

AQUATIC SETTLEMENT AGREEMENT

**A Settlement Agreement in Support of the
Measures identified within the:**

**White Sturgeon Management Plan
Bull Trout Management Plan
Pacific Lamprey Management Plan
Resident Fish Management Plan
Aquatic Nuisance Species Management Plan
and
Water Quality Management Plan**

**Wells Hydroelectric Project
FERC Project No. 2149**

October 2008

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AQUATIC SETTLEMENT AGREEMENT
Wells Hydroelectric Project
FERC License No. 2149

1.0 PARTIES

This Aquatic Settlement Agreement (Agreement) is entered into by and between the Public Utility District No. 1 of Douglas County, Washington (Douglas), a Washington municipal corporation, the United States Fish and Wildlife Service (USFWS), the Washington State Department of Fish and Wildlife (WDFW), the Washington State Department of Ecology (Ecology), the Confederated Tribes of the Colville Reservation (Colville), the Confederated Tribes and Bands of the Yakama Nation (Yakama), the Bureau of Indian Affairs (BIA), and the Bureau of Land Management (BLM). The above entities who have executed this Agreement, herein collectively referred to as the “Parties” and individually as “Party,” have actively participated in the development of this Agreement and associated Aquatic Resource Management Plans.

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.

The National Marine Fisheries Service (NMFS) was invited to participate in the development of this Agreement, but declined to be a signatory Party because its interests are currently satisfied by the measures within the Wells Anadromous Fish Agreement and Habitat Conservation Plan (HCP). Additional entities may become Parties to this Agreement following unanimous consent of all the existing Parties to the Agreement and after executing a signature page and submitting it to Douglas and the Federal Energy Regulatory Commission (FERC).

2.0 RECITALS

2.1 The Wells Hydroelectric Project (Wells Project) is located at river mile 515.6 on the Columbia River in the State of Washington. Wells Dam is located approximately 30 river miles downstream from the Chief Joseph Hydroelectric Project, owned and operated by the United States Army Corps of Engineers, and 42 miles upstream from the Rocky Reach Hydroelectric Project, owned and operated by Chelan County Public Utility District. The nearest town is Pateros, Washington, which is located approximately 8 miles upstream from Wells Dam.

2.2 The Wells Project is the chief generating resource for Douglas. It includes ten generating units with a nameplate rating of 774,300 kilowatts (kW) and a peaking capacity of approximately 840,000 kW. The design of the Wells Project is unique in that the generating units, spillways, switchyard, and fish passage facilities were combined into a single structure referred to as the hydrocombine. Adult fish

passage facilities reside on both sides of the hydrocombine, which is 1,130 feet long, 168 feet wide, with a crest elevation of 795 feet in height. Juvenile fish passage facilities are located across the powerhouse of the dam. The system was developed by Douglas and uses a barrier system to modify the intake velocities on spillways 2, 4, 6, 8, and 10. The Wells Project fish bypass system is the most efficient juvenile fish bypass system on the mainstem Columbia River. The bypass system on average collects and safely passes 92.0 percent of the spring migrating salmonids (yearling Chinook, steelhead, and sockeye) that arrive at Wells Dam and 96.2 percent of the summer migrating subyearling Chinook that arrive at the dam (Skalski et al., 1996).

- 2.3 The Wells Reservoir is approximately 30 miles long. The Methow and Okanogan rivers are tributaries of the Columbia River within the Wells Reservoir. The Wells Project boundary extends approximately 1.5 miles up the Methow River and approximately 15.5 miles up the Okanogan River. The normal maximum surface area of the reservoir is 9,740 acres with a gross storage capacity of 331,200 acre-feet (ac-ft) and usable storage of 97,985 ac-ft at elevation of 781 feet above mean sea level (MSL).
- 2.4 Douglas has various reservoir and surface water rights associated with the operation of the Wells Project including the following certificates (S3-00362, R3-00363, R4-26075, and S4-26074). These certificates provide reservoir impoundment rights for 331,200 ac-ft of water and power generation rights for 220,000 cubic feet per second (cfs) of water.
- 2.5 In March 1979, in response to petitions from tribes and other entities, FERC initiated a consolidated proceeding on juvenile fish protection for the Mid-Columbia hydroelectric projects, including the Wells Project.
- 2.6 In 1990, following the installation of 10 new high-efficiency turbine runners and the installation and preliminary testing of a new and highly effective juvenile fish bypass system, Douglas entered into a long-term fisheries settlement agreement with NMFS, USFWS, WDFW, Colville, Yakama, and Confederated Tribes of the Umatilla Indian Reservation (CTUIR).
- 2.7 On June 21, 2004, FERC approved the HCP. The HCP superseded the 1990 long-term fisheries settlement agreement. The HCP represents the culmination of over 10 years of negotiations between Douglas, NMFS, USFWS, WDFW, Colville, Yakama, CTUIR, and American Rivers. The HCP is the first hydropower HCP for anadromous salmon and steelhead. The HCP is a 50-year agreement included as an amendment to the Original Operating License. The HCP addresses Project related impacts to spring Chinook, summer/fall Chinook, steelhead, sockeye and coho, collectively referred to as Plan Species. With respect to Plan Species, the HCP parties have agreed to be supportive of Douglas's long-term relicensing efforts. The HCP also provides Endangered Species Act (ESA) coverage for all of the permit species (spring Chinook, summer/fall Chinook, sockeye and steelhead). The HCP also is intended to constitute the HCP participants' terms,

- conditions and recommendations for Plan Species under Sections 10(a), 10(j), and 18 of the Federal Power Act (FPA), the Fish and Wildlife Conservation Act, the Essential Fish Habitat provisions of the Magnuson-Stevens Fishery Conservation and Management Act, the Pacific Northwest Electric Power Planning and Conservation Act, and Title 77 of the Revised Code of Washington (RCW) of the State of Washington. On October 16, 2007, FERC officially recognized the HCP as a qualifying Comprehensive Plan pursuant to section 10(a)(2)(A) of the FPA.
- 2.8 On November 1, 2004, Douglas and Colville executed a settlement agreement to resolve all claims regarding any section 10(e) payments to Colville for the term of the original license and any new FERC license arising from the use of lands within the Wells Project Boundary. Pursuant to the settlement agreement, Douglas and Colville also executed a power sales contract and a power sales service agreement. On February 11, 2005 the FERC issued an order approving the settlement agreement and granting approval of the power sales contract under section 22 of the FPA.
- 2.9 The Original Operating License for the Wells Project will expire on May 31, 2012. Douglas is using the Integrated Licensing Process (ILP) as required by FERC regulations issued July 23, 2003 (18 CFR Part 5). Pursuant to the ILP regulations Douglas submitted to FERC, on December 1, 2006, a Notice of Intent to file an application for a New License and a Pre-Application Document.
- 2.10 In March of 2006, following two years of collaborative discussions related to relicensing studies, Douglas approached stakeholders regarding its desire to develop an Aquatic Settlement Agreement for those resources not already protected by the Original Operating License, the HCP, or other related agreements. Stakeholders active in the development of this Agreement included the USFWS, NMFS, WDFW, Ecology, Colville, and Yakama.
- 2.11 Douglas plans to file a Draft License Application (DLA) with FERC on or before December 31, 2009, and plans to file a Final License Application (FLA) for a New License with FERC on or before May 31, 2010. Douglas plans to include this Agreement in the DLA and FLA. It is the Parties' expectation that the Agreement will be signed prior to filing the DLA.

3.0 DEFINITIONS

- 3.1 “Adaptive Management” means an iterative and rigorous process used by the Aquatic Settlement Work Group (Aquatic SWG) to achieve biological goals and objectives. In the context of the relicensing of the Wells Project, this process is intended to improve the management of Aquatic Resources affected by Project operations, in order to achieve the desired goals and objectives of the Aquatic Resource Management Plans as effectively and efficiently as possible, in accordance with the provisions of this Agreement. The process used by the Aquatic SWG has many steps including the following:
- a. Develop initial hypotheses regarding any potential Project impacts and potential protection or mitigation measures;
 - b. Complete studies to determine whether the hypothesized impacts are valid, and if valid, quantify the impact resulting from the Project;
 - c. If the hypothesized impact is validated and quantified, then the Aquatic SWG shall identify appropriate goals and objectives and implementing measures;
 - d. Implement reasonable and appropriate measures to avoid, minimize or mitigate the identified Project impact;
 - e. Develop monitoring and evaluation methodologies for determining whether the goals and objectives have been achieved;
 - f. Should the measures be successful at mitigating or minimizing Project impact(s), then periodic monitoring shall take place to confirm that such goals and objectives continue to be achieved;
 - g. Should the implemented measures fail to achieve the goals and objectives over a reasonable time frame, then the Aquatic SWG shall evaluate additional or revised measures, including those previously considered in the six Aquatic Resource Management Plans, and implement any additional or revised appropriate and reasonable measures, or explain why such goals and objectives cannot be achieved;
 - h. If such goals and objectives have not been achieved over a reasonable time frame, then the Aquatic SWG may reevaluate and revise such goals and objectives.
- 3.2 “Aquatic Settlement Agreement” means this document as well as Attachment A (Proposed License Articles) and Attachments B through G (Aquatic Resource Management Plans).
- 3.3 “Aquatic Resource Management Plans” refers to the six aquatic management plans developed in close collaboration with the Aquatic SWG. These six plans

- are independently known as the White Sturgeon Management Plan (WSMP), Bull Trout Management Plan (BTMP), Pacific Lamprey Management Plan (PLMP), Resident Fish Management Plan (RFMP), Aquatic Nuisance Species Management Plan (ANSMP) and Water Quality Management Plan (WQMP).
- 3.4 “Aquatic Resources” refers to the resources addressed by the six Aquatic Resource Management Plans contained within Attachments B through G.
- 3.5 “Aquatic SWG” refers to the Aquatic Settlement Work Group. The Aquatic SWG is comprised of one voting representative from each of the Parties to this Agreement. The Aquatic SWG is the group charged with the responsibility of implementing this Agreement.
- 3.6 “Chair” refers to a neutral third party, selected unanimously by the Parties and funded by Douglas to coordinate the Aquatic SWG meetings.
- 3.7 “HCP” refers to the Wells Anadromous Fish Agreement and Habitat Conservation Plan.
- 3.8 “Licensee” means the Public Utility District No. 1 of Douglas County or Douglas.
- 3.9 “New Operating License” means the first long-term operating license for Project No. 2149 to be issued by the FERC to Douglas that takes effect after the expiration of the Original Operating License and any subsequent annual licenses that take effect after expiration of the New Operating License.
- 3.10 “Original Operating License” means the original 50-year operating license, as amended, for Project No. 2149 issued by the FERC with an expiration date of May 31, 2012 and any subsequent annual licenses that take effect after expiration of the Original Operating License, but before the effective date of the New Operating License.
- 3.11 A “Party” means an entity who has executed a signature page for this Agreement, and who is identified in Section 1 (Parties) or meets the criteria in Section 1 (Parties).
- 3.12 “Plan Species” refers to the five anadromous fish species covered by the HCP. The five species of fish covered by the HCP are spring Chinook, summer/fall Chinook, steelhead, sockeye and coho.
- 3.13 “Project” means the Wells Hydroelectric Project, licensed to Douglas by the FERC as Project No. 2149.
- 3.14 “Proposed License Articles” means license articles proposed by the Parties to the FERC in this Agreement, and contained in Attachment A hereto.
- 3.15 “Unanimous” and “unanimously” mean that all of the Parties who vote or abstain at an appropriately noticed meeting pursuant to this Agreement agree or abstain

on an action. An abstention does not affect or prevent a vote from being unanimous. See Section 11.5 (Voting).

4.0 THE PURPOSE OF THE AGREEMENT

The Parties agree that the purpose of this Agreement is to resolve all remaining Aquatic Resource issues related to compliance with all federal and state law applicable to the issuance of a New Operating License for the Project. Subject to the reservations of authority in Section 13 (Reservations of Authority) of this Agreement, this Agreement establishes Douglas's obligations for the protection, mitigation, and enhancement of Aquatic Resources affected by Project operations under the New Operating License and its obligations to comply with all related federal and state laws applicable to the issuance of the New Operating License for the Project. It also specifies procedures to be used by the Parties to ensure that the New Operating License is implemented consistent with this Agreement and other laws. The Parties agree that this Agreement is fair, reasonable, and in the public interest within the meaning of FERC Rule 602, 18 C.F.R. § 385.602(g)(3).

The six Aquatic Resource Management Plans contained in Attachments B through G, together with the HCP will function as the Water Quality Attainment Plan (WQAP) in support of the Clean Water Act Section 401 Water Quality Certification for the Wells Project. As of the effective date of the Agreement, pursuant to Section 5 (Term of License and This Agreement), the Parties agree that the measures set forth in the Aquatic Resource Management Plans are adequate to identify and address Project impacts to Aquatic Resources and are expected to achieve the goals and objectives set forth in each of the six Aquatic Resource Management Plans. However, during the course of the New Operating License, there may be instances where the measures found in individual management plans may need to be adapted. In these instances, "Adaptive Management" will be used to achieve the biological goals and objectives.

5.0 TERM OF LICENSE AND THIS AGREEMENT

Douglas will seek a term of 50 years for the New Operating License. The Parties agree to support a 50-year term for the New Operating License. Subject to Section 7 (Effective Dates and Implementation of Attachments), this Agreement shall become effective when signed by Douglas and at least one other Party and shall remain in effect throughout the term of the New Operating License unless this Agreement is terminated sooner pursuant to Section 8 (Termination of Agreement).

6.0 TRANSFER OF LICENSE AND AGREEMENT

In the event the New Operating License is transferred in whole from Douglas to another entity and Douglas is not a co-licensee of the Project, the Parties agree that Douglas shall have no further obligations under the New Operating License or this Agreement following such transfer.

7.0 EFFECTIVE DATES AND IMPLEMENTATION OF ATTACHMENTS

The proposed measures contained within Attachment A (Proposed License Articles) and Attachments B through G (Aquatic Resource Management Plans) shall become effective upon issuance of a FERC order granting a New Operating License to Douglas, except to the extent the implementation of any such measures is prohibited, prevented, or rendered impracticable by the FERC order.

8.0 TERMINATION OF AGREEMENT

8.1 Automatic Termination Events

This Agreement shall terminate automatically: (1) at the end of the term of the Agreement as set forth in Section 5 (Term of License and This Agreement); (2) in the event the FERC does not issue a New Operating License to Douglas for the Project; (3) in the event Douglas withdraws from this Agreement based on Section 8.2 (Withdrawal Events); or (4) in the event the New Operating License is revoked.

8.2 Withdrawal Events

8.2.1 Non-Compliance

A Party may elect at any time to withdraw from the Agreement pursuant to Section 8.2.4 (Conditions Precedent to Withdrawal) based on non-compliance of another Party with the provisions of the Agreement, subject to the following procedures: (1) a Party asserts that another Party is not complying with the terms of the Agreement; (2) the Party documents and presents evidence supporting assertion of non-compliance in writing; and (3) the issue of non-compliance is taken to Dispute Resolution, Section 12 (Dispute Resolution).

8.2.2 Governmental Action

Should a government agency take an action that is materially inconsistent with the terms of this Agreement, including a material inconsistency with or modification of Attachment A (Proposed License Articles) or Attachments B through G (Aquatic Resource Management Plans), then the Parties (not including the government agency, if a Party) shall meet and consider the available actions to address the material inconsistency. Such actions may include a joint or separate request(s) for rehearing with the FERC, a joint or separate appeal(s) to the Washington State Pollution Control Hearing Board (PCHB), judicial review to remove or modify the material inconsistency, or any other action that would address the inconsistency. One or more Parties may proceed to pursue such actions even if all Parties do not wish to participate.

If the material inconsistency is sustained upon the completion of such actions, a Party may: (1) elect to withdraw from this Agreement pursuant to Section 8.2.4 (Conditions Precedent to Withdrawal); (2) agree to implement this Agreement subject to such

governmental action; or (3) enter into additional discussions to determine whether an alternative agreement can be reached.

8.2.3 Impossibility

A Party may elect to withdraw from the Agreement pursuant to Section 8.2.4 (Conditions Precedent to Withdrawal) in the event the Parties agree in writing that the obligations imposed by this Agreement are impossible to achieve.

8.2.4 Conditions Precedent to Withdrawal

Two conditions must be satisfied before a Party can withdraw from the Agreement pursuant to Section 8.2.1 (Non-Compliance), Section 8.2.2 (Governmental Action), or Section 8.2.3 (Impossibility). First, the Party proposing to withdraw from the Agreement shall provide written notice to all other Parties of the substantive basis for its intent to withdraw. The notice shall include a complete statement of reasons and be served in accordance with the requirements of Section 17.2 (Special Notifications). Second, the substantive basis for the proposed withdrawal must be taken to Dispute Resolution (Section 12).

Following Dispute Resolution, a Party choosing to withdraw shall provide all other Parties with notice of withdrawal. The notice shall be in writing and served in accordance with the requirements of Section 17.2 (Special Notifications). A notice of withdrawal shall become effective sixty (60) days from the date the notice was provided to all other Parties. The right to withdraw shall be waived if not exercised within sixty (60) days of completion of Dispute Resolution.

8.2.5 Effect of Withdrawal

Except as set forth in Section 8.2.6 (Effect of Termination), in the event a Party withdraws from this Agreement, this Agreement places no constraints on the withdrawing Party, shall not thereafter be binding on the withdrawing Party, and the withdrawing Party may exercise all rights and remedies that the Party would otherwise have outside this Agreement.

8.2.6 Effect of Termination

Upon expiration of this Agreement, or in the event this Agreement is terminated, voided or determined for any reason to be unenforceable before the end of its term, then: (1) Douglas shall continue to implement the last agreed-upon measures until the FERC orders otherwise and (2) the Parties are not restrained in any manner from advocating to the FERC appropriate measures to replace this Agreement.

9.0 OBLIGATIONS OF THE PARTIES

9.1 Licensee Obligations

Douglas shall file this Agreement with the FERC as an offer of settlement pursuant to Rule 602 consisting of a fully executed copy of this Agreement and an explanatory statement. The offer of settlement related to this Agreement shall be included within both the Draft and Final License Applications, and Attachments B through G shall be identified therein as Douglas's proposed environmental measures for Aquatic Resources pursuant to 18 C.F.R. § 5.18(a)(5)(C). Douglas shall request that the FERC incorporate, without modification, the Attachments to this Agreement as conditions of the New Operating License. Douglas shall use reasonable efforts to obtain a FERC order issuing the New Operating License in a timely manner. Douglas shall also: (1) submit a statement in support of this Agreement to NMFS and USFWS, as part of any comments in the ESA Section 7 consultation process; (2) ensure that any supplemental information, comments, or responses to comments filed by Douglas with the FERC in the context of the relicensing process are consistent with this Agreement; (3) in the event of an appeal of the Project's 401 certification, submit a statement in support of this Agreement to the PCHB and any court reviewing a decision of the PCHB; and (4) actively support incorporation of the Proposed License Articles into the New Operating License in all other relevant regulatory proceedings.

9.2 Obligations of All Parties (Including Licensee)

Except as provided below and in Section 13 (Reservations of Authority), each Party shall support this Agreement by ensuring that all documents filed with the FERC or any other agency or forum, are consistent with this Agreement. Documents covered by this Section include: (1) any recommendations, conditions and/or prescriptions, or any terms and conditions related to Aquatic Resources; (2) as to Parties other than the USFWS, any ESA Section 7 consultation documents or comments on such documents; (3) as to USFWS, any ESA Section 7 consultation documents, or comments on such documents, or any biological opinions, subject to Section 13 (Reservations of Authority); and (4) any supplemental information, comments or responses to comments.

In the event that a Party receives or develops new information, data, or analyses that it intends to file with the FERC or any other agency or administrative body, such Party shall consult with the Aquatic SWG pursuant to Section 11 (Aquatic Settlement Work Group) of this Agreement, to the extent practicable, and shall notify all Parties as soon as practicable.

Except as provided in Section 13 (Reservation of Authority), if a Party proposes to submit to FERC a condition and/or prescription based upon new information, data, or analyses, the Party must comply with the procedures of Section 12 (Dispute Resolution) if the Aquatic SWG does not unanimously approve such condition or prescription.

10.0 MODIFICATION OF AGREEMENT

This Agreement may be amended or modified only in writing and with written unanimous consent of all Parties.

11.0 AQUATIC SETTLEMENT WORK GROUP

11.1 Committee Representation

There shall be an Aquatic SWG composed of one technical representative and a separate policy representative for each Party. The policy representative shall be an individual of a higher management level within each organization relative to the technical representative. Each Party shall provide all other Parties with written notice of its designated representatives and designated alternate(s) to the Aquatic SWG. Each Party with representation on the SWG shall have one vote.

Upon request by any Party, Douglas shall provide a forum for a meeting or meetings of the policy representatives. The Parties anticipate that the policy representatives will meet at least once annually during the term of the New Operating License to review progress and implementation of this Agreement.

11.2 Meetings

The Aquatic SWG shall meet as specified in the respective Aquatic Resource Management Plans or when requested by any member following notice. However, such notice may be waived by a member if done so expressly in writing to the Chair. NMFS may attend all meetings of the Aquatic SWG for coordination purposes with HCP activities and shall be provided copies of notices and agendas for Aquatic SWG meetings. Individuals representing entities that are not a Party to this Agreement may attend meetings following unanimous approval from all of the Parties. Nothing in this Agreement shall preclude any Party from having multiple non-designated representatives from their organization participate in any properly noticed Aquatic SWG meeting.

11.3 Chair of the Aquatic SWG

The Parties shall unanimously select and Douglas shall fund a neutral, non-voting Chair for the Aquatic SWG. The Chair will prepare an annual list of statements of agreement based upon the results of studies, prepare progress reports, prepare meeting minutes, facilitate and mediate the meetings, and assist the members of the Aquatic SWG in making decisions. The Aquatic SWG shall evaluate the performance of the Chair at least every three (3) years or upon request of two or more members of the Aquatic SWG.

11.4 Meeting Notice

The Chair shall provide all committee members with a minimum of ten (10) business days advanced written notice of all meetings unless a member waives notice in writing or

such waiver is reflected in the approved meeting minutes. The notice shall contain an agenda of all matters to be addressed and voted on during the meeting. Means of notice will be determined by the Parties. Unless urgent action is required, to determine the date for a meeting, the Chair will poll the Parties in an effort to identify a meeting date on which all interested Parties are able to attend. If a date is not available for all Parties to meet within a reasonable time, the Chair will select the date that best accommodates the most Parties.

11.5 Voting

The Aquatic SWG shall act by unanimous vote of those present in person or by telephone. However, the Aquatic SWG may develop its own rules and procedures for voting, which may include expanding the methods of voting (e.g., proxy, writing, or other methods). The Chair shall ensure that all members are sent notices with agenda items that may be brought to a vote during the proposed Aquatic SWG meeting.

If a Party's designated representative(s) cannot be present for an agenda item scheduled for a vote, that Party may request the Chair in advance of his/her expected absence to delay a vote or determination of unanimous approval for up to five (5) business days on the subject agenda item. Alternatively, if the Parties cannot convene for a vote within five (5) business days once a vote has been delayed, the Chair shall consult with the absent Party to solicit and record that Party's vote or abstention. The Chair and Parties shall make a reasonable effort to ensure that a vote on any specified agenda item is delayed only once.

If the Aquatic SWG cannot reach unanimous consent, then upon request by any Party, that agenda item shall be referred to the dispute resolution process set forth in Section 12 (Dispute Resolution). The Parties shall negotiate in good faith and attempt to resolve issues at a technical level prior to elevating issues to Dispute Resolution.

Any entity who is not a Party to this Agreement does not have voting rights on the Aquatic SWG or any other committee established under this Agreement.

11.6 Authority and Purpose of Aquatic SWG

The Aquatic SWG will be used as the primary forum for consultation and coordination among the Parties in connection with conducting studies and implementing the measures set forth in this Agreement and as set forth in Section 12 (Dispute Resolution). Any entity not executing this Agreement shall not be a Party to this Agreement and shall not be entitled to vote on any committee established by this Agreement.

In connection with implementation of the Aquatic Resource Management Plans, the Parties agree to use Adaptive Management as defined herein. Adaptive Management involves many steps that may include forming a hypothesis regarding any potential Project related impacts, initial hypothesis development and testing, identifying potential Project related impacts, protection or mitigation measures, and the collection of data or

information necessary to test the hypothesis and developing studies to determine whether the hypothesis is valid. If the hypothesized impact is validated, certain process and study steps are necessary to quantify the impact(s) resulting from the Project.

When hypothesized impacts are validated and quantified through a systematic process, the Aquatic SWG may refine management goals and objectives set forth in the affected Aquatic Resource Management Plans, or add new goals and objectives as appropriate. The next step will be to implement appropriate and reasonable measures to avoid, minimize, or mitigate the identified Project impacts. Following the implementation of appropriate and reasonable measures to avoid, minimize, or mitigate the identified Project impacts, the Aquatic SWG will develop and Douglas will implement monitoring and evaluation methods for determining whether the goals and objectives of the plan are being achieved. If those refinements are successful, then periodic monitoring shall be implemented to confirm that such goals and objectives continue to be achieved. If the implemented measures fail to achieve the refined or new goals and objectives over a reasonable time frame, then the Aquatic SWG shall: (1) evaluate additional or modified measures, including those previously considered in the six Aquatic Resource Management Plans, and implement any additional or revised appropriate and reasonable measures; or (2) explain why such goals and objectives cannot be achieved.

If after a reasonable period of time such goals and objectives have not been achieved, the Aquatic SWG will, as needed, reevaluate and further refine such goals and objectives. The Aquatic SWG may establish its own procedural guidelines for Adaptive Management decisions and related decision process steps, as necessary, to monitor and evaluate established Aquatic Resource Management Plan goals and objectives and to develop new goals and objectives, studies and mitigation measures.

The Aquatic SWG will consult on, coordinate, and oversee all aspects of implementation of the Aquatic Resource Management Plans. If the Aquatic SWG cannot reach agreement, then these decisions shall be referred to the dispute resolution process in Section 12 (Dispute Resolution).

11.7 Studies, Reports, and Meeting Minutes

The Chair will make available all study plans and reports prepared under this Agreement to all members of the Aquatic SWG as soon as reasonably possible. Draft study plans and reports will be distributed to all of the Aquatic SWG representatives for review and comment. Comments will be provided in writing to the Chair within thirty (30) days of receipt of the plan or report unless the Aquatic SWG decides otherwise. Comments will either be addressed in order within the document or made an appendix to the approved study plan or final report.

The Chair will provide draft meeting minutes, including any proposed or final statement(s) of agreements, within ten (10) days after each meeting. Statements of agreement shall be based on a unanimous vote. Minutes shall reflect all significant group discussions and decisions. All Party representatives who were present and participated in

the meeting will be allowed ten (10) days to provide corrections and comments in writing to the Chair. Final meeting minutes will be provided to the members of the Aquatic SWG as soon as reasonably possible after comments have been received. If disagreements exist, as to the proposed meeting minutes, then the Chair will include all perspectives in the final minutes.

The Chair will work with Douglas to compile all relevant materials into one annual calendar-year report. The annual report shall include all final study plans, reports, meeting minutes and statements of agreements, and a list of future proposed actions as agreed to by the Aquatic SWG. The Chair will provide the annual report to Aquatic SWG members for review and approval prior to being filed with FERC. Comments on the annual report shall be provided in writing to the Chair within thirty (30) days of receipt unless the Aquatic SWG decides otherwise. Douglas PUD shall work with the Aquatic SWG to establish a central electronic database that is accessible to all of the Parties. This electronic database will contain all of the documents related to implementation of this Agreement.

12.0 DISPUTE RESOLUTION

12.1 Dispute Resolution Process

If a dispute arises out of or relates to this Agreement, the disputing Parties agree to first use their best efforts to cooperatively resolve such dispute. The disputing Parties shall use their best efforts to resolve disputes arising in the normal course of business at the technical level between each disputing Party's staff with appropriate authority to resolve such disputes.

When a dispute arises between two or more Parties and cannot be resolved in the normal course of business at the technical level, one or more of the disputing Parties shall provide written notice specifying the disputed issues to the Chair, with copies to all Parties. The notice shall describe the specific nature and background of the dispute. All notices shall be served in accordance with the requirements of Section 17.2 (Special Notifications).

Within three (3) days of receiving the notice, or as the Parties otherwise agree, the Chair shall schedule a meeting of the technical representatives of the Aquatic SWG to consider and attempt to resolve the dispute. The technical representatives of the Aquatic SWG shall meet within thirty (30) days or as the Parties otherwise agree, after receiving the notice of dispute.

If after ten (10) business days, or as otherwise agreed, the Chair determines that the Parties' technical representatives are unable to resolve the dispute then the Chair shall immediately submit the matter in writing to the policy representatives of each of the respective Parties. The policy representatives shall meet within thirty (30) days or as the Parties otherwise agree, after receiving notice from the Chair.

If after ten (10) business days, or as otherwise agreed, the Chair determines that the Parties' policy representatives are unable to resolve the dispute then the Chair shall immediately submit the matter in writing to the executive representatives of each of the respective Parties. The executive representatives shall meet within thirty (30) days or as otherwise agreed, after receiving notice from the Chair. If the executive representatives are unable to resolve the dispute within fifteen (15) business days or as otherwise agreed, then the disputing Parties may agree to submit the dispute to voluntary mediation or binding arbitration but are not obligated to do either. If the disputing Parties are unable to resolve the dispute through the above processes any Party may pursue other appropriate remedies, including withdrawal from this Agreement pursuant to Section 8.2.4 (Conditions Precedent to Withdrawal).

12.2 Arbitration and Mediation

In the event the disputing Parties agree pursuant to Section 12.1 (Dispute Resolution Process) to submit a dispute to binding arbitration or voluntary mediation, the following procedures shall apply. The dispute shall then be referred to a mutually acceptable arbitrator or mediator, or if one cannot be agreed upon, to the nearest office of Washington Arbitration & Mediation Service ("WAMS") for resolution within ninety (90) days of the agreement of the Parties to submit the dispute to arbitration or mediation. If the disputing Parties cannot agree on a mutually acceptable arbitrator or mediator within ten (10) business days of such agreement to arbitrate/mediate, the dispute will be referred to WAMS for preparation of a Strike List for arbitrator/mediator selection. Mediation may occur at any time if agreed upon by the Parties. All arbitration proceedings shall be conducted in accordance with the Rules of Arbitration of WAMS or any other mutually agreed upon arbitrator and shall include reasonable discovery provisions as may be stipulated or ordered. The arbitrator's decision shall be final and binding and judgment may be entered thereon, with all remedies otherwise available in court also available in arbitration.

The disputing Parties shall equally share in the cost of arbitration and mediation associated with this Agreement. Parties that do not have an interest in the outcome of the arbitration or mediation proceeding may elect to abstain from further participation in either arbitration or mediation. The Parties agree that the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement that are not affected by the dispute.

Any legal action to enforce a decision of the arbitrator shall be brought either in the United States District Court for the Eastern District of Washington or the FERC, if jurisdiction exists, otherwise such action may be brought in any court of competent jurisdiction. The Colville and Yakama hereby provide a waiver of sovereign immunity that is expressly limited to a legal action filed under this section to enforce a decision of the arbitrator.

13.0 RESERVATIONS OF AUTHORITY

The reservation of authority under Section 13.1 (Federal Power Act) of this Agreement is not intended to limit the right of any Party to seek redress with FERC with respect to an issue related to the implementation or enforcement of this Agreement.

13.1 Federal Power Act

Each Party reserves any authority it may have pursuant to the FPA in the event that: (1) this Agreement is not filed with the FERC; (2) the Party withdraws from this Agreement pursuant to the procedures set forth in Section 8.2 (Withdrawal Events); or (3) this Agreement is terminated pursuant to Section 8.1 (Automatic Termination Events).

The USFWS reserves the Secretary of the Interior's authorities pursuant to the FPA. The USFWS may exercise any reserved authority under Section 18 of the FPA regarding those species covered by this Agreement including but not limited to bull trout, white sturgeon, Pacific lamprey, and resident fish. In the event that the USFWS includes a reservation of authority in the preliminary, modified or final conditions that it submits to FERC, the inclusion of such reservation shall not be considered to be materially inconsistent with this Agreement.

The USFWS shall provide notice to the Aquatic SWG before exercising its Federal Power Act authority. Following notice, the Aquatic SWG may make recommendations to the USFWS regarding how the exercise of such authority can be accomplished in a manner that is consistent with this Agreement. In the event that the Aquatic SWG does not reach a unanimous decision regarding such recommendations, then Section 12 (Dispute Resolution) shall apply.

13.2 Clean Water Act

Ecology reserves its authority to issue a 401 certification under the Clean Water Act (CWA) for the Wells Project under such terms and conditions as it determines are necessary to comply with state and federal laws. The Parties intend that this Agreement, together with the HCP, will satisfy Ecology's requirements for the 401 certification with respect to Aquatic Resources and Plan Species affected by the Wells Project; however, this Agreement does not predetermine the outcome of the 401 certification proceeding or prevent Ecology from responding to new information or analysis or from addressing additional resources that may be affected. Section 12 (Dispute Resolution) shall not apply to the issuance of the 401 certification or a re-issuance of the 401 certification prior to the effective date of the New Operating License.

Ecology reserves all authority it may have to amend the 401 certification or to invoke a reopener clause in the 401 certification to amend the 401 certification for the New Operating License, including, but not limited to, modifying schedules and deadlines, under such terms and conditions as it determines are necessary to comply with state and federal law. Section 12 (Dispute Resolution) shall apply to the exercise of Ecology's

reserved authority to amend, modify or reopen the 401 certification during the term of the New Operating License.

Ecology reserves any authority it may have to enforce the 401 certification, state water quality standards, or other appropriate requirements of state law.

13.3 Endangered Species Act

This Agreement does not affect the terms of the HCP. USFWS anticipates that the measures in this Agreement together with the measures contained within the HCP will be adequate to satisfy ESA responsibilities for aquatic species under the jurisdiction of USFWS. In addition, USFWS shall use reasonable efforts to exercise its authority under the ESA in a manner that allows this Agreement to be fulfilled. By signing this Agreement, however, the USFWS does not formally bind itself to make any specific recommendations or take any particular action with respect to ESA compliance. The USFWS expressly reserves the right, consistent with federal law, to take such future actions as it may deem necessary to meet its obligations under the ESA.

If the FERC requests draft biological opinion(s), the USFWS shall provide such documents to the FERC. If, in its consultation with the FERC pursuant to Section 7 of the ESA, the USFWS requests any measures that are materially inconsistent with the terms of this Agreement, any Party may invoke Section 12 (Dispute Resolution). The USFWS shall participate in Dispute Resolution to the extent practicable and consistent with its ESA responsibilities.

13.4 Douglas Reservation of Authority

Douglas reserves any rights it may have to contest the existence and/or exercise of any reserved authority claimed under this Agreement. In the event that a Party exercises its reserved authority and declines to participate in Dispute Resolution, then Douglas shall have the right to withdraw from the Agreement pursuant to Section 8.2.4 (Conditions Precedent to Withdrawal).

13.5 Exercise of Reserved Authority

To the extent practicable, a Party shall provide notice to the Aquatic SWG at least sixty (60) days before exercising any authority reserved under this Agreement that may be materially inconsistent with this Agreement. Following notice, the Aquatic SWG will meet to discuss and make recommendations regarding the exercise of such authority. If the Aquatic SWG does not reach a unanimous decision regarding such recommendations, then any Party may initiate Dispute Resolution (Section 12). However, if in its sole discretion a Party determines expeditious action is required to perform its statutory duties or responsibilities, such Party shall not be required to wait in exercising reserved authority until Dispute Resolution is initiated or concluded. This provision does not apply to the issuance of a 401 certification prior to the effective date of the New Operating License.

14.0 CHOICE OF LAWS

This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the substantive law of the State of Washington (without reference to any principles of conflicts of laws) and applicable federal law.

15.0 LIMITATIONS OF REOPENINGS

Except as provided in Section 13 (Reservations of Authority), the Parties shall not invoke or rely upon any reopener clause set forth in the New Operating License for the Wells Project for the purposes of obtaining additional license articles, conditions or measures or to promote changes in Project structures or operations related to the protection, mitigation and enhancement of Aquatic Resources.

16.0 FORCE MAJEURE

16.1 No Liability for Force Majeure

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

16.2 Notice

The Party whose performance is affected by Force Majeure shall notify the other Parties in writing within seven (7) days, or as soon thereafter as practicable, after becoming aware of any event that such Party contends constitutes Force Majeure. Such notice shall identify the event causing the delay or anticipated delay, estimate the anticipated length of delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of the measures. The affected Party shall make all reasonable efforts to promptly resume performance of this Agreement and, when able, resume performance of its obligations and give the other Parties written notice to that effect.

17.0 NOTICES

17.1 Routine Notifications

Unless this Agreement specifically requires otherwise, any routine notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by delivery, including email, or sent by mail, postage prepaid to the designated technical and policy representatives of each Party.

17.2 Special Notifications

Unless this Agreement specifically requires otherwise, special notice shall be defined as any notice related to either a withdrawal or dispute resolution notification. All special notices prepared, served, given or made in connection with either withdrawal or dispute resolution, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by acknowledged delivery, including return receipt email, or sent by registered mail return receipt requested, postage prepaid to the technical, policy and executive representatives officially designated by each Party.

18.0 MISCELLANEOUS

18.1 Further Assurances

The Parties shall use best efforts to assist each other in performing their obligations under this Agreement including providing documents and information as may reasonably be requested.

18.2 No Consequential, Incidental or Punitive Damages

There shall be no liability under this Agreement for any consequential, punitive, exemplary, incidental or indirect losses or damages.

18.3 Severability

If any provision of this Agreement is held to be illegal, invalid, or unenforceable under any present or future law, and if the rights or obligations of any Party under this Agreement will not be materially and adversely affected thereby: (1) such provision will be fully severable; (2) this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part thereof; (3) the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance here from; and (4) in lieu of such illegal, invalid or unenforceable provision, the Parties shall, in good faith, negotiate a mutually acceptable, legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible, and shall promptly

take all actions necessary to amend the Agreement to include the mutually acceptable, legal, valid and enforceable provision.

18.4 Waivers

Except as otherwise provided herein, no provision of this Agreement may be waived except in writing. No failure by any Party to exercise, and no delay in exercising, short of the statutory period, any right, power, or remedy under this Agreement shall operate as a waiver thereof. Any waiver at any time by a Party of its right with respect to a default under this Agreement, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter.

18.5 No Third-Party Beneficiaries

None of the promises, rights, or obligations contained in this Agreement shall inure to the benefit of any person or entity not a Party to this Agreement; and no action may be commenced or prosecuted against any Party by any third party claiming to be a third-party beneficiary of this Agreement or the transactions contemplated hereby.

18.6 No Reliance

Each Party acknowledges that in entering into this Agreement, it has not relied on any statement, representation, or promise of the other Party or any other person or entity, except as expressly stated in this Agreement.

18.7 Assumption of Risk

In entering into this Agreement, each of the Parties assumes the risk of any mistake of fact or law, and if either or both of the Parties should subsequently discover that any understanding of the facts or the law was incorrect, none of the Parties shall be entitled to, nor shall attempt to, set aside this Agreement or any portion thereof. This provision does not affect the right of any Party to withdraw from this Agreement in accordance with Section 8.2 (Withdrawal Events).

18.8 Waiver of Defenses

The Parties release each other from any and all claims relating to the formation and negotiation of this Agreement, including reformation, rescission, mistake of fact, or mistake of law. The Parties further agree that they waive and will not raise in any court, administrative body or other tribunal any claim in avoidance of or defense to the enforcement of this Agreement other than the express conditions set forth in this Agreement.

18.9 Independent Counsel

The Parties acknowledge that they have been represented by independent counsel in connection with this Agreement, they fully understand the terms of this Agreement, and they voluntarily agree to those terms for the purposes of making a full compromise and settlement of the subject matter of this Agreement.

18.10 Headings

The headings used for the sections herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

18.11 Interpretations

In this Agreement, unless a clear contrary intention appears: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity; (3) reference to any gender includes each other gender; (4) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (5) reference to any Section, Schedule, Attachment, or Exhibit means such Section, Schedule, Attachment, or Exhibit to this Agreement, and references in any Section, Schedule, Attachment, Exhibit, or definition to any clause means such clause of such Section, Schedule, Attachment, Exhibit, or definition; (6) "hereunder", "hereof", "hereto", "herein," and words of similar import are references to this Agreement as a whole and not to any particular section or other provision hereof unless specifically stated; (7) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (8) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (9) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

18.12 Venue

To the extent permitted by law, the venue for any action to enforce or interpret this Agreement involving any Federal or Tribal Parties shall be the United States District Court for the Eastern District of Washington or the FERC, and the venue for all other Parties shall be a Washington State court of competent jurisdiction or the FERC.

18.13 Legal Authority

Each Party represents and warrants to the other Parties that it has full authority and power to enter into this Agreement, that the Party's representatives who sign below are duly authorized by it to enter into this Agreement, and that nothing herein violates any law, regulation, judicial or regulatory order, or agreement applicable to such warranting Party.

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Agreement Execution

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their proper officers respectively being thereunto duly authorized, and their respective corporate seals to be hereto affixed, the 19 day of January, 2008⁹

PUBLIC UTILITY DISTRICT NO. 1 of DOUGLAS COUNTY, WASHINGTON

By: T. James Davis
T. James Davis, President

By: Lynn M. Heminger
Lynn M. Heminger, Vice President

By: Ronald E. Skagen
Ronald E. Skagen, Secretary

Address of Notice:

Public Utility District No. 1 of Douglas County
1151 Valley Mall Parkway
East Wenatchee, Washington 98802-4497

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UNITED STATES FISH AND WILDLIFE SERVICE

Dated: 7/31/2009

By: Ken S. Berg

Title: Project Leader

Address of Notice:


United States Fish and Wildlife Service
11103 East Montgomery Drive
Spokane, Washington 99206

United States Fish and Wildlife Service
215 Melody Lane, Suite 119
Wenatchee, WA 98801-5933

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STATE OF WASHINGTON, DEPARTMENT OF FISH & WILDLIFE

Dated: 11/20/09

By: 

Title: RD Region 2

Address of Notice:

Washington State Department of Fish and Wildlife
600 Capital Way North
Olympia, Washington 98501-1091

Washington State Department of Fish and Wildlife
1540 Alder Street N.W.
Ephrata, Washington 98823-7669

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STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY

Dated: 11/19/08

By: 

Title: SECTION MANAGER
WATER QUALITY PROGRAM

Address of Notice:

Washington State Department of Ecology
15 West Yakima Avenue, Suite 200
Yakima, Washington 98902-3452

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CONFEDERATED TRIBES OF THE COLVILLE RESERVATION

Dated: 11-10-08

By: Michael Finley

Title: Vice Chairman

Address of Notice:

Confederated Tribes of the Colville Reservation
Natural Resource Committee
P.O. Box 150
Nespelem, Washington 99155

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CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION

Dated: February 24, 2009

By: Ralph Sampson Jr.

Title: Yakama Nation Tribal Council, Chairman


Address of Notice:

Confederated Tribes and Bands of the Yakama Nation
PO Box 151
Toppenish, Washington 98948

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UNITED STATES, BUREAU OF LAND MANAGEMENT

Dated: Nov 13, 2009

By: 

Title: Field manager

Address of Notice:

Bureau of Land Management
915 North Walla Walla
Wenatchee, Washington 98801-1521

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UNITED STATES, BUREAU OF INDIAN AFFAIRS

Dated: _____

By: _____

Title: _____

Address of Notice:

Bureau of Indian Affairs
911 NE 11th Avenue
Portland, OR 97232

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ATTACHMENT A: PROPOSED LICENSE ARTICLES

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ATTACHMENT A: PROPOSED LICENSE ARTICLES

Article 1. The licensee shall implement the measures set forth in section 4 of the White Sturgeon Management Plan, dated August 2008, which is incorporated herein by reference, in consultation with the Aquatic Settlement Working Group. The licensee shall obtain prior Commission approval for any substantial modification or addition to Project works or operations necessary to implement such measures. The licensee shall also submit any proposed amendment to the White Sturgeon Management Plan to add to, or modify any of, the measures or objectives set forth therein to the Commission for approval. The licensee shall file an annual report with the Commission by May 31st of each year to document all studies, measures and other activities completed in the previous year.

Article 2. The licensee shall implement the measures set forth in section 4 of the Bull Trout Management Plan, dated August 2008, which is incorporated herein by reference, in consultation with the Aquatic Settlement Working Group. The licensee shall obtain prior Commission approval for any substantial modification or addition to Project works or operations necessary to implement such measures. The licensee shall also submit any proposed amendment to the Bull Trout Management Plan to add to, or modify any of, the measures or objectives set forth therein to the Commission for approval. The licensee shall file an annual report with the Commission by May 31st of each year to document all studies, measures and other activities completed in the previous year.

Article 3. The licensee shall implement the measures set forth in section 4 of the Pacific Lamprey Management Plan, dated August 2008, which is incorporated herein by reference, in consultation with the Aquatic Settlement Working Group. The licensee shall obtain prior Commission approval for any substantial modification or addition to Project works or operations necessary to implement such measures. The licensee shall also submit any proposed amendment to the Pacific Lamprey Management Plan to add to, or modify any of, the measures or objectives set forth therein to the Commission for approval. The licensee shall file an annual report with the Commission by May 31st of each year to document all studies, measures and other activities completed in the previous year.

Article 4. The licensee shall implement the measures set forth in section 4 of the Resident Fish Management Plan, dated August 2008, which is incorporated herein by reference, in consultation with the Aquatic Settlement Working Group. The licensee shall obtain prior Commission approval for any substantial modification or addition to Project works or operations necessary to implement such measures. The licensee shall also submit any proposed amendment to the Resident Fish Management Plan to add to, or modify any of, the measures or objectives set forth therein to the Commission for approval. The licensee shall file an annual report with the Commission by May 31st of each year to document all studies, measures and other activities completed in the previous year.

Article 5. The licensee shall implement the measures set forth in section 4 of the Aquatic Nuisance Species Management Plan, dated August 2008, which is incorporated herein by reference, in consultation with the Aquatic Settlement Working Group. The licensee shall obtain prior Commission approval for any substantial modification or addition to Project works or operations necessary to implement such measures. The licensee shall also submit any proposed amendment to the Aquatic Nuisance Species Management Plan to add to, or modify any of, the measures or objectives set forth therein to the Commission for approval. The licensee shall file an annual report with the Commission by May 31st of each year to document all studies, measures and other activities completed in the previous year.

Article 6. The licensee shall implement the measures set forth in section 4 of the Water Quality Management Plan, dated October 2008, which is incorporated herein by reference, in consultation with the Aquatic Settlement Working Group. The licensee shall obtain prior Commission approval for any substantial modification or addition to Project works or operations necessary to implement such measures. The licensee shall also submit any proposed amendment to the Water Quality Management Plan to add to, or modify any of, the measures or objectives set forth therein to the Commission for approval. The licensee shall file an annual report with the Commission by May 31st of each year to document all studies, measures and other activities completed in the previous year.