
LAKE CHELAN LICENSE ARTICLES

<p>Attachment A to the Lake Chelan Settlement Agreement</p>
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**LAKE CHELAN HYDROELECTRIC PROJECT
FERC Project No. 637**

October 8, 2003



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

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Attachment A

Lake Chelan Hydroelectric Project

License Articles

FINAL

Article 1. USDA Forest Service Erosion Control Plan

(a) For the term of the New License, including any subsequent annual licenses, Chelan PUD shall be responsible for carrying out erosion control and monitoring measures on USDA Forest Service lands, in accordance with Chapters 1 and 3 of the Lake Chelan Comprehensive Management Plan (Comprehensive Plan), which are incorporated herein by reference. Specifically:

(1) Within one year of the effective date of the New License, Chelan PUD shall develop an erosion control implementation plan acceptable to Chelan PUD and the USDA Forest Service, as detailed in section 2.2 and table 1-4 of Chapter 1 of the Comprehensive Plan. The implementation plan and any updates or revisions shall be subject to the approval of Chelan PUD and the USDA Forest Service, and Chelan PUD shall file the plan and any updates or revisions with FERC. If Chelan PUD and the USDA Forest Service disagree regarding the plan or any updates or revisions, such disagreement shall be subject to dispute resolution pursuant to section 16 of the Agreement.

(2) Site-specific plans shall be prepared by Chelan PUD in consultation with, and with the approval of, the USDA Forest Service, for habitat and ground-disturbing activities on National Forest System Lands necessary to implement the erosion control implementation plan. The site-specific plans shall be completed at least one year before the habitat or ground-disturbing activity occurs. The site-specific plans shall include: (a) a map showing the location of the proposed activity; (b) a description of the USDA Forest Service land management area designation for the location of the proposed activity, and the applicable standards and guidelines regarding habitat and ground-disturbing activities at such location; (c) a description of the alternative designs and mitigation measures considered; (d) data collected from surveys, biological evaluations, or consultation conducted pursuant to applicable regulations; (e) a statement of the integrated weed management measures to be implemented, if any; and (f) an environmental analysis of the proposed action that meets applicable USDA Forest Service requirements for implementing the National Environmental Policy Act (NEPA). Chelan PUD shall conduct or fund such environmental analysis, including, but not limited to, scoping, site-specific resource analysis, and cumulative effects analysis sufficient to meet applicable USDA Forest Service regulations for compliance with NEPA. Chelan PUD may refer to or rely on any previous NEPA analysis for the activity to the extent that the analysis is not out of date, as determined by the USDA Forest

Service. Any contractor or contractors selected by Chelan PUD to conduct the NEPA process shall be approved by the USDA Forest Service in advance of initiating such process.

Following scoping, Chelan PUD shall submit the scope of work for the environmental analysis, including, but not limited to, the range of alternatives that shall be addressed, to the USDA Forest Service for review and approval prior to completion of the environmental analysis, as described in section 2.2.1 of Chapter 1 of the Comprehensive Plan.

(3) Within two years of the effective date of the New License, Chelan PUD shall develop a monitoring and maintenance plan to address the need for ongoing monitoring of shoreline erosion on USDA Forest Service lands, and the need for maintenance of treated sites, as detailed in section 2.3 of Chapter 1 of the Comprehensive Plan. If Chelan PUD and the USDA Forest Service disagree regarding the plan or any updates or revisions, such disagreement shall be subject to dispute resolution pursuant to section 16 of this Agreement. Chelan PUD shall file the plan and any updates or revisions with FERC.

(4) Chelan PUD shall be responsible for the collection and use of large woody debris (LWD) in the erosion control efforts at sites designated in Chapter 1 of the Comprehensive Plan, and as described in Chapter 3 of the Comprehensive Plan.

(5) In consultation with the USDA Forest Service, Chelan PUD shall be responsible for securing any required permits relating to the implementation of this License Article and Chapter 1 of the Comprehensive Plan.

(b) Chapter 1 of the Comprehensive Plan may be modified in writing by mutual agreement of Chelan PUD and the USDA Forest Service at any time during the term of the New License or any 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 the modification shall be undertaken until such approval is received.

(c) The Estimated Cost to Chelan PUD of implementing Chapter 1 is \$2.68 million, as detailed in Table 1-1 of Chapter 1 of the Comprehensive Plan.

Article 2. NPS Erosion Control Plan

(a) Within 180 days of the effective date of the New License, Chelan PUD shall make available \$576,500, for the benefit of the NPS to implement erosion control work and monitoring at seven sites on NPS lands, as identified in the following table, in accordance with Chapter 2 of Comprehensive Plan, which is incorporated herein by reference. The seven sites are identified as follows:

NPS Erosion Sites

Site Number	Location
61	Riddle Creek Cabins
79	Lakeshore Trail
80	Lakeshore Trail
81	Lakeshore Trail
90	Manly Wham
109	Lakeshore Trail
110	Lakeshore Trail

(b) Chelan PUD shall become responsible for implementation of the erosion control work and monitoring described in Chapter 2, but only to the extent that unanticipated circumstances limit or preclude the ability of the NPS to do so. If such unanticipated circumstances arise, Chelan PUD shall employ best efforts to implement such portion of the erosion control work and monitoring that the NPS is unable to implement, but only until the remaining portion of the \$576,500 is expended by Chelan PUD. Such expenditures by Chelan PUD shall include both payments to outside contractors and the cost of all work performed by Chelan PUD employees, including a reasonable allocation of overhead. Chelan PUD shall have no obligation to perform such work unless the NPS has provided written notice to Chelan PUD and the FERC that such unanticipated circumstances exist.

(c) Chelan PUD shall be responsible for additional funding as specified in Section 2.6 of Chapter 2 of the Comprehensive Plan. If Chelan PUD and the NPS fail to reach agreement regarding which, if any, additional sites qualify for treatment as specified in Section 2.6, the matter shall be referred to dispute resolution pursuant to section 16 of the Agreement.

(d) If at the time an erosion site project in this Article and Chapter 2 is to be performed, the average cost of materials and fuel necessary to implement erosion control projects has, over the preceding five years, increased by more than 10 percent above the adjustment provided in section 19 of the Agreement, Chelan PUD and the NPS shall attempt to agree on a plan for completing the remaining work and monitoring. The plan may include, but is not limited to, a reasonable increase in the \$576,500 to be made available by Chelan PUD, a reasonable modification of the timing for implementation of work without modifying the overall schedule provided in the Comprehensive Plan, or use of funds earmarked for future projects as long as the plan provides for funding such future projects. If the NPS and Chelan PUD cannot agree on such a plan, the matter shall be referred to dispute resolution pursuant to section 16 of the Agreement. An increase in the average cost of materials and fuel necessary to implement this License Article and Chapter 2 of less than 10 percent above the adjustment provided in section 19 of the Agreement shall not be the responsibility of Chelan PUD.

Article 3. Large Woody Debris Plan

(a) Within 180 days of the effective date of the New License, and by January 31st of each of the next nineteen years, Chelan PUD shall make available five thousand dollars (\$5,000) for

the benefit of the WDFW to be used in obtaining or transporting Large Woody Debris (LWD) or other bioengineered bank protection and in-lake fish habitat restoration, enhancement, and mitigation materials (hereafter referred to as “bank and habitat materials”) for use on state or private land within or adjacent to Lake Chelan, in accordance with Chapter 3 of the Comprehensive Plan, which is incorporated herein by reference. LWD consists of trees, logs, rootwads, woody debris, and other similar materials.

(b) The funds may be used by WDFW to purchase (as necessary) or transport LWD and other bank and habitat materials to WDFW-provided storage sites within the Lake Chelan basin, for eventual use in bioengineered bank protection and fish habitat installation projects on state and private lands within the Lake Chelan basin. LWD and other bank and habitat materials shall be used on state and private lands within the Lake Chelan basin to mitigate the impacts of future erosion control and bank protection projects within the Lake Chelan basin, as specified in Chapters 1 and 2 of the Comprehensive Plan.

(c)(1) For shoreline erosion control work on USDA Forest Service and NPS lands, work to improve tributary access, and other similar work, the quantity of LWD included in the work and/or placed as mitigation as required by permits using the one-to-one ratio, as described in Chapter 3, section 4.2 of the Comprehensive Plan, is expected by the Parties to provide adequate mitigation for natural resources. Because it is understood that the appropriate amount of LWD will vary from site to site, and from project to project, the ratio described in the preceding sentence shall be applied to the average amount of LWD for the projects performed during any five-year period.

(2) The Parties expect to support the one-to-one ratio on the amount of LWD and any other mitigation requirements in all permitting processes relating to such erosion control and other work, including, but not limited to, permits under Title 77 RCW (Hydraulic Project Approval) and section 404 of the Clean Water Act. If the total mitigation costs required by such permits exceed the costs that would result from the one-to-one ratio, Chelan PUD may reduce the funding provided to WDFW under this Article by the amount of the additional cost incurred.

Article 4. Stehekin Area Plan

(a) Within 180 days of the effective date of the New License, Chelan PUD shall make available \$160,000 to address dust control, the monitoring of dust, and related efforts, all to be carried out by the NPS. The \$160,000 includes \$100,000 for dust abatement (as specified in Section 4.7 of Chapter 4 of the Comprehensive Plan), \$45,000 to be provided on an as needed basis for additional dust abatement or monitoring efforts (as specified in Section 4.7 of Chapter 4 of the Comprehensive Plan), and \$15,000 for monitoring and evaluation of dust abatement efforts (as specified in Section 6.5 of Chapter 4 of the Comprehensive Plan). NPS management activities related to the Stehekin area are described in Chapter 4 of the Comprehensive Plan, which is incorporated herein by reference.

(b) Chelan PUD shall also perform monitoring and analysis of changes at the Stehekin River mouth, in accordance with section 6.3 of Chapter 4 of the Comprehensive Plan, at a cost not to exceed \$90,000.

(c) Chelan PUD shall become responsible for implementation of the measures identified in License Article 4(a) and Chapter 4 of the Comprehensive Plan only if and to the extent that unanticipated circumstances limit or preclude the ability of the NPS to do so. If such circumstances arise, Chelan PUD shall employ best efforts to implement such portion of the work and monitoring as the NPS was unable to implement, but only until the remaining portion of the \$160,000 is expended by Chelan PUD. Such expenditures by Chelan PUD shall include both payments to outside contractors and the cost of all work performed by Chelan PUD employees, including a reasonable allocation of overhead. Chelan PUD shall have no obligation to perform such work until the NPS has provided written notice to Chelan PUD and FERC that such unanticipated circumstances exist.

Article 5. Survey Monument Replacement Plan

Within 180 days of the effective date of the New License, Chelan PUD shall make available funding to the USDA Forest Service not to exceed \$80,000 for survey work to locate, re-establish where necessary, and document survey monuments, in accordance with Chapter 5 of the Comprehensive Plan, which is incorporated herein by reference.

Article 6. Lake Chelan Fishery Plan

In conjunction with the Lake Chelan Fishery Forum (LCFF), Chelan PUD shall implement its responsibilities under Chapter 6 of the Comprehensive Plan, which is incorporated herein by reference. Specifically:

(a) **Food Web Model.** (1) When notified by WDFW pursuant to subsection (a)(2) of this Article, but not sooner than 180 days of the effective date of the New License, Chelan PUD shall make available \$100,000 to a contractor selected by Chelan PUD, after consultation with the LCFF, to develop a food web model for Lake Chelan, as described in section 5 of Chapter 6 of the Comprehensive Plan.

(2) Chelan PUD shall contract to develop the food web model when notified by WDFW, after coordination with NPS, USDA Forest Service, and USFWS, and after consultation with the LCFF, that, in addition to the \$100,000 to be provided by Chelan PUD pursuant to subsection (a)(1) of this License Article, there is funding available from non-Chelan PUD sources sufficient to fund the food web model contract. Chelan PUD may require a written commitment from such non-Chelan PUD source(s) of funding before or at the time Chelan PUD executes a contract for the food web model. If required, the written commitment shall be for the difference between the \$100,000 to be provided by Chelan PUD and the amount to be paid under the contract for the food web model. The food web model contract shall provide that the model and appropriate training shall be provided to the entities that are members of the LCFF.

(b) **Fish Monitoring and Evaluation.** (1) Within 180 days of the effective date of the New License, and by January 31st of each subsequent year, including any subsequent annual licenses, Chelan PUD shall make available \$20,000, to be used by the NPS, the USDA Forest Service, or WDFW, pursuant to a plan developed and adopted by the NPS, USDA Forest

Service, and WDFW for monitoring and evaluating fish in Lake Chelan, as described in Chapter 6 of the Comprehensive Plan. The NPS, USDA Forest Service, and WDFW plan to consult with the LCFF in the course of developing such plan. If, in any year, the NPS, USDA Forest Service, and WDFW fail to develop and adopt such a plan, and submit it to Chelan PUD by January 10, Chelan PUD shall carryover that year’s \$20,000 in funding until such plan has been developed, adopted, and submitted to Chelan PUD.

(2) Within 180 days of the effective date of the New License, and by January 31st of each subsequent year, Chelan PUD shall make available an additional \$20,000, to be used by the NPS, the USDA Forest Service, or WDFW, pursuant to the plan to be developed and adopted pursuant to subsection (b)(1) of this Article. However, Chelan PUD shall only be required to expend such additional \$20,000 on the basis of a one-for-one match (in cash or in-kind) in such year by the NPS, the USDA Forest Service, the USFWS, the WDOE, the WDFW, or any other organization approved as a source of matching funds by the LCFF. Funds made available in any such year, but not matched by December 31 of the following year, shall cease to be available. For any year in which a plan pursuant to subsection (b)(1) of this Article is not submitted to Chelan PUD, Chelan PUD shall carryover such additional \$20,000 in available funding until December 31 of the following year. If such plan is not submitted to Chelan PUD by December 31 of such following year, and one or more requests for payment has not been received by Chelan PUD for such additional \$20,000 by December 31 of such following year, such additional \$20,000 shall no longer be available.

(c) **Tributary Barrier Removal.** (1) Chelan PUD shall be responsible for removing alluvium barriers in tributaries to Lake Chelan for the term of the New License, including any subsequent annual licenses, in order to facilitate adfluvial salmonid access for spawning, as described in Chapter 6 of the Comprehensive Plan. Potential sites are listed alphabetically in Table 6-1 of Chapter 6 of the Comprehensive Plan, and in the following table:

Potential Tributary Barrier Removal Sites

Bear Creek	Lightning Creek
Big Creek	Little Big Creek
Cascade Creek	Lone Fir Creek
Castle Creek	Mitchell Creek
Coyote Creek	Poison Creek
Deep Harbor Creek	Prince Creek
First Creek	Pyramid Creek
Fish Creek	Railroad Creek
Four mile Creek	Riddle Creek
Gold Creek	Safety Harbor Creek
Grade Creek	25 Mile Creek
Graham Harbor Creek	

(2) Within the first five years of the New License, Chelan PUD shall implement the following actions within the drawdown zone of such tributaries: (i) remove existing barriers in up to 10

high priority tributaries, and (ii) monitor up to an additional 10 tributaries to determine if the new lake level operating regime described in Article 8 and Chapter 8 of the Comprehensive Plan effectively removes existing barriers from the mouths of these tributaries.

(3) Every two years during the remaining term of the New License, or at a frequency recommended by LCFF and approved by NPS and USDA Forest Service, Chelan PUD shall fund monitoring of up to 10 tributaries, to determine if barriers are present or have reformed; and to remove any such barriers from up to two tributaries annually, unless barriers are clearly not caused by the Project (e.g., the result of fire, earthquakes, landslides, etc.). Any disagreement regarding whether a tributary barrier is Project-caused shall be resolved through dispute resolution pursuant to section 16 of this Agreement.

(4) The selection of tributaries for barrier removal and monitoring pursuant to this subsection shall be based on the recommendations of the LCFF, and subject to the approval of the NPS regarding tributaries on NPS lands, the USDA Forest Service for tributaries on USDA Forest Service lands, and the WDFW for tributaries on state lands. Any disagreement as to whether a tributary barrier was caused by the Project shall be resolved through the dispute resolution process under section 16 of this Agreement.

(5) The total Estimated Cost to Chelan PUD of the tributary barrier removal and monitoring work provided in this subsection is \$100,000.

(d) **Fish Stocking.** (1) For fish stocking in Lake Chelan and its tributaries during the term of the New License, including any subsequent annual licenses, Chelan PUD shall make available to WDFW for the Chelan Falls Hatchery site sufficient funding to annually rear approximately 5,000 pounds of salmonid fingerlings (for example: 500,000 fish at 100 fish/lb., presently kokanee) and 33,000 pounds of catchable-sized salmonids (for example: approximately 100,000 fish at 3 fish/lb., presently rainbow trout and cutthroat trout), as described in section 4.6.3 of the Comprehensive Plan. The Estimated Cost to Chelan PUD of rearing such poundage of fish is \$30,000 per year.

(2) If WDFW, after coordination with the NPS, USDA Forest Service, and USFWS, and after consultation with the LCFF, decides, at any time during the term of the New License or any subsequent annual licenses, to reduce or eliminate fish stocking into Lake Chelan, the resulting savings shall be available to WDFW for other Lake Chelan fish management activities. Funds to be made available from reductions in fish production shall be determined as equivalent to the proportion of fish production poundage reduced. The funds saved shall be calculated as follows: take the number of pounds of fish production reduced, divide by the 38,000 pounds of fish initially to be produced, and multiply by the \$30,000 (as adjusted under section 19 of the Agreement up to the year of the decision to reduce production). For example, if 5,000 pounds of kokanee production was eliminated, $\$3,950$ would be available for other fish management activities ($5,000/38,000 \times \$30,000$ escalated = $\$3,950$ escalated).

(e) **Entrainment.** (1) Chelan PUD shall conduct no more than 140 days of entrainment sampling over four sampling years, using the same methodology used during the 2000 and 2001 field seasons, or another methodology of comparable cost recommended by the LCFF, and

approved by WDFW, USFWS, and WDOE. Upon request of WDFW, Chelan PUD shall develop a sampling plan in consultation with USFWS, WDOE, and the LCFF, subject to approval by WDFW. The plan shall specify the sampling years and the allocation of sampling days among such years. The first sampling year shall not be prior to the seventh anniversary of the effective date of the New License, and the last sampling year shall be no later than the 35th anniversary of the effective date of the New License. The purpose of the sampling is to determine if significant numbers of adult spawnable age/size adfluvial westslope cutthroat trout are entering the power tunnel entrance.

(2) If less than 500 adult spawning age/size adult adfluvial westslope cutthroat trout are physically captured within any calendar year prior to completion of the four years of sampling, Chelan PUD, in consultation with LCFF, shall prepare an evaluation of the results of the entrainment monitoring and the method used. Chelan PUD, WDFW, USFWS, and WDOE shall determine whether the remainder of the four years of sampling should be conducted, at what intervals and what method should be used.

(3) If more than 500 adult spawnable age/size adult adfluvial westslope cutthroat trout are physically captured within a calendar year in the immediate vicinity of the power tunnel entrance, the WDFW, USFWS, or the WDOE may request that Chelan PUD install fish protection or exclusion devices for the power tunnel entrance, or that Chelan PUD implement other actions recommended by the LCFF and approved by WDFW, USFWS, and WDOE. Chelan PUD may object to the request on the grounds that such fish protection or exclusion devices, or such other actions, as the case may be, are not necessary. To assist in the determination of whether such fish protection or exclusion devices, or other actions, are necessary, Chelan PUD may conduct entrainment sampling in the power tunnel. If Chelan PUD so objects, and it cannot reach agreement with the Agency or Agencies making the request, the matter shall be referred to dispute resolution pursuant to section 16 of this Agreement. If Chelan PUD does not object, or the dispute resolution process results in a decision to install fish protection or exclusion devices, Chelan PUD shall seek recommendations from the LCFF regarding the design of fish protection or exclusion devices or such other actions. Chelan PUD shall conduct such tests as necessary to determine the effectiveness of such fish protection or exclusion devices or such other actions. Upon development of a successful design, Chelan PUD shall install such fish protection or exclusion devices or implement such other actions.

(4) For purposes of this Article, “adult” is defined as naturally-produced (non-stocked), spawnable age or size adfluvial westslope cutthroat trout. The size of adult westslope cutthroat is defined as 9-12 inches in total length, based on current Twin Lakes stock spawner size, but such definition may be adjusted upon a recommendation by the LCFF to WDFW, USFWS, WDOE, and Chelan PUD.

(5) As of the date of this Agreement, the species identified in this Article are not listed species under the ESA. If any identified species become a listed species under the ESA, this Article may be superceded by the ESA.

Article 7. Chelan River Fishery Plan

Within one year of the effective date of the New License, Chelan PUD shall begin implementation of the plan to restore the fish and wildlife resources of the Chelan River, as described in this License Article and Chapter 7 of the Comprehensive Plan, which is incorporated herein by reference.

(a) **Biological objectives.** The Chelan River restoration plan is designed to achieve certain biological objectives concerning restoration and/or enhancement of biological resources in four separate reaches of the river and to support, maintain, and protect the designated and existing beneficial uses of the Chelan River basin, pursuant to applicable federal and State law. The biological objectives that Chelan PUD shall attempt to achieve for each reach are set forth in detail in section 4 of Chapter 7 of the Comprehensive Plan. The Parties believe that achievement of these biological objectives, through implementation of this License Article, would substantially restore a significant number of environmental values associated with the Chelan River.

(b) **Habitat Protection and Restoration measures.** Chelan PUD shall implement the following habitat protection and restoration measures:

(1) **Minimum flows and ramping rates.** Chelan PUD shall comply with the minimum flows and ramping rates provisions set forth in section 2.6.5, table 7-3, and section 3.2, table 7-6, respectively, of Chapter 7 of the Comprehensive Plan as soon as the structures needed to provide such flows are constructed, which shall occur no later than two years after the effective date of the New License. The structures for which construction is needed are a new flow release structure at the dam, estimated to cost \$350,000, and modifications to the channel in Reach 4. Prior to the date such structures are completed, Chelan PUD shall provide flows consistent with Chapter 7 of the Comprehensive Plan for the purposes of testing designs or structures or gathering other data, including water quality data.

(2) **Habitat modification in Reach 4 and the tailrace.** Not later than two years after the effective date of the New License, Chelan PUD shall complete modifications to improve habitat in Reach 4 and the tailrace, as set forth in section 3.1 and 3.2, respectively, of Chapter 7 of the Comprehensive Plan. Chelan PUD shall use standard river habitat restoration techniques to provide and maintain gravel areas for spawning, create pools, increase channel sinuosity, and moderate velocities, as described in sections 3.1, figure 7-9, and section 3.2, figure 7-10, in Chapter 7 of the Comprehensive Plan, or as agreed to by the Chelan River Fishery Forum (CRFF). This habitat work is estimated to have a capital cost of \$500,000.

(3) **Anadromous Fish Spawning Flows in Reach 4.** Beginning 90 days after the habitat modification in subsection (2) of this Article has been completed, Chelan PUD shall comply with the provisions for the pumping of tailrace water into Reach 4 set forth in section 3.3.6 of Chapter 7 of the Comprehensive Plan. As described in section 3.3.6, these additional flows into Reach 4 during the steelhead and late-run chinook spawning periods are to provide greater depths and velocities, which will improve spawning habitat conditions for these species. The capital cost for the pumping station is estimated to be \$2,500,000, with annual operating costs of \$20,000.

(4) **Redd Protection.** Upon the effective date of the New License, Chelan PUD shall comply with the redd protection provisions set forth in section 4.1.3, table 7-10, and section 4.1.3 of Chapter 7 of the Comprehensive Plan. This measure is for the purpose of preventing damage to salmon redds that might occur as a result of powerhouse shutdown. As described in Chapter 7 of the Comprehensive Plan, detection of low dissolved oxygen (DO) levels in redds in the tailrace could trigger implementation of several alternatives, including intermittent powerhouse operation or installation and use of flow release pipes buried in the gravel.

(c) **Implementation Program.** Chelan PUD shall undertake the following program to monitor, evaluate, and adapt, where needed, the protection and restoration measures:

(1) **Monitoring and evaluation.** Chelan PUD shall begin implementation of all monitoring, evaluation, and reporting requirements set forth in section 5.4 and figure 7-13 of Chapter 7 of the Comprehensive Plan as soon after the effective date of the New License as practically feasible, but no later than two and one-half years after the effective date of the New License. The monitoring and evaluation program shall provide the basis for determining whether the biological objectives have been met. The monitoring and evaluation program shall also provide information needed to make changes to the habitat protection and restoration or monitoring and evaluation measures as may be appropriate to facilitate achievement of the biological objectives and of effective monitoring and evaluation. The monitoring and evaluation program will be used to determine if measures beyond those defined in subsection (b) of this License Article should be implemented.

(2) **Reporting and evaluation of success and recommendation of new or modified measures.** By no later than April 30, in each of years 4, 6, 8, and 10 following the effective date of the New License, Chelan PUD shall provide to the CRFF a final Biological Objectives Status Report that (1) summarizes the results of the monitoring and evaluation program, and evaluates the need for modification of the program, (2) describes the degree to which the biological objectives have been achieved, and the prospects for achieving those objectives in the next reporting period, (3) reviews measures implemented to meet those biological objectives, and (4) recommends any new or modified measures, including monitoring and evaluation, needed to achieve the biological objectives, to the extent practicable (hereinafter referred to as “new or modified measures”). Such recommendations shall contain a schedule for implementation. No later than February 28 of each such year, Chelan PUD shall provide a draft of such final report to the CRFF and consult with its members prior to issuing the final report. If a CRFF member is not in agreement with the draft report or recommendations and has an alternative evaluation or recommendation, Chelan PUD shall include a discussion of that alternative evaluation or recommendation in the final report.

(3) **Management options to achieve compliance with biological objectives.** Section 3.6 of Chapter 7 of the Comprehensive Plan sets forth a number of additional management options that Chelan PUD may implement to address specific problems that may arise in achieving biological objectives. Such options include pumping of tailrace water into Reach 4 for rearing salmonids, and actions to reduce the temperature in Reaches 1-3 (site-potential shade, refugia enhancement, flow increases during hot weather or daytime). These options have been identified as potential

actions regarding the problems in question; however, future recommendations are not limited to these options.

(4) Implementation if agreement reached on new or modified measures. If Consensus is achieved by the CRFF and Chelan PUD as to new or modified measures needed to achieve the biological objectives or to carry out monitoring and evaluation, the recommended measures shall become part of the plan and implemented in accordance with an agreed schedule or, absent an agreed schedule, by August 1 of the reporting year. These new and modified measures are deemed to be part of the New License if Consensus is achieved by the CRFF and Chelan PUD. If, however, such measures require an amendment to the New License or FERC approval, Chelan PUD shall petition FERC to so amend the New License.

(d) Dispute Resolution and Reservation of Authority

(1) Resolution of disagreements over new or modified measures. If, within 60 days after issuance of the final Biological Objectives Status Report, the CRFF and Chelan PUD do not reach consensus as to new or modified measures needed to achieve the biological objectives, to the extent practicable, including the implementation schedule, or to carry out monitoring and evaluation, such disagreement shall be subject to dispute resolution pursuant to section 16 of this Agreement. During the pendency of the dispute resolution process, the minimum level of new or modified measures that the CRFF and Chelan PUD can agree upon shall be implemented.

(2) Compliance with biological objectives and state water quality standards. Chelan PUD shall comply with the implementation schedule as provided in Tables 7-10 and 7-11 in Chapter 7 of the Comprehensive Plan. No later than 10 years after the effective date of the New License, Chelan PUD shall provide WDOE with the information necessary to make a determination as to whether the biological objectives in Chapter 7 of the Comprehensive Plan and state water quality standards have been achieved. WDOE agrees that it shall confer with the CRFF prior to making a determination whether and to what extent the biological objectives contained in Chapter 7 have been met. If an Agency with relevant authority or Chelan PUD disagrees with WDOE's determination, it may invoke the dispute resolution process pursuant to section 16 of this Agreement. If WDOE determines that the biological objectives have been met but non-compliance with water quality standards exists, WDOE intends to initiate a process, if necessary, to modify the applicable standards through rulemaking or such alternative process as may otherwise be authorized under applicable federal and state law. If WDOE determines that some or all of the biological objectives have not been met and that Chelan PUD has undertaken all known, reasonable, and feasible measures to achieve those objectives consistent with supporting, protecting, and maintaining the designated and existing beneficial uses, WDOE intends to initiate a process to modify the applicable water quality standards to the extent necessary to eliminate any non-compliance with such standards. Such modification of state standards shall not release Chelan PUD from compliance with the implementation and monitoring measures required by this Article or Chapter 7 of the Comprehensive Plan. Chelan PUD shall, upon request by WDOE, fully respond to all reasonable requests for materials to assist WDOE in making determinations under this section and in any resulting rulemaking or other process.

(3) **Actions if Biological Objectives Not Achieved.** Following the issuance of the final Biological Objectives Status Report in year 10, if Chelan PUD concludes that one or more biological objectives cannot be met in whole or in part despite its having undertaken all known, reasonable, and feasible measures to meet those objectives consistent with supporting, protecting, and maintaining the designated and existing beneficial uses, Chelan PUD may consult with the CRFF regarding whether to modify or eliminate a biological objective and/or associated implementation measure. Any disagreement resulting from such consultation shall be subject to dispute resolution pursuant to section 16 of the Agreement. Any changes to such biological objectives or implementation measures require the written consent of the WDOE, which shall not be unreasonably withheld pursuant to applicable federal and state law.

(4) **WDOE reservation of authority.** WDOE reserves the authority to issue orders to require new or modified measures beyond those otherwise provided for in this License Article and Chapter 7 of the Comprehensive Plan as may be reasonable and necessary to meet applicable water quality standards and other appropriate requirements of state law. In exercising such authority, WDOE shall consider any conflicts that arise between designated and/or existing beneficial uses, and reconcile such conflicts in a reasonable manner consistent with applicable state and federal law. Such new or modified measures may include, but are not limited to, changes to minimum flows and ramping rates. Prior to exercising such authority, WDOE agrees to issue a notice of intent to exercise its authority under this section. An Agency with relevant authority or Chelan PUD may within thirty days of such issuance initiate dispute resolution pursuant to section 16 of the Agreement. However, WDOE's authority shall not be limited by the outcome of the dispute resolution process contained in section 16 of the Agreement. Further, prior to exercising any such authority, WDOE will seek public input; however, if WDOE determines that, under the circumstances, more expeditious action is required, WDOE may limit such opportunities. This reservation of authority is not intended to create a right for Chelan PUD to seek review before the FERC of WDOE's exercise of such authority beyond that which may exist under applicable laws. Further, this provision is not intended to limit WDOE's authority to address unlawful discharges or other unlawful acts involving the Project that are actionable under RCW 90.48.

(5) **Chelan PUD withdrawal and reservation of right to contest.** In the event that WDOE imposes, under section (d)(4) of this Article, new or modified measures that cause the estimated capital costs required in sections (b)(2) and (b)(3) to increase by more than 25 percent, or the flow volumes required in section (b)(1) to increase by more than 2,900 cfs-days (i.e., 10 percent of the 80 cfs minimum flow), Chelan PUD may withdraw from the Agreement, which shall then be null and void. The costs associated with sections (c)(1) and (c)(2) of this Article shall not be considered a cost increase for the purposes of this section. The flow volume associated with Table 7-3 in section 2.6.5 and in section 3.3.7 (5,000 cfs-days) of Chapter 7 of the Comprehensive Plan shall not be considered an increase in volume for the purposes of this section. Prior to withdrawing, Chelan PUD shall engage in dispute resolution pursuant to section 16 of the Agreement. Chelan PUD reserves the right to contest the requirement of new or modified measures by WDOE on any and all legal grounds.

In the event that measures required to provide for redd protection would exceed the capital cost or flow limitations of this subsection, Chelan PUD may also either exceed such

limitations, remove the spawning habitat in the tailrace, or exclude fish from the tailrace. Removal of the spawning habitat or exclusion of fish from the tailrace shall occur only upon approval by the Agencies with relevant authority.

Article 8. Lake Level Plan

(a) Beginning within one year of the effective date of the New License, and for the term of the New License, including any subsequent annual licenses, Chelan PUD shall make every reasonable effort to comply with the Lake level management practices described in Chapter 8 of the Comprehensive Plan, which is incorporated herein by reference. Specifically, Chelan PUD shall make every reasonable effort to comply with the following objectives (contained in section 3.1 of Chapter 8 of the comprehensive Plan): (1) maintaining minimum flows in the Chelan River (this objective has priority over lake levels); (2) reducing high flows in the Chelan River (this objective has priority over lake levels); (3) satisfying regulatory requirements for flood control (adjusting lake level); (4) providing usable lake levels for recreation (which varies between elevation 1,090 and 1,098 ft., depending on the slope of the shoreline and boat dock configurations); (5) reduce shoreline erosion; (6) preventing fish passage blockages (due to tributary barriers); and (7) minimizing the effect of refill on attainment of flow objectives for salmon in the mainstem Columbia River.

(b) Table 8-1 in Chapter 8 of the Comprehensive Plan, and included below, indicates the lake level elevations that Chelan PUD shall seek to achieve, to the extent consistent with the objectives listed in subsection (a) of this Article:

Proposed Lake Elevations (PME14)

Day	Minimum Elevation (ft)
May 1	1,087.6
June 1	1,094.0
July 1	1,098.0
August 1	1,099.0
September 7	1,098.7
October 1	1,097.2

Article 9. Wildlife Habitat Plan

Chelan PUD shall implement its responsibilities under the Wildlife Habitat Plan, as described in Chapter 9 of the Comprehensive Plan, which is incorporated herein by reference. Specifically:

(a) **Wildlife Habitat Restoration.** (1) Within 180 days of the effective date of the New License, Chelan PUD shall make available \$220,000 to the Chelan-Douglas Land Trust, for the acquisition of conservation easements in perpetuity on privately-owned lands located on the north shore of Lake Chelan, in accordance with section 4.1.1 of the Comprehensive Plan. For

purposes of this License Article, all references to the Chelan-Douglas Land Trust refer to the Chelan-Douglas Land Trust or another organization selected pursuant to paragraph (a)(6) of this License Article. The goal is to secure easements on 400 acres of land, and priority shall be given to acquiring easements on lands between elevations 1,100 and 1,400 ft.

(2) Within 180 days of the effective date of the New License, Chelan PUD shall make available additional funding of up to 15 percent of the cost of easement acquisition (not to exceed \$33,000) to the Chelan-Douglas Land Trust, for fees associated with easement acquisition. Associated fees include administrative costs, appraisals, baseline inventories, escrow fees, hazardous substance assessments, legal fees, recording fees, stewardship fees, surveys, and fees relating to title reports and insurance.

(3) Within 180 days of the effective date of the New License, Chelan PUD shall make available \$32,000 to the Chelan-Douglas Land Trust, for shrub-steppe/mule deer winter-range habitat restoration efforts on the lands, if any, for which an easement is acquired under paragraph (a)(1) of this Article. Beyond making the \$32,000 available, Chelan PUD shall have no responsibility for the success of the restoration efforts to be carried out by the Chelan-Douglas Land Trust, in coordination with WDFW. In its contract with the Chelan-Douglas Land Trust, Chelan PUD shall require the Chelan-Douglas Land Trust to coordinate with WDFW in order to assure the highest likelihood of habitat restoration success.

(4) Chelan PUD and WDFW recognize the uncertainty of acquiring conservation easements on 400 acres, due to the variability of landowner participation. If less than 400 acres of conservation easements can be acquired, the funds remaining available under paragraphs (a)(1) and (a)(3) of this Article shall be made available by Chelan PUD to WDFW for habitat restoration within the Lake Chelan basin.

(5) If easements on 400 acres of land can be acquired for less than the \$220,000 made available under paragraphs (a)(1) of this License Article, 50 percent of any funds remaining available shall become available to WDFW for habitat restoration within the Lake Chelan basin, and 50 percent of the funds remaining available shall no longer be available.

(6) To implement this section, Chelan PUD shall enter into a contract with the Chelan-Douglas Land Trust or another organization that Chelan PUD and WDFW find suitable. The contract shall provide that any easements under paragraph (a)(1) of this License Article be acquired and maintained by the Chelan-Douglas Land Trust or other organization. If the organization with whom Chelan PUD initially contracts either dissolves or becomes unsuitable to Chelan PUD and WDFW, Chelan PUD shall enter into a contract with another organization that Chelan PUD and WDFW find suitable.

(b) Upland Habitat Improvements. (1) Within 180 days of the effective date of the New License, and by January 31st of each subsequent year, Chelan PUD shall make available to the USDA Forest Service \$20,000 per year during the term of the New License, and any subsequent annual licenses, for habitat and wildlife enhancement measures identified in section 3 of Chapter 9 of the Comprehensive Plan.

(2) Within 180 days of the effective date of the New License, and by January 31st of each subsequent year, Chelan PUD shall make available to the USDA Forest Service \$5,000 per year for years one through three of the New License for noxious weed control at Threatened, Endangered, and Sensitive (TES) plant locations.

(3) Chelan PUD, in coordination with WDFW, shall continue to conduct wildlife surveys similar to those conducted during the second FERC license for the Project, maintain upland bird feeders, and/or conduct habitat improvement projects for a cost not to exceed \$10,000 per year during the term of the New License, and any subsequent annual licenses. Chelan PUD shall provide an annual wildlife survey report to WDFW.

(c) **Riparian Habitat Improvements.** (1) Within 180 days of the effective date of the New License, and by January 31st of each subsequent year, Chelan PUD shall make available to the NPS \$20,000 per year for the first five years of the New License, then \$10,000 per year for the remainder of the New License term, and any subsequent annual licenses, for Stehekin area habitat improvements.

(2) Within 180 days of the effective date of the New License, Chelan PUD shall make available:

- (A) \$50,000 to the USDA Forest Service to enhance riparian habitat in the Lake Chelan basin;
- (B) \$50,000 to the NPS to enhance riparian habitat in the Lake Chelan basin; and
- (C) \$35,000 to the WDFW to enhance habitat in the Lake Chelan basin.

(d) **Transferability of Funds.** Upon the recommendation of the Chelan-Douglas Land Trust to the WDFW, and with the concurrence of WDFW, or upon the initiative of WDFW, Chelan PUD shall transfer available funds among paragraphs (a)(1), (a)(3), and (c)(2)(C) of this Article. If paragraph (a)(5) is applicable, only 50 percent of the remaining (a)(1) funds shall be transferred, and 50 percent of the remaining paragraph (a)(1) funds shall no longer be available.

Article 10. Historic Properties and Cultural Resources Management Plan

During the term of the New License, and during any subsequent annual licenses, Chelan PUD shall implement a Historic Properties and Cultural Resources Management Plan, in accordance with Chapter 10 of the Comprehensive Plan, which is incorporated herein by reference, and the Programmatic Agreement (PA) among FERC, the SHPO, and the Advisory Council on Historic Preservation. Specifically:

(a) **Lake Chelan Cultural Forum.** Within 180 days of the effective date of the Agreement, Chelan PUD shall form a Lake Chelan Cultural Forum (LCCF). The membership and procedures of the LCCF are governed by section 18 of the Agreement.

(b) **Permitting and Consultation.** Chelan PUD shall adhere to the permitting and consultation guidelines provided in the National Historic Preservation Act (NHPA), the Archaeological Resources Protection Act (ARPA), 36 CFR Part 800, and other applicable cultural resources laws and regulations. As described in section 5.7 of Chapter 10, Chelan PUD

shall consult with appropriate federal and/or state agencies regarding its undertakings that affect cultural resources on Agency lands, and shall consult with the Confederated Tribes of the Colville Reservation (CCT) and Yakama Nation (YN) regarding actions affecting cultural resources of interest to those respective tribes. Chelan PUD shall acquire landowner permission prior to any activities on private lands.

(c) **Area of Potential Effect (APE).** The Historic Properties and Cultural Resources Management Plan contained in Chapter 10 is intended to ensure that continued Project operation will not adversely affect cultural resources identified within the Area of Potential Effect (APE). The APE for the Project includes lands within the Project boundary, as delineated in the expiring FERC license. This includes the operational limits of the reservoir drawdown zone, between 1,079 feet and 1,100 feet above mean sea level elevation. The APE also includes lands outside the Project boundary where Project operations directly affect the character or use of historic properties and/or traditional cultural properties. For example, the APE includes areas of Project-induced erosion that extend outside the Project boundary.

(d) **Surveys.** Chelan PUD shall survey the APE for cultural resources every 15 years, or when the CRF determines that surveys and monitoring are needed after high-flow events or unusually low water, in accordance with section 5.1 of Chapter 10.

(e) **Inadvertent Discovery.** In the event that archaeological deposits are inadvertently encountered during any Project-related activity, such activity shall cease, and Chelan PUD shall follow the protocol described in section 5.4 of Chapter 10.

(f) **Traditional Cultural Properties Management Plan.** Within one year of the effective date of the New License, Chelan PUD shall initiate development and implementation of a Traditional Cultural Property (TCP) management plan, as described in section 4.2 of Chapter 10. Chelan PUD's treatment plans for identified TCPs within the APE that are affected by Project operations are subject to the approval of the land management agency responsible for the property on which the TCPs are located. Chelan PUD shall consider any recommendations from the tribes regarding treatment plans.

(g) **Information Management and Curation.** Storage of all artifacts and archival collections shall adhere to applicable federal curation standards and sections 5.8 and 5.9 of Chapter 10 of the Comprehensive Plan. Chelan PUD shall prepare a draft curation plan within one year of the effective date of the New License, and complete a final curation plan within 3 years of the effective date of the New License.

(h) **Evaluation and Nomination of Potential Historic Properties.** Chelan PUD shall be responsible for the evaluation of sites within the APE that have been identified, but not evaluated, for possible inclusion in the National Register of Historic Places (NRHP), as provided in section 5.2 of Chapter 10. Chelan PUD shall be responsible for guiding nominations of potentially eligible sites through the NRHP nomination process. For publicly owned lands, the relevant land management agency is responsible for nominating any sites for listing on the NRHP. For tribal allotments, the Colville Confederated Tribes reserve the authority to approve the adequacy of the nominations.

(i) **Cultural Resources Coordinator.** Within 180 days of the effective date of the New License, Chelan PUD shall appoint a Cultural Resources Coordinator to implement Chapter 10 of the Comprehensive Plan. The Cultural Resources Coordinator shall be the primary point of contact for all cultural resource tasks undertaken by Chelan PUD as provided in section 3.8 of Chapter 10.

(j) **Public Education.** Within three years of the effective date of the New License, Chelan PUD shall develop and implement an interpretive plan and educational program, as described in section 3.4 of Chapter 10 of the Comprehensive Plan.

(k) **Site Protection.** Within 180 days of the effective date of the New License, Chelan PUD shall begin implementing site protection measures for historic properties within the APE, as described in section 3.2 of Chapter 10 of the Comprehensive Plan.

(l) **Costs.** The estimated annual costs to Chelan PUD for the implementation of subsections (a) through (h) above are \$20,000, throughout the term of the New License. Chelan PUD shall provide annual funding of \$1,000, throughout the term of the New License, to support educational and interpretive activities pursuant to subsection (j). The estimated total capital cost to Chelan PUD to implement subsection (k) is \$225,000. In the event that the costs to Chelan PUD relating to a single site described in Table 10-2 of Chapter 10 of the Comprehensive Plan exceed \$150,000, License Article 12 shall apply. In the event that the funds provided in this section and the contingency fund provided in License Article 12 are exhausted, Chelan PUD shall continue to follow the procedures contained in the Programmatic Agreement.

Article 11. Recreation Plan

Chelan PUD shall provide recreational resources in accordance with Chapter 11 of the Comprehensive Plan, which is incorporated herein by reference. Specifically:

(a) **Docks of the USDA Forest Service.** Within 180 days of the effective date of the New License, Chelan PUD shall make available to the USDA Forest Service \$700,000, for the purpose of repairing and replacing the USDA Forest Service docks listed in Table 11-13 of Chapter 11 of the Comprehensive Plan. Within 180 days of the effective date of the New License, and by January 31st of each subsequent year of the New License, including any subsequent annual licenses, Chelan PUD shall also make available to the USDA Forest Service an additional \$39,000 for operations and maintenance of such docks. The implementation of the repair and replacement of such docks, as well as the operation and maintenance of such docks, shall be the sole responsibility of the USDA Forest Service. At any time after the 30th anniversary of the New License, Chelan PUD shall consider any requests made by the USDA Forest Service for additional funds to repair and replace the docks listed in Table 11-13 of Chapter 11, but Chelan PUD shall be under no obligation to grant any such requests.

(b) **In-Kind Engineering Services for the USDA Forest Service.** Beginning not later than 180 days of the effective date of the New License, Chelan PUD shall make available to the USDA Forest Service \$100,000 to pay for consulting engineering services related to

standardizing the design of USDA Forest Service docks on Lake Chelan, as described in section 4.2.1 of Chapter 11 of the Comprehensive Plan.

(c) **Recreational Enhancements of the USDA Forest Service (Years 1-30 of the License).** Within 180 days of the effective date of the New License, Chelan PUD shall make available to the USDA Forest Service \$980,000, for use by the USDA Forest Service during the first 30 years of the New License for recreational enhancements within or adjacent to the Lake Chelan basin for USDA Forest Service recreation sites, as generally described in section 4.2.1 of Chapter 11 of the Comprehensive Plan. Within 180 days of the effective date of the New License, and by January 31st of each subsequent year of the New License, Chelan PUD shall also make available to the USDA Forest Service an additional \$6,000 for the operation and maintenance of such recreational enhancements. Implementation of such recreational enhancements, and their operation and maintenance, shall be the sole responsibility of the USDA Forest Service.

(d) **Recreational Enhancements of the USDA Forest Service (Years 30 to the end of the License).** Chelan PUD shall make available to the USDA Forest Service a maximum of \$340,000, beginning on the 30th anniversary of the New License and ending on the date the New License expires, for the purpose of implementing recreational enhancements within or adjacent to the Lake Chelan basin for USDA Forest Service recreation sites, consistent with the recommendations of the recreational use and needs assessment study funded by Chelan PUD pursuant to subsection (g), below. Implementation of such recreational enhancements shall be the sole responsibility of the USDA Forest Service.

(e) **NPS Docks and Recreation Facilities.** (1) Within 180 days of the effective date of the New License, Chelan PUD shall make available to the NPS \$149,000, for the purpose of repairing, replacing, and maintaining NPS docks at sites within the Project Area, in accordance with Table 11-15 of Chapter 11 of the Lake Chelan Comprehensive Plan. Chelan PUD shall also make available to the NPS a total amount of \$871,000 to enhance and stabilize NPS recreation sites within the Project Area, and for administrative costs associated with recreation projects, in accordance with section 4.2.2 of Chapter 11 of the Comprehensive Plan at locations identified in the table below.

NPS Recreation Sites Identified For Stabilization Projects

Site Number	Location
71	Weaver Point Dock
72	Stehekin Road
73	Stehekin Landing
75	Stehekin Access Road
76	Lakeshore Trail
82	Lakeshore Trail
83	Flick Creek Dock
113	Lakeshore Trail
210	Stehekin Landing

(2) Chelan PUD shall become responsible for implementation of the recreation enhancement work described in this article and Chapter 11 of the Comprehensive Plan, but only to the extent that unanticipated circumstances limit or preclude the ability of the NPS to do so. If such unanticipated circumstances arise Chelan PUD shall employ best efforts to implement such portion of the recreation enhancement work the NPS was unable to implement, but only until the remaining portion of the funding provided by Chelan PUD is expended by Chelan PUD. Such expenditures by Chelan PUD shall include both payments to outside contractors and the cost of all work performed by Chelan PUD employees, including a reasonable allocation of overhead. Chelan PUD shall have no obligation to perform such work unless the NPS has provided notice to Chelan PUD and FERC in writing that such unanticipated circumstances exist.

(f) **NPS Recreational Enhancements (Years 30 to the end of the License).** Chelan PUD shall make available to the NPS a maximum of \$130,000, beginning on the 30th anniversary of the New License and ending on the date the New License expires, for the purpose of implementing recreational enhancements within or adjacent to the Lake Chelan basin for National Park Service recreation sites, consistent with the recommendations of the recreational use and needs assessment study funded by Chelan PUD pursuant to subsection (g), below.

(g) **Recreation Use Study.** Beginning in the 20th year of the effective date of the New License, and finishing in the 23rd year, Chelan PUD shall conduct a study assessing recreational use and needs within the Lake Chelan basin, at a cost not to exceed \$100,000. The scope and purpose of such study is described in section 4.3 of Chapter 11.

(h) **Whitewater Boating.** Within one year of the effective date of the New License, Chelan PUD shall file with FERC for approval, plans for a three-year whitewater boating monitoring study in the Chelan River in accordance with section 4.2.3 of Chapter 11 of the Comprehensive Plan. The whitewater boating monitoring plan shall be developed by Chelan PUD, in consultation with the American Whitewater Affiliation. Specifically:

(1) Upon FERC approval of such three-year study, Chelan PUD shall provide an annual schedule of whitewater releases for kayaks in the Chelan River during such three-year period. Chelan PUD shall release flows on the second and fourth weekends in July and September, except as provided in subsection (10). Flows on Saturdays shall be between 300 cfs and 375 cfs, and flows on Sundays shall be between 400 cfs and 450 cfs.

(2) Chelan PUD shall develop a reservation system for the whitewater boating monitoring study, whereby the scheduled water releases are made only if six or more kayakers make a reservation by 5:00 P.M. on the Thursday prior to the scheduled release date, and are physically present at the designated kayak put-in location by 10:00 A.M. on the date of the release, and liability insurance protecting the Chelan PUD's liability is in place, as provided in subsection (10) of this License Article. Additionally, each kayaker shall be required to sign a liability waiver in a form satisfactory to Chelan PUD prior to launching his or her kayak in the Chelan River. Only non-motorized, hard-shelled kayaks suitable for Class V whitewater shall be allowed, and no kayaker less than 18 years old shall be allowed. If the conditions contained in this paragraph are met, Chelan PUD shall begin the ramping-up of releases to meet the flows specified in subsection (1) of this License Article at 11:00 A.M., and shall begin ramping-down no sooner than 6:00 P.M.

(3) A survey tool shall be designed by Chelan PUD, in consultation with American Whitewater Affiliation, to solicit input from whitewater boaters utilizing the Chelan River whitewater releases. The survey tool shall, at a minimum, query boaters on the suitability of the following: whitewater release dates, daily schedule, whitewater difficulty, spill volumes, access, carrying capacity, reservation system, and real time flow information.

(4) Chelan PUD shall conduct an annual meeting on or before May 1, whereby Chelan PUD and American Whitewater will review the annual whitewater report, as provided in subsection (5) of this License Article, and make adjustments as warranted to the annual schedule and spill volume (subject to the limitations in subsection (8) and (10) of this License Article), reservation system, and methods for liability protection for the upcoming year.

(5) Chelan PUD shall submit annual reports to FERC on or before June 1 for the previous year's whitewater boating monitoring study in the Chelan River for the initial three years after the effective date of the New License.

(6) Chelan PUD shall submit a final report upon completion of the three-year whitewater boating monitoring study by May 1 of the year following completion of such monitoring study. The final report shall, at a minimum, include information on the dates and volumes of each release for the three year study period, annual use patterns, and an analysis of user preferences based on survey data. The report shall also include recommendations for providing whitewater releases, if any, for the remainder of the New License term. The report shall also make recommendations regarding, at a minimum, an annual schedule of releases (including volume and timing), a reservation system, the minimum number of boaters required to trigger a release, and a mechanism for liability protection.

Chelan PUD shall include with the final report documentation of consultation with American Whitewater Affiliation, and copies of comments and recommendations on the final report. Chelan PUD shall allow a minimum of 30 days for the American Whitewater Affiliation to comment and to make recommendations prior to filing the final report with FERC for approval. If Chelan PUD does not adopt a recommendation, the filing shall include Chelan PUD's reasons for not doing so, based on, among other things, any relevant Project-specific information.

In the event that FERC fails to respond to the final report recommendations, the conditions associated with the three-year whitewater boating monitoring study shall remain in effect for a maximum of two years while pending a FERC ruling.

(7) Chelan PUD shall make publicly available for the three-year whitewater boating monitoring study and for the term of the New License real-time flow information via the Internet for the Chelan River. This information may be published on the Chelan PUD Web site or a third party Web site. The Internet site shall include, at a minimum, the annual schedule for whitewater releases, instructions and requirements for the reservation system, and real-time flow data information. Adjustments to the reservation system must be posted by May 1.

(8) Upon completion of the three-year whitewater boating monitoring study and for the remainder of the New License term (except as provided in subsection (10) of this License Article), Chelan PUD shall provide whitewater releases on the second and fourth weekends in July and September, provided that a minimum number of kayakers make a reservation by the Thursday prior to the scheduled release, through a reservation system developed and implemented by Chelan PUD, and are physically present by 10:00 A.M. on the date of the release. Chelan PUD, in consultation with American Whitewater Affiliation, may adjust the flow levels used following the three-year study, but in no event shall the number of releases exceed eight, nor shall the flow levels exceed 450 cfs. Chelan PUD shall also determine, in consultation with American Whitewater, the minimum number of kayakers required for future flow releases, but in no event shall the number be less than six. Chelan PUD may also make changes to the schedule and/or reservation procedures, in consultation with the American Whitewater Affiliation.

(9) Chelan PUD shall not be obligated to provide whitewater boating flow releases in the Chelan River when the previous day's average Stehekin River inflow is less than 333 cfs, or when the Mid-Columbia Index is greater than \$150/MWh (as adjusted pursuant to section 19.1 of the Agreement).

(10) In order to facilitate whitewater releases in the Chelan River until the Washington State Recreational Use Statute RCW 4.24.210 is changed to Chelan PUD's satisfaction, as described in subsection (11) of section 4.2.3 of Chapter 11 of the Comprehensive Plan, including an amendment that expressly extends the immunity protections of such statute to recreational whitewater releases, or an alternative non-legislative mechanism is developed, Chelan PUD and American Whitewater intend to work together to secure liability insurance protecting Chelan PUD's self-insured retention (subject to a mutually agreed deductible not to exceed \$25,000) for each whitewater release in the Chelan River. Such liability insurance policy shall: (a) have a rating of A-8 minimum, (b) be Comprehensive General Liability for special events, (c) name Chelan PUD as an additional named insured, (d) be primary to other existing collectible insurance by Chelan PUD, (e) be purchased annually to cover all whitewater boating in the Chelan River as described in this License Article, whether such boating be sponsored by American Whitewater Affiliation or others, and (f) be approved by Chelan PUD in advance of any whitewater release. Once such insurance is obtained, whitewater releases shall be made in accordance with the schedule contained in this License Article.

Funding for the purchase of the insurance will be derived from foregoing a maximum of four whitewater release per year (September releases). Chelan PUD shall have no obligation to fund the purchase of insurance beyond the amount saved from the foregone releases from the preceding year. Only the whitewater releases that are covered by an insurance policy shall occur. The requirement for liability insurance shall only be removed if legislation is amended acceptable to Chelan PUD, or a mutually agreeable mechanism for liability protection is developed between American Whitewater and Chelan PUD.

(11) Chelan PUD, American Whitewater Affiliation, and other interested parties intend to work collaboratively to seek an amendment to the above-cited statute that expressly extends the immunity protections of such statute to recreational whitewater releases of the kind that would be

provided by Chelan PUD pursuant to this License Article and as described in section 4.2.3 of Chapter 11 of the Comprehensive Plan. In the event that such amendments to the statute occur, Chelan PUD shall be responsible for all eight releases described in this License Article. In the event that such amendments to the statute do not occur within the three year whitewater boating monitoring study described in this License Article, Chelan PUD and American Whitewater Affiliation intend to work collaboratively to resolve outstanding issues. If any outstanding issues cannot be resolved within a one year period, the parties agree to use the dispute resolution process pursuant to section 16 of the Agreement.

(i) **Operation and Maintenance of Riverwalk, Old Mill, Manson Bay parks.** Chelan PUD shall continue, for the term of the New License, to own and operate the Riverwalk Park and Loop Trail and to maintain the shore access site, located in the City of Chelan, in accordance with section 4.2.4 of Chapter 11 of the Comprehensive Plan. Chelan PUD shall continue, for the term of the New License and any subsequent annual licenses, to own Old Mill Park and Manson Bay Park, and shall be responsible for oversight of related operation and maintenance agreements with Manson Parks Recreation District, in accordance with section 4.2.4 of Chapter 11 of the Comprehensive Plan.

(j) **Reach 1 Access Trail.** Beginning within one year of the effective date of the New License, Chelan PUD shall design and construct a non-motorized, non-paved, multi-use trail below the Lake Chelan Dam in Reach 1 of the Chelan River, in accordance with section 4.2.5 of Chapter 11 of the Comprehensive Plan. The trail shall provide managed access to the Chelan River and connect to the Riverwalk Loop Trail. Planning and development shall be conducted by Chelan PUD, in consultation with adjacent landowners, Chelan County, the City of Chelan, the Lake Chelan Trails Committee, and other interested parties. The total capital cost to Chelan PUD for the Reach 1 Access Trail shall not exceed \$250,000. The annual Estimated Cost to Chelan PUD for operation and maintenance of the trail is \$4,500 for the term of the New License.

(k) **Riverwalk Loop Trail Extension.** Beginning within one year of the effective date of the New License, Chelan PUD shall design and construct a paved trail that links Chelan PUD's existing Riverwalk Loop Trail to the Reach 1 Access Trail, in accordance with section 4.2.6 of Chapter 11 of the Comprehensive Plan. Chelan PUD shall seek approval from FERC for crossing the Lake Chelan Dam as part of the trail extension design. If FERC denies approval to cross the Lake Chelan Dam, the trail design and construction shall only include a trail from Riverwalk Loop Trail along the south shoreline of the Chelan River to link with the Reach 1 Access Trail. Planning and development shall be conducted by Chelan, in consultation with adjacent landowners, Chelan County, the City of Chelan, the Lake Chelan Trails Committee, and other interested parties. The total capital cost to Chelan PUD for the Riverwalk Loop trail extension shall not exceed \$500,000. The annual Estimated Cost to Chelan PUD for operation and maintenance of the trail is \$5,000 for the term of the New License.

(l) **Operation and Maintenance Under the Dan Gordon Bridge.** (1) Beginning within one year of the effective date of the New License, Chelan PUD shall implement efforts to stabilize the sidewalk and replace the handrail along the north shore of the Chelan River, under the Dan Gordon Bridge in accordance with section 4.2.7 of Chapter 11 of the Comprehensive

Plan. The total capital cost to Chelan PUD for such sidewalk stabilization and handrail shall not exceed \$17,000. Chelan PUD shall not be responsible for stabilizing the right-of way area owned by the Washington State Department of Transportation, nor be responsible for rectifying any structural problems regarding the Dan Gordon Bridge. Beginning within one year and of the effective date of the a New License, Chelan PUD shall assume responsibility for annual maintenance associated with the sidewalk and landscaping along the north shore of the Chelan River, beneath the Dan Gordon Bridge.

(m) **Reservation of Lands.** Beginning within 90 days of the effective date of the New License, Chelan PUD shall reserve by not selling or otherwise disposing of land located in Reach 1 of the Chelan River Bypassed Reach, within a portion of Parcel A of Chelan County Short Plat No. 3195 lying northeasterly of the Chelan Gorge Road in accordance with section 4.2.8 of Chapter 11 of the Comprehensive Plan. Chelan PUD shall reserve such land for future recreational development, while continuing to protect and maintain Project purposes. Development or maintenance associated with such future recreational facilities shall not be the responsibility of Chelan PUD. Pursuant to FERC regulation, Chelan PUD shall not allow permanent structures within 200 linear feet of the Chelan Project penstock's centerline.

(n) **Micro Parks.** (1) Beginning within 90 days of the effective date of the New License, Chelan PUD shall quit claim deed to the City of Chelan Parcels #272214662242, #272214662229, and #272214662440, near Water Street. All three Parcels are owned by Chelan PUD, and are located along the south shore of Lake Chelan, approximately three miles from the City of Chelan. Chelan PUD shall include in such quit claim deed any rights it may hold to place docks and buoys in the waters immediately adjacent to such Parcels (subject to a five-year reservation of such rights for the benefit of adjacent landowners, as further specified in the quit claim deed), and subject to any easements and/or damage waivers related to Project impacts that it may hold relating to such Parcels.

(2) Beginning within 180 days of the effective date of the New License, Chelan PUD shall make available to the City of Chelan a total amount of \$20,000 toward the capital costs associated with the development of a micro park at Water Street (Parcels #272214662242, #272214662229, and #272214662440), in accordance with section 4.2.9 of Chapter 11 of the Comprehensive Plan. Development, implementation, and operation and maintenance of such micro park shall be the sole responsibility of the City of Chelan.

(o) **Utility Improvements for Local Trail.** Contingent upon the City of Chelan excavating or trenching from Don Morse Memorial Park to Riverwalk Park, Chelan PUD shall install in such trench primary underground facilities and remove primary overhead lines from the right-of-way area of the sidewalk along Johnson Avenue and State Highway 150 near Campbell's Resort in accordance with section 4.2.10 of Chapter 11 of the Comprehensive Plan. Chelan PUD shall not be responsible for any costs related to trenching, asphalt or concrete work associated with roadway and sidewalk improvements or repair.

(p) **Trail Linkage to PUD parks.** Chelan PUD shall consult with interested organizations and individuals to integrate new trails with existing parks owned and/or managed by Chelan PUD, including Old Mill Park, Manson Bay Park, and Riverwalk Park, in accordance

with section 4.2.11 of Chapter 11 of the Comprehensive Plan. Specifically, Chelan PUD shall develop and construct modifications to existing Chelan PUD park entrances and exits to accommodate the integration of new trails. Chelan PUD shall not be responsible for development or operation and maintenance of such new trails.

(q) **Don Morse Park Erosion.** Within 180 days of the effective date of the New License, Chelan PUD shall make available to the City of Chelan in-kind services not to exceed \$60,000 for engineering and design services and provision of Chelan PUD-owned equipment, if available, for the purpose of controlling erosion at Don Morse Park beach area and marina breakwater on Lake Chelan, in accordance with section 4.2.12 of Chapter 11 of the Comprehensive Plan. Prior to the provision of such services, the City of Chelan shall execute an indemnity and/or hold harmless agreement in a form satisfactory to Chelan PUD. Such agreement shall indemnify Chelan PUD for all costs incurred by Chelan PUD as a result of any future litigation regarding the Don Morse Park beach area and marina breakwater, including costs and attorneys' fees incurred in any resulting litigation, and the cost of any money judgment entered.

Article 12. Unforeseen Resource Needs

(a) **Recognition of Potential Needs.** The Parties recognize that unforeseen resource needs may arise during the course of the New License. In order to meet such needs if they arise, while preserving a reasonable degree of certainty for the electric ratepayers of Chelan PUD, this License Article establishes the procedures to be followed. For the purposes of determining unforeseen resource needs, the following needs are not included: (1) measures required by License Article 7; (2) measures required by License Article 13; and (3) any ESA measures required.

(b) **Identification and Notification relating to an Unforeseen Resource Need.** Any Agency may invoke this section by notifying Chelan PUD and all other Agencies in writing that it has reason to believe that an unforeseen resource need has arisen. The notification shall describe in reasonable detail the basis for concluding that: (1) a Project-caused impact to natural resources (other than erosion) or cultural resources has occurred; (2) the impact has arisen from materially changed factual circumstances (i.e., new facts and/or the relationship among facts) after the effective date of the Agreement; (3) the impact was not addressed or anticipated by the protection, mitigation, and enhancement measures in this Agreement; and (4) additional funding or other measures are needed in order to mitigate the impact. The notification shall also contain any factual information in the possession of the Agency relating to the claimed unforeseen resource need.

(c) **Initial Meeting of the Lake Chelan Policy Committee (LCPC).** Within 60 days after notification has been made under subsection 12(b), Chelan PUD shall convene the LCPC to hold its initial meeting to determine whether conditions (1), (2), (3), and (4) of subsection 12(b) of this License Article have been met.

(d) **Unanimous Agreement Results in Funding and/or Implementation of Other Measures.** At any time during the term of the New License, including any subsequent annual licenses, if the LCPC unanimously agrees that conditions (1), (2), (3), and (4) of subsection 12(b)

of this Article have been met, and unanimously agrees to an amount of funding and/or Other Measures that correspond to the estimated percentage of Project impact, such funding and the cost of other measures shall be provided through the use of Unanticipated Agency Savings, if any, or other method of financing unanimously agreed to by the LCPC.

(e) **Lack of Unanimous Agreement Results in No Funding.** Prior to the 25th anniversary of the New License, if the LCPC, within 180 days after its initial meeting under subsection 12(c), does not unanimously agree that conditions (1), (2), (3), and (4) of subsection 12(b) have been met, and on an amount of funding and/or Other Measures that correspond to the estimated percentage of Project impact, the LCPC shall promptly notify Chelan PUD and all Agencies of such lack of unanimous agreement, and no further action shall be taken regarding such alleged unforeseen resource need unless and until a subsequent notification is made under subsection 12(b), based on new information or subsequent to the 25th anniversary of the New License.

(f) **Contingency Fund.** Chelan PUD shall make available as a contingency fund \$500,000 on the 25th anniversary of the effective date of the New License. If the New License is for a term of 45 years or less, Chelan PUD shall make available an additional \$300,000 on the 30th anniversary of the effective date of the New License. If, however, the New License is for a term greater than 45 years, Chelan PUD shall make available an additional \$800,000 on the 30th anniversary of the effective date of the New License. From the 25th anniversary of the effective date of the New License through the expiration of the New License, including any subsequent annual licenses, the contingency fund shall be available to meet unforeseen resource needs through funding, or by compensating Chelan PUD for the costs of Other Measures.

(g) **Decision Making and Funding Processes.** Any notification under subsection 12(b) made after the 25th anniversary of the New License may qualify for funding from the contingency fund, pursuant to the requirements of this License Article.

(1) **Consensus of the LCPC.** The LCPC shall attempt to reach Consensus regarding whether conditions (1), (2), (3), and (4) of subsection 12(b) have been met. If the LCPC reaches Consensus that any of such conditions have not been met, the LCPC shall so notify Chelan PUD and all Agencies, and no further action shall be taken with respect to the alleged unforeseen resource need unless and until a subsequent notification is made under subsection 12(b).

If the LCPC reaches Consensus that conditions (1), (2), (3), and (4) of subsection 12(b) have been met, and agrees by Consensus to an amount of funding and/or Other Measures that correspond to the estimated percentage of Project impact, the LCPC shall consider whether there are any Unanticipated Agency Savings available. If Unanticipated Agency Savings are available, such Unanticipated Agency Savings shall be applied toward the agreed upon amount of additional funding or the cost of Other Measures until exhausted. If the amount of Unanticipated Agency Savings is insufficient to cover the agreed upon amount of additional funding or the cost of Other Measures, the contingency fund shall be used to fund the remaining amount.

(2) **Independent Advisory Panel.** If there is a lack of Consensus within the LCPC regarding whether conditions (1) and (2) of subsection 12(b) have been met, Chelan PUD shall

convene an independent advisory panel to provide written advice on whether such condition or conditions have been met and, if met, the estimated percentage of impact caused by Project operations. The panel shall consist of one member designated by the relevant Agencies, one member designated by Chelan PUD, and one member chosen by the two designated members. If the two designated members are not able to agree on the selection of the third member within 30 days, the matter shall be referred back to the LCPC for decision. If the LCPC is not able to reach agreement within 30 days, the matter shall be referred to dispute resolution pursuant to section 16 of this Agreement. If the panel unanimously advises that either conditions (1) or (2), or both, have not been met, the LCPC shall accept such advice and promptly notify Chelan PUD and all Agencies that no further action shall be taken with respect to the alleged unforeseen resource need unless and until a subsequent notification is made under subsection 12(b). If the panel unanimously advises that both conditions (1) and (2) have been met, including an estimated percentage of Project causation, the LCPC shall accept such advice and attempt to reach Consensus regarding conditions (3) and (4) of subsection 12(b).

The administrative costs of the independent advisory panel, as well as the costs of the third member of the independent advisory panel, shall be borne 50 percent by the contingency fund and 50 percent by Chelan PUD. In the event that an Agency designates a non-governmental employee as its member of the independent advisory panel, the costs of such member shall be borne by the contingency fund.

(3) **Dispute Resolution.** If, after receiving the non-unanimous advice of the independent panel, there is a lack of Consensus within the LCPC as to whether conditions (1) or (2) have been met, or there is a lack of agreement as to the estimated percentage of impact caused by Project operations, the issue or issues upon which there was a lack of Consensus shall be subject to dispute resolution pursuant to section 16 of the Agreement. During the dispute resolution process, the written advice of the independent advisory panel shall be provided to the mediator.

If there is a lack of Consensus within the LCPC regarding whether either condition (3) or (4) of subsection 12(b), or both, have been met, the issues upon which there is a lack of Consensus shall be subject to dispute resolution pursuant to section 16 of this Agreement.

(h) **General Provisions**

(1) Chelan PUD may, in its sole discretion, apply Unanticipated Agency Savings and any funds available in the contingency fund to the cost of fishways prescribed by NOAA Fisheries or the USFWS pursuant to Section 10.2 of the Agreement.

(2) **Petition to Reopen License.** Other than as provided in section 10 of the Agreement, the Agencies shall not petition FERC to reopen the license until after the 35th anniversary of the effective date of the New License. Following the 35th anniversary of the license, Agencies shall not invoke, or otherwise rely upon any reopener clause set forth in the New License for the purpose of obtaining protection, mitigation, and enhancement measures beyond those required by this Agreement unless the contingency fund is exhausted. Chelan PUD may replenish the contingency fund sufficiently to address the unforeseen resource need that is prompting the

reopener. If any Agency violates this subsection, Chelan PUD may withdraw from this Agreement, in which case this Agreement shall be null and void.

(3) **FERC Approval.** To the extent that any determination under this section involves terminating an activity required by the New License, or initiating an activity not authorized by the New License, including any subsequent annual licenses, Chelan PUD shall apply to the FERC for a license amendment. Any action necessitating a license amendment shall not be undertaken unless and until such license amendment is issued.

(4) **Limitation on Chelan PUD's Obligations, and Reversion of Funds.** Except as provided in section (g)(2) of this Article (relating to the administrative costs of the Independent Panel), Chelan PUD shall have no obligation to exceed the funds deposited in the contingency fund described in section (f) of this License Article. At the expiration of the New License, including subsequent annual licenses, any funds remaining available shall no longer be available

(5) **Estimating Impacts on Energy Production.** For purposes of estimating future decreases or increases in energy production, pursuant to the definition of "Other Measures" contained in subsection 4.11 of this Agreement, Chelan PUD has established a baseline energy production of 365,366 MWh using a computer model (CHEOPS) and input data (PME14). The baseline shall be the amount of energy initially produced under the Agreement, including the 18,654 MWh per year decrease in production (as calculated by the computer model) associated with the new lake level operating regime provided for in License Article 8, the minimum flows established in section 7(b)(1) of License Article 7, and any whitewater releases under License Article 11. If future changes in Project operations pursuant to the New License increase energy production, Chelan PUD shall annually estimate the dollar value of such increase. The dollar value of such increase shall be used to offset any deductions that previously occurred from the contingency fund as a result of decreases in energy production, or shall be carried as a credit toward any future deductions that may occur as a result of decreases in energy production, but in no event shall the operation of this subsection cause the amount of the contingency fund to increase above the amounts provided in subsection (f) of this License Article. Any disagreements regarding the application of this subsection shall be resolved through dispute resolution pursuant to section 16 of the Agreement.

Article 13. Fishways

(a) Authority is reserved to the FERC to require Chelan PUD to construct, operate, and maintain, or to provide for the construction, operation, and maintenance of such fishways as may be prescribed by Secretaries of the Interior or Commerce under section 18 of the FPA. Section 10.2 of the Agreement provides the actions that Chelan PUD may take if such authority is exercised.

Article 14. Upper Columbia Spring-Run Chinook and Steelhead Conservation Measures

(a) Within 180 days of the effective date of the New License, and by January 31st of each subsequent year, including any subsequent annual licenses, Chelan PUD shall make available \$20,000, to be used to acquire water for instream flows through funding of water conservation measures or lease/purchase of water rights from willing sellers, as provided in Chapter 12 of the Comprehensive Plan. NOAA Fisheries and WDOE shall develop a list of proposed measures or lease/purchase of water rights, and submit it to Chelan PUD by January 10 of each year. Chelan PUD shall fund the implementation of those actions on such list, pursuant to a contract between Chelan PUD and an organization (such as Washington Water Trust) that Chelan PUD, NOAA Fisheries and WDOE find suitable, to the extent that holders of water rights voluntarily agree to conservation measures or leases/purchases. The water saved shall be dedicated to instream flows through either the Trust Water Rights program or other contractual arrangement. The \$20,000 funding shall be the total amount provided, covering all costs associated with the measures above.

(b) In the event that implementation of conservation measures or leases/purchases in a year do not use all the funding available, Chelan PUD shall carryover that year's \$20,000 in funding, or any unused portion thereof, into future years. In the event that conservation measures or leases/purchases requiring funding in a single year exceed the \$20,000, funding can be borrowed from future years, adjusted pursuant to Section 19.2.9 of the Settlement Agreement. Priority will be given to conservation measures and purchases that can be implemented early in the term of the New License. Total advance funding to be provided by Chelan PUD during the term of the New License, including any subsequent annual licenses, shall not exceed either \$500,000 or the value of annual funds for the remaining term of the license, adjusted pursuant to Section 19.2.9, whichever is less.