWA Section 401 certification) that remain unresolved after completion of the dispute resolution process, any Party may choose to seek judicial, administrative, or other enforcement of the terms of this Agreement. As to disputes arising under the CWA Section 401 certification or Ecology's reservation of authority under Section 11.2 of this Agreement, Chelan PUD and Ecology reserve their right to make their respective legal arguments regarding the entities or legal fora with authority or jurisdiction to resolve such disputes.
- 17.7 **Relationship of Dispute Resolution to Rehearing or Judicial Review.** The dispute resolution process shall not preclude any Party from timely filing for and seeking administrative rehearing or judicial review if the New License, or any FERC order or action by an Agency, is materially inconsistent with this Agreement. However, the Parties shall follow the dispute resolution process provided in this section to the extent reasonably practicable while such rehearing or judicial review is being pursued. In the event the Parties subsequently agree unanimously to modify this Agreement to conform to the materially inconsistent New License or FERC order, or to resolve the inconsistency between this Agreement and the agency action, the filing Party or Parties shall withdraw the request for rehearing or judicial review, or shall recommend such withdrawal, as appropriate.
- 17.8 **Expedited Dispute Resolution.** Any member of the RRPC may initiate an expedited review of a particular issue, by notifying the RRPC chair that an emergency condition exists. The requesting member must provide the chair a statement, on official letterhead, describing the outstanding issue and the basis of the emergency. This expedited review will be directed to and initiated by the chair to the RRPC Members' executives as constituted pursuant to Section 15.6.2. The chair will convene the executives to consider the outstanding issue expeditiously but no later than 10 business days after receiving the statement of the outstanding issue and the basis of the emergency from the requesting member. In the event the designated executives fail to convene and resolve the matter within 10 business days of receiving such statement, or within such other time period established by the designated executives, the dispute resolution process shall be deemed completed and any Party may withdraw from this Agreement. Upon completing the dispute resolution process, the designated executives shall prepare a joint statement of the remaining issues in dispute, which may also include a discussion of how to resolve such issues consistent with this Agreement.

17.9 Ecology Right to Not Participate in or to Withdraw from Dispute Resolution.

Ecology reserves the right not to participate in, or to withdraw from, dispute resolution under this Agreement if it determines, in its sole discretion, that the situation requires expeditious action to maintain and protect water quality, including existing, designated, or beneficial uses. Ecology further reserves the option to not participate in, or to withdraw from, a dispute resolution initiated pursuant to Section 16.7 if it determines that the Parties have failed to reach agreement after previously completing the dispute resolution process regarding substantially the same issue, and no new significant information has become available since that time. A decision by Ecology not to participate in or to withdraw from, dispute resolution under this Agreement shall not be contested by the other Parties; however, all Parties (other than Ecology) reserve the right to contest any such action taken by Ecology. Ecology shall provide notice of its decision on letterhead, signed by its executive as designated under Section 15.6.2, to not participate in, or to withdraw from, dispute resolution to Chelan PUD prior to or contemporaneous with taking such action, and to other Parties within 10 business days after taking such action.

SECTION 18: Payments

- 18.1 Unless otherwise specified, all costs, balances, or payment amounts specified in dollars shall be deemed to be stated as of the year 2005, and Chelan PUD shall adjust such sums as of January 31 of each following year (starting in the first January after the effective date of the New License), or upon publication of, and in accordance with, the Consumer Price Index for all Urban Consumers, U.S. City Averages, All Items, Not Seasonally Adjusted. Such Consumer Price Index is published by the U.S. Department of Labor, Bureau of Labor Statistics. If the publication of such Consumer Price Index is discontinued, the Parties shall select an appropriate alternative index to achieve the same economic effect.
- 18.2 Chelan PUD shall enter into a mutually acceptable agreement with any Party to which payments are due pursuant to the New License.
- 18.3 The mutually acceptable payment agreements entered into pursuant to subsection 18.2 shall, consistent with applicable federal and state law, provide for the method and timing of payments, documentation of the amount and cost of work completed, a certification that such work was performed in a manner consistent with this Agreement, provisions for addressing liability, and a process for handling disputes regarding documentation, payment, or related matters. Payments shall be made on a reimbursement basis. Within 180 days of entering into a payment agreement pursuant to subsection 18.2, the Agency or other entity requesting payment shall provide an initial planning report to Chelan PUD. The initial planning report shall include a detailed description of the work to be undertaken in the first year for which payment will be sought, and the estimated costs of such work. Subsequent planning reports shall be submitted to Chelan PUD by the Agency or other entity requesting payment by January 31 of each year during the term of the New License and any subsequent annual licenses, in which the Agency or entity

intends to seek payment. Such planning reports shall contain: (a) a detailed description of the work to be undertaken in the current year, and a detailed estimate of the costs of such work; (b) a general description of the work to be undertaken in the following year or next phase of the project, if any, and a preliminary estimate of the costs of such work. A draft of such planning reports shall be submitted by the Agency or other entity to Chelan PUD by September 1 of the preceding year. If there is a disagreement regarding a payment, or implementation of a measure for which payment is being sought, such disagreement shall be resolved using the dispute resolution process pursuant to Section 17.

- 18.4 For the term of the New License, and any subsequent annual licenses, Chelan PUD shall make available an annual statement indicating the status of all funding required by Chelan PUD under the New License, including the amount of funding provided and the amount of funding remaining available.
- 18.5 For the purpose of facilitating the solicitation of matching funds by an Agency or other entity, Chelan PUD shall provide a letter of intent upon request by such Agency or other entity stating that it will make available a certain amount of funds on a certain schedule, subject to the terms and conditions of the New License and consistent with the Comprehensive Plan.
- 18.6 The dollar amount of funding made available on an annual basis under this Agreement shall be adjusted pursuant to subsection 18.1 in the year it is made available, and any remaining balance, less any outstanding billings, shall be so adjusted each succeeding year of the New License term, including any subsequent annual licenses. Unless otherwise provided in the Comprehensive Plan, such amounts, as adjusted, shall remain available during the term of the New License, including any subsequent annual licenses. In the event that any carry-over funding remains available at the expiration of the New License, including any subsequent annual licenses, such funding shall no longer be available.

SECTION 19: General Provisions

- 19.1 **Entire Agreement.** This Agreement sets forth the entire agreement of the Parties with regard to the subject matters addressed in this Agreement related to the relicensing of the Project. This Agreement is made on the understanding that each term is in consideration and support of every other term, and that each term is a necessary part of the entire Agreement.
- 19.2 **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 of the public, as a third-party beneficiary of this Agreement, and shall not authorize any non-Party 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.

- 19.3 **Modification of Agreement.** This Agreement may be modified by unanimous written consent of all Parties at any time during the term of the New License, including subsequent annual licenses. If such modification requires the approval of FERC, Chelan PUD shall submit such modification to FERC for approval, and no actions relating to such modification shall be undertaken until such approval is received.
- 19.4 **Successors, Transferees and Assigns.** This Agreement shall apply to and be binding on the Parties and their successors and assigns. Upon completion of a succession, transfer or assignment, the initial Party shall no longer be a Party to this Agreement. No change in ownership of the Project or transfer of the New License by Chelan PUD shall in any way modify or otherwise affect any other Party's interests, rights, responsibilities or obligations under this Agreement.

SECTION 20: Notice and Communication

- 20.1 **Notices, Meeting Notes, and Statements of Disputed Issues.** All written notices to be given pursuant to this Agreement shall be sent by electronic mail and first class mail or overnight express service, postage prepaid, to each Party at the addresses listed below or such subsequent address as a Party shall provide. Notices shall be deemed received three business days after the date of mailing, or on the date of receipt if overnight express or other receipt-notification service is used. All forum meeting notes and written statements of disputed issues required under Section 15 shall be posted to a designated Internet website and electronically mailed to each Party at the electronic mail address provided by the Party. Such notes and statements shall also be mailed by first class mail or overnight express service, postage prepaid, to any Party unable to receive electronic mail or requesting such service, and shall be deemed received on the date of electronic mailing (or, where applicable, three business days after first class mailing or on the date of receipt if overnight express or other receipt-notification service is used).
- 20.2 For purposes of implementing this Agreement, the Parties agree that the following individuals shall be designated to be the primary contact persons, and all written notices, forum meeting notes, and written statements of disputed issues shall be posted to the individuals listed below. Notification of changes of contact persons shall be made in writing and posted to the contact persons of all other Parties.

List of Contact Persons:

Chelan County PUD
Director of Hydro Services
Gregg Carrington
327 N Wenatchee Avenue
Wenatchee, Washington 98801
Phone: (509) 661-4178
Fax: (509) 661-8155
Email: gregg@chelanpud.org

Washington State Department of Ecology
Central Regional Office Director
Derek Sandison
15 West Yakima Ave -- Suite 200
Yakima, WA 98902-3452
Phone: (509) 457-7120
Fax: (509) 575-2809
Email: dsan461@ecy.wa.gov

Washington State Department of Fish and Wildlife
Regional Director, Dennis Beich
1550 Alder Street NW
Ephrata, Washington 98823-9699
Phone: (509) 754-4624
Fax: (509) 754-5257
Email: beichdwb@dfw.wa.gov

United States Fish and Wildlife
Supervisor, Mark Miller
215 Melody Lane
Wenatchee, Washington 98801
Phone: (509) 665-3508
Fax: (509) 665-3509
Email: mark_miller@fws.gov

City of Entiat
Mayor, Wendell Black
P.O. Box 228, 14070 Kinzel Street
Entiat, Washington 98822
Phone: (509) 784-1500
Fax: (509) 784-1112
Email: city@entiat.org

Alcoa Power Generating Inc.
NW Vice President for Government and
Energy Affairs, Jack Speer
6200 Malaga Alcoa Highway

Malaga, WA 98828-9728
Phone: (509) 663-9331
Fax: (509) 663-9399
Email: jack.speer@alcoa.com

Bureau of Land Management
Acting Area Manager, Neal Hedges
915 Walla Walla Avenue
Wenatchee, WA 98801
Phone: (509) 665-2100
Fax: (509) 665-2116
Email: neil_hedges@or.blm.gov

National Parks Service
Pacific Northwest Region
Susan Rosebrough
909 First Avenue
Seattle, WA 98104
Phone: (206) 220-4121
Email: susan_rosebrough@nps.gov

Confederated Tribes of the Colville Reservation
Joe Peone, Fish & Wildlife Director
Rural Route 1, Box 150
Nespelem WA 99155
Phone: (509) 634-2113
Fax: (509) 634-2126
Email: joe.peone@colvilletribes.com

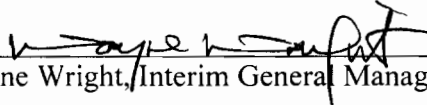
SECTION 21: Signatures

21.1 **Signatory Authority.** Each signatory to this Agreement certifies that he or she is authorized to execute this 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.

21.2 **Signing in Counterparts.** This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpart of this Agreement identical in form having attached to it one or more signature pages.

Dated this 3rd day of February, 2006.

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY

By:  _____
Wayne Wright, Interim General Manager

US FISH & WILDLIFE SERVICE

By: Susan B. Martin
Susan Martin, Project Leader

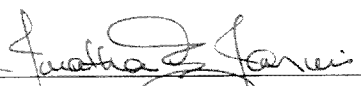
Settlement Agreement

US BUREAU OF LAND MANAGEMENT

By: 
Elaine Marguis-Brong, State Director

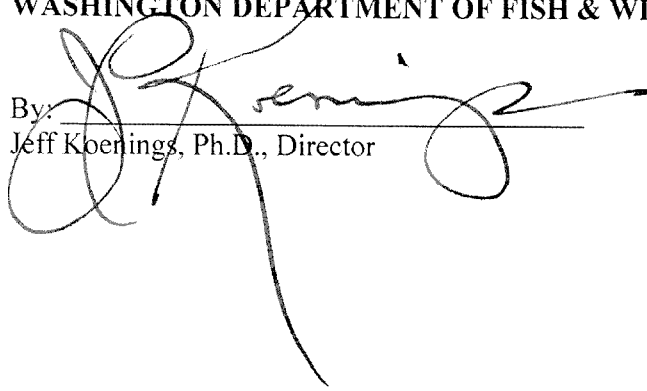
US NATIONAL PARK SERVICE

By: _____

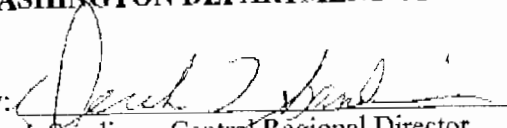

Jonathan B. Jarvis, Regional Director
Pacific West Region

WASHINGTON DEPARTMENT OF FISH & WILDLIFE

By: _____
Jeff Koerings, Ph.D., Director

A large, stylized handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to read 'Jeff Koerings'.

WASHINGTON DEPARTMENT OF ECOLOGY

By: 
Derek Sandison, Central Regional Director

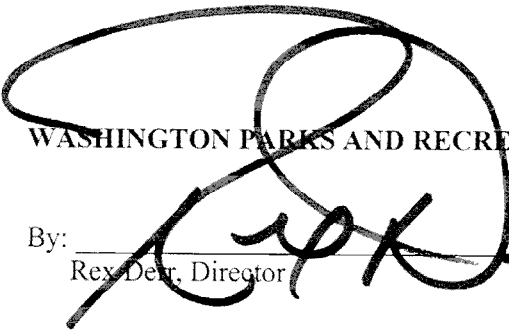
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

By: _____ Colville Business Council
Harvey Moses, Jr., Chairman Colville Business Council

(In a letter submitted by the Confederated Tribes of the Colville Reservation to Chelan PUD dated February 28, 2006, the Committee Chair explained that final review and action on the settlement agreement will require additional committee discussion, followed by a meeting of the full Business Council on or about mid-March before submitting its signature.)

CITY OF ENTIAT

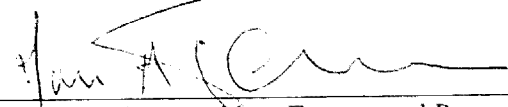
By: Wendell Black
Wendell Black, Mayor



WASHINGTON PARKS AND RECREATION COMMISSION

By: _____
Rex DeWitt, Director

ALCOA POWER GENERATING INC.

By: 
Marc Pereira, Vice President Energy and Procurement

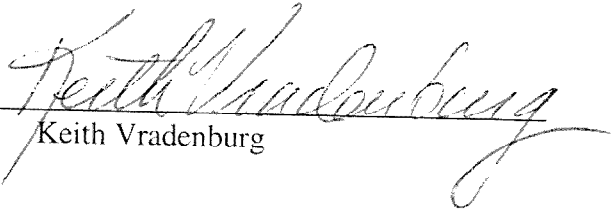
Settlement Agreement

OTHER SIGNING PARTIES

Party: **Entiat Coalition**

- Entiat Watershed Planning Unit
- Entiat Landowners Association
- Chelan County Fire District #8
- Entiat Irrigation District

By:


Keith Vradenburg