

Appendix D
Current License Articles

Current License Articles

The FERC license for the Wells Project currently contains 61 separate license articles. FERC, through various orders amending the Wells Project license, has added and modified various license articles governing the construction, operation and maintenance of the Wells Project. The initial license issued on July 12, 1962 included the standard terms and conditions of Form L-6 (December 15, 1953) except for Articles 23 and 24, the last sentence of Article 17 and also added as special conditions set forth as additional Articles 28-47. Article 48 was added to the license on January 5, 1981. Articles 49-58 were added on September 23, 1982. Articles 59-63 were added on June 21, 2004.

The standard articles of Form L-6, FPC Terms and Conditions of License for Unconstructed Major Project Affecting Navigable Waters and Lands of the United States, revised as of December 15, 1953, are a part of the license, except as noted below.

Article 1. The entire project, as described in the order of the Commission, shall be subject to all the provisions, terms, and conditions of the license.

Article 2. No substantial change shall be made in the maps, plans, specifications, and statements described and designated as exhibits and approved by the Commission in its order as a part of the license until such change shall have been approved by the Commission: Provided, however, that if the Licensee or the Commission deems it necessary or desirable that said approved exhibits, or any of them, be changed, there shall be submitted to the Commission for approval amended, supplemental, or additional exhibit or exhibits covering the proposed changes which, upon approval by the Commission, shall become a part of the license and shall supersede, in whole or in part, such exhibit or exhibits theretofore made a part of the license as may be specified by the Commission.

Article 3. Said project works shall be constructed in substantial conformity with the approved exhibits referred to in Article 2 herein or as changed in accordance with the provisions of said article. Except when emergency shall require for the protection of navigation, life, health, or property, no substantial alteration or addition not in conformity with the approved plans shall be made to any dam or other project works under the license without prior approval of the Commission; and any emergency alteration or addition so made shall thereafter be subject to such modification and change as the Commission may direct. Minor changes in the project works or divergence from such approved exhibits may be made if such changes will not result in decrease in efficiency, in material increase in cost, or in impairment of the general scheme of development; but any of such minor changes made without the prior approval of the Commission, which in its judgment have produced or will produce any of such results, shall be subject to such alteration as the Commission may direct. The Licensee shall comply with such rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, or property.

Article 4. The construction, operation, and maintenance of the project and any work incident to additions or alterations, whether or not conducted upon lands of the United States, shall be subject to the inspection and supervision of the Regional Engineer, Federal Power Commission, in the region wherein the project is located, or of such other officer or agent as the Commission may designate, who shall be the authorized representative of the Commission for such purposes. The Licensee shall furnish to said representative such information as he may require concerning the construction, operation, and maintenance of the project, and of any alteration thereof, and shall notify him of the date upon which work will begin, and as far in advance thereof as said representative may reasonably specify, and shall notify him promptly in writing of any suspension of work for a period of more than one week, and of its resumption and completion. The Licensee shall allow him and other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties.

Article 5. Upon the completion of the project, or at such other time as the Commission may direct, the Licensee shall submit to the Commission for approval revised maps, plans, specifications, and statements insofar as necessary to show any divergence from or variations in the project area and project boundary as finally located or in the project works as actually constructed when compared with the area and boundary shown and the works described in the license or in the maps, plans, specifications, and statements approved by the Commission, together with a statement in writing setting forth the reasons which in the opinion of the Licensee necessitated or justified variations in or divergence from the approved maps, plans, specifications, and statements. Such revised maps, plans, specifications, and statements shall, if and when approved by the Commission, be made a part of the license under the provisions of Article 2 hereof.

Article 6. For the purpose of determining the stage and flow of the stream or streams from which water is to be diverted for the operation of the project works, the amount of water held in and withdrawn from storage, and the effective head on the turbines, the Licensee shall install and thereafter maintain such gages and stream-gaging stations as the Commission may deem necessary and best adapted to the requirements; and shall provide for the required readings of such gages and for the adequate rating of such stations. The Licensee shall also install and maintain standard meters adequate for the determination of the amount of electric energy generated by said project works. The number, character, and location of gages, meters, or other measuring devices, and the method of operation thereof, shall at all times be satisfactory to the Commission and may be altered from time to time if necessary to secure adequate determinations, but such alteration shall not be made except with the approval of the Commission or upon the specific direction of the Commission. The installation of gages, the ratings of said stream or streams, and the determination of the flow thereof, shall be under the supervision of, or in cooperation with, the District Engineer of the United States Geological Survey having charge of stream-gaging operations in the region of said project, and the Licensee shall advance to the United States Geological Survey the amount of funds estimated to be necessary for such supervision or cooperation for such periods as may be mutually agreed upon. The Licensee shall keep accurate and sufficient record of the foregoing

determinations to the satisfaction of the Commission, and shall make return of such records annually at such time and in such form as the Commission may prescribe.

Article 7. So far as is consistent with proper operation of the project, the Licensee shall allow the public free access, to a reasonable extent, to project waters and adjacent project lands owned by the Licensee for the purpose of full public utilization of such lands and waters for navigation and recreational purposes, including fishing and hunting, and shall allow to a reasonable extent for such purposes the construction of access roads, wharves, landings, and other facilities on its lands the occupancy of which may, in appropriate circumstances, be subject to payment of rent to the Licensee in a reasonable amount: Provided, that the Licensee may reserve from public access, such portions of the project waters, adjacent lands, and project facilities as may be necessary for the protection of life, health, and property and Provided further, that the Licensee's consent to the construction of access roads, wharves, landings, and other facilities shall not, without its express agreement, place upon the Licensee any obligation to construct or maintain such facilities.

Article 8. In the construction and maintenance of the project, the location and standards of roads and trails, and other land uses, including the location and condition of quarries, borrow pits, spoil disposal areas, and sanitary facilities, shall be subject to the approval of the department or agency of the United States having supervision over the lands involved.

Article 9. Insofar as any material is dredged or excavated in the prosecution of any work authorized under the license, or in the maintenance of the project, such material shall be removed and deposited so it will not interfere with navigation, and will be to the satisfaction of the district Engineer, Department of the Army, in charge of the locality.

Article 10. In the construction and maintenance of the project works, the Licensee shall place and maintain suitable structures and devices to reduce to a reasonable degree the liability of contact between its transmission lines, and telegraph, telephone, and other signal wires or power transmission lines constructed prior to its transmission lines and not owned by the Licensee, and shall also place and maintain suitable structures and devices to reduce to a reasonable degree the liability of any structures or wires falling and obstructing traffic and endangering life on highways, streets, or railroads.

Article 11. The Licensee shall make provision, or shall bear the reasonable cost, as determined by the agency of the United States affected, of making provision for avoiding inductive interference between any project transmission line or other project facility constructed, operated, or maintained under the license, and any radio installation, telephone line, or other communication facility installed or constructed before or after construction of such project transmission line or other project facility and owned, operated, or used by such agency of the United States in administering the lands under its jurisdiction. None of the provisions of this article is intended to relieve the Licensee from any responsibility or requirement which may be imposed by other lawful authority for avoiding or eliminating inductive interference.

Article 12. The Licensee shall clear such portions of transmission line rights-of-way across lands of the United States as are designated by the officer of the United States in charge of the lands; shall keep the areas so designated clear of new growth, all refuse, and inflammable material to the satisfaction of such officer; shall trim all branches of trees in contact with or liable to contact the transmission line; shall cut and remove all dead or leaning trees which might fall in contact with the transmission line; and shall take such other precautions against fire as may be required by such officer. No fires for the burning of waste material shall be set except with the prior written consent of the officer of the United States in charge of the lands as to time and place.

Article 13. Timber on lands of the United States cut, used, or destroyed in the construction and maintenance of the project works or in the clearing of said lands shall be paid for in accordance with the requirements of and at the current stumpage rates applicable to the sale of similar timber by the agency of the United States having jurisdiction over said lands; and all slash and debris resulting from the cutting or destruction of such timber shall be disposed of as the officer of such agency may direct.

Article 14. The Licensee shall do everything reasonably within its power and shall require its employees, contractors, and employees of contractors to do everything reasonably within their power, both independently and upon request of officers of the agency of the United States concerned, to prevent, make advanced preparations for suppression, and suppress fires on lands occupied under the license.

Article 15. Whenever the United States shall desire to construct, complete, or improve navigation facilities in connection with the project, the Licensee shall convey to the United States, free of cost, such of its lands and its rights-of-way and such right of passage through its dams or other structures, and permit such control of pools as may be required to complete and maintain such navigation facilities.

Article 16. The Licensee shall furnish free of cost to the United States power for the operation and maintenance of navigation facilities at the voltage and frequency required by such facilities and at a point adjacent thereto, whether said facilities are constructed by the Licensee or by the United States.

Article 17. The operation of any navigation facilities, which may be constructed as a part of or in connection with any dam or diversion structure constituting a part of the project works, shall at all times be controlled by such reasonable rules and regulations in the interest of navigation, including the control of the level of the pool caused by such dam or diversion structure, as may be made from time to time by the Secretary of the Army. ~~Such rules and regulations may include the construction, maintenance, and operation by the Licensee, at its own expense, of such lights and signals as may be directed by the Secretary of the Army.~~

Last sentence was not included in the initial license per FPC Order Issuing License (Major) issued July 12, 1962, page 6, paragraph (B).

Article 18. The United States specifically retains and safeguards the right to use water in such amount, to be determined by the Secretary of the Army, as may be necessary for the purposes of navigation on the navigable waterway affected; and the operations of the Licensee, so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Secretary of the Army may prescribe in the interest of navigation, and as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Secretary of the Army may prescribe in the interest of navigation, or as the Commission may prescribe for the other purposes hereinbefore mentioned.

Article 19. The Licensee shall interpose no objection to, and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or to the use by said parties of water for sanitary and domestic purposes from any stream or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license.

Article 20. The Licensee shall be liable for injury to, or destruction of, any buildings, bridges, roads, trails, lands, or other property of the United States, occasioned by the construction, maintenance, or operation of the project works or of the works appurtenant or accessory thereto under the license. Arrangements to meet such liability, either by compensation for such injury or destruction, or by reconstruction or repair of damaged property, or otherwise, shall be made with the appropriate department or agency of the United States.

Article 21. The Licensee shall allow any agency of the United States without charge, to construct or permit to be constructed on, through, and across the project lands, conduits, chutes, ditches, railroads, roads, trails, telephone and power lines, and other means of transportation and communication not inconsistent with the enjoyment of said lands by the Licensee for the purposes stated in the license. This article shall not be construed as conferring upon the Licensee any right of use, occupancy, or enjoyment of the lands of the United States other than for the construction, operation, and maintenance of the project as stated in the license.

Article 22. There is reserved to the appropriate department or agency of the United States, or of the State or county involved, the right to take over, maintain, and supervise the use of any project road as a public road after construction of the project works is completed.

~~Article 23. The actual legitimate original cost of the original project, and of any addition thereto or betterment thereof, shall be determined by the Commission in accordance with the Act and the Commission's rules and regulations thereunder.~~

~~Article 24. After the first twenty (20) years of operation of the project under the license, six (6) percent per annum shall be the specified rate of return on the net investment in the project for determining surplus earnings of the project for the establishment and maintenance of amortization reserves, pursuant to Section 10 (d) of the Act; one half of the project surplus earnings, if any, accumulated after the first twenty years of operation under the license, in excess of six (6) percent annum on the net investment, shall be set aside in a project amortization reserve account as of the end of each fiscal year, provided that, if and to the extent that there is a deficiency of project earnings below six (6) percent per annum for any fiscal year or years after the first twenty years of operation under the license, the amount of such deficiency shall be deducted from the amount of any surplus earnings accumulated thereafter until absorbed, and one half of the remaining surplus earnings, if any, thus cumulatively computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.~~

Articles 23 and 24 were not included in the initial license per FPC Order Issuing License (Major) issued July 12, 1962, page 6, paragraph (B).

Article 25. No lease of the project or part thereof whereby the lessee is granted the exclusive occupancy, possession, or use of project works for purposes of generating, transmitting, or distributing power shall be made without the prior written approval of the Commission; and the Commission may, if in its judgment the situation warrants, require that all the conditions of the license, of the Act, and of the rules and regulations of the commission shall be applicable to such lease and to such property so leased to the same extent as if the lessee were the Licensee: Provided, that the provisions of this article shall not apply to parts of the project or project works which may be used by another jointly with the Licensee under a contract or agreement whereby the Licensee retains the occupancy, possession, and control of the property so used and receives adequate consideration for such joint use, or to leases of land while not required for purposes of generating, transmitting, or distributing power, or to buildings or other property not built or used for said purposes, or to minor parts of the project or project works, the leasing of which will not interfere with the usefulness or efficient operation of the project by the Licensee for such purposes.

Article 26. The Licensee, its successors and assigns shall, during the period of the license, retain the possession of all project property covered by the license as issued or as later amended, including the project area, the project works, and all franchises, easements, water rights, and rights of occupancy and use; and none of such properties necessary or useful to the project and to the development, transmission, and distribution of power therefrom will be voluntarily sold, transferred, abandoned, or otherwise disposed of without the approval of the Commission: Provided, that a mortgage or trust

deed or judicial sales made thereunder, or tax sales, shall not be deemed voluntary transfers within the meaning of this article. In the event the project is taken over by the United States upon the termination of the license, as provided in Section 14 of the Act, or is transferred to a new licensee under the provisions of Section 15 of the Act, the Licensee, its successors and assigns will be responsible for and will make good any defect of title to or of right of user in any of such project property which is necessary or appropriate or valuable and serviceable in the maintenance and operation of the project, and will pay and discharge, or will assume responsibility for payment and discharge, of all liens or incumbrances upon the project or project property created by the Licensee or created or incurred after the issuance of the license: Provided, that the provisions of this article are not intended to prevent the abandonment or the retirement from service of structures, equipment, or other project works in connection with replacements thereof when they become obsolete, inadequate, or inefficient for further service due to wear and tear, or to require the Licensee, for the purpose of transferring the project to the United States or to a new licensee, to acquire any different title to or right of user in any of such project property than was necessary to acquire for its own purposes as Licensee.

Article 27. The terms and conditions expressly set forth in the license shall not be construed as impairing any terms and conditions of the Federal Power Act which are not expressly set forth herein.

Articles 28 – 47 are listed in FPC Order Issuing License (Major) issued July 12, 1962

Article 28. The Licensee shall commence construction of the project works not later than ~~August 1, 1963~~ July 31, 1965, shall thereafter in good faith and with due diligence prosecute such construction, and shall complete construction of such project works not later than ~~June 1, 1967~~ September 1, 1970.

The dates in Article 28 were amended per FPC Order Extending Time for Commencement and Completion of Project Construction issued August 16, 1963.

Article 29. The Licensee shall submit, in accordance with the Commission's rules and regulations, Exhibit L drawings showing the design of the project structures for Commission approval prior to commencement of construction.

Article 30. The Licensee shall, within one year from the date of completion of the project, file with the Commission revised Exhibit F and K to show and describe the entire project, including transmission lines.

Article 31. The Licensee shall prior to flooding, clear all lands in the bottoms and margins of the reservoir up to the high water level which shall be defined as the higher of the following:

(i) A line five feet above the backwater profile under average flow conditions (102,000 cfs for Columbia River; 2,900 cfs for Okanogan River; and 1,300 cfs for Methow River), or

(ii) The backwater profile for the one in ten year flood (500,000 cfs for Columbia; 30,000 cfs for Okanogan River; and 21,000 cfs for Methow River).

The Licensee shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from clearing of the lands or from the construction and maintenance of the project works. In addition, all trees along the margins of the reservoir which may die during operation of the project shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission.

Article 32. With respect to compensation to the United States for the losses caused to the Chief Joseph Project by encroachment upon its tailwater by the operation of the Licensee's project:

(i) The licensee shall, prior to beginning of operation of the Wells power plant, enter into an agreement with the Chief of Engineers, Department of the Army, or his designated representative, to compensate the United States for encroachment on the Chief Joseph Project resulting from the operation of the Wells Project. The agreement will provide for replacement of power loss at Chief Joseph in time and kind, unless otherwise mutually agreed. The loss will be computed on the basis of using the same quantity of water at any given time through the units of the Chief Joseph powerhouse with and without the Wells Project. The difference in power output will be the loss to be replaced. In any computation pertaining to the power loss, the generating capacity will be limited to 125 percent of nameplate rating. The turbine and generator units to be used in computing the loss will be those in existence at Chief Joseph at the time the Wells Project is licensed, and

(ii) The licensee also shall compensate the United States for the increased cost of future turbines, units 17 through 27, required to generate the same power under reduced head conditions as a result of the encroachment of the Wells pool on Chief Joseph tailwater. Such compensation will be a capital sum of \$294,000 payable to the Treasurer of the United States on or before operation of the initial installation at the Wells Project.

Article 33. The Licensee shall not operate the Wells Project in such a manner as to prevent the operation of the Priest Rapids Project No. 2114 in compliance with Article 45 of the license for that project respecting minimum flows at the Hanford Works of the Atomic Energy Commission.

Article 34. Each year before the beginning of flood runoff, the District Engineer, Corps of Engineers, in charge of the locality, shall inform the Licensee of the storage space to be provided in the Wells Project reservoir to compensate approximately for valley storage that may be expected to be lost during the ensuing flood season. The Licensee shall without cost to the United States provide this storage space in accordance with the following general procedures:

(i) The amount of storage space to be provided by the licensee will vary from zero acre-feet for a forecasted peak flow of 500,000 second-feet at The Dalles, Oregon, to approximately 125,000 acre-feet for a forecasted peak flow of 1,100,000 second-feet at The Dalles, the forecasted flows to be as regulated by storage existing at the time of license. To the extent feasible, and in order to minimize the duration of the drawdown of the Wells reservoir for valley storage replacement, the drawdown will be ordered by the District Engineer, not earlier than two weeks before the predicted date on which the observed flow at The Dalles is forecasted to equal or exceed 500,000 cfs and refill will be directed by the District Engineer generally within one week after voluntary filling of Grand Coulee Reservoir for flood control purposes is initiated.

(ii) Detailed procedures for use of the valley storage replacement in the Wells reservoir will be included in a regulation manual to be prepared by the District Engineer.

Article 35. The Licensee shall, prior to commencement of construction of the project, consult with the District Engineer, Corps of Engineers, in charge of the locality with regard to provision to be made for the future construction of navigation facilities.

Article 36. The Licensee shall, for the protection of navigation, construct, maintain, and operate at its expense such lights and other signals on fixed project structures in or over navigable water of the United States as may be directed by the Commission upon recommendation by the Secretary of the Department in which the Coast Guard is operating.

Article 37. The Commission expressly reserves the right to determine at a later date what additional transmission lines and appurtenant facilities, if any, shall be included in the license as part of the project works.

Article 38. The Licensee shall use the improved streamflow from Canadian storage projects for power production purposes, and make available to the Federal system for delivery to Canada, or for its account, the project's share of coordinated system benefits resulting from such improved streamflows, both dependable hydroelectric capacity and average annual usable hydroelectric energy, as determined to be due to Canadian interests under the procedures established pursuant to any treaty between the United States and Canada relating to cooperative development of water resources of the Columbia River Basin.

Article 39. The Licensee shall, after notice and opportunity for hearing, coordinate the operation of the project, electrically and hydraulically, with such other power systems and in such manner as the Commission may direct in the interest of power and other beneficial public uses of water resources, the benefits of which shall be shared equitably by the participants in such coordination.

Article 40. The Licensee shall not make any claim under the authority of this license against the United States or any water users' organization claiming through the United States for any damage resulting from any future depletion in the flow of the waters of the

Columbia River and its tributaries for the irrigation of lands and other beneficial consumptive uses.

~~Article 41. The Licensee shall construct, maintain and operate such protective devices and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources, provided that such modifications shall be reasonably consistent with the primary purpose of the project, as may be prescribed hereafter by the Commission upon its own motion or upon recommendation of the Secretary of the Interior or the Washington State Departments of Fisheries and Game after notice and opportunity for hearing and upon a finding that such modifications are necessary and desirable and consistent with the provisions of the Act: Provided further, That subsequent to approval of the final design drawings prior to commencement of construction no modifications of project structures in the interest of fish and wildlife resources which involve a change in the location, height or main structure of a dam, or the addition of or changes in outlets at or through a dam, or a major change in generating units, or a rearrangement or relocation of a powerhouse, or major changes in a spillway structure shall be required.~~

Article 41 was amended per FPC Order Amending License (Major) issued September 18, 1962 to read as follows:

Article 41. The Licensee shall construct, maintain and operate such protective devices and shall provide such measures and facilities for mitigating losses to fish and wildlife resources as may result from project construction, alteration, or operation and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources, provided that such modifications shall be reasonably consistent with the primary purpose of the project, as may be prescribed hereafter by the Commission upon its own motion or upon recommendation of the Secretary of the Interior or the Washington State Departments of Fisheries and Game after notice and opportunity for hearing and upon a finding that such modifications are necessary and desirable and consistent with the provisions of the Act: Provided further, That subsequent to approval of the final design drawings prior to commencement of construction no modifications of project structures in the interest of fish and wildlife resources which involve a change in the location, height or main structure of a dam, or the addition of or changes in outlets at or through a dam, or a major change in generating units, or a rearrangement or relocation of a powerhouse, or major changes in a spillway structure shall be required.

Note: FERC Order Modifying License Article issued February 24, 1989 requires “the filing of an annual progress report of the licensee’s wildlife mitigation program no later than October 1 of each year.” Information pertaining to this program is detailed in the settlement agreement dated July 15, 1974 and filed on July 19, 1974 between Douglas PUD and the State of Washington Department of Game.

Article 42. Whenever the United States shall desire, in connection with the project, to construct fish handling facilities or to improve the existing fish handling facilities at its

expense, the Licensee shall permit the United States or its designated agency to use, free of cost, such of Licensee's lands and interest in lands, reservoirs, waterways and project works as may be reasonably required to complete such fish handling facilities or such improvements thereof. In addition, after notice and opportunity for hearing the Licensee shall modify the project operation as may be prescribed by the Commission, consistent with the primary purpose of the project, in order to permit the maintenance and operation of the fish handling facilities constructed or improved by the United States under the provision of this article. This article shall not be interpreted to place any obligation on the United States to construct or improve fish handling facilities or to relieve the Licensee of any obligation under this license.

Article 43. The Licensee shall upon written request of the Commission make available to the Secretary of the interior and the Washington State Departments of Fisheries and Game funds not to exceed a total of \$139,500 for the purpose of making investigations to determine the measures required for preventing and mitigating losses to fish and wildlife which may result from project construction or alteration and for making post flooding investigations to determine the effects of actual project construction on fish and wildlife. The Licensee shall make available such additional funds as may be agreed upon by the Licensee, the Secretary of the Interior and the Washington Departments of Fisheries and Game, in the event the project is delayed by amendment of the license extending the date of completion. In the event the Licensee and the agencies herein named fail to reach agreement on the amount of funds, if any, to be made available by the Licensee in addition to the \$139,500 herein provided, the Commission may, after notice and opportunity for hearing, determine the amount, if any, the Licensee shall pay to reimburse the agencies named herein on account of delay of the completion of the project; Provided, however, that the Licensee shall not be responsible for any costs of any studies conducted after five years following the date of impoundment of the project waters.

Article 44. The Licensee shall cooperate with the Secretary of the interior in the preparation of a public use plan for the area and in the possible salvage of archeological data and shall, upon written request of the Commission, make available to the Secretary, or to a qualified agency designated by the Secretary, reasonable amounts of monies not to exceed a total of \$10,000 in the preparation of a public use plan and not to exceed a total of \$55,000 to compensate for expenses incurred in archeological investigations in the pool area.

Article 45. The Licensee shall install additional capacity and make other changes in the project as directed by the Commission, to the extent that it is economically sound and in the public interest to do so, after notice and opportunity for hearing.

Article 46 of the license initially read as follows:

~~Article 46. The Licensee shall pay to the United States the following annual charges:~~

~~(i) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge in accordance with the provisions of Part II of the~~

~~Commission's regulations as in effect from time to time. The authorized installed capacity for such purpose is 659,000 horse power.~~

~~(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, including those used for transmission line right-of-way, an amount to be determined hereafter by the Commission.~~

~~(iii) For the use of tribal lands embraced within the Colville Indian Reservation, such reasonable charge (which may include electric service) as may hereafter be specified by the Commission, subject to the approval of the Indian tribe having jurisdiction over such lands as provided by law.~~

Article 46 (i) was modified to change "Part II" to read "Part 11" per FPC Erratum Notice issued August 10, 1962.

Article 46(i) was also modified to show 723,000 horsepower as the authorized installed horsepower capacity of the project for annual charge purposes per FPC Order Approving Revised Project Exhibits and Adjusting Authorized Installed Capacity and Annual Charges issued April 17, 1964.

Article 46 (i) was further modified to show 1,032,000 horsepower per FPC Order Approving Revised Project Exhibits and Adjusting Initial Authorized Installed Capacity and Annual Charges issued February 2, 1965.

Article 46 (ii) was modified per FPC Order Approving Revised Exhibit K Drawings For Project And Fixed Annual Land Charges issued September 24, 1971. This order removed the words "including those used for transmission-line right-of-way, an amount to be determined hereafter by the Commission" and added "used for project purposes, \$541.20."

Article 46 was further modified per FERC Order Approving As-Built Exhibits J and K and Amending License issued January 5, 1979 to read as follows:

Article 46. The Licensee shall pay the United States the following annual charge, effective September 1, 1967 (the date that power from the project was first sold for profit):

(a) For the purpose of reimbursing the United States for the cost of administration of Part 1 of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its regulations, in effect from time to time. The authorized installed capacity for that purpose is 1,032,000 horsepower.

(b) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 225.50 acres of its lands, exclusive of transmission line rights-of-way, an amount as may be determined from time to time pursuant to the Commission's regulations;

(c) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of 7.22 acres of its lands for transmission line right-of-way purposes, an amount as may be determined from time to time pursuant to the Commission's regulations;

(d) For the use of tribal lands embraced within the Colville Indian Reservation, such reasonable charge (which may include electric service) as may hereafter be specified by the Commission, subject to the approval of the Indian tribe having jurisdiction over such lands as provided by law.

Article 46 was modified per FERC Order Approving Settlement, Amending License, and Granting Approval under Section 22 of the Federal Power Act issued February 11, 2005. This order states that that "Article 46, subpart (iii), of license for the Wells Project No. 2149, issued July 12, 1962, is amended to read as follows:"

(iii) For the use of tribal lands embraced within the Colville Indian Reservation, compensation to The Confederated Tribes of the Colville Reservation pursuant to the terms of the Colville Settlement Agreement and the Colville Power Sales Contract, dated August 18, 2004, between Douglas County Public Utility District No. 1 and The Confederated Tribes of the Colville Reservation, and filed with the Commission November 23, 2004, constitutes payment in full.

Article 47. For benefits made available to the Licensee by upstream storage improvements located in the United States and owned by the United States or its licensees, the licensee shall pay annual charges computed as follows:

The annual cost of interest, maintenance, and depreciation on the dam and reservoir of each headwater improvement project, to be borne by power both at-site and downstream, is to be apportioned to storage and head functions. The amount of such cost to be apportioned to the storage function shall be determined by multiplying such total cost by the ratio of the average power (at-site and downstream) from at-site storage during the critical period to the sum of the average power (at-site and downstream) from at-site storage during the critical period and the total average power at-site (from natural flow and from at-site and upstream storage) during the critical period. The amount of such annual cost of the headwater improvement thus apportioned to the storage function shall be apportioned to the at-site power plant and to each downstream plant in direct proportion to the average power from at-site storage at each plant during the critical period. The annual costs thus apportioned to Project No. 2149 shall be the annual payment to be made for headwater benefits; provided that the Commission may on its own motion or upon a request by the Licensee or any party adjust such amounts, or prescribe another and different formula or procedure to determine the annual payment for future years, after notice and opportunity for hearing; and provided, further, that if the Federal Power Act is amended with respect to headwater benefit payments, the Commission may determine the payments due under this license in accordance with the Act as amended.

The annual charges as computed under this article shall become effective on the date of commercial operation of the fourth unit of the initial installation of seven units authorized herein and shall be paid within 30 days of rendition of a bill therefor by the Commission. In the event payment is not made within 30 days from the date of the billing, the amount billed and unpaid shall be increased at the rate of 7% per annum until paid.

(c) The exhibits designated and describe in finding (2) above are hereby approved as part of the license for the project.

(d) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313 (a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgement of the acceptance of this license, it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

Article 48 (below) was tendered to Douglas PUD in a letter from William W. Lindsay, FERC Director of Office of Electric Power Regulation, dated June 18, 1980. By Douglas PUD Resolution No. 81-4 approved January 5, 1981 and by letter to FERC Secretary Kenneth F. Plumb by Douglas PUD Manager Fred Lieberg dated January 5, 1981, Article 48 was accepted by Douglas PUD and became a part of the license.

Article 48. (a) In accordance with the provisions of this article, the Licensee shall have the authority to grant permission for certain types of use and occupancy of project lands and waters and to convey certain interests in project lands and waters for certain other types of use and occupancy, without prior Commission approval. The Licensee may exercise the authority only if the proposed use and occupancy is consistent with the purposes of protecting and enhancing the scenic, recreational, and other environmental values of the project. For those purposes, the Licensee shall also have continuing responsibility to supervise and control the uses and occupancies for which it grants permission, and to monitor the use of, and ensure compliance with the covenants of the instrument of conveyance for, any interests that it has conveyed, under this article. If a permitted use and occupancy violates any condition of this article or any other condition imposed by the Licensee for protection and enhancement of the project's scenic, recreational, or other environmental values, or if a covenant of a conveyance made under the authority of this article is violated, the Licensee shall take any lawful action necessary to correct the violation. For a permitted use or occupancy, that action includes, if necessary, canceling the permission to use and occupy the project lands and waters and requiring the removal of any non-complying structures and facilities.

(b) The types of use and occupancy of project lands and waters for which the Licensee may grant permission without prior Commission approval are: (1) landscape plantings; (2) non-commercial piers, landings, boat docks, or similar structures and facilities; and (3) embankments, bulkheads, retaining walls, or similar structures for erosion control to protect the existing shoreline. To the extent feasible and desirable to protect and enhance the project's scenic, recreational, and other environmental values, the Licensee shall require multiple use and occupancy of facilities for access to project lands or waters. The

Licensee shall also ensure, to the satisfaction of the Commission's authorized representative, that the uses and occupancies for which it grants permission are maintained in good repair and comply with applicable State and local health and safety requirements. Before granting permission for construction of bulkheads or retaining walls, the Licensee shall: (1) inspect the site of the proposed construction, (2) consider whether the planting of vegetation or the use of riprap would be adequate to control erosion at the site, and (3) determine that the proposed construction is needed and would not change the basic contour of the reservoir shoreline. To implement this paragraph (b), the Licensee may, among other things, establish a program for issuing permits for the specified types of use and occupancy of project lands and waters, which may be subject to the payment of a reasonable fee to cover the Licensee's costs of administering the permit program. The Commission reserves the right to require the Licensee to file a description of its standards, guidelines, and procedures for implementing this paragraph (b) and to require modifications of those standards, guidelines, or procedures.

(c) The Licensee may convey easements or rights-of-way across, or leases of, project lands for: (1) replacement, expansion, realignment, or maintenance of bridges and roads for which all necessary State and Federal approvals have been obtained; (2) storm drains and water mains; (3) sewers that do not discharge into project waters; (4) minor access roads; (5) telephone, gas, and electric utility distribution lines; (6) non-project overhead electric transmission lines that do not require erection of support structures within the project boundary; (7) submarine, overhead, or underground major telephone distribution cables or major electric distribution lines (69-kv or less); and (8) water intake or pumping facilities that do not extract more than one million gallons per day from a project reservoir. No later than January 31 of each year, the Licensee shall file three copies of a report briefly describing for each conveyance made under this paragraph (c) during the prior calendar year, the type of interest conveyed, the location of the lands subject to the conveyance, and the nature of the use for which the interest was conveyed.

(d) The Licensee may convey fee title to, easements or rights-of-way across, or leases of project lands for: (1) construction of new bridges or roads for which all necessary State and Federal approvals have been obtained; (2) sewer or effluent lines that discharge into project waters, for which all necessary Federal and State water quality certificates or permits have been obtained; (3) other pipelines that cross project lands or waters but do not discharge into project waters; (4) non-project overhead electric transmission lines that require erection of support structures within the project boundary, for which all necessary Federal and State approvals have been obtained; (5) private or public marinas that can accommodate no more than 10 watercraft at a time and are located at least one-half mile from any other private or public marina; (6) recreational development consistent with an approved Exhibit R or approved report on recreational resources of an Exhibit E; and (7) other uses, if: (i) the amount of land conveyed for a particular use is five acres or less; (ii) all of the land conveyed is located at least 75 feet, measured horizontally, from the edge of the project reservoir at normal maximum surface elevation; and (iii) no more than 50 total acres of project lands for each project development are conveyed under this clause (d) (7) in any calendar year. At least 45 days before conveying any interest in project lands under this paragraph (d), the Licensee must file a letter to the Director, Office of

Electric Power Regulation, stating its intent to convey the interest and briefly describing the type of interest and location of the lands to be conveyed (a marked Exhibit G or K map may be used), the nature of the proposed use, the identity of any Federal or State agency official consulted, and any Federal or State approvals required for the proposed use. Unless the Director, within 45 days from the filing date, requires the Licensee to file an application for prior approval, the Licensee may convey the intended interest at the end of that period.

(e) The following additional conditions apply to any intended conveyance under paragraphs (c) or (d) of this article:

- (1) Before conveying the interest, the Licensee shall consult with Federal and State fish and wildlife or recreation agencies, as appropriate, and the State Historic Preservation Officer.
- (2) Before conveying the interest, the Licensee shall determine that the proposed use of the lands to be conveyed is not inconsistent with any approved Exhibit R or approved report on recreational resources of an Exhibit E; or, if the project does not have an approved Exhibit R or approved report on recreational resources, that the lands to be conveyed do not have recreational value.
- (3) The instrument of conveyance must include covenants running with the land adequate to ensure that: (i) the use of the lands conveyed shall not endanger health, create a nuisance, or otherwise be incompatible with overall project recreational use; and (ii) the grantee shall take all reasonable precautions to ensure that the construction, operation, and maintenance of structures or facilities on the conveyed lands will occur in a manner that will protect the scenic, recreational, and environmental values.
- (4) The Commission reserves the right to require the Licensee to take reasonable remedial action to correct any violation of the terms and conditions of this article, for the protection and enhancement of the project's scenic, recreational and other environmental values.

(f) The conveyance of an interest in project lands under this article does not in itself change the project boundaries. The project boundaries may be changed to exclude land conveyed under this article only upon approval of revised Exhibit G or K drawings (project boundary maps) reflecting exclusion of that land. Lands conveyed under this article will be excluded from the project only upon a determination that the lands are not necessary for project purposes, such as operation and maintenance, flowage, recreation, public access, protection of environmental resources, and shoreline control, including shoreline aesthetic values. Absent extraordinary circumstances, proposals to exclude lands conveyed under this article from the project shall be consolidated for consideration when revised Exhibit G or K drawings would be filed for approval for other purposes.

Articles 49 – 58 were added to the license by FERC Order Amending License (Major) issued September 23, 1982

Article 49. The Licensee shall continue to cooperate with the Washington State Historic Preservation Officer (SHPO) to carry out a data recovery program, as concurred in by the Advisory Council on Historic Preservation, for mitigating adverse impacts on the Lake Pateros Archeological District. The Licensee shall make available funds in a reasonable amount for the data recovery and reporting measures required. If any previously undiscovered archeological sites are found during the increase in reservoir elevation and its associated activities at the project, those activities shall be halted, a qualified archeologist shall be consulted to determine the significance of the resources, and the Licensee shall consult with the SHPO to develop a mitigation plan for the protection of significant archeological resources. If the Licensee and the SHPO cannot agree on the amount of money to be expended on historical and archeological work at the project, the Commission reserves the right to require the Licensee to conduct, at its own expense, any such work found necessary.

Article 50. Licensee shall, in consultation with the U.S. Soil Conservation Service, investigate and identify all non-project lands and structures, including the Brewster swimming pool, that will be adversely impacted by an increase in the Wells Project Reservoir to elevation 781 feet msl, and within 6 months from the date of this order, file with the Commission a report on its findings, and for approval, specific recommendations, with an implementation schedule, for measures required to mitigate any adverse impacts.

Article 51. The Licensee shall, in consultation with the National Park Service of the U.S. Department of the Interior, the State of Washington Parks and Recreation Commission, and other interested Federal, State, and local agencies, conduct a study of the need, if any, for providing additional public recreational facilities at Project No. 2149, and within 6 months from the date of issuance of this order, file with the Commission the results of the study and for approval, a Report on Recreational Resources for the project that conforms to §4.51(f)(5) of the Commission's regulations.

Article 52. The Licensee shall, prior to the raising of the water surface elevation of the project reservoir, enter into an agreement with the Chief of Engineers, Department of the Army, or his designated representative, to compensate the United States for encroachment at the Chief Joseph Dam resulting from the higher normal water surface elevation of the Wells Project. A copy of the signed agreement shall be filed with the Director, Office of Electric Power Regulation and the San Francisco Regional Engineer. In the event that the parties cannot reach agreement on the compensation to be provided for head encroachment at Chief Joseph Dam, the compensation to be provided by Licensee shall be determined by the Director, Office of Electric Power Regulation prior to raising the operating level of the Wells Reservoir.

Article 53. The Licensee shall submit, for approval, in accordance with the Commission's rules and regulations, revised Exhibit L drawings with supporting design reports showing the stability analysis for the hydrocombine and earth embankment structures within 90 days from the issuance date of this order.

Article 54. The Licensee shall submit for Commission approval a plan and schedule for determining the magnitude and distribution of uplift pressures in the foundation and at the rock concrete interface of the Wells Dam. This plan shall include the procedures and a description of the instrumentation to be used to determine the uplift pressure distribution, both parallel and perpendicular to the axis of the dam, and shall include a monitoring program to detect any changes in the magnitude or distribution of the pressure. The plan shall be submitted within 180 days from the issuance of this order.

Article 55. The Commission reserves the authority to order, upon its own motion or upon the recommendation of Federal or State fish and wildlife agencies or affected Indian Tribes, alterations of project structures and operations to take into account to the fullest extent practicable the regional fish and wildlife program developed pursuant to the Pacific Northwest Electric Power Planning and Conservation Act.

Article 56. The Licensee shall submit for approval, in accordance with the Commission's rules and regulations, revised Exhibit K drawings showing the increase in normal operating pool level of the Wells Reservoir.

Article 57. Within 60 days from the issuance of this order, after consultation with the U.S. Fish and wildlife Service and the Washington Department of Game. Licensee shall file for Commission approval a wildlife improvement plan to mitigate the impacts on wildlife from raising the project reservoir.

Article 58. The Licensee shall institute a program to provide for the periodic inspection, maintenance and monitoring of the hydrocombine drainage system to ensure that all drains are operating efficiently and to determine that the uplift pressures are within design assumptions. An annual report summarizing and analyzing the results of the program shall be submitted to the San Francisco Regional Engineer and to the Director, Office of Electric Power Regulation. Any nonfunctioning drain shall be replaced to the satisfaction of and within the time specified by the Commission's authorized representative.

Articles 59 – 63 were added to the license by FERC Order Amending License issued June 21, 2004

Note: FERC Order on Rehearing issued November 23, 2004 clarified that approval of the Anadromous Fish Agreement and Habitat Conservation Plan superseded the Wells Settlement Agreement (approved by FERC on January 24, 1991). A May 11, 2005 letter from FERC acknowledged receipt of Douglas PUD's final Annual Report on activities related to the Wells Settlement Agreement.

Article 59. (a) The licensee shall carry out its obligations as set forth in the Anadromous Fish Agreement and Habitat Conservation Plan (HCP Agreement) for the Wells Hydroelectric Project No. 2149 filed with the Commission on November 24, 2003, and as approved by the Commission at 107 FERC ¶ 61,280 and ¶ 61,283. Further, the licensee shall file with the Commission (1) the final annual and comprehensive progress reports developed pursuant to the HCP Agreement; and (2) the final results of all studies and testing pursuant to the HCP Agreement.

(b) Prior to taking any action pursuant to the HCP Agreement that requires a change in the authorized project facilities or operations not specifically identified in the HCP Agreement, the licensee shall file a license amendment application.

(c) The licensee shall file design drawings prior to the implementation of any modification or addition to project works that is necessary to implement the HCP Agreement. The licensee shall file such design drawings for Commission approval at least 90 days prior to the start of construction or modification. The licensee will file as-built drawings with the Commission within 6 months after the completion of construction or modification.

Article 60. The licensee, prior to the commencement of any ground-disturbing activity at the Project site or on non-federal lands pursuant to the Tributary Conservation Plan provisions of the Habitat Conservation Plan Agreement approved by the Commission at 107 FERC ¶ 61,280 and ¶ 61,283, shall consult with the Washington State Historical Preservation Officer (SHPO) and potentially affected Indian tribes about the need for a cultural resources survey. For this purpose, the licensee shall within 90 days prepare and provide to the SHPO and potentially affected Indian tribes a map delineating the Area of Potential Effect as defined in 36 C.F.R. § 800.16(d), and the map shall include potential geographical scope of actions under the Tributary Conservation Plan. If any previously unrecorded archeological or historical sites are discovered during the course of such survey or activity, ground-disturbing activity in the vicinity shall be halted, a qualified archeologist shall be consulted to determine the significance of the sites, and the licensee shall consult with the SHPO and tribes to develop a mitigation plan for the protection of significant archeological or historical resources. The Commission reserves authority to resolve any disputes between the licensee and the consulted entities.

Article 61. Bull Trout – Reasonable and Prudent Measures and Terms and Conditions.

(a) Within six months of the issuance of the order amending license issued at 107 FERC ¶ 61,283 (2004), the licensee shall file for Commission approval a plan to implement the Reasonable and Prudent Measures and associated Terms and Conditions said order. The plan shall include provisions for the annual report required by Article ~~412~~ 62. The plan shall be prepared in consultation with the U.S. Fish and Wildlife Service, NOAA Fisheries, Washington Department of Fish and Wildlife, and interested Indian tribes.

(b) The licensee shall include with the plan documentation of consultation, copies of comments and recommendations on the completed plan after it has been prepared and provided to the consulted entities, and specific descriptions of how the entities' comments and recommendations are accommodated by the plan. The licensee shall allow a minimum of 30 days for the entities to comment and to make recommendations before filing the plan with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reason's based on project-specific information.

(c) The Commission reserves the right to require changes to the plan. The plan shall not be implemented until the licensee is notified by the Commission that the plan is approved. Upon approval of the plan, the licensee shall implement the plan, including any changes required by the Commission.

So that the Commission can keep apprised of the licensee's bull trout activities, the licensee shall file, with the Commission, an interim summary report and final take monitoring report at the same time it files the reports with the U.S. Fish and Wildlife Service. The interim summary report shall be filed by March 31 for the prior year's activities and a final take monitoring report shall be filed by December 31, 2008, which includes a six year average annual take level for the project.

Notes:

FERC Order Granting Extension of Time Under Article 61 issued January 6, 2005 extended "the deadline to file a bull trout monitoring plan in accordance with article 61 of the license" to February 28, 2005.

FERC Order Modifying and Approving Bull Trout Management Plan Under Article 61 issued April 19, 2005 added new language to Article 61 (last paragraph).

FERC Order issued June 21, 2004 refers to an "Article 412" within paragraph (a) of Article 61. FERC Errata Notice issued June 14, 2005 corrects paragraph (a) of Article 61 to reference Article 62 instead of Article 412.

Article 62. *Annual Reports – Implementation of Reasonable and Prudent Measures.* (a) The licensee shall prepare and file with the Commission an annual report describing the impacts of the Reasonable and Prudent Measures and associated Terms and Conditions prescribed by the U.S. Fish and Wildlife Service for the protection of bull trout. The report shall also be submitted to the Central Washington Field Office of the U.S. Fish and Wildlife Service and shall list and describe any adverse effects resulting from project activities on bull trout, including the number and life stages of individuals affected.

(b) Upon locating a dead, injured, or sick endangered or threatened species specimen, the licensee shall initially notify the Central Washington Field Office (Wenatchee, Washington; telephone 509-664-0658) within 48 hours. The licensee shall take care in handling sick or injured specimens to ensure effective treatment and care or the handling of dead specimens to preserve biological material in the best possible state for later analysis of cause of death. In conjunction with the care of sick or injured endangered species or preservation of biological materials from a dead animal, the licensee shall carry out instructions provided by the Service to ensure that evidence intrinsic to the specimen is not unnecessarily disturbed.

Article 63. *Reservation of Authority – Bull Trout Recovery Plan.* Authority is reserved to the Commission to require the licensee to carry out specified measures for the purpose of participating in the development and implementation of a bull trout recovery plan.