

Cowlitz River Hydroelectric Project Settlement Agreement

Including

Appendix A- Proposed License Articles

August 8, 2000

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**Cowlitz River Hydroelectric Project
Settlement Agreement**

1 Parties to the Agreement

- 1.1 This Settlement Agreement ("Agreement") is entered into this 10Th day of August, 2000, by and between the following organizations, which shall be referred to collectively as "the Parties": City of Tacoma, Washington, Department of Public Utilities, Light Division ("Tacoma"); Washington Department of Fish and Wildlife ("WDFW"), Washington Department of Ecology ("WDOE"), Washington State Parks and Recreation Commission ("WSPRC"); United States Fish and Wildlife Service ("USFWS"), National Marine Fisheries Service ("NMFS"), United States Forest Service - Gifford Pinchot National Forest ("USFS"), Interagency Committee for Outdoor Recreation ("IAC"), Lewis County, Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation"), Washington Council of Trout Unlimited ("WCTU"), Sport Fishing Guides of Washington ("SFGW") and American Rivers ("American Rivers").
- 1.2 For purposes of this agreement, WDFW, WDOE, WSPRC, USFWS, NMFS, USFS and IAC shall be referred to collectively as "the Agencies". For purposes of this agreement, Lewis County shall be referred to as "the Other Government Entities". For purposes of this agreement, WCTU, SFGW, and American Rivers shall be referred to collectively as "the Conservation Groups."
- 1.3 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.

2 Definitions

- 2.1 "Project" means the Cowlitz River Hydroelectric Project, licensed to Tacoma by the Federal Energy Regulatory Commission ("FERC") as Project No. 2016.
- 2.2 "License" means the regulatory authorization for construction, maintenance and operation of a hydroelectric project subject to the jurisdiction of the FERC pursuant to the

Federal Power Act ("FPA"); the "Licensee" means the legal entity to which the license is granted, City of Tacoma, Washington, Department of Public Utilities, Light Division.

- 2.3 "License articles" means the terms and conditions included in the new license issued to Tacoma by the FERC for the continued operation of the Project.
- 2.4 "Fish Passage Survival" ("FPS") as used in proposed license article 1 and applied to Cowlitz Falls Dam, Riffe Lake, and Mossyrock Dam, means the percentage of smolts entering the upstream end of Scanewa reservoir, and adjusted for natural mortality, that are collected at Cowlitz Falls Dam and Riffe Lake and Mossyrock Dam, that are transported downstream to the stress relief ponds, and subsequently leave the stress relief ponds at Barrier Dam as healthy migrants.
- 2.5 "Fish Guidance Efficiency" ("FGE") as used in proposed license article 2 and applied to Mayfield Dam, means the percentage of smolts entering the Mayfield louver system that are guided through the juvenile fish guidance and bypass facilities and do not enter the turbines.
- 2.6 "Downstream fish passage survival rate" as used in proposed license article 2 and applied to Mayfield Dam, means the percentage of smolts entering the Mayfield louver system that are guided through the juvenile fish guidance and bypass facilities and do not enter the turbines, plus those juveniles that also pass through the project turbines or over the spillway and also survive.
- 2.7 "Wild salmonid" or "wild, naturally spawning", for purposes of this Agreement, means a stock of fish that is sustained by natural spawning and rearing in the natural habitat, regardless of parentage.
- 2.8 "Pre-spawner," for the purpose of this Agreement, means an adult salmonid that is progeny of hatchery or natural adult fish that spawned in the natural environment, returns from the ocean, and is collected at the Barrier Dam or hatchery trapping facilities.
- 2.9 "Recruit," for the purpose of this Agreement, means an adult fish produced by a pre-spawner, measured one generation later and collected at the Barrier Dam or hatchery trapping facilities.

- 2.10 "Indigenous" means a stock of fish that has not been substantially affected by genetic interactions with non-native stocks of fish and is still present in all or part of its original range in the Cowlitz River basin.
- 2.11 "Natural production" means fish that are progeny of spawners in the natural environment and that subsequently rear in the natural environment throughout their lives.
- 2.12 "Agreement" means the entirety of this agreement, including the proposed license articles in Appendix A.
- 2.13 "Adjusted for inflation" means a value that shall be adjusted using the Gross Domestic Product Chain Type Price Index as published in the March issue of the Survey of Current Business. The base value will be defined as the value for the year 2000 as published in the March 2001 issue of the Survey of Current Business. Any adjustments will commence in the following year, or as otherwise provided in this Agreement.
- 2.14 "Material change in the Project" means any activity which falls within the activities contemplated in paragraphs 11.3.1 through 11.3.6.

3 Recitals

- 3.1 The Project generally consists of Mossyrock Dam (RM 65.5), Mayfield Dam (RM 52.0), Riffe Lake reservoir, Mayfield Lake reservoir, the two powerhouses and transmission facilities associated with the dams, the Cowlitz Salmon Hatchery (RM 49.5), the Barrier Dam (RM 47.0), the Cowlitz Trout Hatchery (RM 42.0), recreational facilities at the reservoirs, and lands within the Project boundary. Construction of the Project began with Mayfield Dam in 1956 and was completed with the construction of Mossyrock Dam ending in 1968. The Project has been operated and maintained continuously since original construction.
- 3.2 An original license for the Project was issued to Tacoma by the Federal Power Commission, predecessor to the FERC, by order dated November 28, 1951 for fifty (50) years. The license will expire on December 31, 2001. As required by Section 15 of the FPA, Tacoma filed formal notice of its intent to seek a new license for the Project in November of 1996 and filed an application for new license with FERC on December 27,

1999. In February 1998, FERC approved Tacoma's request to use the alternative relicensing procedures for preparation of its application and an applicant-prepared environmental assessment, in lieu of the Exhibit E environmental report. A Memorandum of Agreement and Communications Protocol among the Parties has guided the conduct of this process, which has culminated in this Agreement by and among the Parties.

4 Powers Reserved

4.1 It is the intent of the Parties that the requirements of the proposed license articles shall be enforced by FERC and other regulatory agencies that have concurrent jurisdiction to enforce such articles, including WDOE for Clean Water Act ("CWA") Section 401 water quality certification requirements. The Agreement and any proposed license articles determined to be outside FERC's jurisdiction shall be enforced through the remedies available under applicable state or federal law.

4.2 As required by Section 401 of the federal CWA, the FERC may not issue a new license for the Project unless and until a certification of compliance with water quality standards has been made or waived by the state agency responsible for CWA implementation. WDOE is the entity in the State of Washington statutorily authorized and obligated to issue Section 401 Water Quality Certifications and National Pollutant Discharge Elimination System ("NPDES") permits pursuant to the CWA and state water quality laws. In addition, WDOE is the entity authorized to issue water rights. By law, WDOE cannot issue any certification and/or permit without public notice and compliance with the State Environmental Policy Act ("SEPA"), following submission of an application for Section 401 certification by Tacoma. As of the date of this Agreement, these prerequisites have not been satisfied and no certification has been issued. Therefore, by signing this Agreement, WDOE may not formally bind itself to take any particular future permit or certification actions. WDOE expressly reserves the right, consistent with federal and state law, to place such conditions as it may deem necessary in any permit or certification it may issue in the future. WDOE's signature on this Agreement does,

however, indicate that absent new information being obtained by WDOE through the public process, environmental review, or other further actions contemplated under this Agreement, or absent a material change in the Project, or relevant change in applicable law, WDOE agrees that the instream flows and other provisions contained in this Agreement are adequate to meet the water quality standards currently contained in Washington law.

- 4.3 As required by Section 7 of the federal Endangered Species Act (“ESA”), the FERC may not issue a new license for the Project unless and until it has completed consultation with NMFS and USFWS with respect to threatened and endangered species affected by the Project. As of the date of this Agreement, ESA Section 7 consultation has not been completed. Therefore, by signing this Agreement, NMFS and USFWS do not formally bind themselves to make any specific recommendations or take any particular action with respect to ESA compliance. NMFS and USFWS expressly reserve the right, consistent with federal law, to take such future actions as they may deem necessary to meet their obligations under the ESA. By signing this Agreement, NMFS and USFWS expressly contemplate that FERC’s subsequent actions with respect to its issuance of the new license, and any subsequent modification, change, condition or omission made with respect to the new license, will fully satisfy the requirements of ESA Section 7, including the terms and conditions contained in a biological opinion issued by NMFS and USFWS. NMFS and USFWS further expressly contemplate that FERC will retain sufficient discretionary involvement or control with respect to project construction, modification, maintenance and operation under the new license issued in conformity with the terms of this Agreement so as to ensure full compliance with the requirements of the ESA with respect to the implementation of such actions during the term of the new license.
- 4.4 By entering into this Agreement, the USFS represents that it believes its statutory and other legal obligations are or can be met consistent with this Agreement. Nothing in this Agreement shall be construed to limit the USFS from complying with its legal obligations under applicable laws and regulation or from considering public comments received in any environmental review or regulatory process related to the issuance of the license.

This Agreement shall not be interpreted to predetermine the outcome of any National Environmental Policy Act ("NEPA") environmental review or administrative appeal process. Further, the USFS reserves the power to submit its standard terms and conditions for license to FERC for inclusion as license articles, as they may apply to the Licensee's activities on National Forest lands.

- 4.5 Under authority of the Treaty of June 9, 1855, the Yakama Nation claims perpetual rights to harvest fish at usual and accustomed places ("U & A") within the upper Cowlitz River basin. NMFS, USFWS, and USFS have a trust responsibility to protect any treaty resources for the benefit of the Yakama Nation. In addition, the Yakama Nation claims a share of the total fisheries harvest within the entire Columbia River basin. Due to a lack of historical documentation, none of the Agencies currently recognize Yakama U & A within the upper Cowlitz River basin. By signing this Agreement, the Parties agree that the issue of the Yakama Nation's treaty fishing rights and harvest allocation is not resolved by this Agreement. However, the Agencies and the Yakama Nation agree to work together on a government-to-government basis to address the issue of recognition by the United States and the State of Washington of Yakama rights to harvest fish within the basin. Resolution of the treaty issue subsequent to execution of this Agreement shall not affect the terms of this Agreement, and shall not create any contingencies or conditions subsequent concerning implementation of its provisions for protection, mitigation, and enhancement of natural resources.
- 4.6 By signing this agreement, all Parties agree that the provisions contained in paragraphs 4.2 and 4.3 control in interpreting the other provisions of this Agreement affecting CWA and ESA compliance.

5 Purpose of the Agreement

- 5.1 It is the intent of the Parties that this Agreement shall resolve, to the satisfaction of the Parties, all issues associated with issuance of a new license for the Project regarding fish passage, fish production, fish habitat, water quality, instream flows, wildlife, recreation and cultural and historic resources. This Agreement establishes Tacoma's obligations for

the protection, mitigation and enhancement of natural resources affected by the Project under a new license issued by FERC. It also specifies procedures to be used among the Parties to ensure the implementation of those license articles consistent with this Agreement, and with other legal and regulatory mandates, including but not limited to those described in Sections 4.2 and 4.3 above. It is the intent of the Parties to establish a framework for future collaborative efforts for the protection, mitigation and enhancement of the natural resources of the Cowlitz River basin.

- 5.2 Through the duration of this Agreement, the Parties and their successors and assigns, hereby release, waive and discharge Tacoma, its successors and assigns, from any and all claims, demands, actions and causes of action of any kind arising during that period from the effects of the Project on the natural resources of the Project area, so long as Tacoma, or its contractors, subcontractors or agents performs its obligations under this Agreement and the new license, and complies with all applicable laws, permits, certifications, and approvals. This release does not waive actions to interpret or enforce this Agreement or claims that may arise from past or future negligent or intentional misconduct of Tacoma in the operation of the Project, nor does it waive any actions that may arise under federal or state laws not referenced in or implemented through this Agreement. This release also does not waive the ability of the Parties to join in the defense of any lawsuit filed by any third party non-signatory as a result of the activities of any Party, including but not limited to any subsequent permitting activities of WDFW, WDOE, NMFS, USFWS or Lewis County.
- 5.3 For purposes of this Agreement, a "*force majeure*" is defined as causes beyond the reasonable control of, and without the fault or negligence of, any Party or any entity controlled by that Party, including its contractors and subcontractors (to the extent said contractor was acting under the control or direction of the Licensee), including but not limited to acts of God, or sudden actions of the elements, including fire. *Force majeure* does not include the financial inability of any Party to complete the work or increased cost of performance. In the event that any Party is wholly or partially prevented from performing obligations under this Agreement because of a *force majeure* event, that Party

shall be excused from whatever performance is affected by such *force majeure* event to the extent so affected, and such failure to perform shall not be considered a material breach, provided that nothing in this Section shall be deemed to authorize a Party to violate the ESA or other permit or certificate requirements, or render the standards and objectives of this Agreement unobtainable and provided further that: (1) the suspension of performance is of no greater scope and no longer duration than is required by the *force majeure*; (2) the prevented Party shall notify the other Parties to this Agreement in writing within a reasonable time after the event. 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; (3) in any action for enforcement or damages, the prevented Party shall have the burden of demonstrating that delay is warranted by a *force majeure*. The prevented Party shall make a good faith effort to avoid and mitigate the effects of the delay and remedy its inability to perform. A *force majeure* event may require use of other provisions of this Agreement in remedying the effects of the *force majeure* event, including but not limited to the provisions of Sections 6, 10, 11, 12, and 13; (4) when there is a delay in performance of a requirement under this Agreement that is attributable to a *force majeure*, the time period for performance of that requirement shall be reasonably extended as determined by the Parties; and (5) when the prevented Party is able to resume performance of their obligation, that Party shall give the other Parties prompt written notice to that effect.

- 5.4 Except as to agreements referenced in Section 6.2 below, all previous communications between the Parties, either verbal or written, with reference to the subject matter of this Agreement are superseded by the terms and provisions of this Agreement, and, once executed, this Agreement shall constitute the entire agreement between the Parties.

6 Guidance for Future Interpretation and Decision-Making

- 6.1** To the extent that the plain language of this Agreement is insufficient, the following general principles may be used by the Parties to aid understanding and implementation. In taking independent action outside the scope of this Agreement that may affect the resources of the Cowlitz River basin, the Parties shall also take into consideration the consistency of their actions with these principles.
- 6.1.1** The emphasis of this Agreement is ecosystem integrity and the restoration and recovery of wild, indigenous salmonid runs, including ESA-listed and unlisted stocks, to harvestable levels.
- 6.1.2** Fisheries obligations will be met through a combination of effective upstream and downstream passage, habitat restoration and improvement, an adaptive management program to restore natural production coupled with continued artificial production to compensate for unavoidable impacts at levels consistent with ESA recovery, and providing fish production for sustainable fisheries.
- 6.1.3** Collection and passage of juvenile fish migrating from the upper basin above Mossyrock Dam is the joint responsibility of the Bonneville Power Administration ("BPA"), Lewis County Public Utility District ("LCPUD") and Tacoma.
- 6.1.4** ESA constraints will be a factor in determining the upper bound of production at the remodeled hatchery complex. Hatchery production numbers are expected to be adjusted downward as wild stocks recover.
- 6.1.5** Fisheries management and hatchery production will be consistent with the overall goal of restoring and recovering wild stocks in the Cowlitz River basin. The hatchery complex will be designed with flexibility so managers can employ innovative rearing practices, low densities, and replication of historic fish out-migration size and timing. At a minimum, WDFW will be the primary contractor for the operation of the hatchery complex through the year 2008 and could continue as such through the term of the license, based upon the results of the annual reviews. Annual reviews of contract

operations will include criteria for success including, but not limited to, fish health, operational efficiency, collaborative relationships, mutual expectations, effective implementation of the Fisheries and Hatcheries Management Plan, and public relations. At any time after 2008, WDFW may be contracted to operate the fish counting and fish separation activities in connection with the operation of the hatchery separator facility.

- 6.1.6 Maintenance of a recreational fishery is important. Implementation of wild salmonid recovery measures shall allow for the continued support of a recreational fishery on the Cowlitz River, including the production of non-indigenous stocks, provided this is consistent with the priority objective to maximize the recovery of wild, indigenous salmonid stocks.
- 6.1.7 If hatchery production is decreased in conjunction with wild stock recovery, there will be excess capacity over time at the hatchery. Uses for this excess capacity will be, in order of priority: 1) to reduce rearing densities of listed indigenous stocks which have not yet recovered; 2) to reduce rearing densities of indigenous stocks which have not yet recovered; 3) to provide space for increasing the production of listed indigenous stocks which have not yet recovered; 4) to provide space for increasing the production of indigenous stocks which have not yet recovered; and 5) to produce fish unrelated to Tacoma's protection, mitigation and enhancement responsibilities for the Project, pursuant to future agreements.
- 6.1.8 Habitat enhancement measures can be combined and coordinated with other habitat efforts throughout the watershed. The habitat component is meant to augment other protective measures, strengthen the overriding goal of wild, indigenous salmon recovery, achieve ESA objectives, and mitigate for the loss of riverine habitat due to project impoundments.
- 6.2 In implementing components of this Agreement that require the Parties to make decisions based on future conditions, the Parties will refer to the following environmental and recreational management plans, among others, for relevant resource goals, operating principles and best practices to inform their decisions:

- 6.2.1 1993 Cowlitz River Project Wildlife Settlement Agreement
- 6.2.2 2000 Cowlitz River Project Cultural Resource Management Plan
- 6.2.3 Washington State Wild Salmonid Policy
- 6.2.4 State of Washington Outdoor Recreation and Habitat Assessment and Policy Plan
- 6.2.5 Applicable ESA Recovery Plans
- 6.2.6 Washington State Trails Plan: Policy and Action Document
- 6.2.7 Revised Shoreline Master Program for Lewis County
- 6.2.8 Draft Lower Columbia Steelhead Conservation Initiative
- 6.2.9 Cowlitz River Project Integrated Aquatic Vegetation Management Plan

7 Effective Date of the Agreement and Duration

- 7.1 This Agreement shall take effect upon signature of all Parties and shall remain in effect for the term of the new license and for any annual license issued subsequent thereto, except as provided in Section 11.5.

8 Obligations of Tacoma: Proposed License Articles for Environmental Protection, Mitigation and Enhancement

- 8.1 Except as described in Sections 4.2 and 4.3 above, the Parties agree that Tacoma's obligations for the protection, mitigation and enhancement of natural resources affected by the Project, including measures for fish passage, fish production, fish habitat, water quality, instream flows, wildlife, recreation and cultural and historic resources are fully described in this Agreement.
- 8.2 In anticipation of and consistent with the proposed license articles in Appendix A, Tacoma agrees to take the following actions promptly upon signing of this Agreement and to continue these actions as required by the articles referenced below:
 - 8.2.1 Undertake studies of Mayfield turbine mortality and current louver effectiveness (Article 2).
 - 8.2.2 Develop a Fisheries and Hatchery Management Plan (Article 6).
 - 8.2.3 Develop a Fisheries Disease Management Plan (Article 8).

- 8.2.4 Develop a Hatchery Complex Remodel and Phase-In Plan (Article 7).
- 8.2.5 Develop a gravel augmentation plan at Barrier Dam (Article 10).
- 8.2.6 Investigate groundwater supply options and availability at the hatchery complex (Article 7).
- 8.2.7 Study Mayfield Lake adult self-sorting and identify adult returns by sub-basin of origin (Article 3).
- 8.2.8 Convene the Fisheries Technical Committee and Habitat Advisory Group referred to in Section 12 of this Agreement.
- 8.2.9 Prepare a training manual for use of its operations staff that provides tools, resources and information to manage flows for flood control, recreation, power generation, and fish survival and health.
- 8.2.10 Engage in negotiations with LCPUD (licensee for the Cowlitz Falls Project, FERC No. 2833) and BPA regarding cooperative efforts to improve downstream passage effectiveness at Cowlitz Falls and provide a progress report to NMFS and USFWS within 4 months of the effective date of this Agreement and monthly thereafter until negotiations are completed or terminated.
- 8.2.11 For any of the above plans and reports that are required to be filed with FERC as a condition of a proposed license article, Tacoma will file such plan or report promptly upon completion, after undertaking such consultation and review as may be required.
- 8.3 In addition, pending issuance of a new license and implementation of new terms and conditions thereunder related to the effects of the Project on natural resources, Tacoma shall continue to comply fully with the terms and conditions of its existing license and shall maintain the level of activity undertaken as of the effective date of this Agreement, with respect to:
 - 8.3.1 Fund operation and maintenance of Cowlitz salmon and trout hatcheries, including stress relief ponds.
 - 8.3.2 Placement of large woody debris.

- 8.3.3 Participation in the salmon and steelhead introduction effort in the Cowlitz River basin above Mayfield Dam by collecting adult fish at the salmon and trout hatcheries and releasing them in their sub-basin of origin and transporting downstream migrants.
- 8.3.4 Funding of a freshwater juvenile tagging and monitoring program.
- 8.3.5 Funding of hatchery fish mass marking.
- 8.3.6 Funding for 50,000 pounds of resident fish production at the Mossyrock trout hatchery.

9 Obligations of the Parties: Actions in Support of License Issuance

- 9.1 Tacoma. By entering into this Agreement, Tacoma agrees to: a) within 30 days of the effective date of this Agreement, file an offer of settlement with FERC pursuant to Rule 602 (18 CFR 385.602); b) submit a statement in support of the Agreement to FERC as part of its response to comments on the Draft Environmental Assessment and application for new license; c) submit a statement in support of the Agreement to WDOE as part of any comments or responses to comments it may file on the application for CWA Section 401 water quality certification; d) submit a statement in support of the Agreement to NMFS and USFWS as part of any comments in the ESA Section 7 consultation process; e) ensure that any supplemental information, comments or responses to comments filed by it with FERC or WDOE in the context of the relicensing and water quality certification processes are consistent with this Agreement; and f) actively support, in all relevant regulatory proceedings, incorporation of the proposed license articles in Appendix A into the FERC license and incorporation of consistent terms into the water quality certification and other applicable permits, as appropriate.
- 9.2 Regulatory Agencies. Except as provided in Sections 4.2 and 4.3 above, by entering into this Agreement, the Agencies, individually and collectively, agree: a) to submit a statement in support of the Agreement to FERC as part of the offer of settlement and of their comments on the Draft Environmental Assessment and Tacoma's application for a new license; b) that the individual agency's complete and final recommendations, conditions, and/or prescriptions pursuant to Sections 4(e), 10(a), 10(j), and 18 of the FPA,

to the extent those sections are applicable to each individual agency, shall be consistent with the Agreement; c) to submit a statement in support of the Agreement to WDOE as part of any comments on the application for CWA Section 401 water quality certification; d) to ensure that any comments submitted to FERC related to the ESA Section 7 consultation process are consistent with the Agreement; e) to ensure that any supplemental information, comments or responses to comments filed by them with FERC or WDOE in the context of the relicensing and water quality certification processes are consistent with this Agreement; and f) to actively support, in all relevant regulatory proceedings, incorporation of the proposed license articles in Appendix A into the FERC license and incorporation of consistent terms into the water quality certification and other applicable permits, as appropriate.

- 9.2.1 To the extent allowed by law, WDOE agrees that its comments, requests, opinions, certification conditions, permit decisions and any other actions taken in compliance with its responsibilities under the CWA shall be consistent with the proposed license articles in Appendix A and that no additional obligations shall be imposed upon Tacoma except as provided in Sections 4.2 and 11.3.
- 9.2.2 To the extent allowed by law and in conformity with Section 4.3 above, USFWS and NMFS agree that Tacoma's application for relicensing as modified by the proposed license articles in Appendix A shall constitute the proposed action for purposes of ESA Section 7 consultation on the new license, and that following issuance of a new license in conformity with this Agreement, the requirements of Section 7(a)(2) of the ESA and other applicable law, no additional obligations shall be imposed upon Tacoma except as provided in Section 11.4.
- 9.2.3 WDFW agrees that, to the extent allowed by applicable law, including requirements for public rulemaking, its actions as fishery resource manager for the State of Washington shall be consistent with the Agreement.
- 9.3 By entering into this Agreement, the Other Government Entities agree, individually and collectively: a) to submit a statement in support of the Agreement to FERC as part of the offer of settlement and of their comments on the Draft Environmental Assessment and

Tacoma's application for a new license; b) that the individual entity's complete and final recommendations pursuant to Section 10(a) of the FPA shall be consistent with the Agreement; c) to submit a statement in support of the Agreement to WDOE as part of any comments on the application for CWA Section 401 water quality certification; d) to ensure that any comments submitted to FERC related to the ESA Section 7 consultation process are consistent with the Agreement; e) to ensure that any supplemental information, comments or responses to comments filed by it with FERC or WDOE in the context of the relicensing and water quality certification processes are consistent with this Agreement; and f) to actively support, in all relevant regulatory proceedings, incorporation of the proposed license articles in Appendix A into the FERC license and incorporation of consistent terms into the water quality certification and other applicable permits, as appropriate.

- 9.4 Except as provided by Section 4.5, by entering into this Agreement, the Yakama Nation agrees: a) to submit a statement in support of the Agreement to FERC as part of the offer of settlement and of its comments on the Draft Environmental Assessment and Tacoma's application for a new license; b) that the Yakama Nation's complete and final recommendations pursuant to Section 10(a) of the FPA shall be consistent with the Agreement; c) to acknowledge in such supporting statements that the Agreement satisfies the trust responsibilities owed to the Yakama Nation by agencies or departments of the United States government concerning this relicensing; d) to recommend to any agency of the United States government not a Party to this Agreement that such agency support the adoption of the Agreement; e) to submit a statement in support of the Agreement to WDOE as part of any comments on the application for CWA Section 401 water quality certification; f) to ensure that any comments submitted to FERC related to the ESA Section 7 consultation process are consistent with the Agreement; g) to ensure that any supplemental information, comments or responses to comments filed by it with FERC or WDOE in the context of the relicensing and water quality certification processes are consistent with this Agreement; and h) to actively support, in all relevant regulatory proceedings, incorporation of the proposed license articles in Appendix A into the FERC

license and incorporation of consistent terms into the water quality certification and other applicable permits, as appropriate.

- 9.5 By entering into this Agreement, the Conservation Groups agree, individually and collectively, to: a) submit a statement in support of the Agreement to FERC as part of the offer of settlement and of their comments on the Draft Environmental Assessment and Tacoma's application for a new license; b) submit a statement in support of the Agreement to WDOE as part of their comments on the application for CWA Section 401 water quality certification; c) ensure that any comments submitted to FERC related to the ESA Section 7 consultation process are consistent with the Agreement; d) ensure that any supplemental information, comments or responses to comments filed by it with FERC or WDOE in the context of the relicensing and water quality certification processes are consistent with this Agreement; and e) actively support, in all relevant regulatory proceedings, incorporation of the proposed license articles in Appendix A into the FERC license and incorporation of consistent terms into the water quality certification and other applicable permits, as appropriate.

10 Adoption by the FERC

- 10.1 The Parties have entered into this Agreement with the express condition that FERC approves the Agreement as an offer of settlement and issues a new license that incorporates the proposed license conditions in Appendix A. The Parties agree that if FERC incorporates into the license the proposed license articles in Appendix A, they will not seek rehearing of the FERC order so doing or support in any way a request for rehearing by any non-Party to this Agreement, provided that as to WDOE this obligation applies only if FERC also incorporates into the license all conditions contained in its CWA Section 401 water quality certification.
- 10.2 In the event that FERC materially changes, conditions, modifies or omits, either directly or indirectly, any of the proposed license articles in Appendix A or any plans required to be submitted in accordance with such articles, in its order issuing new license or any subsequent order, the Agreement shall be considered modified to conform to the FERC

order unless any Party to the Agreement within twenty (20) days of receiving FERC's order provides notice, orally and by facsimile, to the other Parties that it objects to the modification, change, condition or omission, and attempts to convene a meeting or a conference call of all Parties to discuss the objectionable FERC changes and seek consensus on a course of action. If agreement is not reached at the meeting or conference call on a common course of action, any Party may individually file a petition for rehearing with FERC advocating alteration of the license order to reverse the objectionable modification, change, condition or omission and ensure consistency between the Agreement and the new license.

10.2.1 The specific term of the new license for the Project is not an express condition of this Agreement, and the Parties may advocate for a term of at least 30 and not more than 50 years (consistent with Section 15(e) of the FPA) in comments submitted to the FERC, as described in Section 9, above, provided that such advocacy is not inconsistent with the other terms of this Agreement. The Parties agree that any license term of thirty-five to forty years will not constitute a material change allowing a Party to seek rehearing on that issue pursuant to this Section. If FERC issues a license for less than 35 years or more than 40 years, any Party may seek rehearing on the issue of the license term after following the procedures set forth in this section.

10.2.2 In the event that FERC does not reverse the objectionable material change, condition, modification, or omission in an order on petition for rehearing filed as provided above or otherwise further modifies, changes, conditions or omits any provision contained herein, the objecting Party may seek judicial review. Upon final order by FERC or a reviewing court, or expiration of the period for judicial review, the Agreement shall be considered modified to conform to said order. Any Party to the Agreement, within thirty (30) days of such final order or expiration, may withdraw from the Agreement because of the modification, change, condition or omission after providing written notice to the other Parties. Upon such notification, the provisions of Section 11.5 of this Agreement shall apply. Upon withdrawal from this Agreement, a former Party is no longer bound by the

Agreement and shall not have waived any rights or otherwise limited its ability to pursue available remedies by virtue of having previously been a Party to this Agreement.

- 10.2.3 In the event that rehearing petitions and/or judicial appeals arise from FERC actions as described above, the Parties shall meet and confer on the need to amend the Agreement with respect to any deadlines for initiating or completing activities required by this Agreement and the proposed license articles in Appendix A, as incorporated in the new license.

11 Modification of License or Permit Terms and Amendment of Agreement

- 11.1 The Parties agree that this Agreement may be amended by unanimous written consent of the Parties. Any Party may request all other Parties to commence negotiations for a period of up to ninety (90) days to amend the terms and conditions of this Agreement in whole or in part. Any such amendment that renders the Agreement inconsistent with terms and conditions of the new license or other regulatory approvals then in effect shall be subject to approval by FERC or other permitting agency, except that the Parties may agree to implement on an interim basis, pending approval, any amendment not requiring prior regulatory approval. If ESA recovery is successful and all fish stocks affected by the Cowlitz River Project are delisted, the Parties will meet and confer to negotiate any necessary changes to the Agreement. These changes will reflect that WDFW is the state agency with primary authority over fisheries management, including artificial production.
- 11.1.1 If and at such time as this Agreement is amended to include Bonneville Power Administration and Lewis County Public Utility District as signatories to this Agreement, then a) they will be added to the Parties listed in Section 1.1, b) they will be entitled to select an aquatic scientist as their joint representative to become a full member of the Fisheries Technical Committee ("FTC"), and c) they and Tacoma will negotiate promptly, reasonably, and in good faith the equitable cost-sharing agreement among Tacoma, BPA, and Lewis County Public Utility District that is referred to in proposed license article 1.

- 11.2 Except as provided below and pursuant to Sections 4.2, 4.3, and 4.4, the Parties agree not to invoke any re-opener clause or reservation of authority in the new license or in any other regulatory approval or permit required for the Project in order to request the imposition by FERC or any other agency of additional or modified measures for fish passage, fish production, fish habitat, water quality, instream flows, wildlife, recreation, and/or cultural and historic resources unless and until the amendment process described above has been undertaken.
- 11.3 Consistent with the regulatory context of the CWA described in Section 4.2 above, Tacoma by signing this agreement acknowledges that, under current law, WDOE retains the authority to amend the Section 401 water quality certification for purposes of addressing specific proposed activities by adding, deleting or modifying any conditions when any of the following occur:
- 11.3.1 Construction activities that have the potential to adversely impact water quality, including but not limited to: (a) fish passage construction; (b) construction of hatchery and rearing facilities; (c) construction of new diversion works from both tributaries to the Cowlitz River and the Cowlitz River mainstem; (d) construction of new dams; (e) removal or modifications of existing dams, diversions and weirs; and (f) construction of recreation facilities in or near the water.
- 11.3.2 Any proposal to modify the quantity of water diverted at Project facilities.
- 11.3.3 Any proposal to modify stream bed profiles including but not limited to gravel enhancement measures.
- 11.3.4 Any proposal to modify the terms of the Agreement.
- 11.3.5 When monitoring or other studies establish that new measures are necessary to ensure compliance with the water quality standards.
- 11.3.6 When changes in the law necessitate re-opening or amendment in order to ensure compliance with water quality standards.
- 11.3.7 Nothing in this Section affects the right of Tacoma or any other Party to administrative due process, as provided in applicable law, in connection with any such amendment, including the right to notice, an opportunity to be heard, and administrative and judicial

review, except that by signing this Agreement, Tacoma has waived any challenges it may have under current law to WDOE's authority to re-open or amend the CWA Section 401 certification as discussed in paragraphs 11.1 through 11.3.6. By signing this Agreement, Tacoma has not waived its right to challenge on other grounds any new conditions that result from the re-opening or amendment of the certification.

- 11.4 Consistent with the regulatory context of the ESA described in Section 4.3 above, and following completion of consultation pursuant to Section 7(a)(2) of the ESA, including issuance of a biological opinion with regard to a new FERC license issued in conformity with this Agreement, NMFS and USFWS reserve the right to reinitiate consultation under any of the following conditions:
 - 11.4.1 The amount or extent of authorized incidental take is exceeded, or
 - 11.4.2 New information reveals effects of the construction, modification, maintenance or operation of the Project under a new license issued in conformity with this Agreement that may affect listed species or critical habitat in a manner or to an extent not considered in the biological opinion, or
 - 11.4.3 The license is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in the biological opinion, or
 - 11.4.4 A new species is listed or critical habitat designated that may be affected by the construction, modification, maintenance or operation of the project under a new license issued in conformity with this agreement.
 - 11.4.5 In considering any new information regarding the manner or extent to which the construction, modification, maintenance or operation of the Project under a new license issued in conformity with this Agreement may affect listed species or critical habitat, NMFS and USFWS will consider the manner or extent to which the effects of such action, continuing during the term of the license, may increase or reduce the likelihood of survival and recovery of listed salmonids, including any stocks determined by NMFS to be essential to the recovery of listed species that are restored to natural production in the Tilton and Cowlitz river basins pursuant to the protection, mitigation and enhancement requirements of the license and the terms of this Agreement.

- 11.4.6 Nothing in this Section affects the right of Tacoma or any other Party to administrative due process, as provided in applicable law, in connection with any such proceeding, including the right to notice, an opportunity to be heard, and administrative and judicial review.
- 11.5 Withdrawal by Tacoma, or by NMFS, USFWS, or WDOE due to a change by FERC to a term or condition within their mandatory conditioning authority under the conditions described in Section 10.2.1 shall render this Agreement void. Withdrawal by other Parties shall have no effect on the enforceability of this Agreement.
- 11.6 In the event that FERC, WDOE or other regulatory agency having jurisdiction over the Project initiates any proceeding, other than the relicensing proceeding itself, either on its own motion or at the request of a non-Party, that may have the effect of changing, conditioning or modifying any provision contained herein or of imposing additional measures for fish passage, fish production, fish habitat, water quality, instream flows, wildlife, recreation, and/or cultural and historic resources, the other Parties shall meet and confer on the need to participate jointly in the proceeding in support of the Agreement or to amend the Agreement.

12 Implementation of Agreement and License Conditions

- 12.1 To assist in the implementation of the terms of this Agreement, the Parties agree to create the Fisheries Technical Committee ("FTC").
- 12.2 The FTC shall include one representative from each of the following Parties to this Agreement: Tacoma, NMFS, USFWS, WDFW, WDOE and the Yakama Nation; and one representative from the Parties included in the Conservation Groups. Agency representatives will be aquatic scientists. The representatives of the Yakama Nation and the Conservation Groups will be either aquatic scientists or persons with extensive knowledge of the Cowlitz River basin.

- 12.3 Draft plans, reports and recommendations developed by the FTC shall be provided to all Parties for review and comment. Parties will also be provided with final products of the FTC.
- 12.4 The FTC shall meet as deemed necessary by its members, but at least annually. Tacoma shall be responsible for convening the FTC, including providing adequate notice to all FTC members and funding basic administrative services in support of the FTC's efforts.
- 12.5 The FTC shall be responsible for making recommendations on actions to maximize the effectiveness of fisheries mitigation, protection, and enhancement measures. Such recommendations will include, but are not limited to: the plan for phasing in the remodeled hatchery complex described in Article 7, the hatchery and fish management plan described in Article 6, the disease management plan described in Article 8, assessment of the progress towards upstream passage triggers as described in Article 3, assessment of progress toward reaching downstream passage objectives and measures as may be necessary to achieve such objectives as described in Articles 1 and 2, review of instream flows as described in Article 15, study protocols and goals in support of such plans and assessments, and such adaptive management recommendations as may be indicated by monitoring and evaluation measures. Recommendations of the FTC shall be in writing.
- 12.6 The FTC shall develop its own operating rules and procedures, emphasizing the importance of developing a consensus among FTC representatives on fishery measures. When making recommendations, the FTC will operate by consensus when possible or by majority vote.
- 12.7 Where an Agency has prescriptive and mandatory conditioning authority over fisheries or instream flow issues, the FTC will coordinate and convey information to the appropriate decision-making Agency. Where no Agency has prescriptive or mandatory conditioning authority, the FTC will make recommendations to Tacoma, who will convey a subsequent plan to FERC and provide a copy of such plan to the FTC. For recommendations made directly to Tacoma, Tacoma shall follow the recommendations of the FTC unless it can establish good cause for rejecting or modifying such recommendations. Should Tacoma

reject or modify such recommendations, it must notify the FTC in writing within 30 days of receiving the recommendations and state the reasons for rejecting or modifying such recommendations. If the dispute is not resolved, the positions of both the licensee and the FTC shall be provided as documentation of consultation in all FERC filings.

- 12.8 To aid in the implementation of Article 11, the Parties agree to create the Habitat Advisory Group ("HAG"). The HAG will consist of a representative of each Party that elects to participate.
- 12.9 The HAG shall be responsible for advising Tacoma regarding the development and implementation of a plan for the use of the habitat fund required by Article 11, including criteria for disbursement and a means of deciding which habitat projects should receive priority. The HAG shall develop its own operating rules and procedures, emphasizing the importance of developing consensus on habitat measures.

13 Resolving Disputes Among the Parties

- 13.1 In the event that any dispute arises among the Parties as to the interpretation of and/or compliance by any Party with the obligations of this Agreement and the license, the Parties agree to engage in good faith negotiations for a period of at least ninety (90) days in an effort to resolve the dispute. During the ninety-day period, any Party may request the services of a professional mediator to assist in resolving the dispute, with such mediator to be selected by the disputing Parties. The Party requesting such services shall cover the costs, unless there is an agreement among the disputing parties to share costs. In the event that resolution cannot be reached within the 90-day negotiating period, the dispute may be referred to FERC pursuant to FERC's then-applicable Rules of Practice and Procedure (18 CFR Part 385). If a dispute is referred to FERC, the Parties shall make use of such resources for alternative dispute resolution as may be available at FERC.
- 13.2 No Party shall seek relief in any other forum for noncompliance with this Agreement unless and until the requirements of the above-described dispute resolution process shall have been met. If dispute resolution is not successful, any Party may seek judicial,

administrative or other enforcement of the terms of this Agreement, which shall be enforceable under all applicable federal or state laws governing agreements of this type.

- 13.3 This section shall not apply to disputes within the FTC or the HAG, unless the Agencies or a majority of the FTC recommend otherwise. It will also not apply to disputes regarding FERC incorporation of the proposed license articles described in Section 10, to disagreements over proposed amendments to the Agreement described in Section 11, nor to disputes arising in the context of CWA Section 401 water quality certification or ESA compliance.

14 Notice and Communication

- 14.1 All written notices to be given pursuant to this Agreement shall be mailed by 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 identify. Notices shall be deemed to be given five (5) business days after the date of mailing or on date of receipt if overnight express or other receipt-notification service is used.
- 14.2 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 shall be posted to these individuals at the addresses listed below. Notification of changes in the contact persons must be made in writing and delivered to all other contact persons:

For Tacoma:

Debbie Young, Natural Resources Manager
Tacoma Power
3628 South 35th Street
Tacoma, WA 98409
P. O. Box 11007
Tacoma, WA 98411
Phone: (253) 502-8340
Fax: (253) 502-8396
E-mail: dyoung@ci.tacoma.wa.us

For WDFW:

Hal Beecher, Fisheries Research Scientist
Habitat Program, Science Team
Washington Dept. of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091
Phone: (360) 902-2421
Fax: (360) 902-2946
E-mail: beechhab@dfw.wa.gov

For WDOE:

Jeff Marti, Environmental Specialist
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
300 Desmond Drive
Lacey, WA 98503
Phone: (360) 407-6636
Fax: (360) 407-6574
E-mail: jema461@ecy.wa.gov

For WSPRC:

Larry Fairleigh
Washington State Parks and Recreation Commission
P.O. Box 42650
Olympia, WA 98540-2650
Phone: (360) 902-8500
Fax: (360) 664-2756
E-mail: larry.fairleigh@parks.wa.gov

For USFWS:

Eugene Stagner
U.S. Fish and Wildlife Service
510 Desmond Drive S.E., Suite 102
Lacey, WA 98503-1263
Phone: (360) 753-4126
Fax: (360) 753-9008
E-mail: stagner@mail.fws.gov

For NMFS:

Steve Fransen
National Marine Fisheries Service
510 Desmond Drive S.E., Suite 103
Lacey, WA 98503
Phone: (360) 753-6038
Fax: (360) 753-9517
E-mail: steven.m.fransen@noaa.gov

For USFS:

Steve Lanigan
Gifford Pinchot National Forest
10600 N.E. 51st Circle
Vancouver, WA 98682
Phone: (360) 891-5109
Fax: (360) 891-5125
E-mail: slanigan@fs.fed.us

For IAC:

Jim Eychaner
Interagency Committee for Outdoor Recreation
P.O. Box 40917
Olympia, WA 98504
Phone: (360) 902-3011
Fax: (360) 902-3026
E-mail: jime@iac.wa.gov

For Lewis County:

Dennis Hadaller
Lewis County Board of Commissioners
360 N.W. North St, MS: CMS01
Chehalis, WA 98532-1900
Phone: (360) 740-1419
Fax: (360) 740-2675

For Yakama Nation:

Johnson Meninick, Manager
Yakama Nation Cultural Resources Program
P.O. Box 151, Fort Road
Toppenish, WA 98948
Phone: (509) 865-5121
Fax: (509) 865-4664
E-mail: johnson@yakama.com

For Washington Council of Trout Unlimited:

William V. Robinson, Executive Director
Washington Council of Trout Unlimited
4600 S.W. Graham Street
Seattle, WA 98136
Phone: (206) 932-6959
Fax: (206) 754-4240
E-mail: nwssctu@halcyon.com

For American Rivers:

Robert J. Masonis, Regional Director
Conservation Programs
Northwest Regional Office of American Rivers
150 Nickerson Street, Suite 311
Seattle, WA 98109
Phone: (206) 213-0330
Fax: (206) 213-0334
E-mail: rmasonis@amrivers.org

For Sport Fishing Guides of Washington:

Clancy Holt, President
Sport Fishing Guides of Washington
910 Hwy 12
Chehalis, WA 98537
Phone: (360) 262-9549

14.3 In the event that the primary contact person listed in 14.2 above is not available, written notices may be posted to the following individuals at the addresses listed below:

For Tacoma:

Patrick McCarty, Generation Manager
Tacoma Power
3628 South 35th Street
Tacoma, WA 98409-3192
Phone: (253) 502-8336
Fax: (253) 502-8136
E-mail: pmccarty@ci.tacoma.wa.us

For WDFW:

David Mudd, Division Manager, Major Projects
Washington Dept. of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501-1091
Phone: (360) 902-2526
Fax: (360) 902-2946
E-mail: mudddrm@dfw.wa.gov

For WDOE:

Brad Caldwell, Environmental Specialist 4
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
300 Desmond Drive
Lacey, WA 98503
Phone: (360) 407-6639
Fax: (360) 407-6574
E-mail: brca@ecy.wa.gov

For WSPRC:

Barbara Herman, Assistant Attorney General
Natural Resource Division
P.O. Box 40100
Olympia, WA 98504-0100
Phone: (360) 586-4034
Fax: (360) 586-2756
E-mail: barbh@atg.wa.gov

For USFWS:

Lynn Childers
U.S. Fish and Wildlife Service
510 Desmond Drive S.E., Suite 102
Lacey, WA 98503-1263
Phone: (360) 753-5831
Fax: (360) 753-9008
E-mail: lynn_childers@mail.fws.gov

For NMFS:

Brett Joseph
Office of General Counsel
National Marine Fisheries Service
7600 Sand Point Way N.E.
Seattle, WA 98115
Phone: (206) 526-6153
Fax: (206) 526-6542
E-mail: Brett.Joseph@noaa.gov

For USFS:

Walt Dortch, District Ranger
U.S. Forest Service
1405 Emmens Street
Darrington, WA 98241
Phone: (360) 436-1155
E-mail: wdortch@fs.fed.us

For IAC:

Jim Eychaner
Interagency Committee for Outdoor Recreation
P.O. Box 40917
Olympia, WA 98504
Phone: (360) 902-3011
Fax: (360) 902-3026
E-mail: jime@iac.wa.gov

For Lewis County:

Russ Wigley
Lewis County Board of Commissioners
360 N.W. North St, MS: CMS01
Chehalis, WA 98532-1900
Phone: (360) 740-1419
Fax: (360) 740-2675

For Yakama Nation:

Tom Zeilman, Assistant Attorney
Yakama Nation Office of Legal Counsel
P.O. Box 151, Fort Road
Toppenish, WA 98948
Phone: (509) 865-7268
Fax: (509) 865-4713
E-mail: tzeilman@yakama.com

For Trout Unlimited:

Scott Yates
West Coast Legal and Policy Coordinator
Trout Unlimited
213 S.W. Ashe, #205
Portland, OR 97204
Phone: (503) 827-5700
Fax: (503) 827-5672
E-mail: syates@tu.org

For American Rivers:

Andrew Fahlund
Policy Director, Hydropower Programs
American Rivers
1025 Vermont Avenue N.W., Suite 720
Washington, DC 20005
Phone: (202) 347-7550
Fax: (202) 347-9240
E-mail: afahlund@amrivers.org

For Sport Fishing Guides of Washington:

Joe Little, Vice President
Sport Fishing Guides of Washington
1941 Bishop Rd
Chehalis, WA 98537
Phone: (360) 748-3474

14.4 Notices and other communications not required to be made to all Parties or not required to be made in a specific manner under the terms of this Agreement need not be in writing and may be made by telephone, electronic mail or facsimile.

15 Costs

15.1 Except as provided above, all Parties are to bear their own costs of participating in the Agreement.

15.2 Nothing in this Agreement shall be interpreted as or constitute a commitment or requirement that the federal Agencies obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

16 Miscellaneous Provisions


16.1 No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

17 Signatures

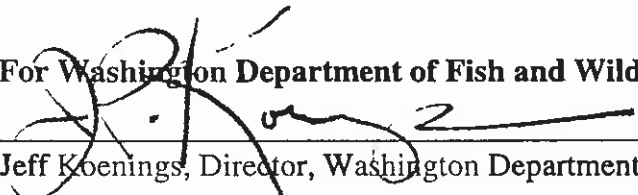
17.1 Each Party to this Agreement represents and acknowledges that it has the full legal authority to execute this Agreement and shall be fully bound by its terms.

Entered into as of this 10th day of August, 2000.

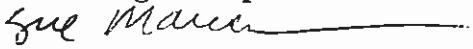
For City of Tacoma:


Mark Crisson, Director, Tacoma Public Utilities


For Washington Department of Fish and Wildlife:


Jeff Koenings, Director, Washington Department of Fish and Wildlife

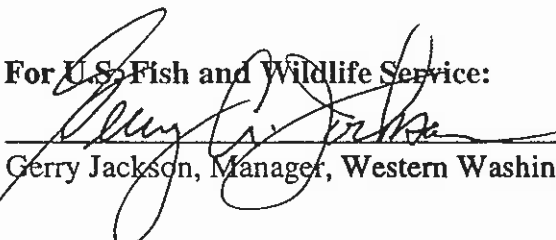
For Washington Department of Ecology:


Sue Mauerman, Regional Director, Washington Department of Ecology

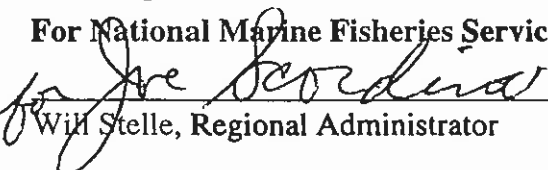
For Washington State Parks and Recreation Commission:

 8-8-00
Cleve Pinnix, Director, Washington State Parks and Recreation Commission

For U.S. Fish and Wildlife Service:


Gerry Jackson, Manager, Western Washington Office

For National Marine Fisheries Service:


Will Stelle, Regional Administrator

For U.S. Forest Service:

Harv Forsgren
Harv Forsgren, Regional Forester

For Interagency Committee for Outdoor Recreation:

Laura Johnson
Laura Johnson, Director

For Lewis County:

Richard G. Graham
Richard Graham, Commissioner

Dennis Hadaller
Dennis Hadaller, Commissioner

Russ Wigley
Russ Wigley, Commissioner

For Yakama Nation:

William Yallup, Sr.
William Yallup, Sr., Chairman, Yakama Nation Cultural Committee

For Washington Council of Trout Unlimited:

William V. Robinson
William V. Robinson, Executive Director

Ric E. Abbett
Ric Abbett, Washington Council NRB Director

For American Rivers:

Rebecca Wodder
Rebecca Wodder, President

For Sport Fishing Guides of Washington:

Clancy Holt For.
Clancy Holt, President

APPENDIX A
PROPOSED LICENSE ARTICLES

Ordering Language. Proposed language for the Commission order issuing new license, regarding fishway prescriptions and reservation of authority.

The following proposed license Articles 1, 2, and 3 will be prescribed by NMFS and USFWS to be separately filed pursuant to their authority under Section 18 of the Federal Power Act ("FPA") (or with respect to certain other provisions, including Section 10(j) of the FPA, as appropriate). NMFS and USFWS expressly reserve their authority under Section 18 of the FPA, including without limitation their authority to amend the following fishway prescriptions contained in proposed Articles 1, 2, and 3 following approval by NMFS and USFWS of such plans, designs and implementation schedules pertaining to fishway construction, operation, maintenance and monitoring as may be submitted by the Licensee in accordance with the terms of the license articles containing such fishway prescriptions.

Article 1. Downstream Fish Passage: Riffe Lake and Cowlitz Falls Collection and Passage.

a) Within six (6) months of license issuance, Licensee shall develop and submit a plan for downstream fish passage and collection at Riffe Lake and Cowlitz Falls. The Licensee shall prepare the plan in collaboration with, and subject to approval by, the National Marine Fisheries Service and the U.S. Fish and Wildlife Service. The plan shall include: 1) a report on the results of negotiations among the Licensee, Lewis County Public Utility District (licensee for the Cowlitz Falls Project, FERC No. 2833) and the Bonneville Power Administration regarding shared funding of cooperative efforts to improve downstream passage and collection effectiveness at or near Cowlitz Falls; 2) proposed facilities and measures most likely to achieve the goal of 95% Fish Passage Survival ("FPS"), as defined in the August 2000 Settlement Agreement, to be funded by the Licensee to contribute to effective downstream passage and collection at or near Cowlitz Falls and/or to be constructed by the Licensee downstream of

Cowlitz Falls Dam at Riffe Lake; 3) plans to support the on-going operation and maintenance of facilities and measures for downstream passage and collection at or near Cowlitz Falls and/or at Riffe Lake each year for the term of the license; 4) plans for monitoring and evaluation of effectiveness, including determination of the combined FPS of the existing, proposed new and/or improved facilities at or near Cowlitz Falls and/or Riffe Lake; and 5) a construction and implementation timeline not to exceed 12 months from plan approval by the Commission, unless the Licensee can establish good cause for additional time. The draft plan shall be provided for 30-day review and comment to the Fisheries Technical Committee provided for in the August 2000 Settlement Agreement, or if the Settlement Agreement has become void, to the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife and Washington Department of Ecology (referred to as "the FTC or agencies"). The Licensee shall include with the plan documentation of consultation and copies of comments and recommendations on the plan, and specific descriptions of how the FTC's or agencies' comments are accommodated by the plan. The Licensee shall submit the final plan to the National Marine Fisheries Service and U.S. Fish and Wildlife Service for approval prior to filing with the Commission. Upon approval by NMFS and USFWS and filing with the Commission, the Licensee shall implement the plan either on its own or pursuant to an agreement reached among the Licensee, Bonneville Power Administration and Lewis County Public Utility District to fund cooperative efforts for passage improvements at or near Cowlitz Falls.

b) Within eighteen (18) months of completion of the new and/or modified Riffe Lake/Cowlitz Falls downstream fish passage/collection facilities required above, the Licensee shall file a report on the effectiveness of the Riffe Lake/Cowlitz Falls downstream fish passage/collection facilities and measures, including an evaluation of the FPS achieved by the facilities and measures. If the FPS achieved has not reached 95%, the report shall include a plan and schedule providing for any further improvements to downstream passage facilities or measures as are determined by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to be most likely successful in reaching 95% FPS. The Licensee shall prepare and file

the plan for further improvements in accordance with the consultation, review and approval procedures set forth above, and upon approval by the NMFS and USFWS and filing with the Commission, shall implement, or support implementation of, the improvements provided for in the plan. The plan and schedule shall provide for continued monitoring and evaluation of fish passage effectiveness. The monitoring and evaluation results shall be provided to the FTC or the agencies in a timely manner.

c) The Licensee shall implement, or support implementation of, additional downstream passage facility improvements and file additional reports at 18 month intervals in accordance with the preceding paragraph until the Licensee has employed the best available technology and achieved at least 75% FPS for all species.

Article 2. Downstream Fish Passage: Mayfield.

a) Within six (6) months of license issuance, the Licensee shall develop and file with the Commission, a study plan or study results evaluating turbine mortality and the effectiveness of the existing louver system at Mayfield Dam. The studies shall be designed and results reviewed in consultation with the Fisheries Technical Committee provided for in the August 2000 Settlement Agreement, or if the Settlement Agreement has become void, with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife and Washington Department of Ecology (referred to as "the FTC or agencies"). The Licensee shall include with the study plan and results documentation of consultation and copies of comments and recommendations on the plan and descriptions of how the FTC's or agencies' comments are accommodated by the plan. The Licensee shall submit the final plan to the National Marine Fisheries Service and U.S. Fish and Wildlife Service for approval prior to filing with the Commission. Upon approval by NMFS and USFWS and filing with the Commission, the Licensee shall conduct the studies.

b) Within three (3) years of license issuance, the Licensee shall develop and file with the Commission, a plan for improvements to downstream fish passage at Mayfield Dam. The plan shall be developed in consultation with the FTC or agencies and shall be based upon, but not

limited to, the 90% Fish Passage Report (filed as supplemental information by the Licensee in February 2000). It shall include: 1) the results of studies of turbine mortality and effectiveness of the existing louvers; 2) plans for debris handling modifications; 3) plans for changes to the bypass system; 4) a comparison of the proposed improvements with those identified in the 90% Fish Passage Report along with a justification for any proposed improvements not included in the 90% Fish Passage Report; 5) a statement of how the proposed improvements will achieve increased Fish Guidance Efficiency ("FGE"), as defined in the August 2000 Settlement Agreement, and survival at Mayfield Dam to a level of downstream fish passage survival rate, also as defined in the August 2000 Settlement Agreement, of greater than or equal to 95% for anadromous stocks; 6) a construction and implementation schedule not to exceed one year from the date of plan approval, unless there is good cause for extending the period beyond one year; and 7) plans to evaluate the effectiveness of downstream fish passage, including FGE and the downstream passage survival rate at Mayfield Dam, upon completion of the proposed improvements. The Licensee shall include with the plan documentation of consultation and copies of comments and recommendations on the plan, and specific descriptions of how the FTC's or agencies' comments are accommodated by the plan. The Licensee shall submit the final plan to the National Marine Fisheries Service and U.S. Fish and Wildlife Service for approval prior to filing with the Commission. Upon approval by NMFS and USFWS and filing with the Commission, the Licensee shall implement the plan.

c) Within eighteen months of the completion of construction of the improvements to downstream fish passage at Mayfield Dam as provided in the approved schedule, the Licensee shall file a report on the effectiveness of the modifications, including a calculation of the downstream fish passage survival rate and FGE achieved by the facility. If the downstream fish passage survival rate at Mayfield Dam has not achieved 95%, the report shall also include plans to further improve the effectiveness of the facilities and measures or to substitute other measures as described in paragraph (d) below, and to continue monitoring their effectiveness, including continued monitoring of FGE and the downstream fish passage survival rate. The Licensee shall prepare and file the plan for further improvements in accordance with the

consultation, review and approval procedures set forth above. Upon approval by NMFS and USFWS and filing with the Commission, the Licensee shall implement the further improvements provided for in the plan.

d) Tacoma shall implement additional downstream passage facility modifications or measures and file additional reports at 18 month intervals in accordance with the preceding paragraph until either: 1) a 95 % downstream fish passage survival rate is achieved; or 2) the National Marine Fisheries Service and U.S. Fish and Wildlife Service, in consultation with the FTC or agencies, determine that passage effectiveness and survival are high enough to support self-sustaining populations of anadromous fish stocks; that protection of anadromous fish migrating downstream at Mayfield Dam has been maximized by all reasonable measures and that adjustments to hatchery production (using then-existing facilities) and/or habitat measures will be required in lieu of further attempts to improve downstream passage at Mayfield Dam. If NMFS and USFWS elect to pursue other measures in lieu of further downstream passage improvements, the Licensee, in consultation with the FTC or agencies, shall prepare a draft plan for other actions designed to mitigate for continued juvenile mortality at Mayfield Dam. The draft plan shall be submitted to the FTC or agencies for 30-day review and comment. The Licensee shall include with the plan documentation of consultation and copies of comments and recommendations on the plan, and specific descriptions of how the FTC's or agencies' comments are accommodated by the plan. The Commission reserves the right to require changes to the plan. Upon Commission approval, the Licensee shall implement the plan.

e) Tacoma shall monitor proper operation of passage facilities and evaluate effects of changed conditions on FGE and downstream fish passage survival, with a summary of results to be submitted annually to the FTC or agencies. Tacoma shall immediately report to the FTC or agencies any results indicating a significant reduction in passage effectiveness or survival, and consult with the FTC or agencies on any further improvements that may be required to maintain consistently high levels of passage effectiveness and survival in accordance with the above performance standards.

Article 3. Upstream Fish Passage: Barrier, Mayfield and Mossyrock.

a) The Licensee, in consultation with the National Marine Fisheries Service and U.S. Fish and Wildlife Service shall provide and maintain effective upstream fish passage at the Barrier Dam, Mayfield Dam and Mossyrock Dam through trap and haul facilities immediately upon license issuance, and continuing until volitional upstream passage systems have been implemented in accordance with this article.

b) Within six months of license issuance, or as soon as practicable thereafter depending on the availability of marked fish, and updated on an annual basis thereafter, the Licensee shall file with the Commission a report on adult anadromous fish traveling through the Cowlitz River Project, prepared in collaboration with the Fisheries Technical Committee provided for in the August 2000 Settlement Agreement, or if the Settlement Agreement has become void, with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife and Washington Department of Ecology (referred to as “the FTC or agencies”). The report shall include: 1) the most recent version of Tables 3, 4, and 5 from the report entitled *Contribution Rate Benchmarks for Future Runs of Spring Chinook, Fall Chinook, and Coho Produced at the Cowlitz Salmon Hatchery* that provide estimated age 3 recruits and survival equivalency that enables comparison of future broods to the benchmark run year and survival rate for each of these species, dated June 28, 2000 and filed with the Commission concurrently with the August 2000 Cowlitz River Hydroelectric Project Settlement Agreement; 2) tables estimating the annual number of adult recruits originating from the Cowlitz River basin upstream of the Toutle River, and including steelhead, cutthroat trout, and all other indigenous stocks that are produced at the hatcheries, along with an index of each stock to its benchmark values, or if not otherwise agreed, a default index of “1”; 3) a plan and schedule for studies, to be conducted at regular intervals, to evaluate whether the following criteria for implementing effective upstream passage through volitional facilities have been met: A) adult fish in Mayfield Lake are able to choose their tributary of origin and survive Mayfield Lake transit at rates determined by NMFS and USFWS, in consultation with

the FTC or agencies, to be sufficient to achieve effective upstream passage through volitional facilities; and B) as determined based on the above-described tables with respect to: (i) the number of pre-spawners arriving at the Barrier Dam, in at least 3 of 5 consecutive brood years measured, and based on the 5-year rolling average, exceeds an abundance level which indicates natural recruitment above Mayfield Dam has achieved self-sustaining levels, as determined by the National Marine Fisheries Service in consultation with the FTC or agencies; (ii) the productivity level in 3 of 5 years and the 5-year rolling average, as measured at the Barrier Dam or other Cowlitz River fish counting facilities by the recruit/pre-spawner ratio, exceeds 1.0; and (iii) the disease management plan required by Article 8 has been implemented.

c) For any annual report filed within 12 years of license issuance in which the results of the studies indicate that, within the next three years or less, the above criteria for volitional upstream passage will be met with respect to any salmonid species originating in the Tilton basin and with respect to either spring chinook salmon or late winter steelhead originating above Mossyrock Dam, the Licensee shall also include proposed preliminary designs and schedules for the construction of upstream passage systems for the Project. In the case of Barrier Dam, the proposed modifications shall provide for breaching the Barrier Dam. In lieu of breaching, a fish ladder may be constructed only if NMFS and USFWS determine, in consultation with the FTC or agencies, that a ladder is more appropriate than breaching for effective upstream passage. The proposed modifications for the Barrier Dam shall also include steps to disable the electrical field in the event of fish ladder construction or breaching the dam. In the case of Mayfield Dam, the upstream passage system proposed shall be a ladder with sorting facilities, unless prior to filing the report the NMFS and USFWS determine that a tram is more appropriate than a ladder for effective upstream passage, in which case the system proposed shall be a tram with sorting facilities. In the case of Mossyrock Dam, the passage system proposed shall be an adult trap and haul facility to facilitate adult transit above Cowlitz Falls Dam to be built before or concurrently with the upstream passage system at Mayfield Dam, unless prior to filing the report the USFWS and NMFS determine that a comparably-priced tram is more appropriate than a trap and haul facility based on studies that show fish are

able to migrate through Riffe Lake, and it has also been determined that an adult upstream passage facility will be developed at Cowlitz Falls Dam. A draft report shall be provided to the FTC or agencies for review and comment. The Licensee shall include with the report documentation of consultation and copies of comments and recommendations on the report, and specific descriptions of how the FTC's and agencies' comments are accommodated by the report. The Licensee shall submit the final report to the NMFS and USFWS for approval prior to filing with the Commission. Upon approval by NMFS and USFWS and filing with the Commission, the Licensee shall implement the proposals in the report.

d) Upon meeting the criteria above for the construction of volitional upstream passage systems, the Licensee shall proceed expeditiously to complete the final design, permitting and construction of upstream passage systems. The final design shall be subject to the same review and approval process described in paragraph c) above. Once the report containing the final design and implementation schedule for the construction of upstream fish passage systems is approved by NMFS and USFWS and filed with the Commission, volitional upstream passage facilities shall be completed and made operational within one (1) year of meeting the criteria or approval of the final design, whichever is later, unless there is good cause for extending the period beyond one year.

e) Within five years of license issuance, the Licensee shall establish an interest-bearing escrow account in the amount of \$15 million to contribute to the total cost of constructing volitional upstream fish passage facilities. To minimize administrative cost and allow conservative growth, said escrow account may be held by the Licensee as a separate account (with Licensee being obligated to treat said account substantially similar to an escrow account), and said account may be invested, consistent with investment limitations on public agencies within the State of Washington.

f) If at any time the Licensee files a report indicating that the above criteria are not likely to be met within 15 years following license issuance with respect to listed chinook salmon or steelhead originating above Mayfield Dam, the Licensee shall consult with the FTC or agencies, using the best available data at the time, regarding factors that may be contributing to

the failure to meet such criteria, and the likelihood or not that such criteria will be met for the listed stocks in the foreseeable future.

g) If preliminary or final upstream volitional fish passage design plans and implementation schedules have not been approved and filed with the Commission at the end of year 12, the Licensee must prepare and submit preliminary design plans and schedules in accordance with paragraphs c) and d) if the volitional upstream passage criteria set forth in paragraphs b) and c) have been met or are likely to be met for any salmonid species in the Tilton by year 15. The Licensee shall proceed expeditiously with final design and construction of volitional upstream passage facilities, unless otherwise directed under paragraph h) below.

h) If within 14 years of license issuance the criteria for volitional upstream passage facilities, described in b), c) and g) above, have not been met and it is determined by the FTC or agencies, and affected Tribes, with the concurrence of NMFS and USFWS, that measures in addition to those provided for in the August 2000 Settlement Agreement are necessary to restore self-sustaining, natural production of ESA-listed stocks in the Cowlitz River basin, and that expenditure of the escrow fund on such additional measures in lieu of volitional upstream facilities is necessary and appropriate to achieve natural stock restoration, consistent with the express purpose of the license and the Settlement Agreement, and with applicable recovery plans for the listed Cowlitz River stocks, the Licensee shall submit to the Commission a plan to abandon volitional upstream passage and expend the funds in the escrow account for the purposes of protecting and promoting restoration and recovery of listed Cowlitz River stocks. The draft plan shall be submitted to the FTC or agencies for 30-day review and comment period. The Licensee shall include with the plan documentation of consultation and copies of comments and recommendations on the plan, and specific descriptions of how the FTC's or agencies' comments are accommodated by the plan. The Commission reserves the right to require changes to the plan. Upon Commission approval, the Licensee shall implement the plan. If the above criteria have not been met for any salmonid species in the Tilton by year 15, the Licensee shall continue monitoring fishery conditions for future construction of upstream volitional fish passage, until either the criteria are met or a decision is made to abandon

upstream volitional passage and fund other necessary and appropriate measures in accordance with this paragraph.

i) Following construction of volitional upstream passage facilities, the Licensee, in consultation with the FTC or the agencies, shall monitor the effectiveness of the facilities. As deemed necessary by NMFS and USFWS, after consultation with the FTC, the Licensee shall implement such reasonable modifications as may be necessary to improve passage effectiveness.

j) Any plan required to be filed pursuant to this article shall be prepared in consultation with the FTC or agencies. The Licensee shall include with the plan documentation of consultation and copies of comments and recommendations on the plan, and specific descriptions of how the FTC's or agencies' comments are accommodated by the plan. The Licensee shall submit the plan to the National Marine Fisheries Service and U.S. Fish and Wildlife Service for approval prior to filing with the Commission. Upon approval by NMFS and USFWS and filing with the Commission, the Licensee shall implement the plan.

Article 4. Juvenile Tagging and Monitoring.

The Licensee shall contribute up to \$40,000 per year (adjusted for inflation), for a freshwater juvenile tagging and monitoring program required for estimating: the number of juveniles arriving at transport facilities; their origin (natural or hatchery); the number of juveniles transported (by species); and adults arriving and transported to the upper basin. Data from the program shall be reviewed annually by the Fisheries Technical Committee provided for in the August 2000 Settlement Agreement, or if the Settlement Agreement has become void, with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife and Washington Department of Ecology (referred to as "the FTC or the agencies") annually and filed with the Commission after review. Funding of the tagging and monitoring program shall continue until implementation of the Fisheries and Hatchery Management Plan, provided for in Article 6.

Article 5. Fish Production and Hatcheries.

a) The Licensee shall be responsible for funding the operation and maintenance of the Cowlitz Hatchery Complex consisting of the remodeled Cowlitz Salmon Hatchery, the remodeled Cowlitz Trout Hatchery, and three satellite rearing facilities, for the duration of this license. The principal stocks of fish to be produced are the indigenous stocks of spring chinook, fall chinook, coho, sea-run cutthroat trout, and late winter-run steelhead. Non-indigenous stocks, such as early winter and summer steelhead, may be produced, provided that production shall emphasize the recovery of indigenous stocks, and production and management of all stocks shall be consistent with that goal. The remodeled hatchery complex will accommodate a range of possible production levels, up to 800,000 pounds, and the current upper bound permitted by the ESA of 771,500 pounds. The total production level within the remodeled hatchery complex will not exceed 650,000 pounds per year for all stocks until and unless a decision has been made pursuant to Article 3 to not construct volitional upstream passage during the remaining term of the license, at which time hatchery production may be considered as part of the plan to expend the funds in the escrow account for the purposes of protecting and promoting recovery of listed stocks. The 650,000 pound limit does not include upper basin pre-smolts that are reared and ponded in the hatchery complex to avoid conflicts with listed stocks. During remodeling of the hatchery complex provided by Article 6, production will approximate the maximum possible within remodeling constraints and ESA requirements. Total annual production levels during remodeling will be established through the planning process delineated in Article 5. Any variations to these transitional production levels during the time period between license issuance and the completion of the remodeled hatchery complex will be prepared in consultation with the Fisheries Technical Committee provided for in the August 2000 Settlement Agreement, or if the Settlement Agreement has become void, with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife and Washington Department of Ecology (referred to as "the FTC or the agencies"). The Licensee shall also be responsible for funding any monitoring required for

adaptive management at the hatcheries, as included in the Fisheries and Hatchery Management Plan required by Article 6.

b) Through 2004, the Licensee will provide funding for 50,000 pounds of trout production. Subsequent to 2004, future trout production will be based upon a review by the FTC of the success or failure of the program and any impacts to listed stocks.

Article 6. Fisheries and Hatchery Management Plan.

Within 9 months of license issuance, the Licensee shall submit a Fisheries and Hatchery Management Plan. The plan shall be updated every 6 years, starting in year 7, of the license. The plan shall identify: a) the quantity and size of fish to be produced at the Cowlitz Hatchery Complex; b) rearing and release strategies for each stock, including upward and downward production adjustments to accommodate recovery of indigenous stocks; c) credit mechanisms for production of high quality natural stocks; d) plans for Licensee-funded on-going monitoring and evaluation; and e) a fisheries management strategy consistent with the priority objective of maximizing the natural production of wild indigenous fish stocks and species in the basin. The Licensee shall prepare the plan in collaboration with the Fisheries Technical Committee provided for in the August 2000 Settlement Agreement, or if the Settlement Agreement has become void, with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife and Washington Department of Ecology (referred to as "the FTC or agencies"). When a draft plan has been prepared, it shall be provided to all affected agencies and Tribes for 30-day review and comment. The Licensee shall include with the final plan documentation of consultation and copies of comments and recommendations, and specific descriptions of how the final plan accommodates all comments and recommendations. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on Project-specific information. The Commission reserves the right to make changes to the plan. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission. Following Commission approval, the plan becomes a requirement of the license, enforceable by the Commission.

Article 7. Hatchery Complex Remodel and Phase-In Plan.

Within 18 months of license issuance the Licensee shall submit a plan for the Hatchery Complex remodel. The plan shall include: a) hatchery design drawings that include decreased rearing densities and innovative practices to replicate historic out-migration size and timing; b) plans for construction scheduling; c) provision for hatchery water supply that maximizes water from existing groundwater wells and, if necessary, provides for treatment of up to 10 cfs additional river water; and d) a plan for gradual transition to innovative rearing practices. The Licensee shall prepare the plan in collaboration with the Fisheries Technical Committee provided for in the August 2000 Settlement Agreement, or if the Settlement Agreement has become void, with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife and Washington Department of Ecology (referred to as “the FTC or agencies”). When a draft plan has been prepared, it shall be provided to all affected agencies and Tribes for 30-day review and comment. The Licensee shall include with the final plan documentation of consultation and copies of comments and recommendations, and specific descriptions of how the final plan accommodates all comments and recommendations. If the Licensee does not adopt a recommendation, the filing shall include the Licensee’s reasons, based on Project-specific information. The Commission reserves the right to require changes to the plan. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission. Following Commission approval, the plan becomes a requirement of the license, enforceable by the Commission.

Article 8. Disease Management Plan.

Within five (5) years of license issuance, the Licensee shall submit a Fisheries Disease Management Plan that defines an acceptable level of risk from *Ceratomyxa shasta* (*C. shasta*) and other diseases, and allows adult fish to be upstream of Barrier Dam. The Fisheries Disease Management Plan shall be designed to allow an appropriate level of pathogens. The plan shall include criteria for determining success or failure, as well as a review every five (5) years to see that the criteria for success are being met and a procedure and schedule for amending the plan if the criteria are not met. Plan amendments could include, but not be limited to: changes in the Fisheries and Hatchery Management Plan and changes to the hatchery water quality and/or quantity. The Licensee shall consult with fish pathology experts from the National Marine Fisheries Service, U.S. Fish and Wildlife Service and Washington Department of Fish and Wildlife and shall prepare the plan in collaboration with the Fisheries Technical Committee provided for in the August 2000 Settlement Agreement, or if the Settlement Agreement has become void, with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife and Washington Department of Ecology (referred to as "the FTC or agencies"). When a draft plan has been prepared, it shall be provided to all affected agencies and Tribes for 30-day review and comment. The Licensee shall include with the final plan documentation of consultation and copies of comments and recommendations, and specific descriptions of how the final plan accommodates all comments and recommendations. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on Project-specific information. The Commission reserves the right to require changes to the plan. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission. Following Commission approval, the plan becomes a requirement of the license, enforceable by the Commission.

Article 9. Large Woody Debris.

Within 1 year of license issuance, the Licensee shall submit a plan to continue to make large woody debris available for fish habitat restoration projects in the Cowlitz River basin. The large woody debris plan shall include: a) a description of the source/s of large woody debris to be made available; b) measures for transporting and delivering large woody debris within the Cowlitz River basin; c) guidelines for the use and disbursement of large woody debris for restoration projects, giving first priority to projects within the lower basin, second priority to upper basin projects, and third priority to projects outside the basin; and d) provisions for storage of large woody debris and for disposal of unused debris. The Licensee shall prepare the plan in collaboration with the Fisheries Technical Committee provided for in the August 2000 Settlement Agreement, or if the Settlement Agreement has become void, with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife, U.S. Forest Service and Washington Department of Ecology (referred to as "the FTC or agencies"). When a draft plan has been prepared, it shall be provided to all affected agencies and Tribes for 30-day review and comment. The Licensee shall include with the final plan documentation of consultation and copies of comments and recommendations, and specific descriptions of how the final plan accommodates all comments and recommendations. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on Project-specific information. The Commission reserves the right to require changes to the plan. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission. Following Commission approval, the plan becomes a requirement of the license, enforceable by the Commission.

Article 10. Gravel Augmentation.

Within 9 months of license issuance, the Licensee shall file for Commission approval a plan to augment spawning gravel below the Barrier Dam to enhance salmonid spawning habitat. The source of gravel, to the extent reasonably available, shall be just upstream of Barrier Dam. The

gravel augmentation plan shall include: a) a description of plans to monitor and evaluate the effectiveness of gravel augmentation, including parameters that will be measured to determine the value of gravel placements to salmonid fish reproduction and the stability and life expectancy of such placements, and b) a plan for the discontinuation of gravel augmentation if Barrier Dam is breached, including plans to monitor the post-breach adequacy of gravel supplies and mitigate for any identified gravel shortfalls in the affected reach (Mayfield Dam to the Toutle River). The Licensee shall prepare the plan in collaboration with the Fisheries Technical Committee provided for in the August 2000 Settlement Agreement, or if the Settlement Agreement has become void, with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife and Washington Department of Ecology (referred to as "the FTC or agencies"). When a draft plan has been prepared, it shall be provided to all affected agencies and Tribes for 30-day review and comment. The Licensee shall include with the final plan documentation of consultation and copies of comments and recommendations, and specific descriptions of how the final plan accommodates all comments and recommendations. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on Project-specific information. The Commission reserves the right to require changes to the plan. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission. Following Commission approval, the plan becomes a requirement of the license, enforceable by the Commission.

Article 11. Fish Habitat Fund.

Within 6 months of license issuance, the Licensee shall establish a habitat fund in the amount of \$3.0 million for the purpose of fisheries habitat protection, restoration, and enhancement through acquisition, easements or restoration projects. The habitat fund may be a special or separate account held by Licensee with all accrued interest being credited to the fund. Within one year of license issuance, the Licensee shall file with the Commission a plan for the uses of the habitat fund, including: a) a statement of the priority uses and criteria for disbursement of

the funds, identifying acquisition by Tacoma in fee title or by conservation easements of riparian habitat along side channels below Barrier Dam as first priority; b) a description of efforts the Licensee will make in concert with other entities to leverage the habitat fund as matching funds for other salmon recovery funding opportunities; c) plans to coordinate with Lewis County on purchases of land or easements, including any plans to fund Lewis County personnel to conduct the acquisition of land rights; d) procedures for conservation groups and others to request the Licensee's participation in restoration projects along with criteria for such participation; and e) a statement of what, if any, additional lands acquired through the habitat fund will be included within the Project boundary. The Licensee shall prepare the plan in consultation with a Habitat Advisory Group provided for in the August 2000 Settlement Agreement, or, if the Settlement Agreement has become void, in consultation with U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife, U.S. Forest Service and Lewis County. When a draft plan has been prepared, it shall be provided to all affected agencies and Tribes for 30-day review and comment. The Licensee shall include with the final plan documentation of consultation and copies of comments and recommendations, and specific descriptions of how the final plan accommodates all comments and recommendations. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on Project-specific information. The Commission reserves the right to require changes to the plan. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission. Following Commission approval, the plan becomes a requirement of the license, enforceable by the Commission.

Article 12. Coordination with Wildlife Settlement Wetlands Acquisition Fund.

Within one year of license issuance, the Licensee shall file with the Commission a report on its efforts to encourage the expeditious expenditure of remaining funds previously allocated by the Licensee in a manner consistent with the purposes of the Wildlife Settlement Agreement of 1993 (continued compliance with which is required by Article 24, below) for lowlands and

wetlands acquisition and restoration and for operations and maintenance, in a manner that enhances the overall goals of fish and wildlife habitat protection and restoration. The Licensee shall prepare the report in consultation with the signatories to the 1993 Wildlife Settlement Agreement (also referred to as the Cowlitz Wildlife Coordinating Committee). The Licensee shall include with the report documentation of consultation and copies of comments and recommendations on the report. The Commission reserves the right to require the Licensee to take such additional steps as may be appropriate in light of the report to promote habitat protection and restoration goals.

Article 13. Instream Flows.

The Licensee shall release minimum flows from the Project into the Cowlitz River for the protection and enhancement of fish and wildlife resources, riparian vegetation, aesthetic resources and water quality. Flows shall be released as follows:

a) March 1 – June 30

Minimum flow releases from Mayfield Dam shall be 5,000 cfs, unless the March 1 or later inflow forecasts indicate that this flow cannot be achieved and assure reservoir refill. A decision to reduce flows shall only be made after Tacoma has consulted with the Fisheries Technical Committee provided for in the August 2000 Settlement Agreement, or if the Settlement Agreement has become void, with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife and Washington Department of Ecology (referred to as “the FTC or agencies”). Once per week from March through the end of June, or as otherwise agreed with the FTC or agencies, Tacoma will conduct a 12-hour release at the lesser of 8,000 cfs or 120% of the preceding flows for juvenile fish transport flows. Natural flows (e.g., from the Tilton River) that provide the same magnitude of flow pulse may substitute for artificial flow pulsing.

b) July 1 - August 14

Minimum flow releases from Mayfield Dam shall be 2,000 cfs during this period.

c) August 15 - September 30

Minimum flow releases from Mayfield Dam shall be 2,000 cfs during this period. If Mayfield releases meet or exceed 5,000 cfs for a consecutive 5-day period as measured by daily mean flows, then flows will not be decreased below 5,000 cfs until a spawning survey, documenting redd numbers and locations in key side-channel areas at River Mile 42 and River Mile 47.5, or two other representative sites as selected by the FTC or agencies, has been performed. If the survey shows that redds are present, the level of minimum flows necessary for the remainder of the period will be established after consultation with the FTC or agencies. The established minimum flows for incubation shall not exceed the lesser of: a) eight inches of river stage height below the highest consecutive 5-day average flow as measured at the USGS gauge (Station #14238000) below Mayfield Dam, or b) 5,000 cfs.

d) October 1 - November 20

Minimum flow releases below Mayfield Dam shall be subject to the following requirements:

- 1) At no time shall flows released from Mayfield Dam be less than 3,500 cfs;
- 2) Flow releases from Mayfield Dam always shall be at a quantity adequate to provide incubation protection to redds established during the period of August 15 - September 30, as defined in Section 3 below;
- 3) When releases during the August 15 - September 30 period meet or exceed 5,000 cfs for a consecutive five-day period as measured by the daily mean flows, minimum flows shall be maintained at the lesser of (A) or (B) below:
 - A) 5,000 cfs
 - B) Eight inches of river stage height below the highest consecutive 5-day average flow during which active spawning occurred, as measured at the USGS gauge (Station #14238000) below Mayfield Dam.

Flow releases less than those described in Section 3 above may be established upon agreement by the FTC or agencies, following review of spawning survey data for the August 15 - September 30 period.

Tacoma shall make a good faith attempt to provide flows for the purpose of protecting spawning habitat (5,000 to 8,000 cfs) from November 1 until either November 20 or the

completion of spawning, whichever comes first.

e) November 21 – February 28

Minimum flow releases from Mayfield Dam will be maintained at the lesser of:

- 1) eight inches of river stage height below the highest consecutive 5-day average flow during which active spawning occurred, as measured at the USGS gauge (Station #14238000) below Mayfield Dam, or
- 2) 5,000 cfs, or
- 3) a lower flow authorized by the FTC or agencies based upon the results of spawning surveys.

Instream flows shall be monitored at the USGS gauge (Station #14238000) below Mayfield Dam or via other approved means. Results of monitoring shall be available to FERC or resource agency staff upon request from the U.S. Geological Survey (USGS) or as otherwise approved. The minimum release required may be reduced, in consultation with the FTC or agencies, when such reduction can be shown not to impact downstream salmonid redds. Flows may be temporarily modified if required by operating emergencies beyond the control of the Licensee that threaten the safety and/or stability of Project facilities, and for short periods upon agreement between the Licensee and the Washington Department of Ecology. If the flow is so modified, the Licensee shall notify the Commission and the Washington Department of Ecology as soon as practicable, but no later than ten (10) days after each such incident.

Article 14. Ramping Rate Conditions.

The Licensee shall operate the Project within the following ramping rate restrictions. Ramping rate refers to the rate of allowable stage decline. These rates apply to flows less than 6,000 cfs. The ramping rate restrictions may be modified based upon further study and approval by the Fisheries Technical Committee provided for in the August 2000 Settlement Agreement, or if the Settlement Agreement has become void, with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife and Washington Department of Ecology (referred to as “the FTC or agencies”).

Time of Year	Daylight Rates*	Night Rates**
February 16 to June 15	No Ramping	2 inches per hour
June 16 to October 31	1 inch per hour	1 inch per hour
November 1 to February 15	2 inches per hour	2 inches per hour

*Daylight shall be defined as one hour before sunrise to one hour after sunset. This is for the protection of salmon fry.

** Night shall be defined as one hour after sunset to one hour before sunrise. This is for the protection of trout and steelhead fry.

These time restrictions will account for the lag time it takes for the fluctuation to pass through all affected fish habitat downstream to the confluence of the Cowlitz and Toutle rivers. Flow is to be measured at the USGS gauge (Station #14238000) below Mayfield Dam.

Article 15. Fish Monitoring Plan.

Within one year of license issuance, the Licensee shall develop and submit a monitoring plan to evaluate the effects of the instream flow requirements, including pulsing or channel maintenance flows, upon the fish of the Cowlitz River, in consultation with the Fisheries Technical Committee provided for in the August 2000 Settlement Agreement, or if the Settlement Agreement has become void, with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife and Washington Department of Ecology (referred to as “the FTC or agencies”). When a draft plan has been prepared, it shall be provided to all affected agencies and Tribes for 30-day review and comment. The Licensee shall include with the final plan documentation of consultation and copies of comments and recommendations, and specific descriptions of how the final plan accommodates all comments and recommendations. If the Licensee does not adopt a recommendation, the filing shall include the Licensee’s reasons, based on Project-specific

information. Upon filing, the Licensee shall implement the plan to the extent that such implementation is not contrary to Commission order or regulation and is in conformity with the CWA Section 401 water quality certification. The Commission and WDOE reserve the right to require changes to the plan. Upon Commission and WDOE approval, the Licensee shall fully implement the plan, including any changes required by the Commission or WDOE. Following Commission and WDOE approval, the plan becomes a requirement of the license, enforceable by the Commission and WDOE. If monitoring indicates that instream flows or pulsing flows for channel maintenance are inadequate, the Commission and WDOE separately reserve the right to require modifications to the flow regime, either on their own motion or upon request of state or federal resource agencies.

Article 16. Instream Flow Implementation.

Within two years of license issuance, the Licensee shall prepare and submit a report on implementation of instream flows containing a description of measures taken to ensure compliance, including preparation and use of a training manual for licensee's staff, and any recommended modifications to operating procedures. The report shall be prepared in consultation with the Fisheries Technical Committee provided for in the August 2000 Settlement Agreement, or if the Settlement Agreement has become void, with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington Department of Fish and Wildlife and Washington Department of Ecology (referred to as "the FTC or agencies"). When a draft report has been prepared, it shall be provided to all affected agencies and Tribes for 30-day review and comment. The Licensee shall include with the final report documentation of consultation and copies of comments and recommendations, and specific descriptions of how the final report accommodates all comments and recommendations. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on Project-specific information. Upon filing, the Licensee shall implement any recommended modifications to the extent that such implementation is not contrary to Commission order or regulation and is in conformity with the CWA Section 401 water quality

certification. The Commission and WDOE reserve the right to require changes to the recommended modifications. Upon Commission and WDOE approval, the Licensee shall fully implement the recommended modifications, including any changes required by the Commission or WDOE. Following Commission and WDOE approval, the recommended modifications become a requirement of the license, enforceable by the Commission and WDOE. If monitoring indicates that instream flows or pulsing flows for channel maintenance are inadequate, the Commission and WDOE separately reserve the right to require modifications to the flow regime, either on their own motion or upon request of state or federal resource agencies.

Article 17. Recreation Facilities.

Within one year of license issuance, the Licensee shall file with the Commission for approval, a recreation plan for the Cowlitz River Project. The plan shall include, but not be limited to, the following specific items:

- (a) A trail system on Peterman Hill built to accepted standards, of not less than 20 miles. The trail will serve non-motorized users and include parking, sanitation facilities, interpretive and regulatory signage and brochures.
- (b) A 2-mile non-motorized loop trail near Mossyrock Park, part of which will (to the extent feasible) be made ADA accessible.
- (c) An extension of the Mossyrock Park boat launch with mooring dock, including provision for seasonal ADA accessibility.
- (d) A low water boat launch at the east end of Riffe Lake.
- (e) An ADA accessible fishing platform in the vicinity of Barrier Dam.
- (f) 50 additional campsites at Taidnapam Park to be provided during years 7 to 12 of the license term.
- (g) Improvements to the road from Highway 12 to Taidnapam Park.
- (h) Add 50 additional campsites at Mossyrock Park during years 19 to 24 of the license term.
- (i) Recreation improvements to be undertaken by the State of Washington for capital

improvements at Ike Kinswa State Park using \$500,000 provided by the Licensee.

(j) Unidentified recreation improvements in the Project area undertaken by the State of Washington using \$100,000 provided by the Licensee.

The plan shall be developed in collaboration with the Interagency Committee for Outdoor Recreation, the U.S. Fish and Wildlife Service, the U.S. Forest Service, Lewis County, Washington State Parks and Recreation Commission, and the Washington Department of Fish and Wildlife. With respect to item (a), the Peterman Hill trail, the Cowlitz Wildlife Coordinating Committee, established pursuant to the 1993 Wildlife Settlement Agreement (referred to in Article 24) will provide oversight and approval of trail planning, location, construction, management and allowable impacts. The plan shall include provisions for monitoring of recreational use impacts to wildlife along and in the vicinity of this trail and define benchmarks for unacceptable wildlife impacts. The Licensee shall allow a minimum of 30 days for affected agencies and Tribes to comment and to make recommendations prior to filing the plan with the Commission. The Licensee shall include with the plan documentation of consultation and copies of comments and recommendations, and specific descriptions of how the agencies' comments are addressed by the plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons. The Commission reserves the right to require changes to the plan. No land clearing or land-disturbing activities shall begin until the Licensee is notified by the Commission that the plan has been approved and has received all necessary permits and certifications. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission. Following Commission approval, the plan becomes a requirement of the license, enforceable by the Commission.

Article 18. Recreation Operation, Maintenance and Safety.

Within one year of license issuance, the Licensee shall file with the Commission an operation, maintenance and safety plan for the recreation facilities for the Cowlitz River Project. The plan shall include, but not be limited to:

- (a) A description of the oversight for trail construction and management to be provided by the Cowlitz Wildlife Area Wildlife Management Coordinating Committee, as established by the 1993 Wildlife Settlement Agreement.
- (b) A plan to work with the Lewis County Sheriff's office to improve boating safety.
- (c) An Americans with Disabilities Act (ADA) transition plan specifying improvements to be made to existing facilities to comply with ADA.
- (d) A plan for Licensee to assume ownership and all responsibility for maintenance and operation of Mayfield Lake County Park from Lewis County.

The plan shall be developed in collaboration with the Interagency Committee for Outdoor Recreation, the U.S. Forest Service, U.S. Fish and Wildlife Service, Lewis County, Washington State Parks and Recreation Commission and the Washington Department of Fish and Wildlife. The Licensee shall allow a minimum of 30 days for affected agencies and Tribes to comment and to make recommendations prior to filing the plan with the Commission. The Licensee shall include with the plan documentation of consultation and copies of comments and recommendations, and specific descriptions of how the agencies' comments are accommodated by the plan. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on Project-specific information. The Commission reserves the right to require changes to the plan. No land clearing or land-disturbing activities shall begin until the Licensee is notified by the Commission that the plan has been approved and has received all necessary permits and certifications. Upon Commission approval, the Licensee shall implement the plan, including any changes required by the Commission. Following Commission approval, the plan becomes a requirement of the license, enforceable by the Commission.

Article 19. Water Access Facilities.

The Licensee shall file with the Commission for approval, plans for expenditure of \$67,000 in each of years four, seven and thirteen for additional facilities to improve water access, such as parking, trails to water, ramps and piers. The plans shall be developed in collaboration with the Interagency Committee for Outdoor Recreation, the U.S. Forest Service, the U.S. Fish and Wildlife Service, Lewis County, Washington State Parks and Recreation Commission and Washington Department of Fish and Wildlife. The Licensee shall allow a minimum of 30 days for affected agencies and Tribes to comment and to make recommendations prior to filing the plans with the Commission. The Licensee shall include with the plans documentation of consultation and copies of comments and recommendations, and specific descriptions of how the agencies' comments are accommodated by the plans. If the Licensee does not adopt a recommendation, the filing shall include the Licensee's reasons, based on Project-specific information. The Commission reserves the right to require changes to the plans. No land clearing or land-disturbing activities shall begin until the Licensee is notified by the Commission that the plans have been approved and has received all necessary permits and certifications. Upon Commission approval, the Licensee shall implement the plans, including any changes required by the Commission. Following Commission approval, the plan becomes a requirement of the license, enforceable by the Commission.

Article 20. Recreation Reporting.

The Licensee shall monitor recreation use of the Project area using protocols developed in consultation with the Interagency Committee for Outdoor Recreation, the U.S. Forest Service and Lewis County. The recreation survey shall begin within six (6) years of the issuance date of this license and be conducted every six (6) years thereafter during the term of the license and shall, at a minimum, include the collection of one calendar year of annual recreation use data every six (6) years. The Licensee shall file on April 1 of every sixth (6th) year after the initial filings, a report with the Commission on the monitoring results. The Licensee shall

allow a minimum of 30 days for affected agencies and Tribes to comment and to make recommendations prior to filing the report with the Commission. The report shall satisfy the Commission's requirements for filing the Form 80 recreation report (18 CFR Section 8.11).

Article 21. Forest Service Facilities.

Licensee shall pay annually to the U.S. Forest Service the amount of \$5,500 by October 1 of each year in compensation for impacts to recreation facilities in the Gifford Pinchot National Forest. Beginning in the seventh (7th) year of the license term, and every 6 years thereafter, this amount shall be adjusted for inflation as provided in the August 2000 Settlement Agreement. Upon agreement between the Forest Service and Licensee, services equivalent in value may be provided in lieu of the annual compensation payment. Licensee shall file with the Commission an annual report documenting its contribution to Forest Service recreation facilities during the preceding year, which report shall be based on information from the Forest Service regarding the use of funds and/or services for these facilities.

Article 22. Forest Service Report.

Within one year of license issuance, the Licensee shall file with the Commission a report, prepared in consultation with the Forest Service, documenting Licensee's efforts to negotiate the transfer of Forest Service and other lands for the purpose of consolidating land ownership within the Cowlitz River Project area. The Commission reserves the right to require additional reports on the progress of such negotiations should they not be concluded within one year of license issuance.

Article 23. Cultural and Historic Resources.

Within 1 year of license issuance, the Licensee shall file for Commission approval a Cultural Resource Management Plan prepared by a qualified cultural resource specialist after having consulted with the SHPO and affected Indian tribes. The plan shall include the following items: a) a description of each discovered property indicating whether it is listed on or eligible

to be listed on the National Register of Historic Places; b) a description of the potential effect on each discovered property; c) proposed measures for avoiding or mitigating effects; d) documentation of the nature and extent of consultation; and e) a schedule for mitigating effects and conducting additional studies. The Commission reserves the right to require changes to the plan. The Licensee shall not begin land-clearing or land-disturbing activities, other than those specifically authorized in this license until informed by the Commission that the requirements of this article have been fulfilled. The Commission reserves the right to require changes to the proposed modifications or measures. Upon Commission approval, the Licensee shall implement the proposed modifications or measures, including any changes required by the Commission. Following Commission approval, the plan becomes a requirement of the license, enforceable by the Commission.

Article 24. Wildlife.

The Licensee shall comply with the terms of the settlement agreement among the City of Tacoma, the State of Washington Department of Wildlife (now the Washington Department of Fish and Wildlife), and the U.S. Fish and Wildlife Service regarding wildlife mitigation for the Cowlitz River Project as set forth in the Licensee's October 24, 1994 filing. The Licensee shall file a monitoring report by May 1 annually, which shall incorporate a report from the Washington Department of Fish and Wildlife, as manager of the lands, describing the implementation of its current management plan. Monitoring reports shall contain any proposed significant changes to the plan for Commission approval. Prior to filing annual reports with the Commission, the Licensee shall provide a draft copy of the report to the Washington Department of Fish and Wildlife, U.S. Fish and Wildlife Service and Lewis County and give these agencies and Lewis County at least 30 days to review and make comments and recommendations on the report. The report shall contain copies of the Licensee's transmittal cover letters to the agencies and Lewis County requesting comments and any comments provided. Should the Licensee disagree with a comment or recommendation, the Licensee shall explain its disagreement in its report based on Project-specific information.

Article 25. Reservation of Commission Authority.

The Commission reserves the authority to order, upon its own motion or upon the recommendation of federal and state fish and wildlife agencies, affected Indian Tribes, and the Northwest Power Planning Council, alterations of Project structures and operations to take into account to the fullest extent practicable the regional fish and wildlife program developed and amended pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.