#4

Barbara Greene
SCL Accepting Boundary License ORD
April 24, 2012
Version #2

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117504

AN ORDINANCE relating to the City Light Department and authorizing the Superintendent of the City Light Department to accept on behalf of the City the new license from the Federal Energy Regulatory Commission to operate Seattle's Boundary Dam Hydroelectric Project (FERC Project No. 2144); and ratifying and confirming prior acts.

WHEREAS, in 1961 the City acquired a fifty-year license from the Federal Energy Regulatory Commission to operate the Boundary Dam Hydroelectric Project; and

WHEREAS, since 2005 the City Light Department has been engaged in the Federal Energy Regulatory Commission's integrated licensing process, including an active negotiation process involving federal, state, tribal, and other stakeholders; and

WHEREAS, in 2010 by Ordinance 123229, the City authorized the Superintendent of the City Light Department to file a comprehensive settlement agreement that outlined the fundamental terms and conditions relating to all disputed issues with the Federal Energy Regulatory Commission; and

WHEREAS, the City Light Department submitted the comprehensive settlement agreement to the Federal Energy Regulatory Commission on March 29, 2010; and

WHEREAS, the fifty-year license for the Boundary Dam Hydroelectric Project expired on September 30, 2011, and the City is operating the Boundary Dam Hydroelectric Project under an annual license issued by the Federal Energy Regulatory Commission on October 4, 2011; and

WHEREAS, it is in the best interest of the City and its ratepayers that the City continue to own and operate the Boundary Dam Hydroelectric Project in accordance with the terms and conditions of the settlement agreement; and

WHEREAS, the City anticipates that the Federal Energy Regulatory Commission will issue a new multi-year license for the Boundary Dam Hydroelectric Project before the end of 2012 with terms and conditions consistent with the settlement agreement; and

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WHEREAS, the Superintendent of the City Light Department will notify the City Council in the event that the new license is not consistent with the terms and conditions of the settlement agreement; NOW, THEREFORE,

BE IT ORDAINDED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of the City Light Department, or his designee, is authorized to accept on behalf of the City the new license for the Boundary Dam Hydroelectric Project from the Federal Energy Regulatory Commission upon its issuance, provided it is generally consistent with the terms and conditions of the Settlement Agreement, submitted to the Federal Energy Regulatory Commission on March 29, 2010, and attached hereto as Attachment 1, for purposes of securing for the benefit of the City and its ratepayers a new license from the Federal Energy Regulatory Commission to operate the Boundary Dam Hydroelectric Project.

Section 2. The Superintendent, or his designee, is further authorized to enter into related agreements that in his view best meet the needs of the City Light Department and that he deems are reasonably necessary to implement the new license from the Federal Energy Regulatory Commission.

Section 3. Any act consistent with the authority of this ordinance that is taken after passage of this ordinance, but prior to its effective date is hereby ratified and confirmed.

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Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the ____ day of _____, 2012, and signed by me in open session in authentication of its passage this _____ day of _____, 2012.

_____

President _____ of the City Council

Approved by me this ____ day of _____, 2012.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Boundary Hydroelectric Project Relicensing Settlement Agreement

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ATTACHMENT 1
BOUNDARY HYDROELECTRIC PROJECT
RELICENSING SETTLEMENT AGREEMENT

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Boundary Hydroelectric Project Relicensing Settlement Agreement

1. Parties

1.1 This Settlement Agreement ("Settlement Agreement" or "Agreement") is entered into this 9th day of March, 2010, between and among Seattle City Light ("SCL"), the Bureau of Indian Affairs ("BIA"), the National Park Service ("NPS"), the US Fish and Wildlife Service ("USFWS"), the US Forest Service ("USFS"), the Kalispel Tribe ("Tribe"), the Washington State Department of Fish and Wildlife ("WDFW"), the Washington State Department of Ecology ("Ecology"), the Public Utility District No. 1 of Pend Oreille County, Washington ("PUD"), the Selkirk Conservation Alliance ("SCA"), American Whitewater, and The Lands Council (collectively, the "Parties").

1.2 Additional entities may become Parties to this Agreement with the unanimous consent of all Parties and by executing a signature page and submitting it to SCL and FERC.

1.3 This Agreement is binding on and shall inure to the benefit of the Parties and their successors and assigns only, except as otherwise specified in this Agreement.

2. Recitals

WHEREAS,

2.1 The Boundary Hydroelectric Project, FERC No. 2144 (the "Project" or "Boundary Project") is owned and operated by the City of Seattle, Seattle City Light Department ("SCL"), the sole FERC licensee for the Project.

2.2 The Project is SCL's largest generation facility, supplying 35 to 45 percent (depending on water conditions) of Seattle's power requirements.

2.3 The Project is located on the Pend Oreille River in northeastern Washington, one of eleven hydroelectric and storage projects in the Clark Fork – Pend Oreille River basin. The Project as proposed for relicensing will occupy approximately 616 acres of the Colville National Forest and 313 acres of BLM lands, and is located within the aboriginal territory claimed by the Tribe and may affect resources held in trust by the federal government.

2.4 The current FERC Project License will expire on September 30, 2011.

2.5 On September 29, 2009, SCL filed with the Commission a complete and final application ("License Application") for a new FERC License to continue operating, as sole Licensee, the Project.

2.6 SCL engaged and collaborated with interested parties through the integrated licensing process. The use of this integrated licensing process was approved by the Commission prior to SCL filing its License Application to relicense the Project.

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2.7 The Parties to this Settlement Agreement have reached resolution of issues related to the relicensing of the Project, as described in this Settlement Agreement.

2.8 In addition, a group of state and federal agencies and other stakeholders that are largely the same as the settling Parties herein have negotiated a separate settlement agreement (the "Sullivan Creek Settlement Agreement") relating to the surrender by the PUD of the Sullivan Creek Hydroelectric Project, FERC No. 2225 (the "Sullivan Creek Project") and to the issuance of a special use authorization for the use and occupancy of National Forest System Lands.

2.9 Sullivan Creek enters the Pend Oreille River about 10 miles upstream of Boundary Dam on the eastern edge of the Project reservoir.

2.10 As originally constructed, the PUD's Sullivan Creek Project included Sullivan Lake Dam and Reservoir, Mill Pond Dam and Reservoir, a conduit, penstock, power plant, and transmission facilities.

2.11 Mill Pond Dam is located approximately three miles upstream from the mouth of Sullivan Creek and is within the FERC boundary for the Sullivan Creek Project. The proposed conditions of the PUD's Sullivan Creek License Surrender Application provide that the PUD will be solely responsible for removal of the Mill Pond Dam and restoration of the Mill Pond/Sullivan Creek vicinity pursuant to the Mill Pond Decommissioning Plan included as Appendix E to the Sullivan Creek Settlement Agreement.

2.12 Through an Interlocal Agreement ("Mill Pond Interlocal Agreement") between SCL and the PUD (an off-license agreement included as Attachment 1 to this Settlement Agreement), SCL will implement the proposed Mill Pond Decommissioning Plan. SCL will perform this work under the Mill Pond Interlocal Agreement as a cooperating agency of the PUD for the time period when the facilities and area are subject to the PUD's Sullivan Creek Project license.

2.13 After removal of the Mill Pond Dam and the completion of the Sullivan Creek license surrender proceedings, SCL will continue to monitor and maintain the Mill Pond area pursuant to proposed provisions in the Boundary Fish and Aquatics Management Plan ("FAMP") included as Settlement Exhibit 11 and the Boundary application for 401 Certification included as Appendix 3 to this Settlement Agreement.

2.14 The Parties to this Settlement Agreement believe that removal of Mill Pond Dam, as set forth in this Agreement, the Sullivan Creek Settlement Agreement and the Mill Pond Decommissioning Plan will remove a fish passage barrier in the vicinity of the Boundary Project, providing potential access to 16 miles of spawning, rearing, overwintering and foraging habitat. Bull trout are listed as threatened under the Endangered Species Act and providing access to additional, good quality habitat is a high priority for the Resource Agencies.

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2.15 Sullivan Lake Dam also is within the FERC project boundary for the Sullivan Creek Project. Sullivan Lake is a natural lake, which is increased in size by the presence of the Sullivan Lake Dam. Currently, the Sullivan Creek Project stores and releases about 31,000 acre-feet of water annually, in accordance with the Pacific Northwest Coordination Agreement and its FERC license. Sullivan Lake pool covers 1,240 acres and is maintained to the extent possible at a constant elevation of 2,588.66 feet above mean sea level (msl) during the months of May through September. Beginning in October, the reservoir is drawn down to provide storage for spring runoff.

2.16 Pursuant to a Memorandum of Agreement ("Cold Water Release MOA") between SCL and the PUD (an off-license agreement included as Attachment 2 to this Settlement Agreement), SCL and the PUD will cooperate in the development of facilities that will release cold water from Sullivan Lake to Outlet Creek and Sullivan Creek within the boundaries of the Sullivan Creek Project.

2.17 The Sullivan Creek Settlement Agreement, Sullivan Creek License Surrender Application, the USFS's Special Use Authorization ("SUA") that will govern the Sullivan Creek Project works after surrender, and the anticipated Sullivan Creek Project 401 Certification for license surrender will designate the PUD as the party solely responsible to design, build, operate and monitor the cold water release facilities.

2.18 SCL will participate financially in the PUD's design, construction, monitoring, and operations and maintenance costs through provisions included in this Settlement Agreement and the Cold Water Release MOA.

2.19 The Resource Agencies that are Parties to this Settlement Agreement believe that provision of a Sullivan Lake cold water release will cool water temperatures and improve native salmonid habitat conditions in Sullivan Creek (below the confluence with Outlet Creek), and provide cooler water input to the Pend Oreille River. In combination with the Mill Pond Dam Removal, the Sullivan Lake cold water release also will improve habitat for bull trout and westslope cutthroat trout.

2.20 The Mill Pond Dam removal and cold water release measures link the relicensing of SCL's Boundary Project to the PUD's surrender of the Sullivan Creek Project license so as to provide significant resource benefits through the removal of Mill Pond Dam, sediment management, channel restoration and monitoring activities at the restored stream channel and through the release of cold water to Outlet Creek and Sullivan Creek under certain circumstances.

2.21 The dam removal, sediment management, channel restoration and monitoring activities at Mill Pond in the Sullivan Creek Project area, and the cold water release from Sullivan Lake to Sullivan Creek, should substantially improve aquatic habitat conditions for native salmonids in the Pend Oreille basin of interest to the Parties. By focusing on measures such as Mill Pond Dam removal, habitat restoration, and other significant PM&E measures proposed by SCL, resource benefits are maximized while preserving SCL's operational

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flexibility at the Boundary Project. An important aspect of the Boundary Project's value to SCL and the region is its flexibility and reliability, that is, its ability to ramp up or down quickly within the hour and in immediate response to customer demand. Operational flexibility allows SCL to continue to provide clean, safe, and reliable power to its ratepayers over the next license term.

TERMS OF AGREEMENT

The Parties hereby agree as follows:

3. General Provisions

3.1 Effective Date of Settlement Agreement

This Settlement Agreement shall become effective upon its execution by all Parties.

3.2 Offer of Settlement

Within 15 days of the Effective Date, the Licensee shall, on behalf of the Parties, file an Offer of Settlement with FERC pursuant to Rule 602 of FERC's Rules of Practice and Procedure, 18 C.F.R. § 385.602. This filing shall consist of an executed copy of this Settlement Agreement, including the Settlement Exhibits, Appendices, and Attachments, and a Joint Explanatory Statement. The Joint Explanatory Statement shall request that FERC: (a) approve the Offer of Settlement; and (b) issue a new License for the Boundary Project that incorporates—without modification—the Proposed License Articles set forth in Settlement Exhibit 1 and the Management Plans set forth in Settlement Exhibits 2 through 11.

3.3 Term of Settlement Agreement

The term of this Settlement Agreement shall commence on the Effective Date and shall continue through the term of the New License including any subsequent annual license(s) unless terminated as provided in Section 7.4.3.1 or Section 10.

4. Definitions

"401 Certification" means the water quality certification decision to be made by Ecology in connection with Project relicensing pursuant to Section 401 of the CWA, 33 U.S.C. § 1341.

"AISCPP" means the Aquatic Invasive Species Control and Prevention Plan in Settlement Exhibit 6.

"Appeal" means a request for rehearing, an administrative or judicial petition or appeal, or other formal agency adjudication.

"BRCC" means the Boundary Resource Coordinating Committee established pursuant to Section 8.1 of this Agreement.

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"Cold Water Release MOA" means the Memorandum of Agreement between SCL and the PUD set forth in Attachment 2 hereto.

"Consultation" means the process described in Sections 8.2.8 and 8.2.9 of this Agreement. Unless specifically noted, the use of the term "consultation" in this Settlement Agreement does not refer to the consultation process prescribed in the Endangered Species Act, 16 U.S.C. §§ 1531, *et seq.*, or the National Historic Preservation Act, 16 U.S.C. §§ 470, *et seq.*

"CRWG" means the Cultural Resources Work Group established pursuant to Section 8.2.1 of this Agreement.

"CWA" means the Clean Water Act, 33 U.S.C. §§ 1251, *et seq.*

"Dispute Resolution Committee" means the committee established by Section 9 of this Settlement Agreement.

"DOAP" means the Dissolved Oxygen Attainment Plan in Settlement Exhibit 7.

"DOI" means Department of Interior, acting through the USFWS, BIA, or the NPS, as appropriate.

"Effective Date" means the date set forth in Section 3.1 of this Settlement Agreement.

"ESA" means Endangered Species Act, 16 U.S.C. §§ 1531, *et seq.*

"FAMP" means the Fish and Aquatics Management Plan in Settlement Exhibit 11.

"FAWG" means the Fish and Aquatics Work Group established pursuant to Section 8.2.1 of this Agreement.

"FERC" or "Commission" means the Federal Energy Regulatory Commission.

"FPA" means Federal Power Act, 16 U.S.C. §§ 791a, *et seq.*

"FTSP" means the Fish Tissue Sampling Plan in Settlement Exhibit 8.

"HPMP" means the Historic Properties Management Plan in Settlement Exhibit 5.

"Licensee" means City of Seattle, Seattle City Light Department.

"Management Plan" refers to any of the management plans filed as Settlement Exhibits with this Settlement Agreement: (a) Fish and Aquatics Management Plan ("FAMP"); (b) Terrestrial Resources Management Plan ("TRMP"); (c) Recreation Resources Management Plan ("RRMP"); (d) Historic Properties Management Plan ("HPMP"); and (e) the Water Quality Plans.

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"Mandatory Terms and Conditions" means the terms and conditions submitted to FERC under Section 4(e) or Section 18 of the FPA, 16 U.S.C. §§ 797(e), 811.

"Material Modification" means a modification of (including additions to or deletions from) this Settlement Agreement, the Proposed License Articles, and Management Plans; provided, that such modification(s), individually or collectively, substantially affects a Party's bargained-for benefits under this Settlement Agreement, including but not limited to costs, power generation, regulatory responsibilities, or resource protection measures; provided, that only a Party that is adversely affected by the modification can assert that a Material Modification has taken place.

"Material Modification" does not include the following: (a) the inclusion of standard license articles from the L-Form (as defined by 18 C.F.R. § 2.9) in the New License; (b) FERC's insertion of its approval or its reservation of authority to require changes to implementation schedules or plans set forth in any Proposed License Article; (c) FERC's requirement to file a subsequent License amendment to implement any Proposed License Article; (d) FERC's removal of language in any of the Proposed License Articles that sets forth the rationale for the article, provided there are not substantive changes to the requirements contained in the article; (e) the inclusion in any 401 Certification of Ecology's reservation of authority to reopen its conditions, provided, that such reservation of authority is consistent with this Settlement; (f) FERC's inclusion of DOI's (and its component bureaus and agencies) or USFS's reservation of mandatory FPA or ESA authorities; (g) any DOI or USFS filing of conditions or prescriptions, pursuant to FPA authorities, that are consistent with this agreement under the circumstances set forth in Section 7.2.2.1 below; (h) FERC's modification of the project boundary under the circumstances set forth in Section 7.5.2.2 below; and (i) any statements, writings or other representations regarding future applications for a new license for this Project.

"Material Modification" also does not include FERC's inclusion of a reservation of authority to require the Licensee to undertake directly habitat improvements for tributaries to Sullivan Lake in lieu of the Fund for Habitat Improvements in Tributaries to Sullivan Lake set forth in Proposed License Article 9(I) in Settlement Exhibit 1 unless the reservation is likely to require expenditures substantially in excess of the amount of the fund.

"Mill Pond Interlocal Agreement" means the Interlocal Agreement for Mill Pond Decommissioning Between Seattle City Light and Public Utility District No. 1 of Pend Oreille County set forth in Attachment 1 hereto.

"New License" means the next license FERC issues for the Project pursuant to the FPA, 16 U.S.C. §§ 797(e), 799, that replaces the current Project license that was initially issued in December 1953.

"Notice" means a written communication that meets the requirements of Section 11.12 of this Settlement Agreement.

"Out Year" has the meaning set forth in Section 8.1.3.3 of this Settlement Agreement.

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"Party" or "Parties" means the signatories to this Settlement Agreement.

"Permit" means a necessary federal, state, regional, or local permit, license, authorization, certification, determination, or other governmental approval for purposes of implementing this Settlement Agreement or the New License.

"PM&E" means protection, mitigation, and enhancement.

"Project" or "Boundary Project" means the Boundary Hydroelectric Project, FERC No. 2144.

"Project Documents" means the Settlement Agreement and the New License.

"Proposed License Articles" means the provisions set forth in Settlement Exhibit 1 that the Parties will request that FERC include, without modification, in the New License.

"Resource Agencies" means BIA, the Tribe, NPS, USFS, USFWS, Ecology, and WDFW.

"RRMP" means Recreation Resources Management Plan in Settlement Exhibit 3.

"RRWG" means the Recreation Resources Work Group established pursuant to Section 8.2.1 of this Agreement.

"SCL" means Seattle City Light, the Licensee.

"Settlement Agreement" or "Agreement" means the entirety of this Settlement Agreement document and its Settlement Exhibits, Appendices and Attachments 1 and 2 (the Mill Pond Interlocal Agreement and the Cold Water Release MOA). As to the Commission's licensing proceeding, Attachments 1 and 2 are included for informational purposes.

"Settlement Exhibit" means an exhibit attached to this Settlement Agreement and designated in Section 13.1 below.

"Sullivan Creek License Surrender Application" means the PUD's application for surrender of the Sullivan Project License.

"Sullivan Creek License Surrender Order" means a FERC order accepting or approving the surrender of the Sullivan Project License subject to terms and conditions with respect to the disposition of Sullivan Project facilities.

"Sullivan Creek Settlement Agreement" means the Settlement Agreement and its Appendices and Attachments filed with FERC for the settlement of the Sullivan Creek Project license surrender proceeding and the Sullivan Creek SUA application for the use and occupancy of National Forest System lands by certain Sullivan Creek Project facilities.

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"Sullivan Creek SUA" means the Special Use Authorization that the PUD is requesting from USFS for the Sullivan Creek Project works that continue to occupy USFS lands after the Sullivan Creek Project license surrender proceeding is completed.

"TAC" means a technical advisory committee established pursuant to Section 8.2.1.1 of this Settlement Agreement.

"TAP" means the Temperature Attainment Plan in Settlement Exhibit 9.

"TDG" means total dissolved gas.

"TDGAP" means the Total Dissolved Gas Attainment Plan in Settlement Exhibit 10.

"TRMP" means the Terrestrial Resources Management Plan in Settlement Exhibit 2.

"TRWG" means the Terrestrial Resources Work Group established pursuant to Section 8.2.1 of this Agreement.

"Water Quality Plans" means the AISCPP, DOAP, FTSP, TAP, and TDGAP.

"Work Group" refers to any of the RRWG, CRWG, FAWG, TRWG and WQWG.

"Work Products" include the plans, study designs, reports, and facility designs required by the Project Documents to be filed with the Commission.

"WQWG" means the Water Quality Work Group established pursuant to Section 8.2.1 of this Agreement.

5. Scope of Settlement Agreement

5.1 Purpose

The Parties have entered into this Settlement Agreement for the purpose of resolving among them issues that have or could have been raised by the Parties in connection with the Commission order issuing a New License. Pursuant to the Parties' obligations and authorities under the FPA and subject to the reservations of authorities, including those set forth in Sections 6, 7.1.1, 7.2.2.1, 7.3.1, 7.3.3, 7.4.1, 7.4.2.4, 7.10.1.1, and 7.10.1.2.2, this Settlement Agreement establishes the Licensee's obligations for the protection, mitigation and enhancement ("PM&E") of resources affected by the Project. Each Party intends that this Settlement Agreement is consistent with and satisfies its currently applicable statutory and regulatory rights and responsibilities under the FPA and other applicable law with respect to relicensing of the Project. Each Party intends further that, subject to the terms of this Settlement Agreement, no resource protection measure or other License provision, other than those provided in the Settlement Exhibits, is necessary to be included within the New License in order to address Project effects or to satisfy the FPA and other applicable law with respect to relicensing of the Project. It also specifies the procedure to be used among the Parties to ensure that

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implementation of the New License is not inconsistent with the Settlement Agreement. The Parties agree that this Settlement Agreement is fair and reasonable, and consistent with the standards under the FPA. The Parties further agree that this Settlement Agreement provides sufficient PM&E measures for FERC to find a balance of beneficial uses and that the Settlement is in the public interest as required under Section 10 of the FPA.

5.2 No Precedent for Other Proceedings

This Settlement Agreement is made upon the express understanding that it constitutes a negotiated resolution among the Parties. Accordingly, nothing in the Settlement Agreement shall be construed as a precedent with regard to any other proceeding, and this Settlement Agreement (including its Settlement Exhibits, Appendices, and Attachments) shall not be offered in evidence in any pending or future proceeding in which a Party participates except in a proceeding to establish the existence or validity of, or to defend, implement, or enforce the Settlement Agreement. This section shall survive any termination of this Settlement Agreement.

5.3 Disclaimer

The Parties have entered into this Settlement Agreement in part to avoid the costs and uncertainty of a contested relicensing proceeding at FERC and the costs and uncertainty of litigation. A Party shall not be deemed to have consented to any operation, management, valuation, or other principle underlying any of the matters covered by this Settlement, except as expressly provided herein. By entering into this Settlement, a Party shall not be deemed to have made any admission or waived any contention of fact or law that it did make or could have made in any FERC proceeding relating to the issuance of a new license for the Project.

6. Reservation of Rights and Satisfaction of Legal Responsibilities

6.1 No Pre-Decisional Determination

Nothing in this Settlement Agreement is intended or shall be construed to be a pre-decisional determination by USFWS, BIA, USFS, WDFW or Ecology. Each Party may give due consideration to any material new information arising in the FERC licensing proceeding, 401 Certification process or ESA consultation, as appropriate under applicable law.

6.2 Reservation of Rights

6.2.1 Nothing in this Settlement Agreement is intended to, or shall be construed to, affect or limit the authority or obligation of any Party to fulfill its constitutional, statutory and regulatory responsibilities or to comply with any applicable judicial decision or order. Among other things, this reservation permits a reservation of authority in a 401 Certification, provided that each other Party reserves its right to contest the exercise of such reservation. This reservation also permits a reservation of authority in a Mandatory Term or Condition, provided that each other Party reserves its right to contest the exercise of such reservation.

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6.2.2 Each Party reserves any authority it may have pursuant to the FPA in the event that: (a) this Agreement is not filed with FERC; (b) the Party withdraws from this Agreement pursuant to the procedures set forth in Section 10.1; or (c) this Agreement is terminated pursuant to Section 7.4.3.1 or Section 10.3. Any other Party reserves the right to contest the existence and/or exercise of any such authority.

6.2.3 Nothing in this Settlement Agreement is intended to change, expand or reduce the application or interpretation of applicable laws. Throughout the Settlement Agreement, certain entities are recognized as having "approval authority" for the purposes of the FERC license and it is the Parties' intent that such "approval authority" is only based on expected application of existing law, specifically the FPA sections 4(e) and 18 and CWA section 401. Other approvals may be required through separate Permit processes. Lastly, nothing in this Settlement Agreement changes, expands or reduces the legal jurisdiction or management authority of the individual Resource Agencies over natural resources.

6.3 Water Rights

Nothing in this Settlement Agreement is intended to, or shall be construed to, modify or alter any Party's existing, inchoate, or reserved water rights, if any, or SCL's pending application for the permitting of an additional non-consumptive hydropower water right (Surface Water Application No. S3-30594).

7. Settlement Agreement Commitments and Implementation

7.1 Filings and Submittals Consistent with Settlement Agreement

7.1.1 Except as provided in Section 7.4.2.1, each Party intends that, throughout the term of this Settlement Agreement, none of that Party's filings or other submittals regarding the Boundary Project with FERC or another regulatory agency will propose Material Modifications or will otherwise be inconsistent with this Settlement Agreement, unless necessary based on material new information or changed circumstances, or if required to fulfill new statutory, regulatory, or court-ordered responsibilities that become effective after the execution of this Agreement. Any Party who believes another Party has breached this provision must give the breaching Party Notice and a 30-day opportunity to cure the breach prior to initiating dispute resolution under Section 9 of this Settlement Agreement.

7.1.2 If a Party files a pleading or other document regarding the Boundary Project before FERC or another regulatory agency that advocates a Material Modification or is otherwise inconsistent with this Settlement Agreement, any other Party may defend by: (a) stating its opposition; (b) requesting that FERC or other regulatory agency disapprove the proposal; and (c) explaining what other reasonable provisions should be included in and/or excluded from the New License if the proposal is approved. Since the Parties recognize that a dispute that results in any of the defenses described in this section may threaten the viability of this Settlement, the Parties affirm their commitment to make best efforts to resolve any such dispute in a timely manner to avoid such results.

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7.1.3 The Parties have not included a proposed duration for the New License in this Settlement Agreement. In pleadings and other documents filed with FERC, each Party may make whatever statements it believes are appropriate regarding a proposed duration for the New License. Any Party may request rehearing of FERC's decision on the duration of the New License but waives its right to judicial review of any FERC order on rehearing regarding the duration of the New License. The duration of the New License is not grounds for withdrawal from this Agreement and is not a basis for seeking modification of this Agreement.

7.2 Support Adoption of License Terms and Conditions

In the relicensing proceeding and all related proceedings in which they participate, all Parties shall support, as appropriate, incorporation of the Proposed License Articles into the New License issued by FERC.

7.2.1 Recommendations under Sections 10(a) and 10(j) and Comments Filed in the Context of the Relicensing Process

Recommendations under FPA Sections 10(a) and 10(j) shall not contain or recommend a Material Modification. Any comments or responses to comments filed in the context of the relicensing process shall not request a Material Modification.

7.2.2 Mandatory Terms and Conditions that Contain Material Modifications of the Settlement Agreement

7.2.2.1 If any of the Mandatory Terms and Conditions contain a Material Modification of this Settlement Agreement, the Settlement Agreement shall be deemed modified to conform to the Mandatory Terms and Conditions unless a Party provides Notice to the other Parties that it objects and initiates dispute resolution under Section 9 of this Agreement within 30 days after the term or condition is filed with FERC. Dispute resolution will consider modifications to the Settlement Agreement or amendment of the Mandatory Term or Condition. If the USFS submits Section 4(e) conditions to FERC that are in all material respects consistent with the Settlement Agreement and the draft preliminary Section 4(e) conditions, attached to this Settlement Agreement as Settlement Exhibit 12, the Parties agree that those Section 4(e) conditions will not be considered to contain a Material Modification. If the DOI submits Section 18 prescriptions to FERC that are in the form of Settlement Exhibit 1, Proposed License Articles 9(B) (Upstream Fish Passage) and 9(C) (Reduction of Project Related Entrainment Mortality) or that generally reserve DOI's authorities consistent with the definition of Material Modification above, the Parties agree that those final Section 18 prescriptions will not be considered to contain a Material Modification.

7.2.2.2 A disputing Party may, in addition to the remedies described in Section 7.2.2.1 and to the extent provided by applicable law, seek administrative and/or judicial review of any Mandatory Term and Condition that contains a Material Modification of this Settlement Agreement. The Parties shall follow the dispute resolution process set forth in Section 9 of this Settlement Agreement to the extent reasonably practicable,

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in order to consider modification of this Settlement Agreement or amendment of the Mandatory Term or Condition, while such administrative or judicial review is pursued. If the Parties subsequently agree to modify this Settlement Agreement or amend the Mandatory Term or Condition, the disputing Party or Parties shall withdraw or dismiss any administrative or judicial action, or recommend such withdrawal or dismissal, as appropriate.

7.2.2.3 Except as provided in Section 7.5.2 or if this Settlement is terminated pursuant to Section 7.4.3.1 or Section 10 herein, if any of the final Mandatory Terms and Conditions contain a Material Modification after a final and non-appealable administrative or judicial decision, this Settlement Agreement shall be deemed modified to conform to that decision.

7.2.3 Proceedings under the Energy Policy Act of 2005

Regarding any of the Mandatory Terms and Conditions filed with FERC in this License proceeding that do not contain a Material Modification of the Settlement Agreement, each Party waives any right it may have to request an agency trial-type hearing on issues of material fact under Sections 4(e) and 18 of the FPA and to propose alternatives under Section 33 of the FPA. Under the foregoing circumstances, the Parties shall not support any trial-type hearing requested by any non-Party and will support USFS and DOI, as appropriate, if a trial-type hearing is requested by any non-Party. If a non-Party requests a trial-type hearing, the Parties may intervene to support this Settlement Agreement, and USFS and DOI shall use good faith efforts to defend its challenged Mandatory Terms and Conditions. Notwithstanding the above, regarding any of the Mandatory Terms and Conditions filed with FERC in this License proceeding that do contain a Material Modification of the Settlement Agreement, each Party reserves any rights to challenge the Mandatory Terms and Conditions or request an agency trial-type hearing on issues of material fact under Sections 4(e) and 18 of the FPA and to propose alternatives under Section 33 of the FPA.

7.3 ESA Consultation

7.3.1 Notwithstanding Section 5.1, the Parties recognize that FERC will consult and may confer with USFWS pursuant to Section 7 of the ESA on issuance of the New License. USFWS anticipates that the measures in this Settlement Agreement will be adequate to: (a) avoid a jeopardy finding for species presently listed as threatened or endangered; (b) avoid a finding of destruction or adverse modification of designated or proposed critical habitat for species presently listed as threatened or endangered; and (c) minimize incidental take of species presently listed as threatened or endangered. 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 Settlement Agreement, however, USFWS is not making a pre-decisional determination of the outcome of any consultation and expressly reserves the right to take such future actions as may be necessary to meet its obligations under the ESA.

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7.3.2 If FERC requests a draft Biological Opinion ("BiOp"), the USFWS shall provide one to FERC. With FERC approval, USFWS will share the draft BiOp with the Licensee prior to issuing it in final form.

7.3.3 Nothing in this Settlement Agreement limits or waives the authority of USFWS to take whatever action it deems necessary if FERC modifies the Proposed License Articles in a manner causing effects to listed species or critical habitat not previously analyzed, or fails to adopt as License conditions the terms and conditions in the Incidental Take Statements.

7.3.4 If the ESA consultation process results in an inconsistency that would require a Material Modification of this Settlement Agreement, this Settlement Agreement shall be deemed modified to conform to the provisions of the BiOp, Incidental Take Statement, or Reasonable and Prudent Alternatives, unless a Party provides Notice to the other Parties that it objects to such modifications and initiates dispute resolution under Section 9 of this Settlement Agreement within 30 days after the BiOp is filed with FERC. If the provisions of the BiOp, Incidental Take Statement, or Reasonable and Prudent Alternatives contain a Material Modification of this Settlement Agreement, a Party may withdraw from this Settlement Agreement after the Parties comply with the dispute resolution process in Section 9 of this Settlement Agreement.

7.3.5 A disputing Party may, in addition and to the extent provided by applicable law, seek administrative and/or judicial review of any BiOp, Incidental Take Statement, or Reasonable and Prudent Alternative that would require a Material Modification of this Settlement Agreement. The Parties shall follow the dispute resolution process set forth in Section 9 of this Settlement Agreement to the extent reasonably practicable, in order to consider modification of this Settlement Agreement while such administrative or judicial review is pursued. If all Parties subsequently agree to modify this Settlement Agreement, the disputing Party or Parties shall withdraw or dismiss any administrative or judicial action, or recommend such withdrawal or dismissal as appropriate.

7.3.6 Unless this Settlement Agreement is terminated pursuant to Section 7.4.3.1 or Section 10 herein, if any BiOp contains a Material Modification of this Settlement Agreement after a final and non-appealable administrative or judicial decision, this Settlement Agreement shall be deemed modified to conform to that decision.

7.4 Clean Water Act

7.4.1 Authorities under the CWA

Nothing in this Settlement Agreement is intended to or shall be construed to restrict or affect the authorities of Ecology under the CWA and other appropriate requirements of state law.

7.4.2 401 Certification

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7.4.2.1 The Parties recognize that Ecology has not issued a 401 Certification related to the New License. Pursuant to FERC regulations, SCL will file the application set forth in Appendix 3 to request a Section 401 Water Quality Certification from Ecology. By entering into this Settlement Agreement, Ecology is not making a pre-decisional determination of the outcome of the 401 Certification. Implementation of the TAP set forth in Settlement Exhibit 9 is not an admission by SCL that the Project causes or contributes to a violation of applicable water quality standards for temperature or that the Project reservoir fails to comply with applicable water quality standards for temperature. Nor does the TAP serve as an admission by Ecology that the Project or reservoir are in compliance with applicable temperature standards. As necessary to preserve the above understanding regarding temperature, SCL reserves the right to appeal the 401 Certification as it relates to temperature, regardless of whether the certification contains a Material Modification of this Settlement Agreement. Further, entry into this Agreement does not restrict the right of any Party to appeal the temperature Total Maximum Daily Load ("TMDL") for the applicable segment of the Pend Oreille River.

7.4.2.2 As to SCL's application for a 401 Certification, the Parties, other than Ecology, respectfully request that Ecology accept and incorporate, without Material Modifications, as conditions to the 401 Certification issued to SCL, all Proposed License Articles and the Water Quality Plans that are within Ecology's jurisdiction pursuant to Section 401 of the CWA. The Parties further request that Ecology not include as conditions to the 401 Certification conditions that constitute a Material Modification of the New License.

7.4.2.3 Consistent with Section 5.1, Ecology anticipates, based upon existing analyses and information, that the Proposed License Articles and Water Quality Plans will be consistent with Section 401 of the CWA.

7.4.2.4 Ecology reserves the right to amend its 401 Certification by further administrative order if it determines that, based upon new information, the provisions hereof are no longer adequate to provide reasonable assurance of compliance with applicable water quality standards or other appropriate requirements of state law.

7.4.3 401 Certification Inconsistent with Settlement Agreement

7.4.3.1 If Ecology denies with prejudice SCL's request for a 401 Certification, and such denial becomes final or is affirmed by a final and non-appealable administrative or judicial decision, and therefore prevents licensing of the Project, this Settlement Agreement shall terminate.

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7.4.3.2 If any 401 Certification contains a Material Modification of this Settlement Agreement, this Settlement Agreement shall be deemed modified to conform to the provisions of the Certification, unless a Party provides Notice to the other Parties that it objects and initiates dispute resolution within 30 days after the Certification is filed with FERC. If any 401 Certification contains a Material Modification of this Settlement Agreement, an aggrieved Party may withdraw from this Settlement Agreement after the Parties comply with the dispute resolution process in Section 9 of this Agreement. A disputing Party may, in addition and to the extent provided by applicable law, seek administrative and/or judicial review of (a) any denial with prejudice of an SCL request for 401 Certification, or (b) any 401 Certification that contains a Material Modification of this Settlement Agreement. The Parties shall follow the dispute resolution process set forth in Section 9 of this Settlement Agreement to the extent reasonably practicable, in order to consider modification of this Settlement Agreement or amendment of the 401 Certification, while such administrative or judicial review is pursued. Ecology shall not be required to participate in such dispute resolution. If all Parties subsequently agree to modify this Settlement Agreement or amend the 401 Certification, the disputing Party or Parties shall withdraw or dismiss any administrative or judicial action, or recommend such withdrawal or dismissal, as appropriate.

7.4.3.3 Unless this Settlement Agreement is terminated pursuant to Section 7.4.3.1 or Section 10 herein, if the final 401 Certification contains a Material Modification of this Settlement Agreement after a final and non-appealable administrative or judicial decision, this Settlement Agreement shall be deemed modified to conform to that decision.

7.5 New License

7.5.1 New License that Does Not Materially Modify the Settlement Agreement

The Parties have entered into this Settlement Agreement with the express expectation and condition that FERC will issue a New License that incorporates, without Material Modification, the Proposed License Articles as enforceable License Articles. The Parties agree that if FERC does so, none of the Parties will seek rehearing of the FERC License order as to the Proposed License Articles, or support any such request for rehearing by a non-Party to this Settlement Agreement. If FERC issues a New License that contains a modification other than a Material Modification of the Settlement Agreement, SCL shall comply with both the New License and the Settlement Agreement to the extent legally permissible; if SCL cannot comply with both the New License and the Settlement Agreement, this Settlement Agreement shall be deemed modified to conform to the New License. If FERC issues a New License that incorporates, without Material Modification, the Proposed License Articles as enforceable License Articles, the Parties may only seek rehearing on issues not covered by the Settlement Agreement or License Articles. Any Party seeking rehearing on any issue shall provide Notice to the Parties as far in advance as practicable before filing a rehearing request. This provision shall not apply to Ecology if the New License is inconsistent with the 401 Certification, and shall not apply to a Party submitting a Mandatory Term and Condition or a term and condition of a BiOp, if the New License is inconsistent with that Mandatory Term and Condition or BiOp term or condition.

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7.5.2 New License that Materially Modifies the Settlement Agreement

If FERC issues a New License that contains a Material Modification of the Settlement Agreement, this Settlement Agreement shall be deemed modified to conform to the modification unless (a) the Material Modification results from an omission of a requirement under the Settlement Agreement that obligated the Licensee to take some action and the Licensee can still lawfully take that action pursuant to the Settlement Agreement without violating any term of the license, or (b) a Party aggrieved by the Material Modification provides Notice to the other Parties that it objects and initiates dispute resolution under Section 9 of this Settlement Agreement within 30 days of the FERC order. For Modifications that fall within subpart a), the Licensee shall comply with the Settlement Agreement regardless of whether dispute resolution has been initiated.

7.5.2.1 Disputing Inconsistencies

The disputing Party or Parties may petition FERC for rehearing or seek judicial review of any New License article, or omission of any Proposed License Article, that results in a Material Modification of the Settlement Agreement. The Parties shall follow the dispute resolution process set forth in Section 9 of this Settlement Agreement while any such rehearing, appeal or request for stay or extension is pursued. Any disputing Party or Parties may ask FERC or the court to defer action on the merits of any rehearing request or appeal while dispute resolution is pursued. If all Parties subsequently agree to modify this Settlement Agreement to conform to the inconsistent action, the disputing Party or Parties shall withdraw or dismiss any administrative or judicial action, or recommend such withdrawal or dismissal, as appropriate.

7.5.2.2 New License that Modifies the Project Boundary

FERC's modification of the Boundary Project boundary, in addition to the boundary modifications already proposed in the amended License Application Exhibit G to be filed contemporaneously with this Settlement Agreement, does not constitute a Material Modification of this Settlement Agreement under the following circumstances:

(a) the inclusion of the portion of Sullivan Creek in which the Mill Pond Decommissioning Plan requires work; and

(b) the inclusion of tributary sites where SCL proposes to engage in ground-disturbing activities.

1. It is the intent of the Parties that SCL not be required to perform any ground-disturbing activities at a site that presents evidence of contamination.

2. The Parties will use their reasonable best efforts to support SCL in the event it asks FERC to exclude from the project boundary lands that FERC has added in the New License beyond those specified in the amended License Application Exhibit G to be filed contemporaneously with this Settlement Agreement, which present a material risk of listing under CERCLA or

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MTCA. This provision shall not be interpreted to require any Party to make any filing with FERC.

If FERC further modifies the Boundary Project boundary in a manner that includes areas where SCL does not propose to engage in ground-disturbing activities or does not otherwise have a long term obligation at the site, SCL may request rehearing regarding such modification. SCL may represent in any request for rehearing of a boundary expansion that includes areas where SCL does not propose ground disturbing activities or otherwise have a long term obligation at the site that the Parties to this Agreement do not oppose its request for hearing. If after any final and non-appealable administrative or judicial decision regarding an expansion of the Project boundary site, the boundary has not been modified as requested, the boundary change may constitute a Material Modification.

7.6 Requests for Stay or Extension of Implementation

7.6.1 If the New License is challenged, a Party may at its discretion request from FERC or a court a stay or extension of any challenged obligation in the Proposed License Articles for the duration of the administrative or judicial review process. Any other Party may oppose the request for stay or extension.

7.6.2 The requesting Party shall contact the other Parties in advance of seeking a stay or extension and make reasonable efforts to discuss the scope of any request. Any Party that opposes a request for stay or extension shall contact the other Parties and make reasonable efforts to discuss the scope and extent of its opposition, prior to making any filing in opposition to FERC or the court.

7.7 Responsibility for Implementation

The Licensee shall implement its obligations under this Settlement Agreement and the New License. The Licensee shall not be excused from this obligation due to a failure by any other Party, entity or person to provide funding or carry out a duty, obligation, or responsibility it may have with respect to the Licensee's Project pursuant to other laws or agreements. Notwithstanding, the Licensee shall have no obligation to reimburse or otherwise pay any other Party for its assistance, participation, or cooperation in any activities pursuant to this Settlement Agreement or the New License unless expressly agreed to by the Licensee or as required by law. In the event of administrative rehearing or judicial review, Parties shall bear their own costs and attorneys' fees, unless otherwise provided by applicable law.

7.8 Availability of Funds

Implementation of this Settlement Agreement by any Party other than the Licensee is subject to the availability of funds. Nothing in this Settlement Agreement shall be interpreted as, or constitute a commitment or requirement that the federal agencies obligate or pay funds in violation of the Anti-Deficiency Act, 31 U.S.C. §§ 1341, *et seq.*, and other applicable law.

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Nothing in this Settlement Agreement is intended or shall be construed to commit a federal official to expend federal funds not appropriated by Congress.

7.9 Permits

7.9.1 The Licensee shall apply for and use active and diligent efforts to obtain in a timely manner and in final form all applicable federal, state, regional, and local permits, licenses, authorizations, certifications, determinations, and other governmental approvals for purposes of implementing the New License. Active and diligent efforts include, but are not limited to, seeking appropriate administrative review of permitting decisions, reapplying as necessary, or timely submitting requested additional information. Permit applications shall be consistent with this Settlement Agreement. The Licensee shall pay all fees required by law related to such Permits. The Licensee shall not be held in breach of this Settlement Agreement if it cannot legally implement an action because all applicable Permits required for that action have been applied for but are not yet obtained, or because a necessary Permit has been denied or includes a Material Modification of the Settlement Agreement.

7.9.2 If a proceeding challenging any Permit required for the action has been commenced, the Licensee shall be under no obligation under this Settlement Agreement to implement the action or any related action until any such proceeding is terminated. If any Permit has been denied or challenged, includes a Material Modification of the Settlement Agreement, or is not obtained in a timely manner, the Parties shall confer to evaluate the effect of such event on implementation of this Settlement Agreement and the New License and to seek to develop actions to respond to that event.

7.9.3 The Parties recognize that a Permit delay or denial, or a Permit that contains a Material Modification of the Settlement Agreement, in itself does not alleviate the Licensee's responsibility to comply with a License Article but may be the basis for requesting FERC to amend the License. If the Parties do not agree on actions to respond to that event, a Party may initiate dispute resolution pursuant to Section 9 to address the issue of necessary actions to respond to Permit delays or denials or Material Modifications. In the event that the Parties do not agree on actions to respond to a Permit delay or denial or Material Modifications, then the Permit delay or denial or Material Modifications may constitute material new information or a basis for withdrawal pursuant to Section 10.

7.9.4 Nothing in this Section shall be construed to limit the Licensee's right to apply for a Permit before issuance of the New License, provided that any such applications shall not contain a Material Modification of the Settlement Agreement.

7.10 Reopener or Amendment of the New License

7.10.1 Reopener by a Party Other than the Licensee

A Party other than the Licensee may request FERC to reopen the New License, or to open an annual license if necessary, based on material new information or changed circumstances, or if

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required to fulfill new statutory, regulatory, or court-ordered responsibilities that become effective after the execution of this Agreement. Each Party reserves all rights under applicable law to challenge any exercise of reserved authority at the time of the exercise of such authority, including any rights provided under Sections 4(e), 18, and 33 of the FPA, if the action would constitute a Material Modification of the Settlement Agreement or the New License.

7.10.2 Amendment of New License by Licensee

7.10.2.1 Amendments that Do Not Contain a Material Modification of the Settlement Agreement

The Licensee may seek amendments of its New License for operational improvements or efficiencies, routine amendments, or similar Project modifications that do not contain a Material Modification of the Settlement Agreement. Each Party reserves all rights under applicable law to challenge or comment on any application for a License amendment.

7.10.2.2 Amendments that Contain a Material Modification of Settlement Agreement

The Licensee may seek a License amendment as necessary for the Project that would contain a Material Modification of the Settlement Agreement to comply with any FERC directive pertaining to dam safety, flood control, or Project security. The Licensee may seek such License amendment following discussions with the Parties, in an effort to achieve consensus on the amendment proposal, including, if necessary, the initiation of dispute resolution under Section 9 of this Settlement Agreement.

Additionally, the Licensee may seek a License amendment that would contain a Material Modification of the Settlement Agreement in response to: (a) material new information, changed circumstances, or if required to fulfill new statutory, regulatory, or court-ordered responsibilities that become effective after the execution of this Agreement; (b) another Party's proposal to reopen under Section 7.10.1.1; (c) a non-Party's proposal to reopen the New License that would contain a Material Modification of the Settlement Agreement; or (d) a BiOp that would result in a Material Modification of the Settlement Agreement issued after the time period for appeal of the New License has passed. Any proposal the Licensee may submit under (b) or (c) above would be conditional and withdrawn if FERC declines to adopt the other Party or non-Party's proposal; and the Licensee shall notify FERC of the conditional nature of its proposed amendment. Other Parties may oppose the Licensee's proposed amendment and comment and/or propose counter-amendments.

Each Party reserves all rights under applicable law to challenge or comment on any application for a License amendment. The provisions of this Settlement Agreement shall remain in effect as unmodified by any amendment until the effective date such amendment is approved by FERC.

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7.10.3 Notice and Consultation Requirement for Reopener or License Amendment

Prior to seeking reopener or License amendment under Sections 7.10.1 or 7.10.2, a Party shall provide the proposed reopener or License amendment to the other Parties for review and comment at least 90 days before initiating the reopener or amendment process with FERC, and shall consult with the Parties starting at least 60 days before initiating the reopener or amendment process with FERC regarding the need for and purpose of the reopener or amendment.

A Party shall not be required to comply with this 90-day Notice and comment process if it reasonably believes an emergency situation exists or the Parties otherwise agree; and provided further, that the Party shall comply with any statutory or regulatory requirements for notice or consultation.

If a Party proposes a reopener or License amendment that another Party believes would contain a Material Modification of the Settlement Agreement or would adversely affect resources under its authority, and objects, then the dispute resolution provisions in Section 9 of this Settlement Agreement shall apply, and the objecting Party must invoke dispute resolution during the 90-day Notice period or waive its objection.

7.11 Amendment of Settlement Agreement

Except as otherwise provided, this Settlement Agreement may be amended at any time, from the Effective Date throughout its term, by written unanimous agreement of all Parties still in existence, including any successors.

7.12 Cooperation among Parties

The Parties shall cooperate in the implementation of this Settlement and the New License.

7.13 Vista House Road

Within six months after the Effective Date, SCL and Pend Oreille County may enter into an agreement providing for the County's operation, maintenance, and reconstruction of the Vista House Road under a USFS road easement. If SCL and Pend Oreille County do not enter into an agreement, SCL shall apply for a special use authorization from the USFS for up to a 30-year term for the operation, maintenance and reconstruction of the Vista House Road within 12 months after issuance of the New License. As the USFS can only issue a special use authorization up to 30 years, SCL shall renew its special use authorization to cover any remaining term of the license prior to the expiration of the existing special use authorization. If Pend Oreille County acquires and later vacates the road easement, SCL shall apply for a special use authorization from the USFS for the remaining term of the New License for the operation, maintenance and reconstruction of the Vista House Road within 12 months after Pend Oreille County vacates the road easement.

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7.14 Mill Pond Dam Removal and Restoration

SCL and the PUD shall undertake the removal of the Mill Pond Dam and related restoration, monitoring and maintenance work as provided in this Section. The Parties agree that this work will remove a fish passage barrier in the vicinity of the Boundary Project, providing potential access to 16 miles of spawning, rearing, overwintering and foraging habitat.

7.14.1 Mill Pond Dam Removal and Restoration Definition

Mill Pond Dam removal and restoration shall consist of all of the activities described in and under the Mill Pond Decommissioning Plan to be submitted as Appendix E to the Sullivan Creek Settlement Agreement.

7.14.2 Mill Pond Dam Monitoring and Maintenance Definition

Mill Pond monitoring and maintenance shall include all of the activities described in and under the Mill Pond Dam Site Monitoring and Maintenance license article for the Boundary Project set forth in Article 9(F) of Settlement Exhibit 1.

7.14.3 Roles and Responsibilities

7.14.3.1 SCL's Roles and Responsibilities

Through the Mill Pond Interlocal Agreement, SCL shall, as the contractor to the PUD, undertake all aspects of the removal of the Mill Pond Dam, as described in the Mill Pond Decommissioning Plan, Sullivan Creek Settlement Agreement, this Settlement Agreement and as approved and conditioned by the Commission, other than those relating to the assessment and protection of cultural and historic resources. SCL shall also implement the Mill Pond Dam Site Monitoring and Maintenance license article for the Boundary Project as approved and conditioned by the Commission.

7.14.3.2 PUD's Roles and Responsibilities

The PUD shall be responsible for the removal of the Mill Pond Dam, in the manner and according to the schedule described in the Mill Pond Decommissioning Plan, in the PUD's application for surrender of the Sullivan Creek Project license. Through the Mill Pond Interlocal Agreement, the PUD authorizes SCL to undertake all aspects of the removal of the Mill Pond Dam, as described in the Mill Pond Decommissioning Plan and as approved and conditioned by the Commission, other than those relating to the assessment and protection of cultural and historic resources. The PUD shall be responsible for undertaking those aspects of the Mill Pond Decommissioning Plan relating to the assessment and protection of cultural resources.

7.14.3.3 USFS's Roles and Responsibilities

USFS shall be responsible for the maintenance of the existing or new bridge to the heritage interpretative site at the Mill Pond Dam following the completion of construction activities

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relating to dam removal and channel restoration required by the Mill Pond Decommissioning Plan.

7.14.4 Material Modification

If, for any reason, Mill Pond Dam is not removed as provided in this Section, it shall constitute a Material Modification.

7.15 Cold Water Release from Sullivan Lake

SCL and the PUD shall jointly undertake the funding, design, permitting, construction, monitoring, operation, and maintenance of the cold water release facility as provided in this Section to improve native salmonid habitat conditions in Sullivan Creek and to provide cooler water input to the Pend Oreille River.

7.15.1 Cold Water Release Facility Definition

The cold water release facility shall consist of a gravity water supply 48 inches in diameter, with fish screens at the inlet, and using an existing low-level outlet from Sullivan Dam, all as described in Appendix F of the Sullivan Creek Settlement Agreement.

7.15.2 Roles and Responsibilities

7.15.2.1 SCL's Roles and Responsibilities

SCL shall be responsible for funding fifty percent (50%) of the actual design, permitting and construction costs, and 50% of the projected monitoring, operation, and maintenance costs, of the cold water release facility. As provided in the Cold Water Release MOA between SCL and the PUD, SCL shall pay its share of design costs, and projected monitoring and O&M costs, after final design, and SCL shall pay its share of permitting and construction costs after construction.

7.15.2.2 PUD's Roles and Responsibilities

The PUD shall include construction of the cold water release facility in its application for surrender of the Sullivan Creek Project license, with construction of the facility to be complete within three years of FERC's issuance of the Sullivan Creek License Surrender Order. The PUD shall be responsible for funding all remaining costs, other than costs payable by SCL, of the design, permitting, construction, monitoring, operation, and maintenance of the cold water release facility. The PUD shall implement the design, permitting, construction, monitoring, operation, and maintenance of the cold water release facility. The PUD shall monitor, operate and maintain the cold water release facility in accordance with the Sullivan Creek Settlement Agreement, specifically including those provisions relating to Sullivan Lake discharge rates and lake levels, and in accordance with Washington water quality standards as provided in the 401 Certification to be issued to the PUD.

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7.15.3 Acknowledgements and Agreements

The Parties acknowledge that SCL's participation in the cold water release facility as provided in this section, together with the other actions required under the TAP, will directly contribute towards meeting any obligations SCL may have under the forthcoming temperature TMDL (Water Quality Improvement Plan) for the Pend Oreille River. The Parties further acknowledge that Ecology has exclusive jurisdiction to implement the TMDL in the Boundary Reach of the Pend Oreille River (from the Box Canyon tailrace to the Canadian border), including preparation of any Water Quality Implementation Plan. The Parties, other than Ecology and the Tribe, agree that they will not request or advocate in any proceeding that Ecology, the Commission or another entity require of SCL any additional measures relating to temperature in the Boundary Reach, over and above SCL's participation in the cold water release facility as provided in this section and the other requirements of the TAP (including without limitation Mill Pond Dam removal). Subject to Section 7.4.2.1, the Tribe agrees that, after the TMDL is issued by Ecology and the Tribe or by Ecology, the Tribe will not request or advocate in any proceeding that Ecology, the Commission or another entity require of SCL any additional measures relating to temperature in the Boundary Reach, over and above those required in the TMDL.

7.15.4 Material Modification

If, for any reason, the cold water release facility is not constructed as provided in this Section, it shall constitute a Material Modification; provided however, the requirement for construction of the cold water release facility pursuant to the Sullivan Creek SUA for the use and occupancy of USFS land, as a condition of surrender of the Sullivan Creek Project, shall not constitute a Material Modification.

8. Boundary Resource Coordinating Committee and Work Groups

8.1 Boundary Resource Coordinating Committee

8.1.1 Formation and Purpose

Within 90 days after issuance of the New License, the Licensee shall convene the BRCC to oversee on a broad scale the integrated and efficient implementation of the PM&E measures as specified in the Project Documents. The BRCC will: (1) be comprised of one representative from each signatory party; (2) meet annually to review a rolling three-year work plan that will include the preceding year, the current year, and the upcoming or "Out" year, consisting of a compilation of work plans of the individual Work Groups included in the annual reports (see Section 8.3.3.2); (3) ensure coordination among Work Groups; (4) review annual reports prepared by each Work Group; and (5) address issues affecting overall license implementation.

8.1.2 BRCC Membership

Each Party shall designate a primary representative to the BRCC at the initial meeting, or at any time thereafter with seven days notice. After the initial meeting, designation shall be by Notice to the Parties in accordance with Section 11.12 of the Settlement Agreement. Each member may

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name alternate representatives. A Party's failure to designate a representative shall not prevent the BRCC from convening or conducting its functions. Members of the BRCC may also serve on the Work Groups established in Section 8.2.1.

8.1.3 BRCC Initial Meeting

At the initial meeting, the BRCC shall establish:

8.1.3.1 Protocols for its annual meetings, including agenda development, timely distribution of materials, and location.

8.1.3.2 Common operating procedures for each Work Group (see Section 8.2), including agenda development (e.g., submission of agenda items), timely distribution of materials, location, and scheduling.

8.1.3.3 Procedures for each Work Group to review and approve the Licensee's implementation schedules that will describe on a month-to-month basis the specific actions that the Licensee plans to implement for the current year and actions planned for the following year (the "Out Year"). The schedule for the current year shall include a description of Project Documents, Work Products, or other materials that will be provided to the Work Groups. "Work Products" include the plans, study designs, reports, and facility designs required by the Project Documents to be filed with the Commission.

8.1.3.4 Protocols for documentation of PM&E measures implemented in the preceding year.

8.1.3.5 Each BRCC member shall also name its Work Group representatives.

8.1.4 BRCC Annual Meetings

BRCC annual meetings shall occur after all Work Group annual meetings and draft final annual reports (including the draft final rolling three-year work plan for that work group) but before the final annual work group reports are due to the Commission.

8.1.5 BRCC Meeting Minutes

The Licensee shall distribute minutes of the annual BRCC meetings, within 30 days of the meeting date, to BRCC members. Any comments, recommendations or questions raised during the annual meetings or in response to the meeting minutes shall be referred by the BRCC to the appropriate Work Group(s) for consideration and response.

8.1.6 BRCC Evaluation of Work Group Processes

The BRCC will evaluate the role, protocols and procedures of the Work Groups five years after issuance of the New License. The BRCC, with input from the Work Groups, will determine if

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protocols and procedures should remain the same, be modified or discontinued. The BRCC will re-evaluate Work Group roles and procedures periodically thereafter, throughout the term of the New License and any annual licenses.

8.1.7 Federal Advisory Committee Act

BRCC participation by state or federal agencies does not affect their responsibilities and authorities. Issues involving the exercise of agencies' specific authorities can be discussed, but decisions are not delegated to the BRCC. The BRCC does not provide consensus advice to any federal agency (consistent with the Federal Advisory Committee Act).

8.2 Work Groups

8.2.1 Work Group Formation and Purpose

The Licensee shall initially convene the Work Groups not later than 180 days after Commission issuance of the New License. Collaboration among the Parties on the specific requirements of the Project Documents will occur primarily through the Work Groups. At the initial meetings, each Work Group shall review the Project Documents, prioritize actions, and establish a list of tasks to be addressed over the current year and review and propose to the BRCC, as appropriate, revisions to the Work Group procedures established by the BRCC. The following Work Groups are hereby established with the voting members identified below:

8.2.1.1 FAWG Membership

The Licensee, USFWS, BIA, the Tribe, USFS, WDFW, Ecology, and SCA, or The Lands Council as an alternate participant, on behalf of the Hydropower Reform Coalition. The Licensee shall form a TAC when required by the FAMP. TAC members shall be chosen by the Licensee in consultation with and subject to the approval of the FAWG. TACs will be formed as necessary and disbanded upon the completion of their technical advisory assignments from the Licensee and the FAWG.

8.2.1.2 TRWG Membership

The Licensee, USFWS, USFS, WDFW, Ecology, and SCA, or The Lands Council as an alternate participant, on behalf of the Hydropower Reform Coalition.

8.2.1.3 RRWG Membership

The Licensee, USFS and NPS.

8.2.1.4 WQWG Membership

The Licensee, USFWS, BIA, the Tribe, USFS, WDFW, Ecology, and SCA, or The Lands Council as an alternate participant, on behalf of the Hydropower Reform Coalition. The WQWG

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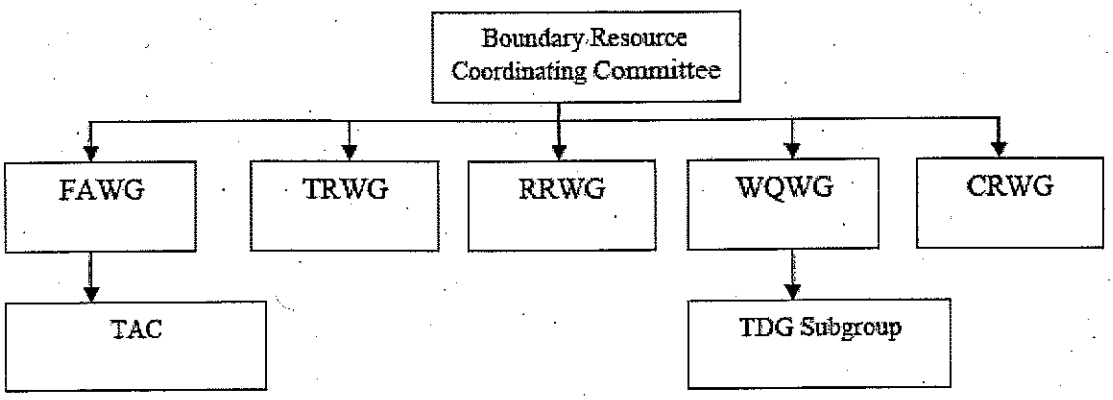
will establish a TDG Subgroup, consisting of the Licensee, Ecology, WDFW, USFS and the Tribe to address progress on TDG.

8.2.1.5 CRWG Membership

The Licensee, BIA, the Tribe, and USFS. Washington Department of Archaeology & Historic Preservation and Bureau of Land Management will participate in the CRWG as defined by the Programmatic Agreement (Proposed License Article 7 in Settlement Exhibit 1).

Figure 1: Boundary Resource Coordinating Committee and Work Groups



8.2.2 New Work Group Voting Members

Any Party may join any Work Group at any time during the term of the New License with 30 days Notice to the current members of the Work Group. Any organization with plan-level authority (as opposed to only permitting authority) over issues addressed by a Work Group that is not a Party to the Settlement Agreement may become a voting member of any Work Group with 30 days' Notice to the Parties if: (1) the organization becomes a signatory of this Settlement Agreement; and (2) the organization agrees to abide by the protocols governing Work Group operations.

8.2.3 Work Group Non-Voting Members

Any other organization or a member of the public may volunteer to serve as a non-voting participant on a Work Group upon 30 days' Notice to the current members of the Work Group and with the approval of the voting members. To qualify, the organization or member of the public must: (1) identify an interest affected by the decisions of the Work Group; (2) agree to abide by consensus decisions of the voting members; and (3) agree to abide by the protocols governing Work Group operations. A non-voting participant has no decision-making authority within the Work Group (i.e., no voting rights or ability to elevate an issue to dispute resolution). Volunteer participants may be removed from a Work Group by consensus of the voting members with 30 days Notice.

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8.2.4 Work Group Voting Member Representatives

Each Party shall designate primary representative(s) to the Work Groups at the initial meeting of the BRCC, or at any time thereafter with seven days notice. After the initial BRCC meeting, designation shall be by Notice to the Parties in accordance with Section 11.12 of the Settlement Agreement. Each member may name alternate representatives to the Work Groups. A Party's failure to designate a representative shall not prevent Work Groups from convening or conducting their functions.

8.2.5 Federal Advisory Committee Act

Work Group participation by state or federal agencies does not affect their statutory responsibilities and authorities. Issues involving the exercise of agencies' specific authorities can be discussed, but decisions are not delegated to the Work Groups. Work Groups do not provide consensus advice to any federal agency (consistent with the Federal Advisory Committee Act).

8.2.6 Work Group Coordination

Any Party may engage on any specific issue within a Work Group on a timely basis, regardless of whether that Party is a current member of the Work Group, and the Licensee shall treat all comments received from a Party under the same provisions that apply to Work Group members. All Work Groups will coordinate among one another if they identify issues through their deliberations that may be of interest to or affect another Work Group or Party.

8.2.7 Work Group Role

The Licensee shall consult with the Work Groups on all aspects of the Work Products. Work Groups will convene as needed to meet the consultation requirements of the Project Documents, but at least annually for the license term and any annual licenses (see Section 8.3.3).

8.2.8 Consensus Defined

Work Groups shall make decisions by consensus. Consensus is achieved when all voting members cast a supportive or neutral vote or have abstained from the decision. When any vote is taken at a meeting on a Work Product, the Licensee shall provide the results to and seek the vote of non-present members within three days. Work Group members not present must inform the Licensee and other Work Group members of their vote on the Work Product within 10 days after the meeting or they shall be deemed to have abstained from the decision.

8.2.9 Work Group Consultation Process

Where the Project Documents require consultation on a Work Product, the Licensee shall strive to, at a minimum, provide Work Group members with a draft Work Product for at least 30 days to review and comment (which the Licensee may reasonably extend upon request of a voting member if needed to facilitate consultation). At the conclusion of this review period, if needed,

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the Licensee shall convene at least one Work Group meeting to discuss the draft Work Product and attempt to reach consensus with Work Group members. If consensus is achieved, the Licensee shall file with the Commission the Work Product and documentation of all consultations with the Work Group, any concerns and responses thereto, and any other written comments provided to the Licensee. If the final Work Product has been modified in any substantive way by the Licensee in response to comments or otherwise, the Licensee shall provide a new final version to Work Group members 10 days before filing it with the Commission.

8.2.10 Elevation of Work Group Decisions to Dispute Resolution

If consensus is not achieved, any voting member may elevate the issue for dispute resolution as provided in Section 9. The voting member objecting to the Work Product must provide a rationale, supporting documentation, and a proposed resolution of the issue for review. This information shall be provided to the Licensee by the objecting member within 10 days of the Work Group meeting pursuant to the Notice provisions in Section 11.12 of the Settlement Agreement. The Licensee shall provide the information to voting members concurrent with its Notice of Issue Elevation.

8.2.11 Impact of Dispute Resolution and Agency Approval Process on FERC Filing Deadlines

If the dispute is not resolved prior to the date the Licensee is required to make a filing, the Licensee shall make the filing and shall describe to the Commission how the Licensee's filing accommodates any comments and recommendations of the Work Group members. If the Licensee's filing does not adopt a recommendation, the filing will include the Licensee's reasons based on Project-specific information. If any necessary agency approval has not been obtained, the Licensee also shall provide an explanation of why the approval was not obtained. The Licensee shall provide the Commission with a copy of any comments and recommendations provided by Work Group members during consultation. Work Group members may submit their own comments to the Commission.

8.2.12 Agency Approval

Prior to implementing a Work Product, the Licensee shall obtain any necessary Commission approval and any necessary agency approval. Where a Project Document identifies an agency with approval authority, the Licensee shall proceed in a manner consistent with the approval of that agency.

8.2.13 Agency Approval Process

When agency approval is required by the Project Documents, that approval must be provided in writing by the approving agency(s). The approving agency(s) will strive to ensure that written approvals are provided to the Licensee in advance of FERC filing deadlines. To facilitate this process, the Licensee shall provide all final Work Products requiring agency approval to the

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approving agency at least 30 days prior to the FERC filing deadline or as otherwise noted in the Project Documents, and shall identify whether consensus among Work Group voting members has been achieved. If consensus has not been achieved, the Licensee shall identify efforts taken to resolve the dispute and shall propose a resolution for consideration by the approving agency. Unless an extension would cause the Licensee to miss a FERC filing deadline, the Licensee shall, if requested by an agency with approval authority, grant a 30-day extension for completion of the agency approval process; provided, however, that in the event that granting such an extension delays the Licensee's ability to take action, the schedule for such action will be adjusted.

8.2.14 Agency Involvement in Work Groups

The position of other members does not override an agency's approval, which is an independent authority. The agency with such approval authority will convey its determination to the Licensee, the Work Group, and the Commission. Notwithstanding, agencies do not waive or relinquish in any respect any approval authorities under the Federal Power Act or other applicable law through their participation in the Work Group consensus process and any subsequent dispute resolution process. While the goal of the Work Groups is consensus decision-making where possible, nothing in the Settlement Agreement is intended to transfer legal authority or jurisdiction from any party to any other.

8.2.15 Work Group Member Withdrawal

Any member of any Work Group may withdraw from that Work Group upon Notice to the Licensee. The Licensee shall provide Notice to other Work Group members in the event of a member withdrawal. Any Party that withdraws from this Settlement Agreement shall be deemed to have withdrawn from all Work Groups.

8.3 Meeting Provisions

8.3.1 Work Group Chairs and Facilitators

The Licensee shall arrange, administer, and chair all meetings. Upon request of a majority of voting members in the Work Group(s), the Licensee shall provide a meeting facilitator(s). Selection of a facilitator(s) will be done in consultation with and for approval by the affected Work Group voting members. The Licensee (either by its own submission or through the facilitator) shall provide no fewer than 10 days prior Notice of any meeting, unless otherwise agreed to by the members of the BRCC or Work Group(s), or required in order to meet a license deadline or an emergency circumstance.

8.3.2 Work Group Meeting Minutes

The Licensee (either by its own submission or through the facilitator) shall provide draft meeting minutes within 10 days after a meeting to members of the Work Group, who shall have 10 days to provide any comments. The Licensee shall distribute final meeting minutes within 30 days of the meeting. Meeting minutes will include Work Group action items, a summary of issues

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discussed, decisions reached, and member concerns. However, when agency or Work Group approvals of specific actions are required, as identified in the Project Documents, the Licensee shall follow procedures identified in Section 8.2.13. The Licensee shall provide Work Group meeting minutes and products to any Party upon request.

8.3.3 Work Group Annual Meeting

The Licensee shall convene annual Work Group meetings to review the previous year's actions and implementation status and to discuss planned activities for the current calendar year and the Out Year. The Licensee shall provide at least 30 days Notice for the annual meetings. An annual meeting may be cancelled by consensus of Work Group members or by the Licensee if no members of the Work Group respond to the Licensee's annual meeting Notice. However, to ensure continued communication and coordination, no more than two consecutive annual meetings of a Work Group may be cancelled.

8.3.3.1 Work Group Annual Reports

Prior to providing Notice for an annual Work Group meeting, the Licensee shall prepare a draft annual report. The Licensee shall provide the draft annual report to Work Group members no later than the time that it provides the 30-day Notice for the annual meeting. Work Group members shall submit any comments and recommendations on the annual report in writing to the Licensee at or before the annual meeting and may provide verbal comments at the meeting. If the Licensee makes substantive revisions to the annual report after the meeting, the Licensee shall circulate the revised report within 10 days of the meeting, and Work Group members may provide additional comments within 10 days of the Licensee's distribution of the revised report. Receipt of further comments does not trigger further circulation of drafts and solicitation of comments. The Licensee shall file with the Commission a final annual report and response to comments and recommendations on the draft report within 60 days after the annual meeting. A copy of the final report will be provided to the Work Group members.

8.3.3.2 Contents of Work Group Annual Reports

The Licensee shall include, at a minimum, the following information in the annual reports:

(a) A rolling, three-year work plan documenting the implementation of PM&E measures in the preceding year, a month by month description of the specific actions that the Licensee plans to implement for the current year and a summary of actions proposed in the Out Year. Specific elements of this plan include:

(i) A summary of the actions implemented during the previous calendar year; such as field testing and studies, compliance monitoring, design and construction, and other analyses.

(ii) Summaries of results of any monitoring or studies conducted during the previous year, conclusions that the Licensee draws

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from the results, and any proposed changes to the Project Documents based on the results.

(iii) The implementation schedule for the current year.

(iv) The implementation schedule for the Out Year.

(b) A discussion of any substantial differences between the actions required in the Project Documents and the actions that the Licensee implemented, including consultation comment letters, explanations and any necessary agency or Work Group approvals for any substantial differences.

(c) A discussion of any significant differences between the implementation schedule in the Project Documents and the schedule for the actions the Licensee plans to implement during the year, including an explanation for any significant differences.

(d) Documentation of consultation with the respective Work Groups and any required agency or Work Group approvals in the previous year.

(e) Identification of any issues or Project Document requirements that would benefit from coordination between Work Groups and discussion at the annual BRCC meeting.

8.3.4 Management Plan Review and Amendment

An amendment is any change to the text of a Management Plan. All amendments require FERC approval before they become effective.

8.3.4.1 Scheduled review

The Licensee in consultation with the Work Groups shall review the Management Plans and amend them if needed on the schedule established in each of the plans. The need for amending the Management Plans will be discussed with the Work Group during the annual meeting in the year in which the review is scheduled to occur. If the Work Group determines an amendment to a Management Plan is not needed, this decision will be documented in the Rolling 3-Year Annual Report/Work Plan for the year in which the review is conducted.

The Licensee will compile a running list of potential changes to each management plan suggested by the Work Group. This list will be compiled from sources such as monitoring and be included in the Rolling 3-Year Annual Report/Work Plan for consideration during the next review/amendment cycle.

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8.3.4.2 Unscheduled review

Amendments to Management Plans may be proposed based on changes in resource conditions resulting from unforeseen effects, from new or existing Project-related activities, or from natural events in the Project area. Amendments may also be warranted if monitoring or other observations indicate that resource objectives are not being met and/or it is determined that a specific PM&E measure is not providing the intended result. The proposed amended Management Plan will document the rationale for changes and the consultation process with the Work Group.

8.3.4.3 Amendment process

The Licensee will be responsible for preparing the draft and final proposed amended Management Plan, coordinating the review process and schedule with the Work Group, consulting with the Parties as set forth in Section 8.2.9, obtaining all necessary agency approvals as set forth in Section 8.2.13, and submitting the final proposed amended Management Plan to FERC. Failure of the approving agency to respond to a request for approval within 60 days shall be deemed to constitute approval.

8.3.5 Cost of Work Group Meetings

The Licensee shall bear all meeting room rental, materials, and similar costs associated with conducting BRCC and Work Group meetings. Each member or other participant will bear its own cost of attendance, unless otherwise agreed to by the Licensee.

9. Dispute Resolution

9.1 General Applicability

9.1.1 The Parties agree to use the following alternative dispute resolution process to resolve disputes related to this Settlement Agreement and the Proposed License Articles, unless otherwise specifically provided in this Settlement Agreement or precluded by statute or agency regulation.

9.1.2 Within five days of a Party initiating dispute resolution under this Section 9, if the dispute resolution proceedings are relevant to a FERC proceeding, the Party shall provide Notice to FERC that dispute resolution has been initiated. Such Notice will identify the portions of the FERC filing that are related to the dispute but need not discuss the nature of the dispute or the Parties' positions.

9.1.3 The Parties agree to devote such time and attention to dispute resolution as necessary and reasonable to attempt to resolve the dispute at the earliest time possible; and each Party will cooperate in good faith promptly to schedule, attend, and participate in dispute resolution. Each Party will promptly implement all final agreements reached, consistent with its applicable statutory and regulatory responsibilities.

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9.1.4 The dispute resolution provisions of this Settlement shall not apply to Ecology insofar as Ecology is exercising its statutory authority to enforce the requirements of a CWA 401 Certification, applicable water quality requirements, or other appropriate requirements of state law. However, Ecology, in its sole discretion, may choose upon specific request to participate in a dispute resolution process in such circumstances.

9.2 Dispute Resolution Procedures

9.2.1 Dispute Initiation Notice

A Party claiming a dispute shall provide timely Notice to the other Parties, describing the matter(s) in dispute and any proposed relief or resolution. Each Party that wishes to participate in dispute resolution shall provide written Notice to the other Parties within 20 days of receiving the dispute initiation Notice. If a dispute initially arises within a Work Group as described in Section 9.2.3, the Party claiming a dispute shall provide timely Notice only to the other Parties that are members of the relevant Work Group. If the dispute is not resolved within the Work Group as described in Section 9.2.3, the Party claiming a dispute shall provide timely Notice to all Parties when the dispute is referred to the Dispute Resolution Committee, describing the matter(s) still in dispute and any proposed relief or resolution.

9.2.2 General Dispute Resolution Procedures

9.2.2.1 The Parties have designated upper-level management Party representatives in Appendix 2 to serve on the Dispute Resolution Committee in the event that the dispute resolution procedures in Section 9 of this Settlement Agreement are necessary. The members of the Dispute Resolution Committee will not be members of the Work Groups established in Section 8.2.1 or the BRCC established in Section 8.1. The members of the Dispute Resolution Committee should be management level representatives of their respective organizations.

9.2.2.2 Except as provided in Section 9.2.3, any dispute arising outside the context of the Work Group process will first be addressed among the disputing Parties. The disputing Parties shall hold at least two informal meetings to resolve the dispute, unless agreed otherwise, commencing within 30 days after the dispute initiation Notice and concluding within 60 days of the first meeting. The 60-day period may be extended upon mutual agreement of the disputing Parties. If the disputing Parties are unable to resolve the dispute by mutual agreement, at least one meeting will be held by the Dispute Resolution Committee to seek resolution. If the Dispute Resolution Committee fails to resolve the dispute by consensus (as defined in Section 8.2.8) within 60 days of Notice to the Dispute Resolution Committee, the Dispute Resolution Committee may, by unanimous consent, agree to mediation and proceed as described in Section 9.2.6. The Party giving Notice of the dispute shall be responsible for coordinating all meetings under this Section and shall make good faith efforts to coordinate a meeting time and location satisfactory to all disputing Parties.

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9.2.3 Resolution of Disputes for Work Groups

Any dispute among the members of a Work Group will first be addressed at the level of the Work Group. Only voting members of a Work Group, pursuant to Sections 8.2.1 and 8.2.2, have the right under this Settlement Agreement to initiate dispute resolution pursuant to Section 9. To initiate dispute resolution, a Work Group member claiming a dispute will give Notice of the dispute as described in Section 9.2.1. Within 20 days after such Notice of a dispute, SCL will convene at least one meeting of the Work Group in person or by conference call to attempt to resolve the dispute. The Work Group procedures set forth in Section 8.2.8 will apply to the meeting. If the dispute is not resolved by the Work Group within 15 days after the meeting, a Work Group member may notify the other Work Group members that this effort to resolve the dispute has failed, in which case SCL will refer the dispute to the Dispute Resolution Committee and follow the procedure described in Section 9.2.2.2.

9.2.4 Costs for Dispute Resolution

Unless otherwise agreed among the Parties, each Party will bear its costs for its own participation in a dispute resolution process.

9.2.5 Continued Operation of the Project and FERC Filings During Dispute Resolution

Pending resolution of any dispute under this Section 9, and subject to the authority of FERC or another agency with jurisdiction to order otherwise and the Parties' reservation of remedies, the Licensee may continue operating the Project in the manner of its operation immediately before the time when the dispute arose. Pending resolution of any dispute, the Licensee may make a FERC filing relating to a disputed issue in order to comply with FERC filing requirements. Any other Party may oppose or respond to the Licensee's filing.

9.2.6 Mediation

If mediation is agreed to under Section 9.2.2.2, the Dispute Resolution Committee shall choose a mediator within 30 days of the conclusion of the meetings described in Section 9.2.2.2. Mediation shall not occur if the Dispute Resolution Committee cannot unanimously agree on the allocation of costs for the mediator or choice of mediator. The mediation process shall be concluded not later than 60 days after the mediator is selected. The above time periods may be shortened or lengthened by consensus (as defined in Section 8.2.8) of the Dispute Resolution Committee.

9.2.7 Dispute Resolution Notice

The Party initially giving Notice of the dispute shall provide Notice to all Parties and FERC, if FERC was noticed under Section 9.1.2, of the result of the dispute resolution process.

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9.2.8 FERC Filings after Dispute Resolution

If a dispute relating to an issue that was the subject of a FERC filing is successfully resolved, the Licensee shall inform FERC of the outcome of dispute resolution. If the Licensee is required to make a FERC filing relating to an issue that was not successfully resolved through dispute resolution, such filing will include the Licensee's reasons, based on Project-specific information, for not adopting a Party's recommendation or for seeking FERC approval without obtaining agency approval. Any other Party may oppose or respond to the Licensee's filing.

9.2.9 Effect of Dispute Resolution on Other Proceedings

The dispute resolution process in this Section 9 does not preclude any Party from timely filing and pursuing an action for administrative or judicial relief of any FERC order, compliance matter, or other regulatory action related to the New License; provided that any such Party shall initiate dispute resolution pursuant to this Section 9 as soon as practicable thereafter or concurrently therewith.

9.3 Remedies

The Parties reserve all remedies for material breach of the Project License or this Settlement Agreement, including seeking a License amendment or other appropriate relief from FERC.

10. Withdrawal from Settlement Agreement

10.1 Withdrawal of a Party from Settlement Agreement

10.1.1 The Party whose interests are adversely affected by a Material Modification or a Party's action that is materially inconsistent with the terms of this Settlement Agreement or New License may withdraw from this Settlement Agreement. A Party may withdraw under this Section only after the Parties comply with the dispute resolution process in Section 9 of this Settlement Agreement. Following completion of the dispute resolution process, the aggrieved Party shall provide Notice to the other Parties of its withdrawal from this Settlement Agreement, pursuant to Section 11.12. In addition, when a Party ceases to exist and has no successors or assigns, it will be deemed to have withdrawn from this Settlement Agreement, but such withdrawal will not give any other Party the right to withdraw.

10.1.2 If the Licensee is required to make a FERC filing addressing an issue(s) not successfully resolved through dispute resolution pursuant to Section 9, no Party involved in that dispute may withdraw from this Settlement Agreement until FERC issues an order on the Licensee's filing. Any Party materially aggrieved by the FERC order as it relates to the disputed matter may then withdraw pursuant to this Section 10, seek rehearing before FERC, and/or exercise any other remedy available under applicable law. For issues that do not require a FERC filing, the disputing Party or Parties may withdraw from this Settlement Agreement following completion of the dispute resolution process set forth in Section 9.

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10.2 Effective Date of Withdrawal

If dispute resolution is unsuccessful and the aggrieved Party provides Notice of withdrawal, the withdrawal shall become effective 10 calendar days after such Notice.

10.3 Termination of Settlement Agreement

Upon expiration of the New License and any subsequent annual license(s), or upon withdrawal from this Settlement Agreement by the Licensee, or upon a denial of 401 Certification as set forth in Section 7.4.3.1, this Settlement Agreement shall terminate as to all Parties and have no force or effect, except that all Parties shall continue to be bound by Sections 5.2 and 11.1, which shall survive termination. The withdrawal of any Party other than the Licensee does not automatically terminate this Settlement Agreement for the remaining Parties. However, the remaining Parties will meet within 20 days, or as otherwise agreed, to discuss the effect of the withdrawal and whether they will continue to operate under the Agreement. A withdrawing Party shall not be bound by any term contained in this Settlement Agreement, except Sections 5.2 and 11.1.

11. Miscellaneous

11.1 Settlement Agreement Negotiations Privileged and Confidential

Unless the Parties agree otherwise, all discussions, communications, drafts, work papers, and notes relating to this Settlement Agreement and created prior to the Effective Date shall be deemed confidential and shall not be discoverable or admissible in any forum or proceeding for any purposes to the fullest extent allowed by applicable law, including 18 C.F.R. § 385.606, except (a) those documents submitted to FERC as a part of the Offer of Settlement; (b) all documents cited by the documents included with the Offer of Settlement; and (c) final resource studies developed for use by the Parties. The provision does not apply to any information that was in the public domain prior to the development of the Settlement Agreement or that became part of the public domain at some later time through no unauthorized act or omission by any Party. The provision does not apply to any information held by: (a) a federal agency that is not protected from disclosure pursuant to the Freedom of Information Act; or (b) a Washington State agency that is not protected from disclosure under the Public Records Act, RCW 42.56, *et seq.*, or other applicable law; provided, however, that prior to the release of any such information, the federal or state agency shall make reasonable efforts to notify all Parties of receipt of a request for release of the information and a reasonable opportunity for any Party to seek a protective order preventing the disclosure of the information as is consistent with that agency's obligations under the law. This Section 11.1 shall survive termination of the Settlement Agreement.

11.2 Severability of Terms of Settlement Agreement

This Settlement Agreement is made on the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire Settlement Agreement. Notwithstanding, if a court rules that any provision in this Settlement Agreement is

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invalid, the Parties agree to meet and confer regarding the continued viability of this Settlement Agreement.

11.3 No Third Party Beneficiaries

This Settlement Agreement shall not create any right or interest in any member of the public as a third-party beneficiary and shall not authorize any non-Party to maintain a suit at law or equity pursuant to this Settlement Agreement. The duties, obligations and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.

11.4 Successors, Transferees and Assigns

This Settlement Agreement shall apply to and be binding on the Parties and their successors and assigns. Any voluntary assignment by a Party shall not be effective unless approved by the Licensee, which approval shall not be unreasonably withheld. A partial assignment is not permitted. After the Licensee's approval of the assignment, the assignee shall sign this Settlement Agreement and become a Party.

11.4.1 Succession

In the event of succession by any Party, whether by statute, executive order or operation of law or contract, or any other involuntary means, the successor shall become a Party to and be bound by the terms of this Settlement Agreement, to the extent permitted by law.

11.4.2 Continuation of Certain Obligations

Upon completion of a succession or assignment, the initial Party shall no longer be a Party to this Settlement Agreement. It shall continue to be bound by Sections 5.2 and 11.1.

No change in ownership of the Project or transfer of the existing or New License by the Licensee shall in any way modify or otherwise affect any other Party's interests, rights, responsibilities or obligations under this Settlement Agreement. Unless prohibited by applicable law, the Licensee shall provide in any transaction for a change in ownership of its Project or transfer of its existing or New License, that such new owner shall be bound by, and shall assume the rights and obligations of the Licensee under this Settlement Agreement upon completion of the change of ownership and approval by FERC of the License transfer.

11.4.3 Notice

The Licensee transferring pursuant to Section 11.4 or an assigning Party shall provide Notice to the other Parties at least 30 days prior to the proposed effective date of such transfer or assignment.

11.5 No Liability for Force Majeure

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No Party shall be in breach of its obligations or liable to any other Party for breach of this Settlement Agreement as a result of a failure to perform if said performance is made impracticable due to an event of *Force Majeure*. The term "*Force Majeure*" means any cause reasonably beyond the Party's control, whether unforeseen, foreseen, foreseeable, or unforeseeable, including but not limited to: acts of God, fire, war, insurrection, civil disturbance, explosion; adverse weather conditions that could not be reasonably anticipated causing unusual delay in transportation and/or field work activities; restraint by court order or order of public authority; inability to obtain—after exercise of reasonable diligence, timely submittal of all applicable applications, and exhaustion of available administrative and judicial remedies—any necessary authorizations, approvals, Permits or licenses due to action or inaction of any non-SCL governmental agency or authority; or labor disputes or strikes which are reasonably beyond the control of the Party seeking excuse from performance. *Force Majeure* does not include lack of resources.

11.6 Process to Respond to Force Majeure Event

The Party whose performance is affected by *Force Majeure* shall provide Notice to the other Parties as soon as reasonably practicable. This Notice shall include: (a) a description of the event causing the delay or anticipated delay; (b) an estimate of the anticipated length of the delay; (c) a description of the measures taken or to be taken to avoid or minimize the delay; and (d) a proposed timetable for the implementation of the measures or performance of the obligation. The affected Party shall make all reasonable efforts to promptly resume performance of the obligation. It shall provide verbal notice and written Notice when it resumes performance of the obligation. If an event of *Force Majeure* prevents performance of one or more PM&E measures for a prolonged period, the Parties recognize that re-initiation of consultation under the ESA may be required.

11.7 Waiver

The failure of any Party to insist, on any occasion, upon strict performance of any provision of this Settlement Agreement shall not be considered a waiver of any obligation, right or duty of, or imposed upon, such Party.

11.8 Governing Law and Venue

11.8.1 Governing Law

The New License shall be governed, construed, and enforced in accordance with federal law and regulation.

11.8.2 Venue

By executing this Settlement Agreement, no federal agency is consenting to the jurisdiction of a state court unless such jurisdiction otherwise exists. In the event an action proceeds in state court, the action shall be brought in the courts of the State of Washington.

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11.8.3 Tribal Sovereign Immunity Waiver and Consent to Federal Court Jurisdiction

The Tribe expressly waives any claim or assertion of sovereign immunity from an action by SCL to interpret or enforce any provision or rights granted in this Settlement Agreement. The Tribe consents to the jurisdiction of the federal courts for any dispute involving the interpretation or enforcement of this Settlement Agreement.

11.9 Elected Officials, Employees and Agents Not to Benefit

No elected officials, employees or agents thereof shall be entitled to any share or part of this Settlement Agreement or to any benefit that may arise from it.

11.10 Relationship of the Parties

Except as otherwise expressly set forth herein, nothing contained in this Settlement Agreement is intended or shall be construed to create an association, trust, partnership or joint venture, or impose any trust or partnership duty, obligation or liability on any Party, or create an agency relationship between or among the Parties or between any Party and any employee of any other Party.

11.11 Notice

11.11.1 Any Notice required by this Settlement Agreement shall be written. If practicable, Notice shall be provided by e-mail or facsimile to all Parties. Notice shall also be sent to all Parties by first-class mail or comparable method of distribution, and as applicable shall be filed with FERC. Members of a Work Group may agree that any Notice relating to activities of the Work Group shall be sufficient if provided only by e-mail.

11.11.2 For the purposes of this Settlement Agreement, and unless otherwise specified, a Notice, including Notice via e-mail or facsimile, shall be effective upon receipt, but if provided only by U.S. Mail, seven days after the date on which it is mailed. When this Settlement Agreement requires Notice in fewer than seven days, Notice shall be provided by facsimile or e-mail and shall be effective when provided.

11.11.3 For the purpose of Notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Appendix 1. The Parties shall provide Notice of any change in the authorized representatives designated in Appendix 1, and the Licensee shall maintain the current distribution list of such representatives. The Parties acknowledge their responsibility to keep the other Parties informed of their current address, telephone, facsimile and e-mail information. Notice obligations under this Section 11.12 are in addition to any notice provisions required by applicable law.

11.12 Entire Agreement

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This Settlement Agreement contains the complete and exclusive agreement among all of the Parties with respect to the subject matter thereof, and supersedes all discussions, negotiations, representations, warranties, commitments, offers, contracts, agreements in principle, and other writings prior to the Effective Date of this Settlement Agreement, with respect to its subject matter. Nothing in this Agreement shall be interpreted to supersede, modify or limit the effectiveness of the Sullivan Creek Settlement Agreement.

11.13 Section Titles for Convenience Only

Section titles in this Settlement Agreement are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any Settlement Agreement provisions or the Parties' intentions.

11.14 Costs

Unless otherwise provided in this Settlement Agreement, each Party shall bear its own costs of implementing this Settlement Agreement.

11.15 Time

All time is specified in number of days. The day of the triggering event is excluded from the count. For any time period that is five days or less, intervening Saturdays, Sundays and legal holidays are excluded. For any time period over five days, all intervening Saturdays, Sundays and legal holidays are included. The last day is included, but if it falls on a Saturday, Sunday or legal holiday, the time is extended to the following non-Saturday, Sunday or legal holiday.

12. Execution of Settlement Agreement

12.1 Signatory Authority

Each signatory to this Settlement Agreement certifies that he or she is authorized to execute this Settlement Agreement and to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such Party.

12.2 Signing in Counterparts

This Settlement Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as if all signatory Parties had signed the same instrument. The signature pages of counterparts of this Settlement Agreement may be compiled without impairing the legal effect of any signatures thereon.

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13. List of Settlement Exhibits, Appendices and Attachments

13.1 Settlement Exhibits

Exhibit 1: Proposed License Articles

- Article 1: Operations
- Article 2: Boundary Resource Coordinating Committee and Work Groups
- Article 3: Terrestrial Resources
- Article 4: Land Acquisition
- Article 5: Recreation Resources
- Article 6: Well Decommissioning
- Article 7: Programmatic Agreement
- Article 8: Water Quality Plans
- Article 9: Fish and Aquatic Resources
  - 9 (A) Mainstem Fish Community and Aquatic Habitat Measures
  - 9 (B) Upstream Fish Passage
  - 9 (C) Reduction of Project Related Entrainment Mortality
  - 9 (D) Tributary Non-native Trout Suppression and Eradication
  - 9 (E) Tributary Fish Community and Aquatic Habitat Measures
  - 9 (F) Mill Pond Dam Site Monitoring and Maintenance
  - 9 (G) Native Salmonid Conservation Program
  - 9 (H) Recreational Fish Stocking Program
  - 9 (I) Fund for Habitat Improvements in Tributaries to Sullivan Lake
- Article 10: Escalation

Exhibit 2: Terrestrial Resources Management Plan
Exhibit 3: Recreation Resources Management Plan
Exhibit 4: Monitoring Well and Road Decommissioning Plan
Exhibit 5: Historic Properties Management Plan
Exhibit 6: Aquatic Invasive Species Control and Prevention Plan
Exhibit 7: Dissolved Oxygen Attainment Plan
Exhibit 8: Fish Tissue Sampling Plan
Exhibit 9: Temperature Attainment Plan
Exhibit 10: Total Dissolved Gas Attainment Plan
Exhibit 11: Fish and Aquatics Management Plan
Exhibit 12: USFS draft Preliminary Section 4(e) Terms & Conditions

13.2 Appendices

Appendix 1: Authorized Party Representatives for Communications
Appendix 2: Authorized Party Representatives for Dispute Resolution Committee
Appendix 3: Boundary Clean Water Act § 401 Certification Application

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13.3 Attachments

Attachment 1: Interlocal Agreement for Mill Pond Decommissioning Between Seattle City Light and Public Utility District No. 1 of Pend Oreille County

Attachment 2: Cold Water Release Memorandum of Agreement

IN WITNESS WHEREOF the Parties have executed this Settlement Agreement as of the date last signed below.

SEATTLE CITY LIGHT

Date_____ By_____
NAME_____
TITLE_____

U.S. FOREST SERVICE

Date_____
By_____
NAME_____
TITLE_____

U.S. FISH AND WILDLIFE SERVICE

Date_____
By_____
NAME_____
TITLE_____

BUREAU OF INDIAN AFFAIRS

Date_____
By_____
NAME_____
TITLE_____

SMC CITY CLERK

NATIONAL PARK SERVICE

Date_____

By_____
NAME_____
TITLE_____

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

Date_____

By_____
NAME_____
TITLE_____

WASHINGTON DEPARTMENT OF ECOLOGY

Date_____

By_____
NAME_____
TITLE_____

PEND OREILLE PUBLIC UTILITY DISTRICT

Date_____

By_____
NAME_____
TITLE_____

KALISPEL TRIBE

Date_____

By_____
NAME_____
TITLE_____

SELKIRK CONSERVATION ALLIANCE

Date_____

By_____
NAME_____
TITLE_____

CITY CLERK

THE LANDS COUNCIL

Date_____

By_____
NAME_____
TITLE_____

AMERICAN WHITEWATER

Date_____

By_____
NAME_____
TITLE_____

SEATTLE CITY CLERK

Date 3/18/10

SEATTLE CITY LIGHT

By _____

NAME _____

TITLE _____

2010 CITY CLERK

Date March 19, 2010

U.S. FOREST SERVICE

By _____

NAME for Mary Wagner

TITLE Regional Forester

CITY CLERK

Date 3/26/2010

U.S. FISH AND WILDLIFE SERVICE

By Ken S. Berg

NAME Ken S. Berg

TITLE Manager, WFWO

SEATTLE CITY CLERK

Date 3/18/2010

BUREAU OF INDIAN AFFAIRS

By _____

NAME _____

TITLE Northwest Regional Director

CITY CLERK

Date March 10, 2010

NATIONAL PARK SERVICE

By Rory Westberg

NAME RORY WESTBERG

TITLE Acting Regional Director

SEA CITY CLERK

Date 3-16-10

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

By _____
NAME Philip Anderson
TITLE Director

SCL CITY CLERK

WASHINGTON DEPARTMENT OF ECOLOGY

Date 17 March 2010

By Grant D. Pfeifer

NAME Grant D. Pfeifer

TITLE Regional Director

SEATTLE CITY CLERK

PEND OREILLE PUBLIC UTILITY DISTRICT

Date 3/17/10

By _____
NAME Robert D. Geddes
TITLE General Manager

PDS CITY CLERK

Date 3-16-10

KALISPEL TRIBE

By _____

NAME Ray Pierre III

TITLE Vice - Chairman

SEATTLE CITY CLERK

SELKIRK CONSERVATION ALLIANCE

Date 03/17/2010

By_____
NAME Mark Sprenger
TITLE Exec. Dir.

SEA CITY CLERK

Date March 22, 2010

THE LANDS COUNCIL

By Mike Peterson

NAME Mike Petersen

TITLE Executive Director

SEA CITY CLERK

Date 3/18/10

AMERICAN WHITEWATER

By _____

NAME KEVIN R. COLBURN

TITLE NATIONAL STEWARDSHIP DIRECTOR

SMS CITY CLERK

Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle City Light	Barbara Greene/615.1091	Calvin Chow/684.4652

Legislation Title:

AN ORDINANCE relating to the City Light Department and authorizing the Superintendent of the City Light Department to accept on behalf of the City the new license from the Federal Energy Regulatory Commission to operate Seattle's Boundary Dam Hydroelectric Project (FERC Project No. 2144); and ratifying and confirming prior acts.

Summary of the Legislation:

This ordinance authorizes the Superintendent of the City Light Department to accept on behalf of the City the new license from the Federal Energy Regulatory Commission (FERC) to operate Seattle's Boundary Dam Hydroelectric Project (FERC Project No. 2144).

Background:

In 1961 the City acquired a fifty-year license from the FERC to operate the Boundary Dam Hydroelectric Project. Since 2005 the City Light Department has been engaged in the FERC's integrated licensing process, including an active negotiation process involving federal, state, tribal, and other stakeholders. In 2010 by Ordinance 123229, the City authorized the Superintendent of the City Light Department to file a comprehensive settlement agreement that Outlined the fundamental terms and conditions relating to all disputed issues with the FERC. The City Light Department submitted the comprehensive settlement agreement to the FERC March 29, 2010. The fifty-year license for the Boundary Dam Hydroelectric Project expired on September 30, 2011, and the City is operating the Boundary Dam Hydroelectric Project under an annual license issued by the FERC on October 4, 2011.

It is in the best interest of the City and its ratepayers that the City continue to own and operate the Boundary Dam Hydroelectric Project in accordance with the terms and conditions of the settlement agreement. The City anticipates that the FERC will issue a new multi-year license for the Boundary Dam Hydroelectric Project before the end of 2012 with terms and conditions consistent with the settlement agreement. The Superintendent of the City Light Department will notify the City Council in the event that the new license is not consistent with the terms and conditions of the settlement agreement.

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Please check one of the following:

X This legislation does not have any financial implications.
(Please skip to "Other Implications" section at the end of the document and answer questions a-h. Earlier sections that are left blank should be deleted. Please delete the instructions provided in parentheses at the end of each question.)

____ This legislation has financial implications.
(If the legislation has direct fiscal impacts (e.g., appropriations, revenue, positions), fill out the relevant sections below. If the financial implications are indirect or longer-term, describe them in narrative in the "Other Implications" Section. Please delete the instructions provided in parentheses at the end of each title and question.)

Appropriations:

(This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation please provide details in the Appropriation Notes section below. If the appropriation is not supported by revenue/reimbursements, please confirm that there is available fund balance to cover this appropriation in the note section.)

Fund Name and Number	Department	Budget Control Level*	2012 Appropriation	2013 Anticipated Appropriation
TOTAL				

**See budget book to obtain the appropriate Budget Control Level for your department.*

Appropriations Notes:

Anticipated Revenue/Reimbursement Resulting from this Legislation:

(This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.)

Fund Name and Number	Department	Revenue Source	2012 Revenue	2013 Revenue
TOTAL				

Revenue/Reimbursement Notes:

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

(This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.)

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2012 Positions	2012 FTE	2013 Positions*	2013 FTE*

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TOTAL							

** 2013 positions and FTE are <u>total</u> 2013 position changes resulting from this legislation, not incremental changes. Therefore, under 2013, please be sure to include any continuing positions from 2012.*

<u>Position Notes</u>:

Do positions sunset in the future?
(If yes, identify sunset date)

Spending/Cash Flow:
(This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.)

Fund Name & #	Department	Budget Control Level*	2012 Expenditures	2013 Anticipated Expenditures
TOTAL				

** See budget book to obtain the appropriate Budget Control Level for your department.*

<u>Spending/Cash Flow Notes</u>:

Other Implications:

a) Does the legislation have indirect financial implications, or long-term implications?

Yes, this legislation has indirect financial implications and long-term implications. Financial implications are reflected in the SCL Relicensing and Implementation Division Budget for 2011 – 2012, and proposed budget for 2013 - 2014.

The long-term implications are positive in that the new Boundary License will provide more economic security for the City's ratepayers while preserving the City's commitment to environmental stewardship. The Boundary Hydroelectric Project is Seattle City Light's largest and most economical generation resource, meeting approximately 40% of Seattle's annual needs for electricity, and is a reliable and renewable resource. The new license will allow us continued unrestricted operations for up to 50 years, providing certainty for financial planning purposes. This certainty has been balanced with significant environmental improvements to Boundary facilities, the enhancement of native fish, protection of endangered plant and wildlife species, preservation of historic and cultural resources, new and improved recreational access and facilities, and

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protection of water quality in the Boundary Project area, which includes approximately 939 acres of land in northeast Washington.

b) **What is the financial cost of not implementing the legislation?**
The Federal Power Act required the City of Seattle to obtain a new license to operate Boundary Dam and the City will be bound by the terms of the new license, including funding the costs of implementing the protection, mitigation, and enhancement measures. It is in the best interest of the City to accept the new license in order to show its commitment to the new measures, to preserve SCL's power portfolio, and to achieve more certainty in financial forecasting. Failure to comply with the new FERC license will result in financial penalties and ultimately the requirement to stop operating Boundary Dam.

c) **Does this legislation affect any departments besides the originating department?**
No.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

There are no possible alternatives to the legislation that would achieve the same or similar objectives.

e) **Is a public hearing required for this legislation?**
No.

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.

g) **Does this legislation affect a piece of property?**
No.

h) **Other Issues:**

List attachments to the fiscal note below: None.

CITY CLER

City of Seattle
Office of the Mayor

June 12, 2012

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that accepts the new license to operate Boundary Dam from the Federal Energy Regulatory Commission (FERC). This license will be issued before the end of 2012 and is anticipated to be consistent with the settlement agreement filed with FERC by Seattle City Light on March 29, 2010 that provided for mitigation efforts in the areas of fisheries, water quality, terrestrial, erosion, recreation, aesthetic and cultural resources. The new license will ensure continued flexibility to operate as we have in the past, allowing the City to continue to offer clean and affordable power to its ratepayers.

The Boundary Project (Project) is owned and operated by Seattle City Light under a license administered by the FERC. The current license was issued in October 1961 and expired on September 30, 2011. In accordance with the Federal Power Act, Seattle City Light filed an application with FERC for a new 50 year license to operate Boundary Dam on September 29, 2009. The request for a new license required study and analysis to identify any impacts the Project may have on the surrounding environment, and proposed protection, mitigation & enhancement measures for the Boundary Project. In addition, Seattle City Light engaged in settlement negotiations with the parties and filed a comprehensive settlement agreement with FERC on March 29, 2010.

The new license will allow Seattle City Light to retain all current operations for the term of the next license, allowing the City to continue to offer clean and affordable power to its ratepayers for the next 40 – 50 years.

Thank you for your consideration of this legislation. Should you have questions, please contact Barbara Greene at 206.615.1091.

Sincerely, Daryl Smith, Deputy Mayor
for Mike McGinn, Mayor of Seattle

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
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