SCL 2026 Boundary License Amendment ORD
Lloyd Dixon
D1a
Screen Reader Users: Make sure settings include reading strikethrough and underline font attributes.

The City of Seattle

Ordinance 127494

Council Bill 121269

An ordinance relating to the City Light Department; authorizing the General Manager and Chief Executive Officer of City Light or designee to execute the First Amendment to Boundary Hydroelectric Project Relicensing Settlement Agreement and other related agreements for amending the Federal Energy Regulatory Commission License for the Boundary Hydroelectric Project; and ratifying and confirming certain prior acts.

Recitals:

The Boundary Hydroelectric Project, Federal Energy Regulatory Commission (FERC) No. 2144 (the “Boundary Project”) is owned and operated by the City of Seattle, City Light Department.

In March 2010 the City entered into the Boundary Project Relicensing Settlement Agreement (Settlement Agreement) with the Bureau of Indian Affairs, the National Park Service, the US Fish and Wildlife Service, the Kalispel Tribe, the Washington State Department of Fish and Wildlife, the Washington State Department of Ecology, the Public Utility District of Pend Oreille County, Washington, the Selkirk Conservation Alliance and American Whitewater (the Parties).

On March 20, 2013 FERC approved the Settlement Agreement in its Order Issuing New License (License).

The Department has engaged and collaborated with the Parties and other interested groups on the potential amendment of certain provisions of the License relating to certain habitat projects, fish entrainment mortality, and the conservation fish hatchery, and to discuss a potential off-license agreement for related matters.

The Parties believe that revisions to the Settlement Agreement and License articles will substantially improve conditions for native salmonid fish in Pend Oreille basin.

It is in the best interest of the City and ratepayers that the City to amend the Settlement Agreement and License for the Project as agreed to by the Parties. Therefore,

Be it ordained by The City of Seattle as follows:

Section 1. The General Manager and Chief Executive Officer of the City Light Department (GM/CEO), or designee, is authorized to execute the First Amendment to Boundary Hydroelectric Project Relicensing Settlement Agreement substantially in the form attached to this ordinance as Attachment A, for purposes of obtaining an amended license from the Federal Energy Regulatory Commission to operate the Boundary Hydroelectric Project.

Section 2. The GM/CEO, or designee, is further authorized to enter into related agreements that in the GM/CEO's view best meet the needs of the City Light Department and that are reasonably necessary to implement the amended Settlement Agreement or to secure an amended license for the Project from the Federal Energy Regulatory Commission.

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

Attachments:

Attachment A – First Amendment to Boundary Hydroelectric Project Relicensing Settlement Agreement

Attachment 1 – Interlocal Agreement for the Second Species Fund and Regional Fishery Benefits

Attachment 2 – Illustration of Revisions to Settlement Agreement

Attachment 3 – Illustration of Revisions to Proposed License Articles: Appendix E to 2013 License Order

Exhibit 1 – Revised Proposed License Articles

Exhibit 2 – U.S. Forest Service Draft Section 4(e) Terms & Conditions

Exhibit 3 – U.S. Dept of the Interior Revised Amended Preliminary Conditions, Recommendations, and Prescriptions

This ordinance shall take effect as provided by Seattle Municipal Code Sections 1.04.020 and 1.04.070.

Passed by the City Council and signed in open session in authentication of its passage on August 11, 2026.

President _____ of the City Council

Approved on August 13, 2026.

Katie B. Wilson, Mayor

Attested on August 14, 2026.

Scheereen Dedman, City Clerk

Seal

FIRST AMENDMENT TO BOUNDARY HYDROELECTRIC PROJECT RELICENSING SETTLEMENT AGREEMENT FERC PROJECT NO. 2144

AMONG

SEATTLE CITY LIGHT

BUREAU OF INDIAN AFFAIRS
NATIONAL PARK SERVICE
UNITED STATES FISH AND WILDLIFE SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE FOREST SERVICE

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE
WASHINGTON DEPARTMENT OF ECOLOGY

KALISPEL TRIBE

PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON

AMERICAN WHITEWATER
SELKIRK CONSERVATION ALLIANCE

_____ 2026

FIRST AMENDMENT TO BOUNDARY HYDROELECTRIC PROJECT RELICENSING SETTLEMENT AGREEMENT

Table of Contents

Page

1. Parties 1
2. Recitals 1
3. General Provisions 2
   3.1 Effective Date of First Amendment 2
   3.2 Offer of Settlement 2
   3.3 Effectiveness of Settlement Agreement 2
4. Scope of First Amendment 3
   4.1 Purpose 3
   4.2 Unmodified Provisions of the Settlement Agreement 3
   4.3 Modified Provisions of the Settlement Agreement 4
5. List of First Amendment Exhibits and Attachments 7
   5.1 First Amendment Exhibits 7
   5.2 Attachments 7

First Amendment to Boundary Hydroelectric Project Relicensing Settlement Agreement

1. Parties

1.1 This First Amendment to Boundary Hydroelectric Project Relicensing Settlement Agreement ("First Amendment to Settlement Agreement" or "First Amendment") is entered into this ___ day of _____, 2026, 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"), and American Whitewater (collectively, the "Parties").[1]

1.2 This First Amendment is binding on and shall inure to the benefit of the Parties and their successors and assigns only.

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").

2.2 In March 2010, the Parties entered into the Boundary Hydroelectric Project Relicensing Settlement Agreement (the "Settlement Agreement"). The Settlement Agreement included Proposed License Articles that were included as Exhibit 1.

2.3 The Federal Energy Regulatory Commission ("FERC") approved the Settlement Agreement in its Order Issuing New License, 142 FERC ¶ 62,231 (issued March 20, 2013) (the "License" or "License Order").

2.4 The Parties intend that all provisions of the Settlement Agreement remain in full force and effect except as expressly amended by this First Amendment.

2.5 SCL engaged and collaborated with interested parties to a) discuss the potential amendment of certain provisions of the License that relate to certain habitat projects, Project-related entrainment mortality, and the conservation hatchery; and b) discuss a potential off-license Interlocal Agreement that would address related matters.

[1] On March 31, 2025, The Lands Council notified SCL that it was withdrawing from the Boundary Hydroelectric Project Relicensing Settlement Agreement, and therefore, will not be taking any position on the First Amendment.

2.6 The Parties believe that the License should be amended in a manner consistent with the Revised Proposed License Articles set forth in Exhibit 1 hereto, the USFS revised Section 4(e) Terms & Conditions set forth in Exhibit 2 hereto, and the USFWS revised recommendations and fishway prescriptions set forth in Exhibit 3 hereto.

2.7 The Parties agree that the Reduction of Project Related Entrainment Mortality program (License Order Appendix E, at Proposed License Article 9 (C), Fish and Aquatic Management Plan ("FAMP") Section 5.3, and related requirements in the License and appendices) should be replaced with provisions contained in Article 9 (C) of the Revised Proposed License Articles set forth in Exhibit 1 hereto.

2.8 Certain Parties have agreed to the terms of an off-license Interlocal Agreement, included as Attachment 1 hereto. Although the Interlocal Agreement is binding on only a subset of the First Amendment's Parties, the Parties recognize that the First Amendment is dependent on the execution of the off-license Interlocal Agreement.

2.9 The Parties believe that the revisions to the Settlement Agreement and the Revised Proposed License Articles contained in this First Amendment, together with the provisions of the off-license Interlocal Agreement, will substantially improve conditions for native salmonids in the Pend Oreille basin of interest to the Parties.

TERMS OF AGREEMENT RELATING TO FIRST AMENDMENT

The Parties hereby agree as follows:

3. General Provisions

3.1 Effective Date of First Amendment

This First Amendment shall become effective upon its execution by all Parties.

3.2 Offer of Settlement

Within 15 days of the Effective Date, SCL 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 First Amendment, including the First Amendment Exhibits and Attachments, and a Joint Explanatory Statement. The Joint Explanatory Statement shall request that FERC: (a) approve the Offer of Settlement; and (b) issue an order amending the License for the Boundary Project that incorporates—without modification—the Revised Proposed License Articles set forth in First Amendment Exhibit 1.

3.3 Effectiveness of Settlement Agreement

All provisions of the Settlement Agreement shall remain in full force and effect except as expressly modified by this First Amendment.

4. Scope of First Amendment

4.1 Purpose

The Parties have entered into this First Amendment for the purpose of addressing information and circumstances that arose since the Settlement Agreement became effective and FERC issued the License. This First Amendment also resolves among the Parties issues that have or could have been raised by the Parties in connection with SCL's application to amend the provisions of the License that are the subject of this First Amendment. Pursuant to the Parties' obligations and authorities under the Federal Power Act ("FPA") and subject to the reservations of authorities included in the Settlement Agreement, the Settlement Agreement, as amended by this First Amendment (including Attachment 1), establishes SCL's obligations for the protection, mitigation and enhancement ("PM&E") of resources affected by the Project. Additional SCL commitments are set forth in the off-license Interlocal Agreement that is included as Attachment 1 to this First Amendment. Each Party intends that the Settlement Agreement, as amended by this First Amendment (including Attachment 1) is consistent with and satisfies its currently applicable statutory and regulatory rights and responsibilities under the FPA and other applicable law. Each Party intends further that the Settlement Agreement, as amended by this First Amendment (including Attachment 1), sufficiently addresses Project effects or satisfies the FPA and other applicable law with respect to the Project. The Parties agree that this First Amendment (including Attachment 1) is fair and reasonable, and consistent with the standards under the FPA. The Parties further agree that the Settlement Agreement, as amended by this First Amendment (including Attachment 1), 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.

4.2 Unmodified Provisions of the Settlement Agreement

This First Amendment makes no revisions to the following sections of the Settlement Agreement that shall remain in full effect.

- Sections 1 through 3
- Section 5
- Sections 6.1 and 6.2.1
- Sections 6.2.3 and 6.3
- Sections 7.1.1 through 7.1.3
- Section 7.2.2.2
- Sections 7.3.2, 7.3.4, and 7.3.5
- Sections 7.4 through 7.15.4
- Sections 8.1 through 8.3.5
- Section 9
- Section 10
- Section 11
- Section 12

4.3 Modified Provisions of the Settlement Agreement

The following provisions of the Settlement Agreement are modified by this First Amendment:

- Section 4
- Section 6.2.2
- Sections 7.2, 7.2.1, 7.2.2, 7.2.2.1, 7.2.2.3, and 7.2.3
- Sections 7.3.1, 7.3.3, and 7.3.6
- Adding new Section 7.16
- Adding new Section 8.4

An illustration of the modifications to the Settlement Agreement by this First Amendment is provided as Attachment 2 for reference purposes only. The modifications to the Settlement Agreement are as follows:

Section 4 of the Settlement Agreement is revised to add the following definitions:

"First Amendment" means the First Amendment to the Boundary Hydroelectric Project Relicensing Settlement Agreement, entered into on _____, 2026, and its Exhibits and Attachments.

"License Amendment Proceeding" means the proceeding and all related proceedings before FERC to approve the Offer of Settlement associated with the First Amendment and to issue an order amending the license for the Boundary Project that incorporates, without modification, the Revised Proposed License Articles set forth in First Amendment Exhibit 1.

"Revised Proposed License Articles" means the provisions set forth in First Amendment Exhibit 1 that the Parties will request that FERC include, without modification, in the license for the Boundary Project, replacing certain Proposed License Articles already included in the license.

Section 4 of the Settlement Agreement is revised so that the definition of "Settlement Agreement" reads as follows:

"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 amended by the First Amendment. Settlement Attachments 1 and 2 and First Amendment Attachment 1 are included for FERC's informational purposes.

Section 6 of the Settlement Agreement is revised to read as follows:

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

Section 7 of the Settlement Agreement is revised to read as follows:

7.2 Support Adoption of License Terms and Conditions

In the License Amendment Proceeding and all related proceedings in which they participate, all Parties shall support, as appropriate, incorporation of the Revised Proposed License Articles into the amended license issued by FERC.

7.2.1 Recommendations under Sections 10(a) and 10(j) and Comments Filed in the Context of the License Amendment Proceeding

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 License Amendment Proceeding shall not request a Material Modification.

7.2.2 Mandatory Terms and Conditions that Contain Material Modifications

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 the Settlement 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 revised amended preliminary Section 4(e) conditions, attached to the First Amendment as First Amendment Exhibit 2, 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 First Amendment Exhibit 3, Proposed License Article 9 (B) (Upstream Fish Passage) and Revised Proposed License Article 9 (C) (Reduction of Project Related Entrainment Mortality) (contained in First Amendment Exhibit 1) 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.

7.2.2.3 Except as provided in Section 7.5.2 or if this settlement is terminated pursuant to Section 10 of the Settlement Agreement, 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 the License Amendment Proceeding that do not contain a Material Modification of this 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 the Mandatory Terms and Conditions, 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 the License Amendment Proceeding that do contain a Material Modification of this 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 hereof, the Parties recognize that FERC will consult and may confer with USFWS pursuant to Section 7 of the ESA on issuance of an amended license. USFWS anticipates that this Settlement Agreement, including the measures in First Amendment Exhibit 3, 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 the First Amendment, 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.

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 Revised 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.

7.3.6 Unless this Settlement Agreement is terminated pursuant to Section 10 herein, if any BiOp would require 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.

Section 7 of the Settlement Agreement is revised to add the following provision:

7.16 Second Species Fund and Production of Fish for Regional Benefit

SCL shall undertake to provide funding for the Second Species Fund ("SSF") and to produce fish for the benefit of the Region as set forth in the Interlocal Agreement for Creation of the Second Species Fund and Provision of Regional Fishery Benefits ("Interlocal Agreement") included as First Amendment Attachment 1. Termination of the Interlocal Agreement per the terms of the Interlocal Agreement Section 7(b) or 7(c) may constitute grounds for termination of this Settlement Agreement or for USFWS' exercise of its reserved Section 18 authority.

Section 8 of the Settlement Agreement is revised to add the following provision:

8.4 Conflict Between Revised Proposed License Articles and Fish and Aquatics Management Plan

To the extent a conflict arises between the terms of the Revised Proposed License Articles and the Fish and Aquatics Management Plan ("FAMP"), the Revised Proposed License Articles take

precedence and the FAMP shall be interpreted in a manner that is consistent with the Revised Proposed License Articles.

5. List of First Amendment Exhibits and Attachments

5.1 First Amendment Exhibits

Exhibit 1: Revised Proposed License Articles

Articles 1 – 8: NOT REVISED

Article 9: Fish and Aquatic Resources (REVISED WHERE NOTED)

9 (A) Mainstem Fish Community and Aquatic Habitat Measures (REVISED)
9 (B) Upstream Fish Passage
9 (C) Reduction of Project Related Entrainment Mortality (REVISED)
9 (D) Tributary Non-native Trout Suppression and Eradication
9 (E) Tributary Fish Community and Aquatic Habitat Measures (REVISED)
9 (F) Mill Pond Dam Site Monitoring and Maintenance
9 (G) Native Salmonid Conservation Program (REVISED)
9 (H) Recreational Fish Stocking Program
9 (I) Fund for Habitat Improvements in Tributaries to Sullivan Lake

Article 10: NOT REVISED

Exhibit 2: USFS draft Section 4(e) Terms & Conditions (REVISED)

Exhibit 3: USFWS draft Fishway Prescriptions (REVISED)

5.2 Attachments

Attachment 1: Interlocal Agreement for Creation of the Second Species Fund and Provision of Regional Fishery Benefits

Attachment 2: Illustration of Revisions to 2010 Settlement Agreement

Attachment 3: Illustration of Revisions to Exhibit E of 2013 License Order, Proposed License Articles

IN WITNESS WHEREOF the Parties have executed this First Amendment 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_____

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_____

AMERICAN WHITEWATER

Date_____

By_____
NAME_____
TITLE_____

**Exhibit 1 to FIRST AMENDMENT TO BOUNDARY HYDROELECTRIC PROJECT RELICENSING SETTLEMENT AGREEMENT
FERC PROJECT NO. 2144**

Revised Proposed License Articles
Seattle City Light

March 2010; Revised [●], 2026

.

DRAFT

TABLE OF CONTENTS

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 (Revised)**
- **9(B) Upstream Fish Passage**
- **9(C) Reduction of Project Related Entrainment Mortality (Revised)**
- **9(D) Tributary Non-native Trout Suppression and Eradication**
- **9(E) Tributary Fish Community and Aquatic Habitat Measures (Revised)**
- **9(F) Mill Pond Dam Site Monitoring and Maintenance**
- **9(G) Native Salmonid Conservation Program (Revised)**
- **9(H) Recreational Fish Stocking Program**
- **9(I) Fund for Habitat Improvements in Tributaries to Sullivan Lake**

Article 10: Escalation

Article 1. ***Operations*.**

(a) From Memorial Day weekend (starting Friday evening) through Labor Day weekend (ending on Monday evening), licensee will maintain forebay water surface elevations at or above 1,984 feet NAVD 88 from 6:00 am through 8:00 pm, to facilitate recreational access and use. From 8:00 pm through 6:00 am licensee will maintain forebay water surface elevations at or above 1,982 feet NAVD 88. The licensee must comply with these elevations except under the following conditions or events: equipment failures; unanticipated events during maintenance activities, which require extended scheduled repair and maintenance outages; electrical and mechanical device limitations; safety inspections; testing; natural disasters (e.g. lightning); load and reserve support as required by the Western Electricity Coordinating Council (WECC) and North American Electric Reliability Corporation (NERC) to maintain Project and regional energy stability and reliability; capacity and energy emergencies; and any event that triggers the Project Emergency Action Plan (EAP). Licensee shall notify the Commission and the Parties following any such conditions. In addition, to monitor compliance with the pool elevation requirements, licensee will provide an annual report to the Commission and Parties identifying any excursion from pool elevation requirements including the cause and corrective measure, if applicable.

(b) To reduce total dissolved gas (TDG) under normal, non-spill operations, licensee will operate Units 55 and 56 above 125 MW and sequence their startup and shutdown so that they are the last units to be brought on line and the first units to be shut down. During the new license term, licensee will upgrade generating equipment at the Boundary power plant consistent with the schedule set forth in Exhibit A included in the Boundary License Application Addendums. Upon completion of any turbine upgrades, licensee shall evaluate the need for the unit sequencing set forth in this paragraph in consultation with the Boundary Relicensing Settlement Parties, and based upon such evaluation may propose revisions to, or elimination of, unit sequencing requirements through a license amendment application.

Article 2. *Boundary Resource Coordinating Committee and Work Groups*

This Article shall be implemented pursuant to Section 8 of the Settlement Agreement. Within 90 days after issuance of the New License, the licensee shall convene the Boundary Resource Coordinating Committee (BRCC). Within 180 days after issuance of the New License, the licensee shall convene the following Work Groups:

- Fish and Aquatics Work Group
- Terrestrial Resources Work Group
- Recreation Resources Work Group
- Water Quality Work Group (and Total Dissolved Gas Subgroup)
- Cultural Resources Work Group

The licensee shall bear all meeting room rental, materials, and similar costs associated with conducting BRCC and Work Group meetings.

The licensee shall arrange, administer, and chair all BRCC and Work Group meetings. The licensee shall consult with the Work Groups on all aspects of the Settlement Agreement, New License, and Management Plans (collectively referred to as "Project Documents"). The licensee shall convene the Work Groups as needed to meet the consultation requirements of the Project Documents, but at least annually for the license term and any annual licenses.

"Consultation" as used in this Article and in the Project Documents means that the licensee shall obtain the views of and attempt to reach consensus among the specific Parties, specific Work Groups, and the BRCC whenever consultation is required in the Project Documents. Consultation shall not mean consultation under section 7 of the Endangered Species Act or other state and federal laws requiring consultation unless specifically provided.

Article 3. *Terrestrial Resources.*

(a) The licensee shall implement the Terrestrial Resources Management Plan (TRMP) to implement terrestrial resource protection, mitigation, and enhancement (PM&E) measures. Licensee shall implement TRMP in consultation with the Terrestrial Resources Work Group (TRWG).

(b) The TRMP shall be the principal instrument for management of, implementation, monitoring and adaptation of PM&E measures for terrestrial resources affected by or related to the project. The licensee shall achieve the goals and objectives described in the TRMP through implementation of the following programs:

(i) Erosion program

(ii) Habitat protection and enhancement program

(iii) Integrated weed management program

(iv) Rare, threatened or endangered plant species program

(v) Wildlife program

(vi) Shoreline management program

(c) The licensee shall manage any Project Habitat Lands acquired pursuant to Article 4 (Land Acquisition) as set forth in section (d) of that Article.

(d) The annual TRMP report shall:

(i) Document the implementation of PM&E measures as scheduled in the TRMP

(ii) Describe the current year's and Out Year proposals for implementing scheduled management actions pursuant to the TRMP

(iii) Document consultation activities related to the TRMP

(iv) Document the results of monitoring of completed actions (to the extent monitoring is required for any particular action) to ensure proper implementation and effectiveness

(e) The licensee shall, in consultation with the TRWG, develop those monitoring protocols and data forms identified in the TRMP and file them with the Commission for approval within 180 days of license issuance. The licensee shall include documentation of consultation, copies of comments and recommendations on the protocols after they have

been prepared and provided to the TRWG and specific descriptions of how the TRWG's comments are accommodated by the protocols.

(f) The licensee, as part of the TRMP, shall develop and implement an adaptive management process to monitor implementation and effectiveness of terrestrial resource PM&E measures, and adapt implementation measures as needed to meet resource specific goals and objectives. The licensee, in consultation with the TRWG, shall develop adaptive management proposals, including protocols and schedules. The TRMP shall be reviewed, and as necessary amended, every five years during the license term in consultation with the TRWG as part of the adaptive management process. TRMP amendments shall be filed with the Commission for approval. Upon Commission approval, the licensee shall implement the amended plan.

(g) The licensee shall include with the TRMP amendments stipulated in section (f) above, documentation of consultation, copies of comments and recommendations on the plan amendments after they have been prepared and provided to the TRWG and specific descriptions of how the TRWG's comments are accommodated by the plan amendments.

(h) Licensee shall prepare any proposed amendments to the TRMP in consultation with the TRWG and subject to approval by the United States Forest Service prior to filing with the Commission. Licensee shall file any proposed amendments to the TRMP with the Commission for approval prior to implementation.

(i) The Commission reserves the right to require changes to the plan. Implementation of plan amendments shall not begin until the amendments are approved by the Commission. Upon Commission approval, the licensee shall implement the plan amendments, including any changes required by the Commission.

Article 4. ***Land Acquisition.***

(a) The licensee shall acquire additional Project Habitat Lands within five years of license issuance and shall promptly bring the acquired lands into the Project boundary. The licensee, in consultation with the Terrestrial Resources Work Group (TRWG), shall prioritize and select parcel(s) for acquisition using the habitat criteria described below to attain the stated targets. The licensee shall notify the Commission of the location and acreage of land acquired and submit updated License Exhibit G maps within 90 days of acquisition.

(b) The Project Habitat Lands acquired by licensee, pursuant to this Article, shall achieve the targets of approximately 158 acres of riparian and upland habitat and approximately 13,022 lineal feet of varying habitats immediately adjacent to water features. Licensee shall acquire Project Habitat Lands between the near ridgelines east and west of the Project and identified as the secondary study area in the Revised Study Plan for Rare, Threatened and Endangered Wildlife Species (Study No. 18) (SCL 2007). The eastern boundary roughly aligns with Boundary Ridge, Crowell Mountain, and Sand Creek Mountain and the ridge between Boundary Reservoir and Sullivan Lake. On the west side, the boundary follows a line connecting Frisco, Abercrombie, Litton and Baldy mountains. Water features include perennial flat-water bodies, streams, wetlands or seeps. Targets may be accomplished and applied by the licensee to the same parcel of land, provided that the parcel meets the described habitat criteria. An example of applying the targets to the same parcel includes a parcel that contains both riparian and upland habitat, as well as a perennial water feature. Acres and lineal feet would be calculated for the riparian and upland habitat, and for the perennial water feature, respectively.

(c) The licensee, in consultation with the TRWG, shall apply the following habitat objectives to identify and prioritize property acquisitions:

(i) Acquire property with high habitat diversity located immediately adjacent to or containing perennial water and secure from disturbance via open roads or towns, and/or a natural community that is relatively scarce or dwindling in the watershed, which has unique landscape or habitat elements or rare species occurrences. For purposes of this Article, “high habitat diversity” means three or more habitat types (e.g., riparian, wetland, upland, meadow)

(ii) Acquire large block(s) of habitat rather than small, scattered parcels (to manage for species with large home ranges and to provide for diverse landscapes) that are contiguous with other protected parcels of land (i.e., Bureau of Land Management, United States Department of Agriculture, United States Forest Service ownership), form a strong corridor link or are connected by a viable corridor to protected land

(iii) Acquire property with habitats that benefit any of the following wildlife species groups (especially where use of a parcel by these species groups is documented):

1. Threatened, endangered, candidate and special status species
2. Big game
3. Waterfowl
4. Upland game birds (i.e., forest grouse and turkey)
5. Amphibians
6. Aquatic furbearers
7. Neotropical migrant birds

(d) Within one year of acquisition of the additional Project Habitat Lands, the licensee shall, in consultation with the TRWG, develop parcel specific habitat objectives and implementation tasks for the long-term management of these lands consistent with Terrestrial Resources Management Plan (TRMP) goals. Management plans for acquired parcels shall be incorporated into the TRMP which shall be filed with the Commission.

Article 5. ***Recreation Resources.***

(a) The licensee shall implement the RRMP to enhance recreation resources at the Boundary Project in consultation with a RRWG.

(b) The RRMP is an implementation plan that the licensee will use to monitor, design, construct, fund, operate and maintain existing and proposed public recreation facilities and programs at the Project. The RRMP includes the following programs:

(i) Recreation Facility Capital Improvements Program

(ii) Recreation Facility Operations and Maintenance Program

(iii) Shoreline Dispersed Recreation Management Program

(iv) Recreation Monitoring Program

(v) Multi-Resource Interpretation and Education Program

(c) The licensee's RRMP implementation responsibilities include the following:

(i) Funding and implementing all aspects of the RRMP

(ii) Coordinating all aspects of the RRMP with the RRWG and other interested parties, as needed

(iii) Consulting with the RRWG and other interested parties when necessary and as directed by license and the RRMP

(iv) Preparing an annual Recreation Action and Work Plan in consultation with the RRWG, distributing it for review to the RRWG and other interested parties as requested, and submitting it to the Commission

(v) Periodically amending the RRMP, if needed, in consultation with the RRWG, distributing the amended RRMP to the RRWG and other interested parties for review, and submitting it to Commission

(d) The annual RRMP report shall:

(i) Identify the measures implemented as scheduled in the RRMP

(ii) Identify current year and Out Year proposals for implementing scheduled recreation management actions

(iii) Reconcile and document differences between each year's proposals and any replacement or additional measures agreed upon by the licensee and the affected agencies

(iv) Document consultation related to the RRMP

(v) Document the results of monitoring of completed actions (to the extent monitoring is necessary for any particular action) to ensure proper implementation and effectiveness

(e) Licensee shall prepare any proposed amendments to the RRMP in consultation with the RRWG and subject to approval by the United States Forest Service prior to filing with the Commission. Licensee shall file any proposed amendments to the RRMP with the Commission for approval prior to implementation.

(f) The Commission reserves the right to require changes to the plan. Implementation of plan amendments shall not begin until the plan amendments are approved by the Commission. Upon Commission approval, the licensee shall implement the plan amendments, including any changes required by the Commission.

Article 6. ***Well Decommissioning*.**

The licensee shall implement the Monitoring Well and Road Decommissioning Plan contained in Exhibit 4 to the Boundary Hydroelectric Project Relicensing Settlement Agreement.

Article 7. ***Programmatic Agreement.***

(a) The licensee shall implement the "Programmatic Agreement Among the Federal Energy Regulatory Commission and the Washington State Historic Preservation Officer for Managing Historic Properties that may be Affected by a License Issuing to Seattle City Light for the Continued Operation of the Boundary Hydroelectric Project in Pend Oreille County, Washington (FERC No. 2144)," executed on _____, 20__, including but not limited to the Historic Properties Management Plan (HPMP) for the Project. In the event that the Programmatic Agreement is terminated, the licensee shall continue to implement the provisions of its approved HPMP. The Commission reserves the authority to require changes to the HPMP at any time during the term of the license.

Article 8. *Water Quality Plans*.

(a) The licensee shall implement the following water quality plans, all of which have been approved by the Washington Department of Ecology (Ecology) and by the Commission (Water Quality Plans) and are contained in Exhibits 6-10 to the Boundary Hydroelectric Project Relicensing Settlement Agreement:

(i) Aquatic Invasive Species Control and Prevention Plan

(ii) Dissolved Oxygen Attainment Plan

(iii) Fish Tissue Sampling Plan

(iv) Temperature Attainment Plan

(v) Total Dissolved Gas Attainment Plan

(b) Any amendments to the Water Quality Plans shall be in consultation with the Water Quality Work Group (WQWG) and subject to the approval of Ecology before filing with the Commission.

(c) The Commission reserves the right to require changes to the amended plan. Implementation of the amended plan by the licensee shall not begin until it is approved by the Commission. Upon Commission approval, the amended plan becomes a requirement of the license, and the licensee shall implement the amended plan, including any changes required by the Commission.

Article 9. *Fish and Aquatic Resources.*

The licensee shall implement the Fish and Aquatics Management Plan (FAMP) to implement fish and aquatic resource protection, mitigation, and enhancement (PM&E) measures.

(a) The FAMP shall be the principal guiding document for the planning, implementation, monitoring, adaptive management and reporting of PM&E measures for fish and aquatic resources affected by or related to the Project. The FAMP includes specific goals for fish and aquatic resources, as well as clearly defined objectives for achieving the goals.

(b) The following license articles govern the resource management programs as described in the FAMP:

(i) 9 (A) Mainstem Fish Community and Aquatic Habitat Measures (REVISED)

(ii) 9 (B) Upstream Fish Passage

(iii) 9 (C) Reduction of Project Related Entrainment Mortality (REVISED)

(iv) 9 (D) Tributary Non-native Trout Suppression and Eradication

(v) 9 (E) Tributary Fish Community and Aquatic Habitat Measures (REVISED)

(vi) 9 (F) Mill Pond Dam Site Monitoring and Maintenance

(vii) 9 (G) Native Salmonid Conservation Program (REVISED)

(viii) 9 (H) Recreational Fish Stocking Program

(ix) 9 (I) Fund for Habitat Improvements in Tributaries to Sullivan Lake

(c) The licensee shall, in consultation with the Fish and Aquatics Work Group (FAWG), develop and implement an adaptive management process including protocols and schedules to monitor implementation and effectiveness of measures identified in the FAMP, and adapt implementation measures as needed to meet resource specific goals and objectives.

(d) The licensee shall prepare a FAMP annual report and file it with the Commission pursuant to Article 2 and the FAMP. The report shall include subsections for each PM&E measure, with content dependent on the specific reporting requirement for the PM&E measure, and the activities that occurred during the year.

(e) The licensee shall prepare any proposed amendments to the FAMP in consultation with the FAWG and subject to approval by the United States Forest Service, Department of Interior and Washington Department of Ecology prior to filing with the Commission. The licensee shall file any proposed amendments to the FAMP with the Commission for approval prior to implementation.

(f) The Commission reserves the right to require changes to the plan. Implementation of plan amendments shall not begin until the plan amendments are approved by the Commission. Upon Commission approval, the licensee shall implement the plan amendments, including any changes required by the Commission.

Article 9 (A). ***Mainstem Fish Community and Aquatic Habitat Measures (REVISED).***

The licensee shall implement the Fish and Aquatics Management Plan (FAMP), Section 5.1, to: (1) modify trapping pools in the area known as the Cobble Sisters to reduce the risk of fish being trapped in the pools during periods of declining flow and reservoir water surface elevations, (2) enhance Sullivan Creek tributary delta habitat by providing additional cover, in the form of large woody debris (LWD) jams, for salmonids occupying coldwater refugia, and (3) conduct fish community surveys and evaluate predation on outmigrating native salmonids at select tributary deltas.

(a) *This section has been deleted.*

(b) Channel Modifications of Mainstem Trapping Pools at Project RM 30.3

(i) The licensee shall implement site modifications at the Cobble Sisters within five years of license issuance.

(ii) The licensee shall excavate a channel to connect mainstem flow to three isolated pools at a large cobble bar near PRM 30.3 to reduce the risk of fish becoming trapped during declining water surface elevations. Spoils from excavation will be used to fill a fourth pool near the channel margin.

(iii) The licensee shall conduct compliance monitoring at the Cobble Sisters within one year following implementation of the measure. Compliance monitoring will include documentation collected during implementation, such as survey data and photographs of the site before and after excavation.

(iv) Licensee shall repeat physical measurements to evaluate whether the site modifications continue to function as designed every ten years following construction and following one in 25 year high flow events. During the year following each physical monitoring effort, the FAWG will determine if remediation measures are needed to ensure that site modifications continue to satisfy design specifications. The licensee will implement the required measures to satisfy design objectives.

(v) The reporting and implementation schedule for channel excavation at the Cobble Sisters is summarized below.

PM&E Measure Activity	**Schedule**
Implementation Planning	Within three years of license issuance
Implementation	Within five years of license issuance
Compliance Report	Within six years of license issuance
Physical Monitoring	Every ten years following construction, and following flows exceeding a 25-year recurrence interval
Monitoring Report	Within one year of physical monitoring

(c) Mainstem Large Woody Debris at Tributary Deltas

(i) The licensee shall place two LWD jams at the Sullivan Creek delta.

(ii) Licensee shall place and maintain LWD jams in the thalweg in the upper delta regions of the Sullivan Creek delta to minimize use by non-salmonids. The specific location and design of the LWD jams will be determined during implementation planning by the licensee in consultation with and subject to approval by the FAWG.

(iii) The licensee shall conduct implementation planning with final design specifications to be approved by the FAWG. Implementation planning will identify:

1. Specific locations for LWD jams at the Sullivan Creek delta

2. LWD jam design specifications for each location

3. Specific monitoring protocols

(iv) Licensee shall complete construction of the LWD jams within ten years following license issuance. The schedule for initial construction of the Sullivan Creek delta log jams may depend on upstream Mill Pond Dam removal activities.

(v) If permitting, landowner permission or other issues prevent implementation within ten years following license issuance, the licensee will determine, with approval from the FAWG, alternate locations for installing LWD jams, or will identify and implement alternative measures to provide additional cover in the Sullivan Creek delta with a commensurate schedule and level of effort.

(vi) Licensee will implement compliance and effectiveness monitoring for each LWD jam. The licensee shall conduct compliance monitoring and will provide documentation to the FAWG and the Commission that the measure has been implemented as specified. Effectiveness monitoring will evaluate the need for LWD jam repair or replenishment.

(vii) Licensee will issue a compliance report, including documentation collected during construction, repair, or replenishment within one year following implementation or repair of a LWD jam.

(viii) Licensee will conduct physical effectiveness monitoring during the ninth year following the construction of a structure and at ten-year intervals thereafter. In addition, licensee will conduct physical effectiveness monitoring to determine continued compliance with design specifications following major flood events (25-year event). The results of the effectiveness monitoring will be used to support adaptive management and adjustments to the PM&E measure during repair or log replenishment of a structure.

(ix) Licensee will repair or replenish the LWD jams within one year following physical effectiveness monitoring.

(x) Licensee will conduct three consecutive years of biological effectiveness monitoring within the first ten years following construction. Biological effectiveness monitoring will also be conducted concurrent with physical effectiveness monitoring through the term of the license.

The reporting and implementation schedule for mainstem LWD at the Sullivan Creek delta is summarized below.

PM&E Measure Activity	**Schedule**
Implementation	At the direction of the FAWG, may be completed after the tenth year following license issuance depending on the influence of Mill Pond Dam removal
Compliance Reporting	Within one year following construction, repair or replenishment of LWD structures
Physical Effectiveness Monitoring	In the ninth year following implementation, and every tenth year thereafter; and after flows exceeding a 25-year recurrence interval
Biological Effectiveness Monitoring	Three consecutive years between initial construction and first scheduled repair/replenishment, and then concurrent with physical effectiveness monitoring
Monitoring Report	Within one year following physical or biological effectiveness monitoring

(d) Boundary Reservoir Fish Community Monitoring and Evaluation of Salmonid Predation at Select Tributary Deltas

(i) The licensee shall conduct fish community surveys to monitor changes in fish population abundance and size structure of focal species over time. Focal species will be westslope cutthroat trout, bull trout, mountain whitefish, smallmouth bass,

northern pikeminnow and northern pike and may include other species as identified by the FAWG. The study design and final implementation schedule will be developed in consultation with and subject to approval by the FAWG.

(ii) The licensee shall conduct a fish community monitoring study in the fifth year following license issuance and at five-year intervals thereafter, unless otherwise directed by the FAWG. Planning for the fish community monitoring study component shall be completed during the calendar year prior to study implementation, and a summary report of field activities will be completed within one year of the completion of field surveys. The reporting and implementation schedule for fish community monitoring is summarized below.

PM&E Measure Activity	**Schedule**
Fish Community Study Plan	Within four years of license issuance and every fifth year thereafter
Conduct Fisheries Survey	In the fifth year following license issuance and every fifth year thereafter
Survey Completion Report	In the sixth year following license issuance and every fifth year thereafter

(iii) The licensee shall conduct the predation study to quantify the proportion of outmigrating native salmonids from select tributaries that are being consumed by predatory fish within the selected tributary deltas and determine consumption rates of select predators. The licensee shall develop the study design and final implementation schedule in consultation with and subject to approval by the FAWG.

(iv) If the results of the predation investigation identify that a significant proportion of native salmonids are consumed by predators at tributary deltas, licensee could implement potential non-operational measures including predator control to improve native salmonid survival. An adaptive approach to the tributary delta predation investigations will continue under the direction of the FAWG (FAMP Mainstem Measures section 5.1.4).

(v) The licensee shall conduct a tributary delta predation study in the fourth year and 15th year following license issuance, unless otherwise directed by the FAWG. A study plan will be completed during the calendar year prior to study implementation, and a summary report of field activities will be completed within one year of the completion of field surveys. The reporting and implementation schedule for the predation study is summarized below.

PM&E Measure Activity	**Schedule**

Tributary Delta Predation Planning	By end of calendar year prior to conducting delta predation study
Conduct Tributary Delta Predation Study	In the fourth and 15th years following license issuance
Tributary Delta Predation Study Report	Within one year following tributary delta predation field surveys

Article 9 (B). ***Upstream Fish Passage.***

(a) The licensee shall install, operate, maintain and monitor a single upstream trap and haul fishway facility (upstream fishway or fishway) in the Boundary Project tailrace as described in Section 5.2 of the Fish and Aquatics Management Plan. The purpose of this fishway is to provide safe, timely and effective passage for bull trout, cutthroat trout, and mountain whitefish (target fish species) in the Project area for the license term and any subsequent annual licenses.

(b) The licensee shall work collaboratively with the Fish and Aquatics Work Group (FAWG) and the approving agencies in all aspects of the fishway development and implementation processes. All FAWG decisions regarding fishway development and implementation are subject to the approval of the Department of the Interior (DOI), United States Forest Service (USFS), and the Washington Department of Ecology (Ecology).

(c) General provisions

(i) The licensee shall design and construct this upstream fishway using the best available scientific information, including but not limited to the NMFS 2008 Anadromous Salmonid Passage Facility Design Manual (Design Manual), taking into account the site specific conditions at the Project, biological information specific to the target species and other relevant information. The fishway shall be operated consistent with fisheries management goals and objectives for target species in the Pend Oreille River basin. In no case shall attraction flows exceed 1,650 cfs (3% of maximum generation discharge). The licensee must demonstrate that any departures from the Design Manual will be effective at providing safe, timely and effective passage for target species. The final design is subject to the approval of DOI, USFS and Ecology.

(ii) The licensee shall undertake a research and development phase of up to 12 years to evaluate the fishway entrance design, entrance location and attraction flow volumes that will achieve the purposes of the facility. Within 12 years following license issuance (two planning years, eight research years and two design years), the licensee shall file with the Commission for approval, a plan to install, operate and maintain an upstream trap and haul fishway. The licensee shall complete construction of the upstream fishway within two years of receiving the Commission's approval and shall monitor fishway operations for the license term and any annual licenses issued for the Project.

(iii) The licensee shall ensure that the fishway includes a fixed entrance(s) and a release location(s) at least one mile upstream of the Boundary Dam. The release location(s) shall be determined by the FAWG. Provided the fishway is constructed according to a design that has been approved by DOI, USFS, and Ecology, and is operated consistent with an approved installation, operation and maintenance plan, and subject only to such minor modifications as are described

in section (g) below, the fishway will satisfy all applicable upstream fish passage requirements.

(d) Fishway development plan

(i) Within two years of license issuance, the licensee shall file with the Commission a Fishway Development Plan (FDP) for collecting site-specific biological and engineering information required to site, design and install the upstream trap and haul fishway. The licensee shall implement the FDP for up to eight years. The FDP shall include methods for identifying the following, among other things:

1. Site-specific hydraulic conditions in the tailrace of Boundary Dam, under all operating scenarios

2. Proper location of the upstream fishway and entrance(s) given site specific considerations of the Boundary Dam spillway, sluiceway, powerhouse and tailrace area

3. Information on swimming performance, behavior, and migratory pattern of target fish species downstream of the dam sufficient to determine the appropriate location of the fishway entrance(s) under all operating scenarios and related environmental cues, including but not limited to temperature, total dissolved gas, water velocity and lighting; fishway attraction effectiveness shall be evaluated using target species from upstream sources or that demonstrate upstream migration behavior

4. Structures, devices and measures to allow adjustment of the fishway entrance(s) and auxiliary flow as necessary to effectively attract target fish species into the upstream fishway including the influence of cooler attraction flow water if incorporated into the test facility

5. Structures, devices, and measures to allow adjustment of water flow, water velocity and water surface elevations within the upstream fishway as needed to effectively convey target fish species into the fish trapping device

6. Provisions for counting and evaluating fish passage through the upstream fishway

7. Provisions for transport and release of fish upstream of the dam

(ii) The licensee shall conduct studies pursuant to the FDP using the most appropriate technology available, including mark and recapture methods, as determined by the FAWG in consultation with a Technical Advisory Committee (TAC) (see section (f) below). The TAC will assist the licensee and the FAWG with the design of upstream fish passage studies and analysis of study results. Target fish

species being evaluated will represent the size distribution of migrating bull trout, cutthroat trout and mountain whitefish in the Project area.

(iii) The licensee may evaluate prototype facilities within the eight-year FDP implementation phase.

(e) Fishway design and construction plan

(i) Within 12 years following license issuance (two planning years, eight research years and two design years), the licensee shall file with the Commission for approval, a Fishway Design and Construction Plan (FDCP) to install, operate and maintain an upstream trap and haul fishway at the Boundary Dam. The licensee shall complete construction of the upstream fishway within two years of receiving the Commission's approval on the FDCP.

(ii) The licensee shall integrate the site specific and biological information developed during the FDP implementation phase in the FDCP. The FDCP shall include, but shall not be limited to: (1) functional design drawings; (2) quantification of flows needed to operate the fishway; (3) a proposed operations and maintenance plan; (4) a schedule for installing the facilities; (5) the fishway location, operational period, design flow range, trap holding pools, crowder and brail systems; (6) sorting and transport provisions; (7) sample/anesthetic/recovery tanks; and (8) structures, devices and measures to allow adjustment of auxiliary flow at the fishway entrance(s) as necessary to effectively attract target fish species into the upstream fishway.

(iii) The licensee shall develop the fishway design based upon the best available scientific information, including the Design Manual. Any departures from the Design Manual will be considered by the FAWG based on compelling evidence and in consultation with the TAC (see section (f) below). The licensee must demonstrate that any departures from the Design Manual will be effective at providing safe, timely and effective passage for target species. The final design is subject to the approval of DOI, USFS and Ecology.

(iv) Within 12 months of initial fishway operation, the licensee shall file with the Commission a Hydraulic Evaluation Report documenting compliance with all design specifications.

(f) Collaboration with the FAWG

(i) The licensee shall develop all plans and the fishway design, and shall conduct all studies in collaboration with the FAWG. The licensee shall convene a TAC consisting of fish passage design experts to assist in developing all plans and designs. The licensee shall select the fish passage design experts in consultation with and subject to approval by the FAWG. Pursuant to the Settlement

Agreement, the TAC will provide recommendations to the FAWG pertaining to the site, design and installation of the upstream fishway as well as determine whether development of a computational fluid dynamic or physical scale model of the Boundary Dam and appurtenant facilities are necessary. Decisions regarding fish passage design and evaluation are subject to the dispute resolution provision of the Settlement Agreement.

(ii) When filing designs and plans, the licensee shall include: documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations were accommodated by the licensee. If the licensee does not adopt a recommendation from the FAWG or obtain a required agency approval, the filing shall include its reasoning based on Project specific information.

(iii) The licensee shall provide fishway design drawings (including drawings for any prototype or test facilities to be evaluated) to the FAWG for review at the 30% (functional design), 50% and 90% completion stage and the licensee shall consult with the FAWG at each stage. For approval, a 100% final design shall be provided by the licensee to DOI, USFS and Ecology at least two weeks prior to filing with the Commission.

(g) Compliance, effectiveness and long-term monitoring

(i) Within 13 years following license issuance, the licensee shall file a Post Construction Evaluation Plan (PCEP) with the Commission. The PCEP shall include methods for documenting fish passage efficiency, passage time, mortality, injury and fallback rates under a representative range of operating scenarios and environmental conditions. The licensee shall begin implementing the PCEP no later than one year following completion of the Hydraulic Evaluation Report and shall continue until safe, timely and effective passage is demonstrated over a range of operating conditions within the first five years of operation. The licensee shall modify the fishway based on results of the evaluations and reevaluate fishway effectiveness within this time frame and effort, as determined necessary by the FAWG. PCEP implementation costs including evaluation, planning and study permitting shall not exceed $1,000,000 (1 million dollars).

(ii) The following limitations shall apply:

1. The need for any modifications shall be determined by the FAWG within five years of completing the Hydraulic Evaluation Report and shall be based on information collected from the PCEP.

2. For any fishway constructed pursuant to Design Manual criteria (e.g., a fishway that includes attraction flow of 1,650 cfs) and approved by DOI, USFS, and Ecology, the licensee shall make minor modifications

including permitting, design and construction for increasing fishway effectiveness within an amount not to exceed 5% of facility construction costs.

3. For any fishway that includes departures from the Design Manual, the licensee shall make minor modifications including permitting, design and construction for increasing fishway effectiveness within an amount not to exceed 10% of facility construction costs.

(iii) 13 years after the PCEP evaluations and any related modifications have been completed, the FAWG will determine the need and scope for reevaluating fishway performance (including fish passage efficiency, passage time, mortality, injury and fallback rates). The licensee shall conduct all studies required by the FAWG under typical project operations. If fishway performance has decreased when compared to the initial PCEP evaluations, the licensee shall implement any corrective measures determined necessary by the FAWG to return performance to its previous level.

(iv) In addition, the licensee shall implement one year fishway performance evaluation(s) at any time during the license term if substantive changes occur in project operations, structures or tailwater bathymetry (caused, for example, by severe flow events). If performance has decreased when compared to the original PCEP evaluations, the licensee shall implement any corrective measures determined necessary by the FAWG to return performance to its previous level.

(h) Reporting and schedule

(i) The licensee shall prepare annual reports summarizing information related to monitoring, operations, problems encountered, program status and results of activities during the previous 12 months. Once the fishway has been installed and is operational, annual reports will also quantify the number and condition of target fish species captured and transported and the location of their release. Annual reports will also document fishway operations including tailrace water surface elevations, tailrace flow levels, fishway attraction flows, hours of fishway operation and any maintenance or operational issues identified over the year and repairs implemented to resolve the issues.

(ii) The implementation schedule for the upstream passage program is summarized as follows:

Protection, Mitigation, and Enhancement (PM&E) Measure Activity	**Schedule**
Implementation Plan	Within two years of license issuance
Fishway Design Research	In the third through the tenth years following license issuance
Fishway Design	In the tenth through the 12th years following license issuance
Fishway Design Submittal to the Commission	Within 12 years of license issuance
Fishway Construction	Within two years of receiving the Commission's approval of fishway design
Fishway Operation	Within two years of receiving the Commission's approval of fishway design
Status Report	Annually following license issuance

Article 9 (C). ***Reduction of Project Related Entrainment Mortality (REVISED).***

(a) Within five years after execution of the 2026 First Amendment to the 2010 Boundary Hydroelectric Project Relicensing Settlement Agreement ("First Amendment to Settlement Agreement" or "First Amendment"), in consultation with the Fish and Aquatic Work Group (FAWG) established pursuant to Section 8.2.1 of the 2010 Boundary Hydroelectric Project Relicensing Settlement Agreement ("2010 Settlement Agreement or "SA"), the licensee shall develop a Baseline Condition Report.

(i) The Baseline Condition Report will, at minimum, describe the genetic structure and distribution of individuals from populations of bull trout, cutthroat trout, and mountain whitefish (collectively "Target Fish Species") within Boundary Reservoir and the watersheds that flow into it.

(ii) The Baseline Condition Report will draw on information collected from the Boundary Reservoir fish community monitoring required by the Order Issuing New License, 142 FERC ¶ 62,231 (March 20, 2013) ("2013 License Order"), 2010 Settlement Agreement, and 2010 Fish and Aquatic Management Plan (FAMP).[1] Specifically, FAMP Section 5.1.4.1.1 requires the licensee to conduct fish community surveys in Boundary Reservoir beginning in year 5 after license issuance and at five-year intervals thereafter, and FAMP Section 5.1.4.3 sets forth a requirement to complete a fish community monitoring study plan prior to conducting such surveys.

(iii) The Baseline Condition Report will also draw on information collected from the licensee's periodic mainstem sampling of the Boundary Reservoir Fish Community,[2] implementation of upstream fish passage measures (2013 License Order Appendix E, Proposed Article 9 (B)), activities associated with the tributary non-native suppression and eradication program (2013 License Order Appendix E, Proposed Article 9 (D)), and the native salmonid conservation program (2013 License Order Appendix E, Proposed Article 9 (G)), as well as ongoing efforts by others in the watershed.

(iv) In developing the Baseline Condition Report, the licensee shall document and assess fish movement and demographics based on PIT tagged individuals of Target Fish Species within select Boundary Reservoir tributaries and Boundary Reservoir. The FAWG shall determine which Boundary Reservoir tributaries to study.

[1] See Ordering Paragraph E of the 2013 License Order, Exhibit 1 of the 2010 Settlement Agreement at Proposed License Article 9 (A), and Section 5.1.4.1.1. of the FAMP.

[2] Periodic sampling was an annual activity defined by electrofishing an established list of 400-m index reaches of Boundary Reservoir during spring and fall. This periodic sampling has been a voluntary activity by the licensee since 2018 (i.e., not required by the 2013 License Order, 2010 Settlement Agreement, or the 2010 FAMP).

(v) Every 5 years after the finalization of the Baseline Condition Report, the licensee shall, in consultation with the FAWG, develop an Updated Baseline Condition Report to identify trends within the assemblage of Target Fish Species and discrete populations.

(b) At a time to be determined by the licensee, but no later than 2045, the licensee shall coordinate with the FAWG to determine whether entrainment is a causative factor in the continued depression of Target Fish Species, based on whether one of the following conditions exist:

(i) A single self-sustaining population of bull trout (defined for purposes of the First Amendment as 100 breeding adults or greater) has established within a tributary to the lower Pend Oreille River downstream of Albeni Falls Dam, or

(ii) Five percent or more of a Target Fish Species population greater than 6 inches are entrained below Boundary Dam. This percentage will not include entrained fish that were translocated, reintroduced, or planted into Boundary or Box Canyon tributaries within the same year or subsequent entrainment of an individual fish within the same year.

(c) If, at the time the licensee coordinates with the FAWG consistent with subsection (b) above, existing information is not sufficient to determine if entrainment could be a causative factor in the continued depression of Target Fish Species populations, the licensee shall develop and implement studies to determine if entrainment of Target Fish Species is occurring. Such studies, if needed, shall be performed over a period of at least two years, but no more than three years (to increase the potential of evaluating different water years and different entrainment scenarios), and shall be undertaken consistent with Section 5.3.3 of the FAMP or the latest acceptable scientific techniques and methodologies, as determined by the FAWG.

(d) By no later than 2048, if the FAWG or the Secretary of the Interior (Secretary) conclude that the conditions in subsections b and c have been established, the licensee shall initiate the development of a study to evaluate direct downstream survivability through the project and the relationship to population status as set forth in subsection b. The licensee's methodologies for this survivability study shall be developed within six months of the FAWG or Secretary concluding that the conditions in subsections b and c have been established.

(e) The licensee's methodologies for this survivability study shall be reviewed by the FAWG and approved by the Secretary, and the study shall be completed within two years of approval of the study methodology and shall include evaluation of entrainment under the operational scenarios that are most common at the facility. These common scenarios will consider combinations of powerhouse, spillway and/or sluiceway operation that reflect

operations that occur over the majority of the year. If the survivability study indicates that the combined average injury and mortality rates for a Target Fish Species through downstream passage routes (turbine and/or spillways and sluiceways) are greater than 15%, and therefore a causative factor in the continued depression of target species, the licensee shall, in consultation with the FAWG and subject to the approval of the Secretary, develop a Downstream Passage Mitigation Plan.

(f) The Downstream Passage Mitigation Plan shall identify mitigation measures to be designed, implemented, and evaluated in any subsequent FERC license, including a timeline for implementing mitigation measures within the first five years of the subsequent license. In the case of data gaps or missing information needed to inform the final design of mitigation measures, the Downstream Passage Mitigation Plan will identify the gaps and information needs and the approaches needed to fill such gaps and needs within the first five years of the subsequent license. Licensee shall develop the Downstream Passage Mitigation Plan in consultation with the FAWG and shall submit the Downstream Passage Mitigation Plan to the Secretary for approval no later than six months prior to the licensee's submission of the Pre-Application Document. The Downstream Passage Mitigation Plan will be included in any Pre-Application Document the licensee files with FERC as part of an application for a subsequent license.

(g) The Downstream Passage Mitigation Plan, which shall identify a timeline for implementation, may include, but shall not be limited to, a plan for the final design and implementation of downstream fish passage facilities. Licensee agrees not to challenge the inclusion of the Plan, or its implementation, in the next FERC license.[3]

(h) Nothing in the First Amendment shall affect or limit the authorities or rights of the Department of the Interior and U.S. Forest Service, including the reservation of rights and authorities included in Section 6 of the 2010 Settlement Agreement and Article 406 of the 2013 License Order.

[3] If Interior exercises its Federal Power Act Section 18 authority to require a new license to include the measures contained in the Downstream Passage Mitigation Plan, the licensee agrees to not seek a trial-type hearing or submit alternative prescriptions pursuant to section 241 of the Energy Policy Act of 2005, 16 U.S.C. § 811. If a new license includes the measures contained in the Downstream Passage Mitigation Plan, the licensee further agrees to not seek rehearing and/or appeal of those license provisions.

Article 9 (D). ***Tributary Non-native Trout Suppression and Eradication*.**

The licensee shall implement non-native salmonid suppression and eradication activities in portions of 23 waterbodies in the Boundary Reservoir watershed as described in Section 5.4.2 of the Fish and Aquatics Management Plan (FAMP).

(a) Within one year of license issuance, the licensee shall submit to the Commission an integrated schedule approved by the Fish and Aquatics Work Group (FAWG) for the implementation of non-native salmonid suppression and eradication activities. The schedule shall be coordinated with tributary enhancement activities and native salmonid conservation activities required by the FAMP. The integrated schedule shall prioritize activities and include milestones for completing design, consultation, regulatory review, permitting and implementation. The general schedule included in the FAMP will guide the development of the integrated schedule to be filed with the Commission.

(b) The licensee's level of effort for suppression may vary among stream reaches but shall be consistent with an average of six electrofishing efforts of one to three passes per reach every ten years from the start of implementation through the remainder of the license term.

(c) Eradication of non-native salmonids by the licensee shall be consistent with a level of effort associated with three chemical treatment applications assuming the use of antimycin, rotenone or an equivalent fish toxicant.

(d) The licensee shall annually review scheduled activities in consultation with the FAWG as necessary to consider proposed changes in the upcoming year's efforts, including consideration of alternative suppression and eradication measures. Following FAWG approval of the implementation measures, the licensee shall develop specific plans, obtain all necessary permits and complete any required environmental reviews such that the measures can be implemented pursuant to the approved schedule.

(e) The licensee shall use adaptive management strategies, in consultation with and subject to approval of the FAWG, for implementing non-native salmonid eradication and suppression measures. Adaptive management will be based on reach-specific conditions and objectives.

(f) The licensee shall document compliance in annual reports. The reports will describe activities completed during the year and identify any proposed modifications for the following year. The reporting and implementation schedule for non-native trout suppression and eradication is summarized below:

Protection, Mitigation, and Enhancement (PM&E) Measure Activity	**Schedule**
Implementation Schedule	Within one year of license issuance
Implementation Planning	One to two years in advance of the scheduled implementation year for each waterbody
Implementation in Sullivan Creek and Tributaries	Begins within one to ten years of license issuance
Implementation in Sweet Creek	Begins within 20 years of license issuance
Implementation in Slate Creek, Uncas Gulch and Flume Creek	Begins within 11 to 15 years of license issuance
Implementation in Pewee Creek, Lime Creek, Lake Lucerne and Sand Creek	Begins within 16 to 20 years of license issuance
Annual Reports	Following each year suppression or eradication efforts occur
Eradication Effectiveness Monitoring and Reporting	Within one year following treatment activities

Article 9 (E). ***Tributary Fish Community and Aquatic Habitat Measures (REVISED).***

(a) The licensee shall implement the following aquatic habitat measures, pursuant to the general provisions identified below and the detailed provisions included in the Fish and Aquatics Management Plan (FAMP), Sections 5.4.3 through 5.4.10.

(b) Specific aquatic habitat measures include the following:

(i) Within ten years of license issuance, the licensee shall complete riparian improvements and stream channel enhancement in Sullivan Creek from river mile (RM) 0.30 to RM 0.54. In consultation with the Fish and Aquatics Work Group (FAWG), the schedule for implementation of this measure may be modified dependent upon the Mill Pond Dam decommissioning schedule.

(ii) Within ten years of license issuance, the licensee shall complete stream and riparian improvements in Sullivan Creek from RM 2.3 to RM 3.0.

(iii) Within ten years of license issuance, the licensee shall complete Large Woody Debris (LWD) placement and road improvements in Sullivan Creek and selected tributaries upstream of the confluence with Outlet Creek; provided that licensee shall not be required to remove the culvert from the North Fork of Sullivan Creek.

(iv) Within 20 years of license issuance, the licensee shall complete culvert replacements (except on the North Fork of Sullivan Creek) in tributaries to Boundary Reservoir.

(v) Within 20 years of license issuance, the licensee shall complete riparian planting, culvert replacement, and channel reconstruction measures in Linton Creek from RM 0.00 to RM 0.24.

(vi) Within 20 years of license issuance, the licensee shall complete riparian and channel improvements in Sweet Creek from RM 0.0 to RM 0.6.

(vii) Within 25 years of license issuance, the licensee shall complete habitat enhancement in Tier-2 tributaries to the Boundary Reservoir.

(viii) The licensee shall complete restoration of dispersed recreation sites located in Sullivan Creek riparian areas consistent with the schedule detailed in the FAMP.

The specific scope of each measure is detailed in the FAMP.

(c) By the end of the first year following license issuance, the licensee shall submit to the Commission an integrated schedule that has been approved by the FAWG for

the implementation of these measures. The licensee shall coordinate the schedule with tributary non-native salmonid suppression and eradication activities and native salmonid conservation activities required by the FAMP. The integrated schedule shall prioritize activities and include milestones for completing design, consultation, regulatory review, permitting and implementation. The timelines included in the FAMP will guide the development of the integrated schedule to be filed with the Commission.

(i) The licensee shall develop specific plans for each measure according to the integrated schedule in paragraph (c). Each plan shall include specific goals, objectives, cost estimates, anticipated restoration techniques, maintenance requirements and monitoring plans and methods. Specific, measurable success criteria shall also be developed by the licensee in consultation with the FAWG and included for each measure. For each measure that includes a construction component, the plan will include final construction drawings. Where applicable, measures should be addressed on a programmatic basis.

(d) The licensee shall develop all plans pursuant to Article 2 and the FAMP. As part of the integrated schedule in paragraph (c), licensee shall, in consultation with and approval by the FAWG, develop a Tributary Management Plan (TMP) including a subsection for each tributary that will receive treatments. The TMP shall provide a coordinated approach for implementing tributary habitat restoration measures. The TMP will identify appropriate target fish population sizes and species to be achieved through implementation of measures in the FAMP. The licensee shall include a schedule and scope of treatments for each tributary to ensure that treatments are complementary to the population and habitat goals.

(e) Once a restoration measure has been completed, the licensee shall evaluate the measure every eight years for the license term to ensure continued compliance with success criteria specific to measures and developed in consultation with and approved by the FAWG. If a restoration measure falls below success levels as determined through eight-year effectiveness monitoring, the licensee shall, within 60-days, develop a plan for repairs to correct the deficiencies, including a schedule for proposed work and further monitoring, in consultation with the FAWG. A summary of repairs will be included in the annual report.

In addition to the eight-year effectiveness monitoring, the licensee shall annually, and following major (25 year) flood events, inspect measures as described in the FAMP.

The licensee shall include the results of all monitoring and summary of repairs in the annual reports filed with the Commission.

(f) In the event that any of the above measures cannot be implemented, alternative measures will be implemented as provided in the FAMP.

Article 9 (F). ***Mill Pond Dam Site Monitoring and Maintenance.***

(a) As provided in Section 5.5 of the Fish and Aquatics Management Plan (FAMP), the licensee shall, beginning at the point in time when the Commission determines that the Mill Pond Decommissioning Plan for Pend Oreille PUD's surrender of its license for the Sullivan Creek Project has been completed, monitor and provide maintenance where necessary, to the area covered by the Mill Pond Decommissioning Plan for ten years (with monitoring in the second, fourth, sixth and tenth years) and once every eight years thereafter to ensure:

(i) stream channel is functioning in accordance with the design criteria

(ii) vegetation is becoming established

(iii) control of non-native plant species

(b) Within one year from when the Commission determines that the Mill Pond Decommissioning Plan for Pend Oreille PUD's surrender of its license for the Sullivan Creek Project has been completed, the licensee shall develop plans and protocols for monitoring and maintenance of the Mill Pond Dam site in consultation with the Fish and Aquatics Work Group (FAWG) and subject to approval by United States Forest Service and the Washington Department of Ecology.

(c) After any major flood event in Sullivan Creek, the licensee shall evaluate the site to determine whether the stream channel continues to meet design criteria. The licensee will undertake any measures necessary to assure that the stream channel is meeting agreed to design parameters. In the event of flows greater than a flood event having a 100-year recurrence interval, the licensee will not be responsible for repair of stream restoration measures that may have been damaged from such an event.

Article 9 (G). ***Native Salmonid Conservation Program (REVISED).***

(a) The licensee shall implement provisions of the Fish and Aquatics Management Plan (FAMP), Section 5.6, to design, construct and operate a fish propagation facility for the production of native salmonids to supplement tributaries draining into the Boundary Reservoir. The licensee shall release propagated native salmonids to supplement existing populations, or to introduce native salmonids of resident and/or migratory life histories into reaches where they are not currently present. Target release sites will include those reaches where non-native trout have been actively suppressed or where high quality, but underutilized habitat is available in tributaries draining into the Boundary Reservoir. Supplementation of native salmonids is expected to complement non-native trout suppression and/or stream habitat improvement activities. The licensee shall be responsible for the appropriate marking of all outplanted fish for the purpose of identifying these fish during future monitoring efforts.

(b) The initial capacity of the facility will be up to 45,000 eyed eggs, fry, or fingerling (three to four inch) fish per year and multiple age class broodstock (capacity of 1,000-2000 pounds). Annual production will be commensurate with the need to outplant fish in tributaries draining into the Boundary Reservoir

(c) Licensee will design the facility to simultaneously propagate two species of fish and several year classes (life stages); selection of species, stocks and lifestages to be produced would be determined in consultation with and subject to approval by the Fish and Aquatics Work Group (FAWG). In addition, licensee will ensure the facility will have the capacity to sustain the necessary numbers of broodstock fish to produce the number of eggs, fry or fingerlings for the purposes of the Conservation Program.

(d) Licensee shall use a multi-step approach to implement this measure. The licensee shall complete each step in consultation with and subject to approval by the FAWG. Preliminary planning suggests that the 40-acre Washington Department of Fish and Wildlife (WDFW) parcel on Skookum Creek, which formerly included the Usk Hatchery, is a potential location for the propagation facility.

(i) The first step for the licensee in the development of the native salmonid conservation facility shall be to confirm the feasibility of the Usk Hatchery site. If this site proves to be infeasible, the licensee will consider alternatives including purchase or funding of an alternate existing facility, or development at a new site with an appropriate source of water. If a feasible site cannot be

identified, the licensee will re-direct mitigation efforts towards the purchase of suitable eggs, fry or fingerlings from another source to meet population goals or toward commensurate protection, mitigation, and enhancement (PM&E) measures as determined in consultation with and subject to approval by the FAWG.

(ii) The second step for the licensee shall be to complete implementation planning that includes the following:

1. Goals and policies of federal and state agencies and the Kalispel Tribe regarding conservation facilities and native salmonid recovery

2. Risks and benefits of supplementing bull and/or westslope cutthroat trout in the Project area

3. Mitigation measures to be used to reduce risk (e.g., of spreading disease, domestication, etc.)

4. A conceptual level description and engineering design for the facility, with specifications

5. Description of any off-site facilities or techniques that could be used as part of release strategies (e.g., acclimation and volitional release ponds, streamside or instream incubation of eyed eggs, etc.)

6. Sources and techniques to be used for collecting broodstock

7. Target production levels by life stage

8. A hatchery genetics management plan

(iii) The third step for the licensee shall be preparation of draft and final engineering plans for the facility, completing any required regulatory review (e.g., NEPA compliance) and obtaining any needed permits. Following approval of final design and permitting, the licensee will construct the facility and fund operation and maintenance for the license term.

(e) The licensee shall complete implementation planning within three years of license issuance and the facility will be operational within six years of license issuance.

(f) The licensee shall prepare a construction compliance report within one year following construction of the facility that will document any variances from the implementation planning, engineering and construction steps.

(g) Prior to the fish conservation facility being operational, the licensee shall annually summarize its fish conservation activities of the previous 12 months. Once the facility is operational, the licensee shall annually summarize the following information: (i) numbers, lifestages, size and species of fish produced; (ii) timing and locations of releases; (iii) percent survival between life stages; (iv) results of effectiveness monitoring; (v) disease outbreaks, other problems and remedies that were implemented to reduce the risk of problems reoccurring; and
(vi) effectiveness monitoring in (j).

(h) The licensee shall file status reports every five years that summarize the annual reports and provide more detailed analysis and assessment of trends in the data. The five-year status reports will also describe any changes in production or release strategies developed in consultation with and subject to approval by the FAWG and the rationale for implementing the changes.

(i) Licensee, in consultation with and subject to approval by the FAWG, shall establish population goals for the Conservation Program by determining appropriate tributary target fish populations desirable for the purpose of establishing self-sustaining, native stocks of fish. Optimal outplanting strategies for achieving population goals will be identified by the licensee in consultation with and subject to approval by the FAWG through monitoring and evaluating multiple outplanting strategies that consider appropriate fish sizes, outplanting densities, frequency and timing. Each outplanting strategy will have independent markers/identifiers for analysis (e.g., otolith marks utilizing calceine, thermal, strontium chloride). The licensee shall monitor the initial success of outplanted native salmonids and conduct periodic monitoring until population goals are achieved. The licensee shall evaluate the reproductive success of outplanted native salmonids to determine, in consultation with and subject to approval by the FAWG, if population goals are met. The licensee shall adjust the conservation schedule and numbers subject to approval of the FAWG.

(j) In consultation with the FAWG, the licensee shall evaluate the effectiveness of the Conservation Program, including the success of alternate outplanting strategies, reproductive success of outplanted fish, or other aspects of the Conservation Program pursuant to the

FAMP. The results of effectiveness monitoring will be included in the annual report.

(k) The reporting and implementation schedule for the native salmonid conservation facility is summarized below.

PM&E Measure/Activity	**Schedule**
Complete Implementation Planning	Within three years of license issuance
Facility Draft and Final Engineering Plans	Within four years of license issuance
Facility Construction	Within six years of license issuance
Begin Operations	Within six years of license issuance
Construction Compliance Monitoring Report	Within seven years of license issuance
Annual Reports	Every year
Five-year Status Reports	Every fifth year

With prior notice to FERC, the licensee may use the Regional facility to produce fish to meet Regional needs per the terms of the Interlocal Agreement for Creation of the Second Species Fund and Provision of Regional Fishery Benefits among licensee and certain other parties dated _____, 2026.

Article 9 (H). ***Recreational Fish Stocking Program*.**

(a) The licensee shall implement provisions of the Fish and Aquatics Management Plan (FAMP), Section 5.7, to provide for the annual stocking of approximately 11,678 pounds of trout in 18 lakes within a 15-mile area around the Project beginning no later than within two years of license issuance.

(b) Trout species stocked in these lakes will consist of westslope cutthroat, rainbow, rainbow triploid or tiger trout, and may include fall fry, fingerlings, spring fry and catchable-size fish. The number, size and species of fish, planting schedule and location may be adjusted by licensee in consultation with and approval by Washington Department of Fish and Wildlife (WDFW).

(c) Within one years of license issuance, the licensee shall, in consultation with and approval by WDFW, complete implementation planning to identify:

(i) Pre-stocking monitoring protocols

(ii) Source of fish

(iii) Number, size and species of fish, planting schedule and location

(iv) Stocking protocols

(d) The licensee shall provide for annual monitoring and evaluation of lakes receiving the stocked fish prior to the springtime opening day of trout season. At least six of the lakes receiving stocked fish will be monitored each year on a rotating subset of the 18 lakes. Monitoring activities will consist of yearly fall or pre-opening day spring index gillnetting to evaluate recruitment of planted trout fry, trout growth rates, relative trout abundance, and detection of illegally introduced and/or undesirable fish species. Survey timing, location and protocol will be developed by the licensee in consultation with and approval by WDFW.

(e) The licensee shall provide for opening day creel census on two lakes per year. Lakes to be creel-sampled will be selected each year in consultation with the WDFW.

(f) The licensee shall prepare an annual report identifying the amount, size, species, timing and location of stocking efforts. The licensee shall also prepare the results of monitoring and evaluation activities, activities planned for the upcoming year and highlight any proposed changes from previous protocols.

Article 9 (I). ***Fund for Habitat Improvements in Tributaries to Sullivan Lake.***

(a) Within one year of license issuance, licensee shall establish a $2.5 million (2.5 million dollar) fund called the Sullivan Lake Upper Tributary Fund in an interest bearing account for improving aquatic habitat in Harvey Creek, Noisy Creek and Jungle Creek as described in Section 2.6 of the Fish and Aquatics Management Plan (FAMP).

(b) Licensee shall have no obligations for any other habitat measures in tributaries to Sullivan Lake other than the Sullivan Lake Upper Tributary Fund.

(c) Licensee shall make fund distributions for measures in tributaries to Sullivan Lake in installments at the discretion of the Fish and Aquatic Work Group (FAWG) for planning and implementation activities.

(d) In the event that there are any unexpended funds in the Sullivan Lake Upper Tributary Fund after the measures described above have been completed, licensee shall use such unexpended funds for purposes of achieving additional habitat improvement in tributaries to the Boundary Reservoir as directed by the FAWG.

Article 10. *Escalation*.

(a) Unless otherwise indicated, all costs or payment amounts specified in dollars in the New License and Management Plans shall be deemed to be stated as of the year 2009, and licensee shall escalate such sums as of January 1 of each following year (starting in January 2012, or in the year preceding the Commission License issuance, whichever is later) according to the following formula:

AD = D x (NGDP)/(IGDP)

Where:

AD = Adjusted dollar amount as of January 1 of the year in which the adjustment is made

D = Dollar amount prior to adjustment

IGDP = "GDP-IPD" for the third quarter of the year before the previous adjustment date (or, in the case of the first adjustment, the third quarter of the year 2009)

NGDP = "GDP-IPD" for the third quarter of the year before the current adjustment date

(b) "GDP-IPD" is the value published for the Gross Domestic Product Implicit Price Deflator by the United States Department of Commerce, Bureau of Economic Analysis in the publication Survey of Current Business, in the third month following the end of the applicable quarter. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted upon approval by the Commission. If the base year for "GDP-IPD" is changed or if publication of the index is discontinued, the licensee shall notify the Commission as soon as possible and recommend, after consultation with the Settlement Agreement Parties, adjustments or an alternative index that achieves the same economic effect.

Exhibit 2 to FIRST AMENDMENT TO BOUNDARY HYDROELECTRIC PROJECT RELICENSING SETTLEMENT AGREEMENT FERC PROJECT NO. 2144

U.S. Forest Service Draft Section 4(e) Terms & Conditions

[__] 2026

DRAFT

USDA FOREST SERVICE
MODIFIED FEDERAL POWER ACT SECTION 4(e) TERMS AND CONDITIONS
BOUNDARY HYDROELECTRIC PROJECT, NO. 2144

Conditions filed on [___], 2026, as part of First Amendment to Boundary Hydroelectric Project Relicensing Settlement Agreement.

General

License articles contained in the Federal Energy Regulatory Commission's (Commission) Standard Form L-5 issued by Order No. 540, dated October 31, 1975, cover those general requirements that the Secretary of Agriculture, acting by and through the USDA Forest Service, considers necessary for adequate protection and utilization of the land and related resources of the Colville National Forest. Under authority of section 4(e) of the Federal Power Act (16 U.S.C. § 797(e)), the following terms and conditions are deemed necessary for adequate protection and utilization of National Forest System lands and resources. These terms and conditions are based on those resources enumerated in the Organic Administration Act of 1897 (30 Stat. 11), the Multiple-Use Sustained Yield Act of 1960 (74 Stat. 215), the National Forest Management Act of 1976 (90 Stat. 2949), and any other law specifically establishing a unit of the National Forest System or prescribing the management thereof (such as the Wilderness Act or Wild and Scenic Rivers Act), as such laws may be amended from time to time, and as implemented by regulations and approved Land and Resources Management Plans prepared in accordance with the National Forest Management Act. Therefore, pursuant to section 4(e) of the Federal Power Act, the following conditions covering specific requirements for protection and utilization of the National Forest System lands shall also be included in any license issued for the Boundary Hydroelectric Project (Project) and any license amendment issued.

Condition No. 1 – Compliance with the Settlement Agreement[1]

The Licensee shall completely and fully comply with all provisions of the Boundary Hydroelectric Project Relicensing Settlement Agreement as amended by the 2026 First Amendment to Settlement Agreement (collectively, "Settlement Agreement") relating to:

[1] Note for Conditions 1 and 2. Implementation requirements do not extend to off license agreements or other information provided to FERC along with the Settlement Agreement for information purposes only.

1. All protection, mitigation and enhancement measures and other obligations identified in the Settlement Agreement and Exhibits which are on or affect National Forest System (NFS) lands and resources; and

2. All commitments in each and every plan referenced in the Settlement Agreement, and Exhibits which implement activities which are on or affect NFS lands and resources; provided, however, that this Condition No. 1 excludes those measures and other obligations, and those provisions of the Settlement Agreement and Exhibits, relating to decommissioning of the Mill Pond Dam and implementation of the cold water release from Sullivan Lake (including, the Settlement Agreement §§ 7.14 and 7.15, and Settlement Agreement Exhibit 9, (Temperature Attainment Plan) §§ 4.1.2.1.1 and 4.1.2.2.). In addition this Condition No. 1 also excludes Appendices 1-3 and Attachments 1 and 2 of the Settlement Agreement.

Condition No. 2 – Reservation of Authority in the Event the Settlement Agreement is Materially Modified or Not Accepted by the Commission

USDA Forest Service preliminary terms and conditions are premised on two considerations:

1. The Commission's acceptance and incorporation of the Settlement Agreement, Appendices, and Exhibits as they relate to activities that are on or affect National Forest System lands, without material modification into the new Project license; provided, however, that such acceptance and incorporation shall not extend to those provisions of the Settlement Agreement, Appendices and Exhibits relating to decommissioning of the Mill Pond Dam and implementation of the cold water release from Sullivan Lake as defined in Condition No. 1.

2. The Licensee's immediate and complete implementation of its obligations in accordance with the Settlement Agreement as it may be modified or conformed by the Parties following issuance of the license by the Commission.

In the event either of these requirements are not met, the USDA Forest Service reserves its authority to supplement or modify its terms and conditions at a later time.

Condition No. 3 – Implementation of Settlement Agreement License Articles

The Licensee shall implement Settlement Agreement License Articles 1-10, as amended by the 2026 First Amendment, as they relate to activities that are on or affect National Forest System lands.

1. Operations

2. Boundary Resource Coordinating Committee and Work Groups
3. Terrestrial Resources
4. Land Acquisition
5. Recreation Resources
6. Well Decommissioning
7. Programmatic Agreement
8. Water Quality Plans
9. Fish and Aquatic Resources
    9 (A) Mainstem Fish Community and Aquatic Habitat Measures as amended by the 2026 First Amendment
    9 (B) Upstream Fish Passage
    9 (C) Reduction of Project Related Entrainment Mortality as amended by the 2026 First Amendment
    9 (D) Tributary Non-native Trout Suppression and Eradication
    9 (E) Tributary Fish Community and Aquatic Habitat Measures as amended by the 2026 First Amendment
    9 (F) Mill Pond Dam Site Monitoring and Maintenance
    9 (G) Native Salmonid Conservation Program as amended by the 2026 First Amendment
    9 (H) Recreational Fish Stocking Program
    9 (I) Fund for Habitat Improvements in Tributaries to Sullivan Lake
10. Escalation

Condition No. 4 - Implementation of the License on National Forest System Lands

The Licensee shall not commence implementation of habitat or ground-disturbing activities on National Forest System (NFS) lands until the USDA Forest Service has approved site-specific project designs and issued a notice to proceed.

Additional NFS Lands. If long term occupancy of NFS lands is required for Project related purposes and such occupancy is not authorized by including such lands within the FERC Project boundary, the Licensee shall obtain a special-use authorization for occupancy and use of such NFS lands from the USDA Forest Service. Within three months of License issuance and before conducting any habitat or ground-disturbing activities on such NFS lands, the Licensee shall apply to the USDA Forest Service for a special-use authorization for occupancy and use of NFS lands, and shall file the special-use authorization with the Commission once obtained.

Additional lands authorized for use by the Licensee in a new special-use authorization shall be subject to laws, rules, and regulations applicable to the NFS. The terms and conditions of the USDA Forest Service special-use authorization are enforceable by the USDA Forest Service under the laws, rules, and regulations applicable to the NFS.

Should additional NFS lands be needed for this Project over the License term and such lands are not included within the FERC Project Boundary, the special-use authorization shall be amended to include any additional NFS lands.

Approval of Changes on NFS Lands after License Issuance. Notwithstanding any License authorization to make changes to the Project, the Licensee shall receive written approval from the USDA Forest Service prior to making changes in the location of any constructed Project features or facilities on NFS lands, or in Project uses of NFS lands, or any departure from the requirements of any approved exhibits for Project facilities located on NFS lands filed by the Licensee with the Commission. Following receipt of such approval from the USDA Forest Service, and at least 60 days prior to initiating any such changes or departure, the Licensee shall file a report with the Commission describing the changes, the reasons for the changes, and showing the approval of the USDA Forest Service for such changes. The Licensee shall file an exact copy of the report with the USDA Forest Service at the time it is filed with the Commission.

Coordination with Other Authorized Uses on NFS Lands. In the event that portions of the Project area are under federal authorization for other activities and permitted uses, the Licensee shall consult with the USDA Forest Service to coordinate such activity with authorized uses before starting any activity on NFS land that the USDA Forest Service determines may affect another authorized activity.

Site-Specific Plans. The Licensee shall prepare site-specific plans subject to review and approval by the USDA Forest Service for habitat and ground-disturbing activities on NFS lands affected by the Project required by the License, including such activities contained within resource management plans required by the License to be prepared subsequent to License issuance. The Licensee shall prepare site-specific plans for planned activities one year in advance of implementation dates required by the License, or as otherwise agreed to by USDA Forest Service. For activities planned in the first year after License issuance, the Licensee shall provide the site-specific plans to the USDA Forest Service sufficiently in advance of implementation to allow USDA Forest Service review and approval of the site-specific plans prior to implementation. For emergency situations, where corrective or mitigation actions must be implemented immediately, the Licensee will coordinate with the USDA Forest Service to expedite approvals and/or permits.

Site-specific plans shall include:

1. A map depicting the location of the proposed activity and GPS coordinates.
2. A description of the USDA Forest Service land management area designation for the location of the proposed activity and applicable standards and guidelines.
3. Where required by regulatory procedures, a description of alternative locations, designs and mitigation measures considered including erosion control and

implementation and effectiveness monitoring designed to meet applicable standards and guidelines.

4. Draft biological evaluations or assessments including survey data as required by regulations applicable to habitat or ground-disturbing activities on NFS lands in existence at the time the plan is prepared.

5. An environmental analysis of the proposed action consistent with the USDA Forest Service policy and regulations for implementation of the National Environmental Policy Act (NEPA) in existence at the time the plan is prepared for Commission Licensed projects on NFS lands. Environmental Analysis completed by the Commission or others may be relied upon as appropriate on a project specific basis as agreed to by USDA Forest Service.

6. A Spill Prevention and Control, and Hazardous Materials Plan for hazardous materials storage, spill prevention and cleanup on NFS lands, as needed, will be provided to USDA Forest Service for review and approval before work commences.

Surveys and Land Corners. The Licensee shall avoid disturbance to all public land survey monuments, private property corners, and forest boundary markers. In the event that any such land markers or monuments are destroyed by an act or omission of the Licensee, in connection with the use and/or occupancy authorized by the License, depending on the type of monument destroyed, the Licensee shall reestablish or reference same in accordance with (1) the procedures outlined in the "Manual of Instructions for the Survey of the Public Land of the United States," (2) the specifications of the County Surveyor, or (3) the specifications of the USDA Forest Service. Further, the Licensee shall ensure that any such official survey records affected are amended as provided for by law.

Condition No. 5 - Surrender of License or Transfer of Ownership

At least 1 year in advance of filing an application for license surrender, the Licensee shall prepare a restoration plan for National Forest Service lands approved by the USDA Forest Service. The restoration plan shall identify improvements to be removed, restoration measures, and time frames for implementation and shall be filed with the Commission as part of the surrender application.

Condition No. 6 – Indemnification

The Licensee shall indemnify, defend, and hold the United States harmless for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the Licensee in connection with the Licensee's use and/or occupancy of National Forest System lands authorized by this License. This indemnification and hold harmless provision applies to any acts and omissions of the Licensee or the Licensee's assigns, agents, employees, affiliates, subsidiaries, fiduciaries, contractors, or lessees in

connection with the Licensee's use and/or occupancy of National Forest System lands authorized by this license which result in: (1) violations of any laws and regulations which are now or which may in the future become applicable, and including but not limited to environmental laws such as the Comprehensive Environmental Response Compensation and Liability Act, Resource Conservation and Recovery Act, Oil Pollution Act, Clean Water Act, Clean Air Act; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States (other than as contemplated by the License); or (4) the release or threatened release of any solid waste, hazardous substances, pollutant, contaminant, or oil in any form in the environment.

Condition No. 7 - Reservation of Authority

The Licensee shall implement, upon order of the Commission, such additional conditions as may be identified by the Secretary of Agriculture, pursuant to the authority provided in Section 4(e) of the Federal Power Act, as necessary for the adequate protection and utilization of the public land reservations under the authority of the USDA Forest Service, provided that such additional conditions are necessary, based on compelling evidence, to address changed circumstances.

Condition No. 8 – National Forest System Roads

The Licensee shall be authorized to construct, reconstruct, use and maintain those roads across National Forest System lands that are necessary for the operation, maintenance, and recreational use of the Project as identified and described in Table 1. The Licensee shall have authorization to use the roads described in Table 1 if the roads are included in the Project boundary, or by a special use authorization (SUA) issued by the USDA Forest Service for those roads not included within the Project boundary, or as is otherwise provided in Table 1. The Licensee shall apply for a SUA within three months of License issuance for those roads not included within the Project boundary. Construction and reconstruction of roads listed in Table 1 shall conform to plans, specifications and written stipulations approved by the USDA Forest Service prior to beginning construction and reconstruction work. Roads listed in Table 1 shall be maintained to the level and standards listed in Table 1 and described in Appendix A, as may be amended during the License term.

DRAFT

Table 1: Authorization and Responsibility for Roads needed for Boundary Project operation and maintenance

Road Name/Number	Access Points	Authorization Across NFS Land	SCL Maintenance/Reconstruction Responsibility
West Side Access Road	Main access road from Pend Oreille Co. Rd. 2975 to Boundary Dam	Use of this road segment shall be authorized by including the segment within the Project boundary or by issuance of an SUA by USDA Forest Service for segments not included within the Project boundary.	SCL to maintain for Project and public access. To be maintained to Maintenance Level 5.
FS 6200348	Access to main transmission line towers between Boundary Dam and BPA yard.	Use of this road segment shall be authorized by including the segment within the Project boundary or by issuance of an SUA by USDA Forest Service for segments not included within the Project boundary.	Share by first use.[1] To be maintained to Maintenance Level 2.
FS 3165000/ Pend Oreille Co. Rd. 3990	Main access route between State Route 31 and the east side of Boundary Dam and the Vista House	SCL shall be authorized to use, maintain and reconstruct this road across National Forest System lands by issuance of an SUA by USDA Forest Service or through a grant of a Public Road Easement to Pend Oreille County.	To be maintained to Maintenance Level 5.
FS 3165350	Road across dam, connecting Pend Oreille Co. Rd. 3990 with the West Side Access Road	Use of this road segment shall be authorized by including the segment within the Project boundary or by issuance of an SUA by USDA Forest Service for segments not included within the Project boundary.	SCL to maintain for project operation and maintenance use. To be maintained to Maintenance Level 2.
FS 3100172	Access to Riverside Mine reservoir overlook from SR 31 to junction with FS 3100178 and trailhead	Use of this road segment shall be authorized by including the segment within the Project boundary or by issuance of an SUA by USDA Forest Service for segments not included within the Project boundary.	SCL to reconstruct and maintain for public access. To be maintained to Maintenance Level 3.
FS 3165325	Access to Pee Wee Falls overlook from POC 3990/FS 3165000 to junction with FS 3165315	Use of this road segment shall be authorized by including the segment within the Project boundary or by issuance of an SUA by USDA Forest Service for segments not included within the Project boundary.	SCL to reconstruct and maintain for public access. To be maintained to Maintenance Level 3.
FS 3165315	Access to Pee Wee Falls overlook from FS 3165325 to trailhead	Use of this road segment shall be authorized by including the segment within the Project boundary or by issuance of an SUA by USDA Forest Service for segments not included	SCL to reconstruct the existing segment of road and construct an extension of this road (if needed) to a proposed trailhead and maintain for public access. To be maintained to Maintenance

		within the Project boundary.	Level 3.
FS 3165340	Road accessing up stream dam deflection monitoring point off of Pend Oreille Co. Rd. 3990/FS 3165000	Access shall be approved by USDA Forest as described in USDA Forest Service Condition 4 (Implementation of the License on National Forest System Lands).	SCL to close with an earthen-berm after the unauthorized road segment is decommissioned.
Unauthorized Road off FS 3165340	Road accessing up stream dam deflection monitoring point off of the 3165340 Road	Access shall be approved by USDA Forest as described in USDA Forest Service Condition 4 (Implementation of the License on National Forest System Lands).	SCL to decommission road and stabilize the 2 mass wasting sites.

[1]Share the road maintenance and reconstruction based on who needs the road first. When the road is needed, the organization that needs the road first will perform the maintenance and reconstruction needed to accommodate their use. If the road is currently closed, once the road is no longer needed, it will be reclosed and maintained to a USDA Forest Service maintenance level 1 configuration.

Condition No. 9 – National Forest System Land Boundary Survey

Within three years of License issuance, the Licensee shall re-establish the Public Land Survey System Corners, or establish witness corners governing National Forest System property boundaries within and adjacent to the Project area. The corners, which need to be re-established, are identified in Table 1. The Licensee shall also survey, mark and post to USDA Forest Service standards and specifications those National Forest System lands adjacent to the Project, as identified in Table 1. The Licensee shall be responsible for all USDA Forest Service administrative costs associated with surveying, marking and posting of National Forest System lands identified in Table 1.

In addition, the Licensee shall post Project Boundary signs at all public access points at the Project boundary, informing the public of the location of the boundary. These locations include, but are not limited to, Metaline Waterfront Park, Boundary Forebay Recreation Area, BLM recreation site across from Everett Island, and at any new overlooks and trail access points. The Licensee and USDA Forest Service shall discuss additional locations where there may be public access that requires posting of signs. The Licensee shall post signs at such additional locations as agreed to with the USDA Forest Service.

DRAFT

Table 1 – Boundary Survey

Legal Description Willamette Meridian	**Corners**	**Survey and Post**
T39N, R43E Section 10	Witness corner to Corner 3 of Cromwell Lode	1. North line of the Cromwell Lode 2. West line of the Shale No. 11 Lode North of Corner 4 of the Cromwell Lode
T39N, R43E Section 28	1. Witness corner to Corner 1 MS 984. 2. West Meander Corner on the North Section line (Section 28)	Government Lots 5 and 11

DRAFT

Exhibit 3 to FIRST AMENDMENT TO BOUNDARY HYDROELECTRIC PROJECT RELICENSING SETTLEMENT AGREEMENT FERC PROJECT NO. 2144

UNITED STATES DEPARTMENT OF THE INTERIOR

REVISED AMENDED PRELIMINARY CONDITIONS AND RECOMMENDATIONS PURSUANT TO SECTIONS 10(a) AND 10(j) OF THE FEDERAL POWER ACT FOR THE BOUNDARY HYDROELECTRIC PROJECT FERC PROJECT NO. 2144

AND

REVISED AMENDED PRELIMINARY PRESCRIPTIONS FOR FISHWAYS PURSUANT TO SECTION 18 OF THE FEDERAL POWER ACT FOR THE BOUNDARY HYDROELECTRIC PROJECT FERC PROJECT NO. 2114

[__] 2026

UNITED STATES DEPARTMENT OF THE INTERIOR

REVISED AMENDED PRELIMINARY CONDITIONS AND RECOMMENDATIONS PURSUANT TO SECTIONS 10(a) AND 10(j) OF THE FEDERAL POWER ACT FOR THE BOUNDARY HYDROELECTRIC PROJECT FERC PROJECT NO. 2144

10(j) Recommendation No. 5: Mainstem Fish Community and Aquatic Habitat Measures (Settlement Agreement – Proposed License Article 9 (A) (REVISED))

The Department of the Interior is deleting section (a) of Recommendation No. 5 and is entirely replacing section (c). Section (b) remains unchanged but is included here for consistency.[1] Section (d)(iv) is slightly modified.

The licensee shall implement the Fish and Aquatics Management Plan (FAMP), Section 5.1, to: (1) modify trapping pools in the area known as the Cobble Sisters to reduce the risk of fish being trapped in the pools during periods of declining flow and reservoir water surface elevations, (2) enhance Sullivan Creek tributary delta habitat by providing additional cover, in the form of large woody debris (LWD) jams, for salmonids occupying coldwater refugia, and (3) conduct fish community surveys and evaluate predation on outmigrating native salmonids at select tributary deltas.

(a) *This section has been deleted from Recommendation No. 5*

(b) Channel Modifications of Mainstem Trapping Pools at Project RM 30.3

(i) The licensee shall implement site modifications at the Cobble Sisters within five years of license issuance.

(ii) The licensee shall excavate a channel to connect mainstem flow to three isolated pools at a large cobble bar near PRM 30.3 to reduce the risk of fish becoming trapped during declining water surface elevations. Spools from excavation will be used to fill a fourth pool near the channel margin.

(iii) The licensee shall conduct compliance monitoring at the Cobble Sisters within one year following implementation of the measure. Compliance monitoring will

[1] The definitions and acronyms in this Revised Amended Preliminary Conditions and Recommendations Pursuant to Sections 10(a) and 10(j) of the Federal Power Act for the Boundary Hydroelectric Project FERC Project No. 2144 shall have the same definitions as in the 2010 Boundary Hydroelectric Project Relicensing Settlement Agreement.

DRAFT

include documentation collected during implementation, such as survey data and photographs of the site before and after excavation.

(iv) Licensee shall repeat physical measurements to evaluate whether the site modifications continue to function as designed every ten years following construction and following one in 25 year high flow events. During the year following each physical monitoring effort, the FAWG will determine if remediation measures are needed to ensure that site modifications continue to satisfy design specifications. The licensee will implement the required measures to satisfy design objectives.

(v) The reporting and implementation schedule for channel excavation at the Cobble Sisters is summarized below.

PM&E Measure Activity	**Schedule**
Implementation Planning	Within three years of license issuance
Implementation	Within five years of license issuance
Compliance Report	Within six years of license issuance
Physical Monitoring	Every ten years following construction, and following flows exceeding a 25-year recurrence interval
Monitoring Report	Within one year of physical monitoring

(c) Mainstem Large Woody Debris at Tributary Deltas

(i) The licensee shall place two LWD jams at the Sullivan Creek delta.

(ii) The licensee shall place and maintain LWD jams in the thalweg in the upper delta regions of the Sullivan Creek delta to minimize use by non-salmonids. The specific location and design of the LWD jams will be determined during implementation planning by the licensee in consultation with and subject to approval by the FAWG.

(iii) The licensee shall conduct implementation planning with final design specifications to be approved by the FAWG. Implementation planning will identify:

1. Specific locations for LWD jams at the Sullivan Creek delta

2. LWD jam design specifications for each location

3. Specific monitoring protocols

(iv) Licensee shall complete construction of the LWD jams within ten years following license issuance. The schedule for initial construction of the Sullivan Creek delta log jams may depend on upstream Mill Pond Dam removal activities.

DRAFT

(v) If permitting, landowner permission or other issues prevent implementation within ten years following license issuance, the licensee will determine, with approval from the FAWG, alternate locations for installing LWD jams, or will identify and implement alternative measures to provide additional cover in the Sullivan Creek delta with a commensurate schedule and level of effort.

(vi) Licensee will implement compliance and effectiveness monitoring for each LWD jam. The licensee shall conduct compliance monitoring and will provide documentation to the FAWG and the Commission that the measure has been implemented as specified. Effectiveness monitoring will evaluate the need for LWD jam repair or replenishment.

(vii) Licensee will issue a compliance report, including documentation collected during construction, repair, or replenishment within one year following implementation or repair of a LWD jam.

(viii) Licensee will conduct physical effectiveness monitoring during the ninth year following the construction of a structure and at ten-year intervals thereafter. In addition, licensee will conduct physical effectiveness monitoring to determine continued compliance with design specifications following major flood events (25-year event). The results of the effectiveness monitoring will be used to support adaptive management and adjustments to the PM&E measure during repair or log replenishment of a structure.

(ix) Licensee will repair or replenish the LWD jams within one year following physical effectiveness monitoring.

(x) Licensee will conduct three consecutive years of biological effectiveness monitoring within the first ten years following construction. Biological effectiveness monitoring will also be conducted concurrent with physical effectiveness monitoring through the term of the license.

The reporting and implementation schedule for mainstem LWD at the Sullivan Creek delta is summarized below.

PM&E Measure Activity	**Schedule**
Implementation	At the direction of the FAWG, may be completed after the tenth year following license issuance depending on the influence of Mill Pond Dam removal
Compliance Reporting	Within one year following construction, repair or replenishment of LWD structures
Physical Effectiveness Monitoring	In the ninth year following implementation, and every tenth year thereafter; and after flows exceeding a 25-year recurrence interval

Biological Effectiveness Monitoring	Three consecutive years between initial construction and first scheduled repair/replenishment, and then concurrent with physical effectiveness monitoring
Monitoring Report	Within one year following physical or biological effectiveness monitoring

(d) Boundary Reservoir Fish Community Monitoring and Evaluation of Salmonid Predation at Select Tributary Deltas

(i) The licensee shall conduct fish community surveys to monitor changes in fish population abundance and size structure of focal species over time. Focal species will be westslope cutthroat trout, bull trout, mountain whitefish, smallmouth bass, northern pikeminnow and northern pike and may include other species as identified by the FAWG. The study design and final implementation schedule will be developed in consultation with and subject to approval by the FAWG.

(ii) The licensee shall conduct a fish community monitoring study in the fifth year following license issuance and at five-year intervals thereafter, unless otherwise directed by the FAWG. Planning for the fish community monitoring study component shall be completed during the calendar year prior to study implementation, and a summary report of field activities will be completed within one year of the completion of field surveys. The reporting and implementation schedule for fish community monitoring is summarized below.

PM&E Measure Activity	**Schedule**
Fish Community Study Plan	Within four years of license issuance and every fifth year thereafter
Conduct Fisheries Survey	In the fifth year following license issuance and every fifth year thereafter
Survey Completion Report	In the sixth year following license issuance and every fifth year thereafter

(iii) The licensee shall conduct the predation study to quantify the proportion of outmigrating native salmonids from select tributaries that are being consumed by predatory fish within the selected tributary deltas and determine consumption rates of select predators. The licensee shall develop the study design and final implementation schedule in consultation with and subject to approval by the FAWG.

(iv) If the results of the predation investigation identify that a significant proportion of native salmonids are consumed by predators at tributary deltas, the licensee could implement potential non-operational measures including predator control to improve native salmonid survival. An adaptive approach to the tributary delta

predation investigations will continue under the direction of the FAWG (FAMP Mainstem Measures section 5.1.4).

(v) The licensee shall conduct a tributary delta predation study in the fourth year and 15th year following license issuance, unless otherwise directed by the FAWG. A study plan will be completed during the calendar year prior to study implementation, and a summary report of field activities will be completed within one year of the completion of field surveys. The reporting and implementation schedule for the predation study is summarized below.

PM&E Measure Activity	Schedule
Tributary Delta Predation Planning	By end of calendar year prior to conducting delta predation study
Conduct Tributary Delta Predation Study	In the fourth and 15th years following license issuance
Tributary Delta Predation Study Report	Within one year following tributary delta predation field surveys

10(j) Recommendation No. 7: Tributary Fish Community and Aquatic Habitat Measures (Settlement Agreement – Proposed License Article 9 (E))

The following shall replace Recommendation No. 7 in its entirety.

(a) The licensee shall implement the following aquatic habitat measures, pursuant to the general provisions identified below and the detailed provisions included in the Fish and Aquatics Management Plan (FAMP), Sections 5.4.3 through 5.4.10.

(b) Specific aquatic habitat measures include the following:

(i) Within ten years of license issuance, the licensee shall complete riparian improvements and stream channel enhancement in Sullivan Creek from river mile (RM) 0.30 to RM 0.54. In consultation with the Fish and Aquatics Work Group (FAWG), the schedule for implementation of this measure may be modified dependent upon the Mill Pond Dam decommissioning schedule.

(ii) Within ten years of license issuance, the licensee shall complete stream and riparian improvements in Sullivan Creek from RM 2.3 to RM 3.0.

(iii) Within ten years of license issuance, the licensee shall complete Large Woody Debris (LWD) placement and road improvements in Sullivan Creek and selected tributaries upstream of the confluence with Outlet Creek; provided that licensee shall not be required to remove the culvert from the North Fork of Sullivan Creek.

(iv) Within 20 years of license issuance, the licensee shall complete culvert replacements (except on the North Fork of Sullivan Creek) in tributaries to Boundary Reservoir.

(v) Within 20 years of license issuance, the licensee shall complete riparian planting, culvert replacement, and channel reconstruction measures in Linton Creek from RM 0.00 to RM 0.24.

(vi) Within 20 years of license issuance, the licensee shall complete riparian and channel improvements in Sweet Creek from RM 0.0 to RM 0.6.

(vii) Within 25 years of license issuance, the licensee shall complete habitat enhancement in Tier-2 tributaries to the Boundary Reservoir.

(viii) The licensee shall complete restoration of dispersed recreation sites located in Sullivan Creek riparian areas consistent with the schedule detailed in the FAMP.

The specific scope of each measure is detailed in the FAMP.

(c) By the end of the first year following license issuance, the licensee shall submit to the Commission an integrated schedule that has been approved by the FAWG for the implementation of these measures. The licensee shall coordinate the schedule with tributary non-native salmonid suppression and eradication activities and native salmonid conservation activities required by the FAMP. The integrated schedule shall prioritize activities and include milestones for completing design, consultation, regulatory review, permitting and implementation. The timelines included in the FAMP will guide the development of the integrated schedule to be filed with the Commission.

(i) The licensee shall develop specific plans for each measure according to the integrated schedule in paragraph (c). Each plan shall include specific goals, objectives, cost estimates, anticipated restoration techniques, maintenance requirements and monitoring plans and methods. Specific, measurable success criteria shall also be developed by the licensee in consultation with the FAWG and included for each measure. For each measure that includes a construction component, the plan will include final construction drawings. Where applicable, measures should be addressed on a programmatic basis.

(d) The licensee shall develop all plans pursuant to Article 2 and the FAMP. As part of the integrated schedule in paragraph (c), licensee shall, in consultation with and approval by the FAWG, develop a Tributary Management Plan (TMP) including a subsection for each tributary that will receive treatments. The TMP shall provide a coordinated approach for implementing tributary habitat restoration measures. The TMP will identify appropriate target fish population sizes and species to be achieved through implementation of measures in the FAMP. The licensee shall include a schedule and scope of treatments for each tributary to ensure that treatments are complementary to the population and habitat goals.

(e) Once a restoration measure has been completed, the licensee shall evaluate the measure every eight years for the license term to ensure continued compliance with success criteria specific to measures and developed in consultation with and approved by the

FAWG. If a restoration measure falls below success levels as determined through eight-year effectiveness monitoring, the licensee shall, within 60-days, develop a plan for repairs to correct the deficiencies, including a schedule for proposed work and further monitoring, in consultation with the FAWG. A summary of repairs will be included in the annual report.

In addition to the eight-year effectiveness monitoring, the licensee shall annually, and following major (25 year) flood events, inspect measures as described in the FAMP.

The licensee shall include the results of all monitoring and summary of repairs in the annual reports filed with the Commission.

(f) In the event that any of the above measures cannot be implemented, alternative measures will be implemented as provided in the FAMP.

DRAFT

UNITED STATES DEPARTMENT OF THE INTERIOR

REVISED AMENDED PRELIMINARY PRESCRIPTIONS FOR FISHWAYS PURSUANT TO SECTION 18 OF THE FEDERAL POWER ACT FOR THE BOUNDARY HYDROELECTRIC PROJECT FERC PROJECT NO. 2114

3.0 Reduction of Project Related Entrainment Mortality (2013 License Order Appendix E – Proposed License Article 9 (C) (REVISED))

The Reduction of Project Related Entrainment Mortality program set forth in the March 20, 2013 Order Issuing New License, Appendix E ("2013 License Order"), Proposed Article 9 (C) and section 5.3 of the Fisheries and Aquatic Management Plan (FAMP), and incorporated into the Federal Energy Regulatory Commission's (FERC) license for the Boundary Hydroelectric Project (Project) by Ordering Paragraph (F) of the 2013 License Order, and required by the Department of the Interior's (Interior) Prescription 3, is modified and the following shall replace Interior's Prescription 3 in its entirety.

(a) Within five years after execution of the 2026 First Amendment to the 2010 Boundary Hydroelectric Project Relicensing Settlement Agreement ("First Amendment to Settlement Agreement" or "First Amendment"), in consultation with the Fish and Aquatic Work Group (FAWG) established pursuant to Section 8.2.1 of the 2010 Boundary Hydroelectric Project Relicensing Settlement Agreement ("2010 Settlement Agreement or "SA"), the licensee shall develop a Baseline Condition Report.

(i) The Baseline Condition Report will, at minimum, describe the genetic structure and distribution of individuals from populations of bull trout, cutthroat trout, and mountain whitefish (collectively "Target Fish Species") within Boundary Reservoir and the watersheds that flow into it.

(ii) The Baseline Condition Report will draw on information collected from the Boundary Reservoir fish community monitoring required by the 2013 License Order, 2010 Settlement Agreement, and 2010 Fish and Aquatic Management Plan (FAMP).[2] Specifically, FAMP Section 5.1.4.1.1 requires the licensee to conduct fish community surveys in Boundary Reservoir beginning in year 5 after license issuance and at five-year intervals thereafter, and FAMP Section 5.1.4.3 sets forth a requirement to complete a fish community monitoring study plan prior to conducting such surveys.

(iii) The Baseline Condition Report will also draw on information collected from the licensee's periodic mainstem sampling of the Boundary Reservoir Fish

[2] See Ordering Paragraph E of the 2013 License Order, Exhibit 1 of the 2010 Settlement Agreement at Proposed License Article 9 (A), and Section 5.1.4.1.1. of the FAMP.

Community,[3] implementation of upstream fish passage measures (2013 License Order Appendix E, Proposed Article 9 (B)), activities associated with the tributary non-native suppression and eradication program (2013 License Order Appendix E, Proposed Article 9 (D)), and the native salmonid conservation program (2013 License Order Appendix E, Proposed Article 9 (G)), as well as ongoing efforts by others in the watershed.

(iv) In developing the Baseline Condition Report, the licensee shall document and assess fish movement and demographics based on PIT tagged individuals of Target Fish Species within select Boundary Reservoir tributaries and Boundary Reservoir. The FAWG shall determine which Boundary Reservoir tributaries to study.

(v) Every 5 years after the finalization of the Baseline Condition Report, the licensee shall, in consultation with the FAWG, develop an Updated Baseline Condition Report to identify trends within the assemblage of Target Fish Species and discrete populations.

(b) At a time to be determined by the licensee, but no later than 2045, the licensee shall coordinate with the FAWG to determine whether entrainment is a causative factor in the continued depression of Target Fish Species, based on whether one of the following conditions exist:

(i) A single self-sustaining population of bull trout (defined for purposes of the First Amendment as 100 breeding adults or greater) has established within a tributary to the lower Pend Oreille River downstream of Albeni Falls Dam, or

(ii) Five percent or more of a Target Fish Species population greater than 6 inches are entrained below Boundary Dam. This percentage will not include entrained fish that were translocated, reintroduced, or planted into Boundary or Box Canyon tributaries within the same year or subsequent entrainment of an individual fish within the same year.

(c) If, at the time the licensee coordinates with the FAWG consistent with subsection (b) above, existing information is not sufficient to determine if entrainment could be a causative factor in the continued depression of Target Fish Species populations, the licensee shall develop and implement studies to determine if entrainment of Target Fish Species is occurring. Such studies, if needed, shall be performed over a period of at least two years, but no more than three years (to increase the potential of evaluating different water years and different entrainment scenarios), and shall be undertaken consistent with Section 5.3.3 of the FAMP or the latest acceptable scientific techniques and methodologies, as determined by the FAWG.

[3] Periodic sampling was an annual activity defined by electrofishing an established list of 400-m index reaches of Boundary Reservoir during spring and fall. This periodic sampling has been a voluntary activity by the licensee since 2018 (i.e., not required by the 2013 License Order, 2010 Settlement Agreement, or the 2010 FAMP).

DRAFT

(d) By no later than 2048, if the FAWG or the Secretary of the Interior (Secretary) conclude that the conditions in subsections b and c have been established, the licensee shall initiate the development of a study to evaluate direct downstream survivability through the project and the relationship to population status as set forth in subsection b. The licensee's methodologies for this survivability study shall be developed within six months of the FAWG or Secretary concluding that the conditions in subsections b and c have been established.

(e) The licensee's methodologies for this survivability study shall be reviewed by the FAWG and approved by the Secretary, and the study shall be completed within two years of approval of the study methodology and shall include evaluation of entrainment under the operational scenarios that are most common at the facility. These common scenarios will consider combinations of powerhouse, spillway and/or sluiceway operation that reflect operations that occur over the majority of the year. If the survivability study indicates that the combined average injury and mortality rates for a Target Fish Species through downstream passage routes (turbine and/or spillways and sluiceways) are greater than 15%, and therefore a causative factor in the continued depression of target species, the licensee shall, in consultation with the FAWG and subject to the approval of the Secretary, develop a Downstream Passage Mitigation Plan.

(f) The Downstream Passage Mitigation Plan shall identify mitigation measures to be designed, implemented, and evaluated in any subsequent FERC license, including a timeline for implementing mitigation measures within the first five years of the subsequent license. In the case of data gaps or missing information needed to inform the final design of mitigation measures, the Downstream Passage Mitigation Plan will identify the gaps and information needs and the approaches needed to fill such gaps and needs within the first five years of the subsequent license. Licensee shall develop the Downstream Passage Mitigation Plan in consultation with the FAWG and shall submit the Downstream Passage Mitigation Plan to the Secretary for approval no later than six months prior to the licensee's submission of the Pre-Application Document. The Downstream Passage Mitigation Plan will be included in any Pre-Application Document the licensee files with FERC as part of an application for a subsequent license.

(g) The Downstream Passage Mitigation Plan, which shall identify a timeline for implementation, may include, but shall not be limited to, a plan for the final design and implementation of downstream fish passage facilities. Licensee agrees not to challenge the inclusion of the Plan, or its implementation, in the next FERC license.[4]

(h) Nothing in the First Amendment shall affect or limit the authorities or rights of the Department of the Interior and U.S. Forest Service, including the reservation of rights and authorities included in Section 6 of the 2010 Settlement Agreement and Article 406 of the 2013 License Order.

[4] If Interior exercises its Federal Power Act Section 18 authority to require a new license to include the measures contained in the Downstream Passage Mitigation Plan, the licensee agrees to not seek a trial-type hearing or submit

DRAFT

alternative prescriptions pursuant to section 241 of the Energy Policy Act of 2005, 16 U.S.C. § 811. If a new license includes the measures contained in the Downstream Passage Mitigation Plan, the licensee further agrees to not seek rehearing and/or appeal of those license provisions.

DRAFT

Attachment 1 to FIRST AMENDMENT TO BOUNDARY HYDROELECTRIC PROJECT RELICENSING SETTLEMENT AGREEMENT FERC PROJECT NO. 2144

Boundary Hydroelectric Project
(FERC No. 2144)

Interlocal Agreement for Creation of the Second Species Fund and Provision of Regional Fishery Benefits among Seattle City Light and Washington Department of Fish and Wildlife, Public Utility District No. 1 of Pend Oreille County, and the Kalispel Tribe

[__] 2026

DRAFT

INTERLOCAL AGREEMENT FOR THE CREATION OF SECOND SPECIES FUND AND PROVISION OF REGIONAL FISHERY BENEFITS AMONG SEATTLE CITY LIGHT AND WASHINGTON DEPARTMENT OF FISH AND WILDLIFE, PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, AND THE KALISPEL TRIBE

This Agreement is made and entered into this ___ day of _____, 2026, by and between Seattle City Light ("SCL"), Washington Department of Fish and Wildlife ("WDFW"), Public Utility District No. 1 of Pend Oreille County ("PUD"), and the Kalispel Tribe ("Tribe") (collectively, the "Parties").

RECITALS,

WHEREAS, the Parties may enter into contracts with one another pursuant to chapter 39.34 RCW to carry out their respective municipal purposes; and

WHEREAS, the Parties, and several other parties, entered into the Boundary Hydroelectric Project Relicensing Settlement Agreement in March 2010 (the "2010 Settlement Agreement") for the purpose of, among other things, resolving environmental and natural resource issues related to SCL's application to FERC for a new license for the Boundary Hydroelectric Project, FERC No. 2144, which was granted by Order Issuing New License, 142 FERC ¶ 62,231 (Mar. 20, 2013) ("2013 License Order" or "License"); and

WHEREAS, the 2010 Settlement Agreement and the 2013 License Order require SCL to undertake certain actions described in Proposed License Article 9 (C) to address Reduction of Project Related Entrainment Mortality; and

WHEREAS, the Parties agree that new information and data developed since the implementation of the 2010 Settlement Agreement and 2013 License Order indicates that certain measures described in Proposed License Article 9 (C) are not warranted at this time; and

WHEREAS, the Parties desire to amend the 2010 Settlement Agreement through a First Amendment to the Settlement Agreement ("First Amendment"); and

WHEREAS, the Parties desire to amend the 2013 License Order through an Application for Amendment of License ("License Amendment"); and

WHEREAS, the Parties desire to amend the obligations described in the 2010 Settlement Agreement's Proposed License Article 9 (C) and to increase funds for activities that the Parties agree will have a greater positive impact on the conservation and propagation of native salmonids within the Boundary Project Area and within the surrounding Regional watershed; and

WHEREAS, the Parties desire to create a new funding vehicle to finance the production of a Second Species of native salmonid solely for Regional benefit; and

WHEREAS, the Parties desire to reach an agreement on the operation of the Native Salmonid Conservation Facility for the production of a Second Species of native salmonid solely for Regional benefit; and

WHEREAS, the Parties wish to enter into this Interlocal Agreement under Ch.39.34 RCW for the purpose of establishing and clarifying their relative roles and responsibilities with respect to the funding of the production of a Second Species of native salmonid and the operation of the Native Salmonid Conservation Facility to produce a Second Species of native salmonid solely for Regional benefit;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Purpose

The purpose of this Agreement is to establish (i) the Second Species Fund ("SSF") and (ii) the Parties' respective roles and responsibilities with respect to the design, construction, and operation of the Native Salmonid Conservation Facility (the "Hatchery").

2. Relationship

No separate legal or administrative entity is created by this Agreement. Each Party will have no authority to execute contracts or to make commitments on behalf of any other Party, and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between any of the Parties. SCL will serve as the administrator of this Interlocal Agreement. Each Party will acquire, hold and dispose of its respective real and personal property used in the cooperative undertaking.

3. Definitions

For purposes of this Interlocal Agreement:

"Hatchery" means the Native Salmonid Conservation Facility described in the Fish and Aquatics Management Plan 5.6.1.

"Region" and "Regional" are defined as the lower Pend Oreille watershed outside of the Boundary License Project Area.

"Second Species" means a species of native salmonid (*e.g.,* Bull Trout, YY Brook Trout, Mountain Whitefish) other than westslope cutthroat trout.

Other terms shall have the definitions assigned to them in the 2010 Settlement Agreement and the First Amendment to the 2010 Settlement Agreement.

4. Creation of the Second Species Fund

a. SCL will use $4,000,000 of the remaining funds from the Reduction of Project Related Entrainment Mortality program, which are estimated to be $16,100,000, to create the SSF. The purpose of the SSF is to fund the production of the Second Species solely to meet Regional needs. The balance of the remaining funds from the Reduction of Project Related Entrainment Mortality program, estimated to be $12,100,000, will be used to supplement funding for the

operation and maintenance of the Hatchery as a Regional facility for the production of westslope cutthroat trout for use in Pend Oreille River tributaries between Albeni Falls Dam and Boundary Dam.

b. SCL as the account holder of the SSF will provide an accounting of the SSF to the Fish and Aquatics Work Group ("FAWG"). All expenditures from the SSF will be approved by providing an invoice to the FAWG for approval. Agencies who perform field work for purposes of supporting the production of westslope cutthroat trout and the Second Species for use in Pend Oreille River tributaries between Albeni Falls Dam and Boundary Dam will provide an invoice to the FAWG for approval and reimbursement from funds from the SSF.

c. SCL will make an initial deposit to the SSF in the amount of $500,000 upon FERC approval of the First Amendment and License Amendment, followed by yearly deposits of $250,000 into the SSF until SCL's contributions to the SSF reach $4,000,000. SCL will fund the SSF early if an account shortfall is projected due to increased fish production or outplanting activity.

d. The creation of the SSF will not change SCL's existing obligations to monitor, evaluate, and report on the performance of the hatchery program required in the License and 2010 Settlement Agreement.

5. Construction, Operation and Management of the Hatchery

The Parties agree as follows:

a. SCL has designed and constructed the Hatchery to be capable of simultaneously propagating two species and multiple year classes of fish. The first species will always be westslope cutthroat trout. The Second Species will be Bull Trout, unless determined by the FAWG to be another species, *e.g.*, YY Brook Trout, Mountain Whitefish. The Second Species will always be the same species for both SCL and the Region, such that there are never more than two species under production at any time.

b. The Hatchery will have two lines of production of westslope cutthroat trout: one line for SCL needs under the License at the direction of the FAWG; and one line for the needs of the Region at the direction of WDFW.

c. Production of westslope cutthroat trout for Regional needs will commence when the First Amendment has been fully executed by all the Parties to that agreement.

d. If it is determined through ongoing discussions with the FAWG that it is necessary to construct a Second Species Building to house production of a Second Species, SCL will advance all phases of design of the building starting with the existing 30% design and will construct the Second Species Building in consultation with the FAWG.

e. If it is determined through ongoing discussions with the FAWG that the Second Species Building is not necessary and production of the Second Species for the License and the Region can occur within the existing Hatchery footprint, taking into consideration adequate biosecurity and other technical considerations, then the cost of the Second Species Building (up to $2,000,000) will be added to the SSF.

i. Any retrofits to the existing facility footprint that are needed to accommodate production of Second Species will be paid from the SSF.

ii. Second Species production of fish, as required by the License, will be as directed by the FAWG. Second Species production for the Region will be as directed by WDFW in consultation with U.S. Fish and Wildlife Service ("USFWS") and the Tribe. If production of the Second Species for the Region requires the finalization of construction of the Second Species Building, production of the Second Species will begin 5 years after completion of the First Amendment and FERC approval of the License Amendment.

f. SCL will operate and maintain at its expense the Hatchery for the term of the License. The operation and maintenance costs for Second Species production for the Region will be funded by the SSF and/or alternative funding sources from the Region, except if the Second Species Building is being operated solely for Regional benefit. If the Second Species Building is being operated solely for Regional benefit, operation and maintenance costs to be paid by the SSF will include all costs associated with operating and maintaining the Second Species Building except for the labor costs of Hatchery staff.

g. If and when SCL is required to produce Bull Trout or another species at the Second Species Building for the Boundary Reservoir and tributaries that flow into it, the operation and maintenance costs for the Second Species Building will be shared equally between SCL and the SSF.

h. SCL shall pay for all planning, logistics, field effort, and monitoring costs for the disposition of fish, including Bull Trout, that are propagated pursuant to SCL's License obligations. All planning, logistics, field effort, and monitoring for the disposition of any fish that are propagated by SCL at the direction of WDFW for Regional benefit will be funded from the SSF and/or other funding sources.

i. Nothing in this Agreement modifies or creates any new obligation for the PUD under its separate Trout Habitat Restoration Program, established in Appendix A to FERC's December 17, 2021 Order Amending License for the Box Canyon Project, 177 FERC ¶ 61,183 (incorporating at ¶55 the Department of Interior's Revised 4(e) Condition 6) (FERC No. 2042).

6. Force Majeure

No Party shall be in breach of its obligations or liable to another Party for breach of this 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 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.

7. Suspension and Termination

If any Party fails to comply with the provisions of this Agreement, the other Parties may pursue such remedies as are legally available, including but not limited to, dispute resolution pursuant to Section 12 of this Agreement as well as the suspension or termination of this Agreement in the manner specified herein:

a. **Suspension.** If any Party fails to comply with the provisions of this Agreement, or whenever a Party is unable to substantiate full compliance with provisions of this Agreement, the other Parties may suspend the Agreement pending corrective actions or investigation, effective not less than seven (7) days following written notification to the other Party, including an explanation of why the Parties believe non-compliance has occurred. The suspension will remain in full force and effect until the other Party has taken corrective action to the satisfaction of the complaining Party and is able to substantiate its full compliance with the terms and conditions of this Agreement.

b. **Termination for Cause**. If any Party fails to comply with the provisions of this Agreement and either of the following conditions exist:

(1) The lack of compliance is of such scope and nature that continuation of the Agreement is substantially detrimental to the interests of the other Parties; or

(2) The non-compliant Party has failed within the time specified by any other Party to satisfactorily substantiate its compliance with the terms and conditions of this Agreement; then,

The Party alleging non-compliance may terminate this Agreement, and thereupon shall notify the other Parties of termination and other persons authorized to receive notice pursuant to Section 11.11 of the 2010 Settlement Agreement, the reasons therefore, and the effective date, provided such effective date shall not be prior to notification of the non-compliant Party. The Party alleging non-compliance shall send a copy of such notice to persons authorized to receive notice pursuant to Section 11.11 of the 2010 Settlement Agreement.

c. **Termination on Other Grounds.** This Agreement may also be terminated in whole or in part:

(1) By any Party in the event that FERC has issued an order, which order has become final and unappealable, that constitutes a Material Modification that results in termination of the 2010 Settlement Agreement or the First Amendment.

(2) By any Party in the event that Ecology has issued a 401 Certification, which Certification has become final and unappealable, that constitutes a Material Modification of the 2010 Settlement Agreement or the First Amendment.

d. **Existing Rights Not Affected by Termination.** In the event of termination of this Agreement by any party, such termination shall not affect any rights that have accrued prior to the effective date of the termination. Such prior rights shall survive such termination.

8. Changes, Amendments, Modifications

The Parties may, from time to time, propose changes or modifications in the manner in which their obligations under this Agreement will be performed. The Parties shall notify the persons authorized to receive notice pursuant to Section 11.11 of the 2010 Settlement Agreement of any changes. Such changes, once agreed to by all Parties, shall be incorporated in written amendments to this Agreement that shall be signed by all Parties.

9. Personnel; Subcontractors

Each Party will, or will require its subcontractors to, secure and maintain in full force and effect during the term of this Agreement all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

10. Assignability

No Party may assign any interest in this Agreement, and no Party may transfer any interest in this Agreement (whether by assignment or novation), without prior written consent of the other Parties.

11. Compliance with Laws

Each Party will, and will require its subcontractors to, comply with all applicable laws of the United States and the State of Washington; the Charter and ordinances of The City of Seattle and of the PUD; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof.

12. Dispute Resolution

Any disputes arising under this agreement shall be governed by and proceed according to Section 9 of the 2010 Settlement Agreement.

13. General Provisions

Term. This agreement will be effective on the first date upon which it has been fully executed by all Parties and will remain in effect until the termination of the 2010 Settlement Agreement.

The provisions of the 2010 Settlement Agreement relating to waiver, counterpart originals, severability and notice shall apply to this Agreement.

14. Listing Under the Interlocal Cooperation Act

This agreement is entered into pursuant to the Interlocal Cooperation Act, Ch.39.34 RCW. SCL, PUD and WDFW shall list this agreement by subject on their respective internet websites and in a form that is retrievable by the public from such website as provided in RCW 39.34.040.

15. Cooperation and Facilitation

The Parties agree to cooperate with each other to facilitate the completion of the Hatchery and, if necessary, the Second Species Building. The Parties agree to take such other and further action as may be necessary and appropriate and as may be required by Federal and State Agencies with authority over such work.

IN WITNESS WHEREOF, in consideration of the terms, conditions, and covenants contained herein, or attached and incorporated and made a part hereof, the Parties have executed this Agreement by having their representatives affix their signatures below.

Public Utility District No. 1 of Pend Oreille County

By_____
General Manager

ATTEST:

_____

Name _____

Seattle City Light

By_____
General Manager and Chief Executive Officer

ATTEST:

_____

Name _____

Kalispel Tribe

By _____

ATTEST:

_____

Name _____

Washington Department of Fish and Wildlife

By _____

ATTEST:

_____

Name _____

Attachment 2 to FIRST AMENDMENT TO BOUNDARY HYDROELECTRIC PROJECT RELICENSING SETTLEMENT AGREEMENT FERC PROJECT NO. 2144

ILLUSTRATION OF REVISIONS TO SETTLEMENT AGREEMENT

DRAFT

BOUNDARY HYDROELECTRIC PROJECT
RELICENSING SETTLEMENT AGREEMENT
FERC PROJECT NO. 2144

AMONG

SEATTLE CITY LIGHT

BUREAU OF INDIAN AFFAIRS
NATIONAL PARK SERVICE
UNITED STATES FISH AND WILDLIFE SERVICE
UNITED STATES DEPARTMENT OF AGRICULTURE FOREST SERVICE

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE
WASHINGTON DEPARTMENT OF ECOLOGY

KALISPEL TRIBE

PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON

AMERICAN WHITEWATER
SELKIRK CONSERVATION ALLIANCE
THE LANDS COUNCIL

March 2010

BOUNDARY HYDROELECTRIC PROJECT RELICENSING SETTLEMENT AGREEMENT

Table of Contents

Page

1. Parties 1
2. Recitals 1
3. General Provisions 4
   - 3.1 Effective Date of Settlement Agreement 4
   - 3.2 Offer of Settlement 4
   - 3.3 Term of Settlement Agreement 4
4. Definitions 4
5. Scope of Settlement Agreement 8
   - 5.1 Purpose 8
   - 5.2 No Precedent for Other Proceedings 9
   - 5.3 Disclaimer 9
6. Reservation of Rights and Satisfaction of Legal Responsibilities 9
   - 6.1 No Pre-Decisional Determination 9
   - 6.2 Reservation of Rights 9
   - 6.3 Water Rights 10
7. Settlement Agreement Commitments and Implementation 10
   - 7.1 Filings and Submittals Consistent with Settlement Agreement 10
   - 7.2 Support Adoption of License Terms and Conditions 11
   - 7.3 ESA Consultation 12
   - 7.4 Clean Water Act 13
   - 7.5 New License 15
   - 7.6 Requests for Stay or Extension of Implementation 16
   - 7.7 Responsibility for Implementation 17
   - 7.8 Availability of Funds 17
   - 7.9 Permits 17
   - 7.10 Reopener or Amendment of the New License 18
   - 7.11 Amendment of Settlement Agreement 19
   - 7.12 Cooperation among Parties 19
   - 7.13 Vista House Road 19
   - 7.14 Mill Pond Dam Removal and Restoration 20
   - 7.15 Cold Water Release from Sullivan Lake 21
8. Boundary Resource Coordinating Committee and Work Groups 22
   - 8.1 Boundary Resource Coordinating Committee 22

DRAFT

8.2 Work Groups....24
8.3 Meeting Provisions....28
9. Dispute Resolution....31
9.1 General Applicability....31
9.2 Dispute Resolution Procedures....32
9.3 Remedies....34
10. Withdrawal from Settlement Agreement....34
10.1 Withdrawal of a Party from Settlement Agreement....34
10.2 Effective Date of Withdrawal....35
10.3 Termination of Settlement Agreement....35
11. Miscellaneous....35
11.1 Settlement Agreement Negotiations Privileged and Confidential....35
11.2 Severability of Terms of Settlement Agreement....35
11.3 No Third Party Beneficiaries....36
11.4 Successors, Transferees and Assigns....36
11.5 No Liability for Force Majeure....36
11.6 Process to Respond to Force Majeure Event....37
11.7 Waiver....37
11.8 Governing Law and Venue....37
11.9 Elected Officials, Employees and Agents Not to Benefit....38
11.10 Relationship of the Parties....38
11.11 Notice....38
11.12 Entire Agreement....38
11.13 Section Titles for Convenience Only....38
11.14 Costs....39
11.15 Time....39
12. Execution of Settlement Agreement....39
12.1 Signatory Authority....39
12.2 Signing in Counterparts....39
13. List of Settlement Exhibits, Appendices and Attachments....39
13.1 Settlement Exhibits....39
13.2 Appendices....40
13.3 Attachments....40

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.

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.

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 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.

"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.

"First Amendment" means the First Amendment to the Boundary Hydroelectric Project Relicensing Settlement Agreement, entered into on _____, 2026, and its Exhibits and Attachments.

"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.

"License Amendment Proceeding" means the proceeding and all related proceedings before FERC to approve the Offer of Settlement associated with the First Amendment and to issue an order amending the license for the Boundary Project that incorporates, without modification, the Revised Proposed License Articles set forth in First Amendment Exhibit 1.

"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.

"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 11.11 of this Settlement Agreement.

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

"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.

"Revised Proposed License Articles" means the provisions set forth in First Amendment Exhibit 1 that the Parties will request that FERC include, without modification, in the license for the Boundary Project, replacing certain Proposed License Articles already included in the license.

"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 amended by the First Amendment. Settlement Attachments 1 and 2 and First Amendment Attachment 1 are included for FERC's 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.

"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 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.

6.2.2 Each Party reserves any authority it may have pursuant to the FPA in the event that: (a) the First Amendment is not filed with FERC; (b) the Party withdraws from this Agreement pursuant to the procedures set forth in Section 10.1; or (c) the Settlement Agreement is terminated pursuant to 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.

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 License Amendment Proceeding and all related proceedings in which they participate, all Parties shall support, as appropriate, incorporation of the Revised Proposed License Articles into the amended license issued by FERC.

7.2.1 Recommendations under Sections 10(a) and 10(j) and Comments Filed in the Context of the License Amendment Proceeding

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 License Amendment Proceeding shall not request a Material Modification.

7.2.2 Mandatory Terms and Conditions that Contain Material Modifications

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 the Settlement 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 revised amended preliminary Section 4(e) conditions, attached to the First Amendment as First Amendment Exhibit 2, 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 First Amendment Exhibit 3, Proposed License Articles 9 (B) (Upstream Fish Passage) and Revised Proposed License Article 9 (C) (Reduction of Project Related Entrainment Mortality) (contained in First Amendment Exhibit 1) 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, 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 10 of the Settlement Agreement, 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 the License Amendment Proceeding that do not contain a Material Modification of this 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 the Mandatory Terms and Conditions, 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 Amendment Proceeding that do contain a Material Modification of this 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 hereof, the Parties recognize that FERC will consult and may confer with USFWS pursuant to Section 7 of the ESA on issuance of an amended license. USFWS anticipates that this Settlement Agreement, including the measures in First Amendment Exhibit 3, 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 the First Amendment, 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.

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 Revised 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 10 herein, if any BiOp would require 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

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.

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.

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 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. 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 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; (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.

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.

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 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 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 Sullivan Creek License Surrender Application. 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 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 and historic 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 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 Sullivan Creek License Surrender Application, 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.

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.

7.16 Second Species Fund and Production of Fish for Regional Benefit

SCL shall undertake to provide funding for the Second Species Fund ("SSF") and to produce fish for the benefit of the Region as set forth in the Interlocal Agreement for Creation of the Second Species Fund and Provision of Regional Fishery Benefits ("Interlocal Agreement") included as First Amendment Attachment 1. Termination of the Interlocal Agreement per the terms of the Interlocal Agreement Section 7(b) or 7(c) may constitute grounds for termination of this Settlement Agreement or for USFWS' exercise of its reserved Section 18 authority.

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 11.11 of the Settlement Agreement. Each member may 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 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.

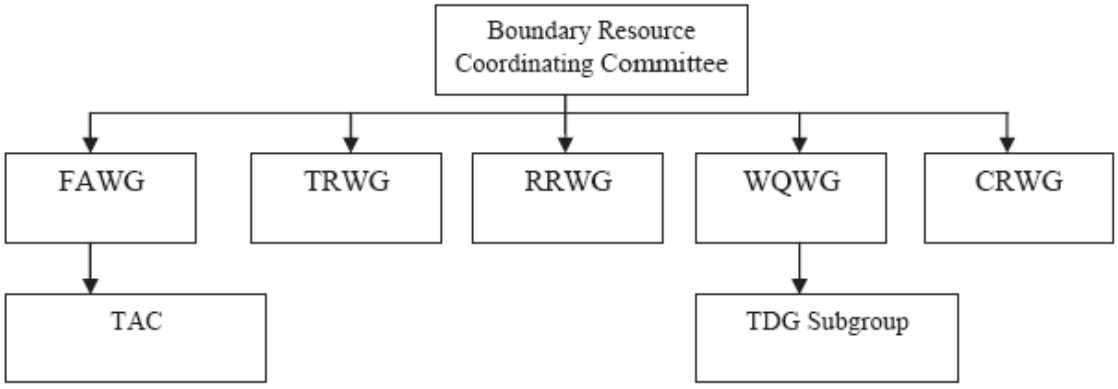
8.2.1.4 WQWG Membership

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 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.

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 11.11 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, 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 11.11 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 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 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 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.

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.

8.4 Conflict Between Revised Proposed License Articles and Fish and Aquatics Management Plan

To the extent a conflict arises between the terms of the Revised Proposed License Articles and the Fish and Aquatics Management Plan ("FAMP"), the Revised Proposed License Articles take precedence and the FAMP shall be interpreted in a manner that is consistent with the Revised Proposed License Articles.

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.

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.

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.

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 11.11. 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.

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 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

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.

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 11.11 are in addition to any notice provisions required by applicable law.

11.12 Entire Agreement

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.

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

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_____

NATIONAL PARK SERVICE

Date_____

By_____
NAME_____
TITLE_____

Date_____

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

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_____

THE LANDS COUNCIL

Date_____

By_____
NAME_____
TITLE_____

AMERICAN WHITEWATER

Date_____

By_____
NAME_____
TITLE_____

DRAFT

Attachment 3 to FIRST AMENDMENT TO BOUNDARY HYDROELECTRIC PROJECT RELICENSING SETTLEMENT AGREEMENT FERC PROJECT NO. 2144

ILLUSTRATION OF REVISIONS TO PROPOSED LICENSE ARTICLES APPENDIX E TO 2013 LICENSE ORDER

APPENDIX E

Proposed License Articles from the Boundary Hydroelectric Project (No. 2144) Settlement Agreement

Article 1. *Operations*.

(a) From Memorial Day weekend (starting Friday evening) through Labor Day weekend (ending on Monday evening), licensee will maintain forebay water surface elevations at or above 1,984 feet NAVD 88 from 6:00 am through 8:00 pm, to facilitate recreational access and use. From 8:00 pm through 6:00 am licensee will maintain forebay water surface elevations at or above 1,982 feet NAVD 88. The licensee must comply with these elevations except under the following conditions or events: equipment failures; unanticipated events during maintenance activities, which require extended scheduled repair and maintenance outages; electrical and mechanical device limitations; safety inspections; testing; natural disasters (e.g. lightning); load and reserve support as required by the Western Electricity Coordinating Council (WECC) and North American Electric Reliability Corporation (NERC) to maintain Project and regional energy stability and reliability; capacity and energy emergencies; and any event that triggers the Project Emergency Action Plan (EAP). Licensee shall notify the Commission and the Parties following any such conditions. In addition, to monitor compliance with the pool elevation requirements, licensee will provide an annual report to the Commission and Parties identifying any excursion from pool elevation requirements including the cause and corrective measure, if applicable.

(b) To reduce total dissolved gas (TDG) under normal, non-spill operations, licensee will operate Units 55 and 56 above 125 MW and sequence their startup and shutdown so that they are the last units to be brought on line and the first units to be shut down. During the new license term, licensee will upgrade generating equipment at the Boundary power plant consistent with the schedule set forth in Exhibit A included in the Boundary License Application Addendums. Upon completion of any turbine upgrades, licensee shall evaluate the need for the unit sequencing set forth in this paragraph in consultation with the Boundary Relicensing Settlement Parties, and based upon such evaluation may propose revisions to, or elimination of, unit sequencing requirements through a license amendment application.

Article 2. *Boundary Resource Coordinating Committee and Work Groups*

This Article shall be implemented pursuant to Section 8 of the Settlement Agreement. Within 90 days after issuance of the New License, the licensee shall

convene the Boundary Resource Coordinating Committee (BRCC). Within 180 days after issuance of the New License, the licensee shall convene the following Work Groups:

- Fish and Aquatics Work Group
- Terrestrial Work Group
- Recreation Resources Work Group
- Water Quality Work Group (and Total Dissolved Gas Subgroup)
- Cultural Resources Work Group

The licensee shall bear all meeting room rental, materials, and similar costs associated with conducting BRCC and Work Group meetings.

The licensee shall arrange, administer, and chair all BRCC and Work Group meetings.
The licensee shall consult with the Work Groups on all aspects of the Settlement Agreement, New License, and Management Plans (collectively referred to as "Project Documents"). The licensee shall convene the Work Groups as needed to meet the consultation requirements of the Project Documents, but at least annually for the license term and any annual licenses. "Consultation" as used in this Article and in the Project Documents means that the licensee shall obtain the views of and attempt to reach consensus among the specific Parties, specific Work Groups, and the BRCC whenever consultation is required in the Project Documents. Consultation shall not mean consultation under section 7 of the Endangered Species Act or other state and federal laws requiring consultation unless specifically provided.

Article 3. *Terrestrial Resources*.

(a) The licensee shall implement the Terrestrial Resources Management Plan (TRMP) to implement terrestrial resource protection, mitigation, and enhancement (PM&E) measures. Licensee shall implement TRMP in consultation with the Terrestrial
Resources Work Group (TRWG).

(b) The TRMP shall be the principal instrument for management of, implementation, monitoring and adaptation of PM&E measures for terrestrial resources affected by or related to the project. The licensee shall achieve the goals

and objectives described in the TRMP through implementation of the following programs:

(i) Erosion program

(ii) Habitat protection and enhancement program

(iii) Integrated weed management program

(iv) Rare, threatened or endangered plant species program

(v) Wildlife program

(vi) Shoreline management program

(c) The licensee shall manage any Project Habitat Lands acquired pursuant to Article 4 (Land Acquisition) as set forth in section (d) of that Article.

(d) The annual TRMP report shall:

(i) Document the implementation of PM&E measures as scheduled in the TRMP

(ii) Describe the current year's and Out Year proposals for implementing scheduled management actions pursuant to the TRMP

(iii) Document consultation activities related to the TRMP

(iv) Document the results of monitoring of completed actions (to the extent monitoring is required for any particular action) to ensure proper implementation and effectiveness

(e) The licensee shall, in consultation with the TRWG, develop those monitoring protocols and data forms identified in the TRMP and file them with the Commission for approval within 180 days of license issuance. The licensee shall include documentation of consultation, copies of comments and recommendations on the protocols after they have been prepared and provided to the TRWG and specific descriptions of how the TRWG's comments are accommodated by the protocols.

(f) The licensee, as part of the TRMP, shall develop and implement an adaptive management process to monitor implementation and effectiveness of terrestrial resource PM&E measures, and adapt implementation measures as needed to meet resource specific goals and objectives. The licensee, in consultation with the

TRWG, shall develop adaptive management proposals, including protocols and schedules. The TRMP shall be reviewed, and as necessary amended, every five years during the license term in consultation with the TRWG as part of the adaptive management process. TRMP amendments shall be filed with the Commission for approval. Upon Commission approval, the licensee shall implement the amended plan.

(g) The licensee shall include with the TRMP amendments stipulated in section (f) above, documentation of consultation, copies of comments and recommendations on the plan amendments after they have been prepared and provided to the TRWG and specific descriptions of how the TRWG's comments are accommodated by the plan amendments.

(h) Licensee shall prepare any proposed amendments to the TRMP in consultation with the TRWG and subject to approval by the United States Forest Service prior to filing with the Commission. Licensee shall file any proposed amendments to the TRMP with the Commission for approval prior to implementation.

(i) The Commission reserves the right to require changes to the plan. Implementation of plan amendments shall not begin until the amendments are approved by the Commission. Upon Commission approval, the licensee shall implement the plan amendments, including any changes required by the Commission.

Article 4. *Land Acquisition.*

(a) The licensee shall acquire additional Project Habitat Lands within five years of license issuance and shall promptly bring the acquired lands into the Project boundary. The licensee, in consultation with the Terrestrial Resources Work Group (TRWG), shall prioritize and select parcel(s) for acquisition using the habitat criteria described below to attain the stated targets. The licensee shall notify the Commission of the location and acreage of land acquired and submit updated License Exhibit G maps within 90 days of acquisition.

(b) The Project Habitat Lands acquired by licensee, pursuant to this Article, shall achieve the targets of approximately 158 acres of riparian and upland habitat and approximately 13,022 lineal feet of varying habitats immediately adjacent to water features. Licensee shall acquire Project Habitat Lands between the near ridgelines east and west of the Project and identified as the secondary study area in the Revised Study Plan for Rare, Threatened and Endangered Wildlife Species (Study No. 18) (SCL 2007). The eastern boundary roughly aligns with Boundary Ridge, Crowell Mountain, and Sand Creek Mountain and the ridge between Boundary Reservoir and Sullivan Lake. On the west side, the boundary follows a line

connecting Frisco, Abercrombie, Litton and Baldy mountains. Water features include perennial flat-water bodies, streams, wetlands or seeps. Targets may be accomplished and applied by the licensee to the same parcel of land, provided that the parcel meets the described habitat criteria. An example of applying the targets to the same parcel includes a parcel that contains both riparian and upland habitat, as well as a perennial water feature. Acres and lineal feet would be calculated for the riparian and upland habitat, and for the perennial water feature, respectively.

(c) The licensee, in consultation with the TRWG, shall apply the following habitat objectives to identify and prioritize property acquisitions:

(i) Acquire property with high habitat diversity located immediately adjacent to or containing perennial water and secure from disturbance via open roads or towns, and/or a natural community that is relatively scarce or dwindling in the watershed, which has unique landscape or habitat elements or rare species occurrences. For purposes of this Article, “high habitat diversity” means three or more habitat types (e.g., riparian, wetland, upland, meadow)

(ii) Acquire large block(s) of habitat rather than small, scattered parcels (to manage for species with large home ranges and to provide for diverse landscapes) that are contiguous with other protected parcels of land (i.e., Bureau of Land Management, United States Department of Agriculture, United States Forest Service ownership), form a strong corridor link or are connected by a viable corridor to protected land

(iii) Acquire property with habitats that benefit any of the following wildlife species
groups (especially where use of a parcel by these species groups is documented):

1. Threatened, endangered, candidate and special status species

2. Big game

3. Waterfowl

4. Upland game birds (i.e., forest grouse and turkey)

5. Amphibians

6. Aquatic furbearers

7. Neotropical migrant birds

(d) Within one year of acquisition of the additional Project Habitat Lands, the licensee shall, in consultation with the TRWG, develop parcel specific habitat objectives and implementation tasks for the long-term management of these lands consistent with Terrestrial Resources Management Plan (TRMP) goals. Management plans for acquired parcels shall be incorporated into the TRMP which shall be filed with the Commission.

Article 5. *Recreation Resources.*

(a) The licensee shall implement the RRMP to enhance recreation resources at the Boundary Project in consultation with a RRWG.

(b) The RRMP is an implementation plan that the licensee will use to monitor, design, construct, fund, operate and maintain existing and proposed public recreation facilities and programs at the Project. The RRMP includes the following programs:

(i) Recreation Facility Capital Improvements Program

(ii) Recreation Facility Operations and Maintenance Program

(iii) Shoreline Dispersed Recreation Management Program

(iv) Recreation Monitoring Program

(v) Multi-Resource Interpretation and Education Program

(c) The licensee's RRMP implementation responsibilities include the following:

(i) Funding and implementing all aspects of the RRMP

(ii) Coordinating all aspects of the RRMP with the RRWG and other interested
parties, as needed

(iii) Consulting with the RRWG and other interested parties when necessary and as directed by license and the RRMP

(iv) Preparing an annual Recreation Action and Work Plan in consultation with the RRWG, distributing it for review to the RRWG and other interested parties as requested, and submitting it to the Commission

(v) Periodically amending the RRMP, if needed, in consultation with the RRWG, distributing the amended RRMP to the RRWG and other interested parties for review, and submitting it to Commission

(d) The annual RRMP report shall:

(i) Identify the measures implemented as scheduled in the RRMP

(ii) Identify current year and Out Year proposals for implementing scheduled recreation management actions

(iii) Reconcile and document differences between each year's proposals and any replacement or additional measures agreed upon by the licensee and the affected agencies

(iv) Document consultation related to the RRMP

(v) Document the results of monitoring of completed actions (to the extent monitoring is necessary for any particular action) to ensure proper implementation and effectiveness

(e) Licensee shall prepare any proposed amendments to the RRMP in consultation with the RRWG and subject to approval by the United States Forest Service prior to filing with the Commission. Licensee shall file any proposed amendments to the RRMP with the Commission for approval prior to implementation.

(f) The Commission reserves the right to require changes to the plan. Implementation of plan amendments shall not begin until the plan amendments are approved by the Commission. Upon Commission approval, the licensee shall implement the plan amendments, including any changes required by the Commission.

Article 6. *Well Decommissioning*.

The licensee shall implement the Monitoring Well and Road Decommissioning Plan contained in Exhibit 4 to the Boundary Hydroelectric Project Relicensing Settlement Agreement.

Article 7. *Programmatic Agreement.*

(a) The licensee shall implement the "Programmatic Agreement Among the Federal Energy Regulatory Commission and the Washington State Historic Preservation Officer for Managing Historic Properties that may be Affected by a License Issuing to Seattle City Light for the Continued Operation of the Boundary Hydroelectric Project in Pend Oreille County, Washington (FERC No. 2144)," executed on [December 6, 2011] including but not limited to the Historic Properties Management Plan (HPMP) for the Project. In the event that the Programmatic Agreement is terminated, the licensee shall continue to implement the provisions of its approved HPMP. The Commission reserves the authority to require changes to the HPMP at any time during the term of the license.

Article 8. *Water Quality Plans.*

(a) The licensee shall implement the following water quality plans, all of which have been approved by the Washington Department of Ecology (Ecology) and by the Commission (Water Quality Plans) and are contained in Exhibits 6-10 to the Boundary Hydroelectric Project Relicensing Settlement Agreement:

(i) Aquatic Invasive Species Control and Prevention Plan

(ii) Dissolved Oxygen Attainment Plan

(iii) Fish Tissue Sampling Plan

(iv) Temperature Attainment Plan

(v) Total Dissolved Gas Attainment Plan

(b) Any amendments to the Water Quality Plans shall be in consultation with the Water
Quality Work Group (WQWG) and subject to the approval of Ecology before filing with
the Commission.

(c) The Commission reserves the right to require changes to the amended plan. Implementation of the amended plan by the licensee shall not begin until it is approved
by the Commission. Upon Commission approval, the amended plan becomes a requirement of the license, and the licensee shall implement the amended plan, including any changes required by the Commission.

Article 9. *Fish and Aquatic Resources.*

The licensee shall implement the Fish and Aquatics Management Plan (FAMP) to implement fish and aquatic resource protection, mitigation, and enhancement (PM&E) measures.

(a) The FAMP shall be the principal guiding document for the planning, implementation, monitoring, adaptive management and reporting of PM&E measures for fish and aquatic resources affected by or related to the Project. The FAMP includes specific goals for fish and aquatic resources, as well as clearly defined objectives for achieving the goals.

(b) The following license articles govern the resource management programs as described in the FAMP:

(i) 9 (A) Mainstem Fish Community and Aquatic Habitat Measures (REVISED)

(ii) 9 (B) Upstream Fish Passage

(iii) 9 (C) Reduction of Project Related Entrainment Mortality (REVISED)

(iv) 9 (D) Tributary Non-native Trout Suppression and Eradication

(v) 9 (E) Tributary Fish Community and Aquatic Habitat Measures (REVISED)

(vi) 9 (F) Mill Pond Dam Site Monitoring and Maintenance

(vii) 9 (G) Native Salmonid Conservation Program (REVISED)

(viii) 9 (H) Recreational Fish Stocking Program

(ix) 9 (I) Fund for Habitat Improvements in Tributaries to Sullivan Lake

(c) The licensee shall, in consultation with the Fish and Aquatics Work Group (FAWG), develop and implement an adaptive management process including protocols and schedules to monitor implementation and effectiveness of measures identified in the
FAMP, and adapt implementation measures as needed to meet resource specific goals and objectives.

(d) The licensee shall prepare a FAMP annual report and file it with the Commission pursuant to Article 2 and the FAMP. The report shall include subsections for each
PM&E measure, with content dependent on the specific reporting requirement for the
PM&E measure, and the activities that occurred during the year.

(e) The licensee shall prepare any proposed amendments to the FAMP in consultation with the FAWG and subject to approval by the United States Forest Service, Department of Interior and Washington Department of Ecology prior to filing with the Commission. The licensee shall file any proposed amendments to the FAMP with the Commission for approval prior to implementation.

(f) The Commission reserves the right to require changes to the plan. Implementation of plan amendments shall not begin until the plan amendments are approved by the Commission. Upon Commission approval, the licensee shall implement the plan amendments, including any changes required by the Commission.

Article 9 (A). ***Mainstem Fish Community and Aquatic Habitat Measures.***

The licensee shall implement the Fish and Aquatics Management Plan (FAMP), Section 5.1, to: (1) modify trapping pools in the area known as the Cobble Sisters to reduce the risk of fish of being trapped in the pools during periods of declining flow and reservoir water surface elevations, (2) enhance Sullivan Creek tributary delta habitat by providing additional cover, in the form of large woody debris (LWD) jams, for salmonids occupying coldwater refugia, and (3) conduct fish community surveys and evaluate predation on outmigrating native salmonids at select tributary deltas.

(a) This section has been deleted.

(b) Channel Modifications of Mainstem Trapping Pools at Project RM 30.3

(i) The licensee shall implement site modifications at the Cobble Sisters within five years of license issuance.

(ii) The licensee shall excavate a channel to connect mainstem flow to three isolated pools at a large cobble bar near PRM 30.3 to reduce the risk of fish becoming trapped during declining water surface

elevations. Spoils from excavation will be used to fill a fourth pool near the channel margin.

(iii) The licensee shall conduct compliance monitoring at the Cobble Sisters within one year following implementation of the measure. Compliance monitoring will include documentation collected during implementation, such as survey data and photographs of the site before and after excavation.

(iv) Licensee shall repeat physical measurements to evaluate whether the site modifications continue to function as designed every ten years following construction and following one in 25 year high flow events. During the year following each physical monitoring effort, the FAWG will determine if remediation measures are needed to ensure that site modifications continue to satisfy design specifications. The licensee will implement the required measures to satisfy design objectives.

(v) The reporting and implementation schedule for channel excavation at the Cobble Sisters is summarized below.

PM&E Measure Activity	**Schedule**
Implementation Planning	Within three years of license issuance
Implementation	Within five years of license issuance
Compliance Report	Within six years of license issuance
Physical Monitoring	Every ten years following construction, and following flows exceeding a 25-year recurrence interval
Monitoring Report	Within one year of physical monitoring

(c) Mainstem Large Woody Debris at Tributary Deltas

(i) The licensee shall place two LWD jams at the Sullivan Creek delta and one LWD jam at the deltas of Sweet, Slate and Linton creeks (total of five LWD jams).

(ii) Licensee shall place and maintain LWD jams in the thalweg in the upper delta regions of the Sullivan Creek delta to minimize use by non-salmonids. The specific location and design of the LWD jams will be determined during implementation planning by the licensee in consultation with and subject to approval by the FAWG.

(iii) The licensee shall conduct implementation planning with final design specifications to be approved by the FAWG. Implementation planning will identify:

1. Specific locations for LWD jams at selected deltas

2. LWD jam design specifications for each location

3. Specific monitoring protocols

(iv) Licensee shall complete construction of the LWD jams within ten years following license issuance. The schedule for initial construction of the Sullivan Creek delta log jams may depend on upstream Mill Pond Dam removal activities.

(v) If permitting, landowner permission or other issues prevent implementation within ten years following license issuance, the licensee will determine, with approval from the FAWG, alternate locations for installing LWD jams, or will identify and implement alternative measures to provide additional cover in the Sullivan Creek delta with a commensurate schedule and level of effort.

(vi) Licensee will implement compliance and effectiveness monitoring for each LWD jam. The licensee shall conduct compliance monitoring and will provide documentation to the FAWG and the Commission that the measure has been implemented as specified. Effectiveness monitoring will evaluate the need for LWD jam repair or replenishment.

(vii) Licensee will issue a compliance report, including documentation collected during construction, repair, or replenishment within one year following implementation or repair of a LWD jam.

(viii) Licensee will conduct physical effectiveness monitoring during the ninth year following the construction of a structure and at ten-year intervals thereafter. In addition, licensee will conduct physical effectiveness monitoring to determine continued compliance with design specifications following major flood events (25-year event). The results of the effectiveness monitoring will be used to support adaptive management and adjustments to the PM&E measure during repair or log replenishment of a structure.

(ix) Licensee will repair or replenish the LWD jams within one year following physical effectiveness monitoring.

(x) Licensee will conduct three consecutive years of biological effectiveness monitoring within the first ten years following construction. Biological effectiveness monitoring will also be conducted concurrent with physical effectiveness monitoring through the term of the license.

The reporting and implementation schedule for mainstem LWD at the Sullivan Creek delta is summarized below.

PM&E Measure Activity	**Schedule**
Implementation	At the direction of the FAWG, may be completed after the tenth year following license issuance depending on the influence of Mill Pond Dam removal
Compliance Reporting	Within one year following construction, repair or replenishment of LWD structures
Physical Effectiveness Monitoring	In the ninth year following implementation, and every tenth year thereafter; and after flows exceeding a 25-year recurrence interval
Biological Effectiveness Monitoring	Three consecutive years between initial construction and first scheduled repair/replenishment, and then concurrent with physical effectiveness monitoring
Monitoring Report	Within one year following physical or biological effectiveness monitoring

(d) Boundary Reservoir Fish Community Monitoring and Evaluation of Salmonid Predation at Select Tributary Deltas

(i) The licensee shall conduct fish community surveys to monitor changes in fish population abundance and size structure of focal species over time. Focal species will be westslope cutthroat trout, bull trout, mountain whitefish, smallmouth bass, northern pikeminnow and northern pike and may include other species as identified by the FAWG. The study design and final implementation schedule will be developed in consultation with and subject to approval by the FAWG.

(ii) The licensee shall conduct a fish community monitoring study in the fifth year following license issuance and at five-year intervals

thereafter, unless otherwise directed by the FAWG. Planning for the fish community monitoring study component shall be completed during the calendar year prior to study implementation, and a summary report of field activities will be completed within one year of the completion of field surveys. The reporting and implementation schedule for fish community monitoring is summarized below.

PM&E Measure Activity	**Schedule**
Fish Community Study Plan	Within four years of license issuance and every fifth year thereafter
Conduct Fisheries Survey	In the fifth year following license issuance and every fifth year thereafter
Survey Completion Report	In the sixth year following license issuance and every fifth year thereafter

(iii) The licensee shall conduct the predation study to quantify the proportion of outmigrating native salmonids from select tributaries that are being consumed by predatory fish within the selected tributary deltas and determine consumption rates of select predators. The licensee shall develop the study design and final implementation schedule in consultation with and subject to approval by the FAWG.

(iv) If the results of the predation investigation identify that a significant proportion of native salmonids are consumed by predators at tributary deltas, licensee could implement potential non-operational measures including predator control to improve native salmonid survival. An adaptive approach to the tributary delta predation investigations will continue under the direction of the FAWG (FAMP Mainstem Measures section 5.1.4).

(v) The licensee shall conduct a tributary delta predation study in the fourth year and 15th year following license issuance, unless otherwise directed by the FAWG. A study plan will be completed during the calendar year prior to study implementation, and a summary report of field activities will be completed within one year of the completion of field surveys. The reporting and implementation schedule for the predation study is summarized below.

PM&E Measure Activity	Schedule
Tributary Delta Predation Planning	By end of calendar year prior to conducting delta predation study
Conduct Tributary Delta Predation Study	In the fourth and 15th years following license issuance
Tributary Delta Predation Study Report	Within one year following tributary delta predation field surveys

Article 9 (B). ***Upstream Fish Passage.***

(a) The licensee shall install, operate, maintain and monitor a single upstream trap and haul fishway facility (upstream fishway or fishway) in the Boundary Project tailrace as described in Section 5.2 of the Fish and Aquatics Management Plan. The purpose of this fishway is to provide safe, timely and effective passage for bull trout, cutthroat trout, and mountain whitefish (target fish species) in the Project area for the license term and any subsequent annual licenses.

(b) The licensee shall work collaboratively with the Fish and Aquatics Work Group (FAWG) and the approving agencies in all aspects of the fishway development and implementation processes. All FAWG decisions regarding fishway development and implementation are subject to the approval of the Department of the Interior (DOI), United States Forest Service (USFS), and the Washington Department of Ecology (Ecology).

(c) General provisions

(i) The licensee shall design and construct this upstream fishway using the best available scientific information, including but not limited to the NMFS 2008 Anadromous Salmonid Passage Facility Design Manual (Design Manual), taking into account the site specific conditions at the Project, biological information specific to the target species and other relevant information. The fishway shall be operated consistent with fisheries management goals and objectives for target species in the Pend Oreille River basin. In no case shall attraction flows exceed 1,650 cfs (3% of maximum generation discharge). The licensee must demonstrate that any departures from the Design Manual will be effective at providing safe, timely and effective passage for target species. The final design is subject to the approval of DOI, USFS and Ecology.

(ii) The licensee shall undertake a research and development phase of up to 12 years to evaluate the fishway entrance design, entrance location and attraction flow volumes that will achieve the purposes of the facility. Within 12 years following license issuance (two planning years, eight research years and two design years), the licensee shall file with the Commission for approval, a plan to install, operate and maintain an upstream trap and haul fishway. The licensee shall complete construction of the upstream fishway within two years of receiving the Commission's approval and shall monitor fishway operations for the license term and any annual licenses issued for the Project.

(iii) The licensee shall ensure that the fishway includes a fixed entrance(s) and a release location(s) at least one mile upstream of the Boundary Dam. The release location(s) shall be determined by the FAWG. Provided the fishway is constructed according to a design that has been approved by DOI, USFS, and Ecology, and is operated consistent with an approved installation, operation and maintenance plan, and subject only to such minor modifications as are described in section (g) below, the fishway will satisfy all applicable upstream fish passage requirements.

(d) Fishway development plan

(i) Within two years of license issuance, the licensee shall file with the Commission a Fishway Development Plan (FDP) for collecting site-specific biological and engineering information required to site, design and install the upstream trap and haul fishway. The licensee shall implement the FDP for up to eight years. The FDP shall include methods for identifying the following, among other things:

1. Site-specific hydraulic conditions in the tailrace of Boundary Dam, under all operating scenarios

2. Proper location of the upstream fishway and entrance(s) given site specific considerations of the Boundary Dam spillway, sluiceway, powerhouse and tailrace area

3. Information on swimming performance, behavior, and migratory pattern of target fish species downstream of the dam sufficient to determine the appropriate location of the fishway entrance(s) under all operating scenarios and related environmental cues, including but not limited to temperature,

total dissolved gas, water velocity and lighting; fishway attraction effectiveness shall be evaluated using target species from upstream sources or that demonstrate upstream migration behavior

4. Structures, devices and measures to allow adjustment of the fishway entrance(s) and auxiliary flow as necessary to effectively attract target fish species into the upstream fishway including the influence of cooler attraction flow water if incorporated into the test facility

5. Structures, devices, and measures to allow adjustment of water flow, water velocity and water surface elevations within the upstream fishway as needed to effectively convey target fish species into the fish trapping device

6. Provisions for counting and evaluating fish passage through the upstream fishway

7. Provisions for transport and release of fish upstream of the dam

(ii) The licensee shall conduct studies pursuant to the FDP using the most appropriate technology available, including mark and recapture methods, as determined by the FAWG in consultation with a Technical Advisory Committee (TAC) (see section (f) below). The TAC will assist the licensee and the FAWG with the design of upstream fish passage studies and analysis of study results. Target fish species being evaluated will represent the size distribution of migrating bull trout, cutthroat trout and mountain whitefish in the Project area.

(iii) The licensee may evaluate prototype facilities within the eight-year FDP implementation phase.

(e) Fishway design and construction plan

(i) Within 12 years following license issuance (two planning years, eight research years and two design years), the licensee shall file with the Commission for approval, a Fishway Design and Construction Plan (FDCP) to install, operate and maintain an upstream trap and haul fishway at the Boundary Dam. The licensee shall complete construction of the upstream fishway within two years of receiving the Commission's approval on the FDCP.

(ii) The licensee shall integrate the site specific and biological information developed during the FDP implementation phase in the FDCP. The FDCP shall include, but shall not be limited to: (1) functional design drawings; (2) quantification of flows needed to operate the fishway; (3) a proposed operations and maintenance plan; (4) a schedule for installing the facilities; (5) the fishway location, operational period, design flow range, trap holding pools, crowder and brail systems; (6) sorting and transport provisions; (7) sample/anesthetic/recovery tanks; and (8) structures, devices and measures to allow adjustment of auxiliary flow at the fishway entrance(s) as necessary to effectively attract target fish species into the upstream fishway.

(iii) The licensee shall develop the fishway design based upon the best available scientific information, including the Design Manual. Any departures from the Design Manual will be considered by the FAWG based on compelling evidence and in consultation with the TAC (see section (f) below). The licensee must demonstrate that any departures from the Design Manual will be effective at providing safe, timely and effective passage for target species. The final design is subject to the approval of DOI, USFS and Ecology.

(iv) Within 12 months of initial fishway operation, the licensee shall file with the Commission a Hydraulic Evaluation Report documenting compliance with all design specifications.

(f) Collaboration with the FAWG

(i) The licensee shall develop all plans and the fishway design, and shall conduct all studies in collaboration with the FAWG. The licensee shall convene a TAC consisting of fish passage design experts to assist in developing all plans and designs. The licensee shall select the fish passage design experts in consultation with and subject to approval by the FAWG. Pursuant to the Settlement Agreement, the TAC will provide recommendations to the FAWG pertaining to the site, design and installation of the upstream fishway as well as determine whether development of a computational fluid dynamic or physical scale model of the Boundary Dam and appurtenant facilities are necessary. Decisions regarding fish passage design and evaluation are subject to the dispute resolution provision of the Settlement Agreement.

(ii) When filing designs and plans, the licensee shall include: documentation of consultation, copies of comments and recommendations, and specific descriptions of how comments and recommendations were accommodated by the licensee. If the licensee does not adopt a recommendation from the FAWG or obtain a required agency approval, the filing shall include its reasoning based on Project specific information.

(iii) The licensee shall provide fishway design drawings (including drawings for any prototype or test facilities to be evaluated) to the FAWG for review at the 30% (functional design), 50% and 90% completion stage and the licensee shall consult with the FAWG at each stage. For approval, a 100% final design shall be provided by the licensee to DOI, USFS and Ecology at least two weeks prior to filing with the Commission.

(g) Compliance, effectiveness and long-term monitoring

(i) Within 13 years following license issuance, the licensee shall file a Post Construction Evaluation Plan (PCEP) with the Commission. The PCEP shall include methods for documenting fish passage efficiency, passage time, mortality, injury and fallback rates under a representative range of operating scenarios and environmental conditions. The licensee shall begin implementing the PCEP no later than one year following completion of the Hydraulic Evaluation Report and shall continue until safe, timely and effective passage is demonstrated over a range of operating conditions within the first five years of operation. The licensee shall modify the fishway based on results of the evaluations and reevaluate fishway effectiveness within this time frame and effort, as determined necessary by the FAWG. PCEP implementation costs including evaluation, planning and study permitting shall not exceed $1,000,000 (1 million dollars).

(ii) The following limitations shall apply:

1. The need for any modifications shall be determined by the FAWG within five years of completing the Hydraulic Evaluation Report and shall be based on information collected from the PCEP.

2. For any fishway constructed pursuant to Design Manual criteria (e.g., a fishway that includes attraction flow of 1,650 cfs) and approved by DOI, USFS, and Ecology, the licensee

shall make minor modifications including permitting, design and construction for increasing fishway effectiveness within an amount not to exceed 5% of facility construction costs.

3. For any fishway that includes departures from the Design Manual, the licensee shall make minor modifications including permitting, design and construction for increasing fishway effectiveness within an amount not to exceed 10% of facility construction costs.

(iii) 13 years after the PCEP evaluations and any related modifications have been completed, the FAWG will determine the need and scope for reevaluating fishway performance (including fish passage efficiency, passage time, mortality, injury and fallback rates). The licensee shall conduct all studies required by the FAWG under typical project operations. If fishway performance has decreased when compared to the initial PCEP evaluations, the licensee shall implement any corrective measures determined necessary by the FAWG to return performance to its previous level.

(iv) In addition, the licensee shall implement one year fishway performance evaluation(s) at any time during the license term if substantive changes occur in project operations, structures or tailwater bathymetry (caused, for example, by severe flow events). If performance has decreased when compared to the original PCEP evaluations, the licensee shall implement any corrective measures determined necessary by the FAWG to return performance to its previous level.

(h) Reporting and schedule

(i) The licensee shall prepare annual reports summarizing information related to monitoring, operations, problems encountered, program status and results of activities during the previous 12 months. Once the fishway has been installed and is operational, annual reports will also quantify the number and condition of target fish species captured and transported and the location of their release. Annual reports will also document fishway operations including tailrace water surface elevations, tailrace flow levels, fishway attraction flows, hours of fishway operation and any maintenance or operational issues identified over the year and repairs implemented to resolve the issues.

(ii) The implementation schedule for the upstream passage program is summarized as follows:

Protection, Mitigation, and Enhancement (PM&E) Measure Activity	**Schedule**
Implementation Plan	Within two years of license issuance
Fishway Design Research	In the third through the tenth years following license issuance
Fishway Design	In the tenth through the 12th years following license issuance
Fishway Design Submittal to the Commission	Within 12 years of license issuance
Fishway Construction	Within two years of receiving the Commission's approval of fishway design
Fishway Operation	Within two years of receiving the Commission's approval of fishway design
Status Report	Annually following license issuance

Article 9 (C). ***Reduction of Project Related Entrainment Mortality (REVISED).***

(a) Within five years after execution of the 2026 First Amendment to the 2010 Boundary Hydroelectric Project Relicensing Settlement Agreement ("First Amendment to Settlement Agreement" or "First Amendment"), in consultation with the Fish and Aquatic Work Group (FAWG) established pursuant to Section 8.2.1 of the 2010 Boundary Hydroelectric Project Relicensing Settlement Agreement ("2010 Settlement Agreement or "SA"), the licensee shall develop a Baseline Condition Report.

(i) The Baseline Condition Report will, at minimum, describe the genetic structure and distribution of individuals from populations of bull trout, cutthroat trout, and mountain whitefish (collectively "Target Fish Species") within Boundary Reservoir and the watersheds that flow into it.

(ii) The Baseline Condition Report will draw on information collected from the Boundary Reservoir fish community monitoring required by the Order Issuing New License, 142 FERC ¶ 62,231 (March 20,

2013) ("2013 License Order"), 2010 Settlement Agreement, and 2010 Fish and Aquatic Management Plan (FAMP).[1] Specifically, FAMP Section 5.1.4.1.1 requires the licensee to conduct fish community surveys in Boundary Reservoir beginning in year 5 after license issuance and at five-year intervals thereafter, and FAMP Section 5.1.4.3 sets forth a requirement to complete a fish community monitoring study plan prior to conducting such surveys.

(iii) The Baseline Condition Report will also draw on information collected from the licensee's periodic mainstem sampling of the Boundary Reservoir Fish Community,[2] implementation of upstream fish passage measures (2013 License Order Appendix E, Proposed Article 9 (B)), activities associated with the tributary non-native suppression and eradication program (2013 License Order Appendix E, Proposed Article 9 (D)), and the native salmonid conservation program (2013 License Order Appendix E, Proposed Article 9 (G)), as well as ongoing efforts by others in the watershed.

(iv) In developing the Baseline Condition Report, the licensee shall document and assess fish movement and demographics based on PIT tagged individuals of Target Fish Species within select Boundary Reservoir tributaries and Boundary Reservoir. The FAWG shall determine which Boundary Reservoir tributaries to study.

(v) Every 5 years after the finalization of the Baseline Condition Report, the licensee shall, in consultation with the FAWG, develop an Updated Baseline Condition Report to identify trends within the assemblage of Target Fish Species and discrete populations.

(b) At a time to be determined by the licensee, but no later than 2045, the licensee shall coordinate with the FAWG to determine whether entrainment

---

[1] See Ordering Paragraph E of the 2013 License Order, Exhibit 1 of the 2010 Settlement Agreement at Proposed License Article 9 (A), and Section 5.1.4.1.1. of the FAMP.

[2] Periodic sampling was an annual activity defined by electrofishing an established list of 400-m index reaches of Boundary Reservoir during spring and fall. This periodic sampling has been a voluntary activity by the licensee since 2018 (i.e., not required by the 2013 License Order, 2010 Settlement Agreement, or the 2010 FAMP).

is a causative factor in the continued depression of Target Fish Species, based on whether one of the following conditions exist:

(i) A single self-sustaining population of bull trout (defined for purposes of the First Amendment as 100 breeding adults or greater) has established within a tributary to the lower Pend Oreille River downstream of Albeni Falls Dam, or

(ii) Five percent or more of a Target Fish Species population greater than 6 inches are entrained below Boundary Dam. This percentage will not include entrained fish that were translocated, reintroduced, or planted into Boundary or Box Canyon tributaries within the same year or subsequent entrainment of an individual fish within the same year.

(c) If, at the time the licensee coordinates with the FAWG consistent with subsection (b) above, existing information is not sufficient to determine if entrainment could be a causative factor in the continued depression of Target Fish Species populations, the licensee shall develop and implement studies to determine if entrainment of Target Fish Species is occurring. Such studies, if needed, shall be performed over a period of at least two years, but no more than three years (to increase the potential of evaluating different water years and different entrainment scenarios), and shall be undertaken consistent with Section 5.3.3 of the FAMP or the latest acceptable scientific techniques and methodologies, as determined by the FAWG.

(d) By no later than 2048, if the FAWG or the Secretary of the Interior (Secretary) conclude that the conditions in subsections b and c have been established, the licensee shall initiate the development of a study to evaluate direct downstream survivability through the project and the relationship to population status as set forth in subsection b. The licensee's methodologies for this survivability study shall be developed within six months of the FAWG or Secretary concluding that the conditions in subsections b and c have been established.

(e) The licensee's methodologies for this survivability study shall be reviewed by the FAWG and approved by the Secretary, and the study shall be completed within two years of approval of the study methodology and shall include evaluation of entrainment under the operational scenarios that are most common at the facility. These common scenarios will consider combinations of powerhouse, spillway and/or sluiceway operation that reflect operations that occur over the majority of the year. If the

survivability study indicates that the combined average injury and mortality rates for a Target Fish Species through downstream passage routes (turbine and/or spillways and sluiceways) are greater than 15%, and therefore a causative factor in the continued depression of target species, the licensee shall, in consultation with the FAWG and subject to the approval of the Secretary, develop a Downstream Passage Mitigation Plan.

(f) The Downstream Passage Mitigation Plan shall identify mitigation measures to be designed, implemented, and evaluated in any subsequent FERC license, including a timeline for implementing mitigation measures within the first five years of the subsequent license. In the case of data gaps or missing information needed to inform the final design of mitigation measures, the Downstream Passage Mitigation Plan will identify the gaps and information needs and the approaches needed to fill such gaps and needs within the first five years of the subsequent license. Licensee shall develop the Downstream Passage Mitigation Plan in consultation with the FAWG and shall submit the Downstream Passage Mitigation Plan to the Secretary for approval no later than six months prior to the licensee's submission of the Pre-Application Document. The Downstream Passage Mitigation Plan will be included in any Pre-Application Document the licensee files with FERC as part of an application for a subsequent license.

(g) The Downstream Passage Mitigation Plan, which shall identify a timeline for implementation, may include, but shall not be limited to, a plan for the final design and implementation of downstream fish passage facilities. Licensee agrees not to challenge the inclusion of the Plan, or its implementation, in the next FERC license.[3]

(h) Nothing in the First Amendment shall affect or limit the authorities or rights of the Department of the Interior and U.S. Forest Service, including the reservation of rights and authorities included in Section 6 of the 2010 Settlement Agreement and Article 406 of the 2013 License Order.

---

[3] If Interior exercises its Federal Power Act Section 18 authority to require a new license to include the measures contained in the Downstream Passage Mitigation Plan, the licensee agrees to not seek a trial-type hearing or submit alternative prescriptions pursuant to section 241 of the Energy Policy Act of 2005, 16 U.S.C. § 811. If a new license includes the measures contained in the Downstream Passage Mitigation Plan, the licensee further agrees to not seek rehearing and/or appeal of those license provisions.

Article 9 (D). *Tributary Non-native Trout Suppression and Eradication.*

The licensee shall implement non-native salmonid suppression and eradication activities in portions of 23 waterbodies in the Boundary Reservoir watershed as described in Section 5.4.2 of the Fish and Aquatics Management Plan (FAMP).

(a) Within one year of license issuance, the licensee shall submit to the Commission an integrated schedule approved by the Fish and Aquatics Work Group (FAWG) for the implementation of non-native salmonid suppression and eradication activities. The schedule shall be coordinated with tributary enhancement activities and native salmonid conservation activities required by the FAMP. The integrated schedule shall prioritize activities and include milestones for completing design, consultation, regulatory review, permitting and implementation. The general schedule included in the FAMP will guide the development of the integrated schedule to be filed with the Commission.

(b) The licensee's level of effort for suppression may vary among stream reaches but shall be consistent with an average of six electrofishing efforts of one to three passes per reach every ten years from the start of implementation through the remainder of the license term.

(c) Eradication of non-native salmonids by the licensee shall be consistent with a level of effort associated with three chemical treatment applications assuming the use of antimycin, rotenone or an equivalent fish toxicant.

(d) The licensee shall annually review scheduled activities in consultation with the FAWG as necessary to consider proposed changes in the upcoming year's efforts, including consideration of alternative suppression and eradication measures. Following FAWG approval of the implementation measures, the licensee shall develop specific plans, obtain all necessary permits and complete any required environmental reviews such that the measures can be implemented pursuant to the approved schedule.

(e) The licensee shall use adaptive management strategies, in consultation with and subject to approval of the FAWG, for implementing non-native salmonid eradication and suppression measures. Adaptive management will be based on reach-specific conditions and objectives.

(f) The licensee shall document compliance in annual reports. The reports will describe activities completed during the year and identify any proposed modifications for the following year. The reporting and implementation schedule for non-native trout suppression and eradication is summarized below:

Protection, Mitigation, and Enhancement (PM&E)	**Measure Activity Schedule**
Implementation Schedule	Within one year of license issuance
Implementation Planning	One to two years in advance of the scheduled implementation year for each waterbody
Implementation in Sullivan Creek and Tributaries	Begins within one to ten years of license issuance
Implementation in Sweet Creek	Begins within 20 years of license issuance
Implementation in Slate Creek, Uncas Gulch and Flume Creek	Begins within 11 to 15 years of license issuance
Implementation in Pewee Creek, Lime Creek, Lake Lucerne and Sand Creek	Begins within 16 to 20 years of license issuance
Annual Reports	Following each year suppression or eradication efforts occur
Eradication Effectiveness Monitoring and Reporting	Within one year following treatment activities

Article 9 (E). *Tributary Fish Community and Aquatic Habitat Measures (REVISED)*.

(a) The licensee shall implement the following aquatic habitat measures, pursuant to the general provisions identified below and the detailed provisions included in the Fish and Aquatics Management Plan (FAMP), Sections 5.4.3 through 5.4.10.

(b) Specific aquatic habitat measures include the following:

(i) Within ten years of license issuance, the licensee shall complete riparian improvements and stream channel enhancement in Sullivan Creek from river mile (RM) 0.30 to RM 0.54. In consultation with the Fish and Aquatics

Work Group (FAWG), the schedule for implementation of this measure may be modified dependent upon the Mill Pond Dam decommissioning schedule.

(ii) Within ten years of license issuance, the licensee shall complete stream and riparian improvements in Sullivan Creek from RM 2.3 to RM 3.0.

(iii) Within ten years of license issuance, the licensee shall complete Large Woody Debris (LWD) placement and road improvements in Sullivan Creek and selected tributaries upstream of the confluence with Outlet Creek; provided that licensee shall not be required to remove the culvert from the North Fork of Sullivan Creek.

(iv) Within 20 years of license issuance, the licensee shall complete culvert replacements (except on the North Fork of Sullivan Creek) in tributaries to Boundary Reservoir.

(v) Within 20 years of license issuance, the licensee shall complete riparian planting, culvert replacement, and channel reconstruction measures in Linton Creek from RM 0.00 to RM 0.24.

(vi) Within 20 years of license issuance, the licensee shall complete riparian and channel improvements in Sweet Creek from RM 0.0 to RM 0.6.

(vii) Within 25 years of license issuance, the licensee shall complete habitat enhancement in Tier-2 tributaries to the Boundary Reservoir.

(viii) The licensee shall complete restoration of dispersed recreation sites located in Sullivan Creek riparian areas consistent with the schedule detailed in the FAMP.

The specific scope of each measure is detailed in the FAMP.

(c) By the end of the first year following license issuance, the licensee shall submit to the Commission an integrated schedule that has been approved by the FAWG for the implementation of these measures. The licensee shall coordinate the schedule with tributary non-native salmonid suppression and eradication activities and native salmonid conservation activities required by the FAMP. The integrated

schedule shall prioritize activities and include milestones for completing design, consultation, regulatory review, permitting and implementation. The timelines included in the FAMP will guide the development of the integrated schedule to be filed with the Commission.

> (i) The licensee shall develop specific plans for each measure according to the integrated schedule in paragraph (c). Each plan shall include specific goals, objectives, cost estimates, anticipated restoration techniques, maintenance requirements and monitoring plans and methods. Specific, measurable success criteria shall also be developed by the licensee in consultation with the FAWG and included for each measure. For each measure that includes a construction component, the plan will include final construction drawings. Where applicable, measures should be addressed on a programmatic basis.

(d) The licensee shall develop all plans pursuant to Article 2 and the FAMP. As part of the integrated schedule in paragraph (c), licensee shall, in consultation with and approval by the FAWG, develop a Tributary Management Plan (TMP) including a subsection for each tributary that will receive treatments. The TMP shall provide a coordinated approach for implementing tributary habitat restoration measures. The TMP will identify appropriate target fish population sizes and species to be achieved through implementation of measures in the FAMP. The licensee shall include a schedule and scope of treatments for each tributary to ensure that treatments are complementary to the population and habitat goals.

(e) Once a restoration measure has been completed, the licensee shall evaluate the measure every eight years for the license term to ensure continued compliance with success criteria specific to measures and developed in consultation with and approved by the FAWG. If a restoration measure falls below success levels as determined through eight-year effectiveness monitoring, the licensee shall, within 60-days, develop a plan for repairs to correct the deficiencies, including a schedule for proposed work and further monitoring, in consultation with the FAWG. A summary of repairs will be included in the annual report.

In addition to the eight-year effectiveness monitoring, the licensee shall annually, and following major (25 year) flood events, inspect measures as described in the FAMP.

The licensee shall include the results of all monitoring and summary of repairs in the annual reports filed with the Commission.

(f) In the event that any of the above measures cannot be implemented, alternative measures will be implemented as provided in the FAMP.

Article 9 (F). *Mill Pond Dam Site Monitoring and Maintenance.*

(a) As provided in Section 5.5 of the Fish and Aquatics Management Plan (FAMP), the licensee shall, beginning at the point in time when the Commission determines that the Mill Pond Decommissioning Plan for Pend Oreille PUD's surrender of its license for the Sullivan Creek Project has been completed, monitor and provide maintenance where necessary, to the area covered by the Mill Pond Decommissioning Plan for ten years (with monitoring in the second, fourth, sixth and tenth years) and once every eight years thereafter to ensure:

(i) stream channel is functioning in accordance with the design criteria

(ii) vegetation is becoming established

(iii) control of non-native plant species

(b) Within one year from when the Commission determines that the Mill Pond Decommissioning Plan for Pend Oreille PUD's surrender of its license for the Sullivan Creek Project has been completed, the licensee shall develop plans and protocols for monitoring and maintenance of the Mill Pond Dam site in consultation with the Fish and Aquatics Work Group (FAWG) and subject to approval by United States Forest Service and the Washington Department of Ecology.

(b) After any major flood event in Sullivan Creek, the licensee shall evaluate the site to determine whether the stream channel continues to meet design criteria. The licensee will undertake any measures necessary to assure that the stream channel is meeting agreed to design parameters. In the event of flows greater than a flood event having a 100-year recurrence interval, the licensee will not be responsible for repair of stream restoration measures that may have been damaged from such an event.

Article 9 (G). *Native Salmonid Conservation Program (REVISED)*.

(a) The licensee shall implement provisions of the Fish and Aquatics Management Plan (FAMP), Section 5.6, to design, construct and operate a fish propagation facility for the production of native salmonids to supplement tributaries draining into the Boundary Reservoir. The licensee shall release propagated native salmonids to supplement existing populations, or to introduce native salmonids of resident and/or migratory life histories into reaches where they are not currently

present. Target release sites will include those reaches where non-native trout have been actively suppressed or where high quality, but underutilized habitat is available in tributaries draining into the Boundary Reservoir. Supplementation of native salmonids is expected to complement non-native trout suppression and/or stream habitat improvement activities. The licensee shall be responsible for the appropriate marking of all outplanted fish for the purpose of identifying these fish during future monitoring efforts.

(b) The initial capacity of the facility will be up to 45,000 eyed eggs, fry, or fingerling (three to four inch) fish per year and multiple age class broodstock (capacity of 1,000-2000 pounds). Annual production will be commensurate with the need to outplant fish in tributaries draining into the Boundary Reservoir

(c) Licensee will design the facility to simultaneously propagate two species of fish and several year classes (life stages); selection of species, stocks and lifestages to be produced would be determined in consultation with and subject to approval by the Fish and Aquatics Work Group (FAWG). In addition, licensee will ensure the facility will have the capacity to sustain the necessary numbers of broodstock fish to produce the number of eggs, fry or fingerlings for the purposes of the Conservation Program.

(d) Licensee shall use a multi-step approach to implement this measure. The licensee shall complete each step in consultation with and subject to approval by the FAWG. Preliminary planning suggests that the 40-acre Washington Department of Fish and Wildlife (WDFW) parcel on Skookum Creek, which formerly included the Usk Hatchery, is a potential location for the propagation facility.

(i) The first step for the licensee in the development of the native salmonid conservation facility shall be to confirm the feasibility of the Usk Hatchery site. If this site proves to be infeasible, the licensee will consider alternatives including purchase or funding of an alternate existing facility, or development at a new site with an appropriate source of water. If a feasible site cannot be identified, the licensee will re-direct mitigation efforts towards the purchase of suitable eggs, fry or fingerlings from another source to meet population goals or toward commensurate protection, mitigation, and enhancement (PM&E) measures as determined in consultation with and subject to approval by the FAWG.

(ii) The second step for the licensee shall be to complete implementation planning that includes the following:

1. Goals and policies of federal and state agencies and the Kalispel Tribe regarding conservation facilities and native salmonid recovery

2. Risks and benefits of supplementing bull and/or westslope cutthroat trout in the Project area

3. Mitigation measures to be used to reduce risk (e.g., of spreading disease, domestication, etc.)

4. A conceptual level description and engineering design for the facility, with specifications

5. Description of any off-site facilities or techniques that could be used as part of release strategies (e.g., acclimation and volitional release ponds, streamside or instream incubation of eyed eggs, etc.)

6. Sources and techniques to be used for collecting broodstock

7. Target production levels by life stage

8. A hatchery genetics management plan

(iii) The third step for the licensee shall be preparation of draft and final engineering plans for the facility, completing any required regulatory review (e.g., NEPA compliance) and obtaining any needed permits. Following approval of final design and permitting, the licensee will construct the facility and fund operation and maintenance for the license term.

(e) The licensee shall complete implementation planning within three years of license issuance and the facility will be operational within six years of license issuance.

(f) The licensee shall prepare a construction compliance report within one year following construction of the facility that will document any variances from the implementation planning, engineering and construction steps.

(g) Prior to the fish conservation facility being operational, the licensee shall annually summarize its fish conservation activities of the previous 12 months. Once the facility is operational, the licensee shall annually summarize the following information:

(i) numbers, lifestages, size and species of fish produced;

(ii) timing and locations of releases;

(iii) percent survival between life stages;

(iv) results of effectiveness monitoring;

(v) disease outbreaks, other problems and remedies that were implemented to reduce the risk of problems reoccurring; and

(vi) effectiveness monitoring in (j).

(h) The licensee shall file status reports every five years that summarize the annual reports and provide more detailed analysis and assessment of trends in the data. The five-year status reports will also describe any changes in production or release strategies developed in consultation with and subject to approval by the FAWG and the rationale for implementing the changes.

(i) Licensee, in consultation with and subject to approval by the FAWG, shall establish population goals for the Conservation Program by determining appropriate tributary target fish populations desirable for the purpose of establishing self-sustaining, native stocks of fish. Optimal outplanting strategies for achieving population goals will be identified by the licensee in consultation with and subject to approval by the FAWG through monitoring and evaluating multiple outplanting strategies that consider appropriate fish sizes, outplanting densities, frequency and timing. Each outplanting strategy will have independent markers/identifiers for analysis (e.g., otolith marks utilizing calceine, thermal, strontium chloride). The licensee shall monitor the initial success of outplanted native salmonids and conduct periodic monitoring until population goals are achieved. The licensee shall evaluate the reproductive success of outplanted native salmonids to determine, in consultation with and subject to approval by the FAWG, if population goals are met. The licensee shall adjust the conservation schedule and numbers subject to approval of the FAWG.

(j) In consultation with the FAWG, the licensee shall evaluate the effectiveness of the Conservation Program, including the success of alternate outplanting strategies, reproductive success of outplanted fish, or other aspects of the Conservation Program pursuant to the FAMP. The results of effectiveness monitoring will be included in the annual report.

(k) The reporting and implementation schedule for the native salmonid conservation facility is summarized below.

PM&E Measure/Activity	**Schedule**
Complete Implementation Planning	Within three years of license issuance
Facility Draft and Final Engineering Plans	Within four years of license issuance
Facility Construction	Within six years of license issuance
Begin Operations	Within six years of license issuance
Construction Compliance Monitoring Report	Within seven years of license issuance
Annual Reports	Every year
Five-year Status Reports	Every fifth year

With prior notice to FERC, the Licensee may use the Regional facility to produce fish to meet Regional needs per the terms of the Interlocal Agreement for Creation of the Second Species Fund and Provision of Regional Fishery Benefits among Licensee and certain other parties dated _____, 2026.

Article 9 (H). ***Recreational Fish Stocking Program*.**

(a) The licensee shall implement provisions of the Fish and Aquatics Management Plan (FAMP), Section 5.7, to provide for the annual stocking of approximately 11,678 pounds of trout in 18 lakes within a 15-mile area around the Project beginning no later than within two years of license issuance.

(b) Trout species stocked in these lakes will consist of westslope cutthroat, rainbow, rainbow triploid or tiger trout, and may include fall fry, fingerlings, spring fry and catchable-size fish. The number, size and species of fish, planting schedule and location may be adjusted by licensee in consultation with and approval by Washington Department of Fish and Wildlife (WDFW).

(c) Within one years of license issuance, the licensee shall, in consultation with and approval by WDFW, complete implementation planning to identify:

(i) Pre-stocking monitoring protocols

(ii) Source of fish

(iii) Number, size and species of fish, planting schedule and location

(iv) Stocking protocols

(d) The licensee shall provide for annual monitoring and evaluation of lakes receiving the stocked fish prior to the springtime opening day of trout season. At least six of the lakes receiving stocked fish will be monitored each year on a rotating subset of the 18 lakes. Monitoring activities will consist of yearly fall or preopening day spring index gillnetting to evaluate recruitment of planted trout fry, trout growth rates, relative trout abundance, and detection of illegally introduced and/or undesirable fish species. Survey timing, location and protocol will be developed by the licensee in consultation with and approval by WDFW.

(e) The licensee shall provide for opening day creel census on two lakes per year. Lakes to be creel-sampled will be selected each year in consultation with the WDFW.

(f) The licensee shall prepare an annual report identifying the amount, size, species, timing and location of stocking efforts. The licensee shall also prepare the results of monitoring and evaluation activities, activities planned for the upcoming year and highlight any proposed changes from previous protocols.

Article 9 (I). *Fund for Habitat Improvements in Tributaries to Sullivan Lake.*

(a) Within one year of license issuance, licensee shall establish a $2.5 million (2.5 million dollar) fund called the Sullivan Lake Upper Tributary Fund in an interest bearing account for improving aquatic habitat in Harvey Creek, Noisy Creek and Jungle Creek as described in Section 2.8 of the Fish and Aquatics Management Plan (FAMP).

(b) Licensee shall have no obligations for any other habitat measures in tributaries to Sullivan Lake other than the Sullivan Lake Upper Tributary Fund.

(c) Licensee shall make fund distributions for measures in tributaries to Sullivan Lake in installments at the discretion of the Fish and Aquatic Work Group (FAWG) for planning and implementation activities.

(d) In the event that there are any unexpended funds in the Sullivan Lake Upper Tributary Fund after the measures described above have been completed, licensee shall use such unexpended funds for purposes of achieving additional habitat improvement in tributaries to the Boundary Reservoir as directed by the FAWG.

Article 10. *Escalation*.

(a) Unless otherwise indicated, all costs or payment amounts specified in dollars in the New License and Management Plans shall be deemed to be stated as of the year 2009, and licensee shall escalate such sums as of January 1 of each following year (starting in January 2012, or in the year preceding the Commission License issuance, whichever is later) according to the following formula:

AD = D x (NGDP)/(IGDP)

Where:

AD = Adjusted dollar amount as of January 1 of the year in which the adjustment is made

D = Dollar amount prior to adjustment

IGDP = "GDP-IPD" for the third quarter of the year before the previous adjustment date
(or, in the case of the first adjustment, the third quarter of the year 2009)

NGDP = "GDP-IPD" for the third quarter of the year before the current adjustment date

(b) "GDP-IPD" is the value published for the Gross Domestic Product Implicit Price Deflator by the United States Department of Commerce, Bureau of Economic Analysis in the publication Survey of Current Business, in the third month following the end of the applicable quarter. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted upon approval by the Commission. If the base year for "GDP-IPD" is changed or if publication of the index is discontinued, the licensee shall notify the Commission as soon as possible and recommend, after consultation with the Settlement Agreement Parties, adjustments or an alternative index that achieves the same economic effect.