

PAYMENT AGREEMENT
Between

PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY (Chelan PUD)
And
WASHINGTON DEPARTMENT OF FISH & WILDLIFE (WDFW)

SECTION 1. BACKGROUND

This Payment Agreement is made and entered into by and between Public Utility District No. 1 of Chelan County (Chelan PUD) and the Washington Department of Fish and Wildlife (WDFW), together referred to as the Parties. This Payment Agreement constitutes the mutually acceptable agreement providing coordination of “make funds available” activities for the implementation of the Settlement Agreement Articles 3, 6, and 9 as required by Section 19.2.3 of the Lake Chelan Settlement Agreement and attachments dated October 8, 2003 (Settlement Agreement).

The Federal Energy Regulatory Commission (FERC) issued the Order on Offer of Settlement and Issuing New License (New License) and the Order on Rehearing on November 6, 2006, and April 19, 2007, respectively, for the Lake Chelan Hydroelectric Project No. 637 that require Chelan PUD to provide funds for various protection, enhancement, and mitigation measures as described in the Settlement Agreement, which is incorporated as Appendix A of the New License.

The Lake Chelan Settlement Agreement is incorporated herein by reference.

SECTION 2. RELATIONSHIP TO THE SETTLEMENT AGREEMENT

This Payment Agreement has been executed pursuant to, and is to be used in conjunction with, the Settlement Agreement. In the event of a direct conflict between the provisions of this Payment Agreement and the Settlement Agreement, the Settlement Agreement shall control.

SECTION 3. STATEMENT OF WORK

All funds identified in the Settlement Agreement, Section 19.1, are deemed to be stated as of the year 2002 dollars and Chelan PUD shall adjust the funds as of January 31 each year (starting in January 2004), or upon the publication of and in accordance with the Consumer Price Index for all Urban Consumers, US City Average, All Items.

Under the Settlement Agreement, Chelan PUD has agreed to make funds available to the WDFW for work conducted to address large woody debris, fisheries, and wildlife concerns over the life of the New License.

3.1 **Large Woody Debris Plan.** Pursuant to Settlement Agreement Article 3 and in accordance with Chapter 3 of the Comprehensive Plan, Chelan PUD will make available to the WDFW:

3.1.1 Under Settlement Agreement Articles 3(a) and 3(b), \$5,000 annually, during the first 20 years of the New License, for obtaining or transporting Large Woody Debris (LWD) or other bank protection and in-lake fish habitat restoration, enhancement, and mitigation materials for use on state or private land within or adjacent to Lake Chelan.

To purchase (as necessary) or transport LWD and other bank and habitat materials to Washington Fish and Wildlife-provided storage sites within the Lake Chelan basin, for eventual use in bank protection and fish habitat installation projects using bioengineering methods on state and private lands within the Lake Chelan basin. LWD and other bank and habitat materials shall be used on state and private lands within the Lake Chelan basin to mitigate the impacts of future erosion control and bank protection projects within the Lake Chelan basin.

3.1.2 Under Settlement Agreement Articles 3(c)(1) and 3(c)(2), for shoreline erosion control work on USDA Forest Service (Forest Service) and National Park Service (NPS) lands, work to improve tributary access, and other similar work, the quantity of LWD included in the work and/or placed as mitigation as required by permits using the one-to-one ratio, as described in Chapter 3, section 4.2 of the Comprehensive Plan, is expected by the parties of the Settlement Agreement to provide adequate mitigation for natural resources. Because it is understood that the appropriate amount of LWD will vary from site to site, and from project to project, the ratio described in the preceding sentence shall be applied to the average amount of LWD for the projects performed during any five-year period.

If the total mitigation costs required by the necessary permitting processes related to such erosion control and other work exceed the costs that would result from the one-to-one ratio anticipated by the parties to the Settlement Agreement, then Chelan PUD may reduce the funding provided to WDFW under this provision by the amount of the additional cost incurred.

3.2 **Lake Chelan Fishery Plan.** Pursuant to Settlement Agreement Article 6 and in accordance with Chapter 6 of the Comprehensive Plan, Chelan PUD agrees to make available:

3.2.1 **Monitoring and Evaluation.** Up to \$20,000, as determined by the Lake Chelan Fishery Forum (LCFF), of annual costs incurred for implementing, an annual plan for monitoring and evaluating fish in Lake Chelan and tributary streams in accordance with Settlement Agreement Article 6(b)(1). The WDFW shall develop its portion of the monitoring and evaluation plan in conjunction with the Forest Service and National Park Service and in consultation with the LCFF. Such plan shall be submitted to Chelan PUD annually no later than January 10 and approved by FERC as required by article 404 of the New License before Chelan PUD will provide reimbursement to WDFW for its costs incurred in implementation of monitoring and evaluation measures.

3.2.2 **Monitoring and Evaluation (Matching Funds).** An additional reimbursement to WDFW of matching funding up to \$20,000, as determined by the LCFF, of annual costs incurred in implementing, in conjunction with the Forest Service and the NPS in accordance with Settlement Agreement Article 6(b)(2), its responsibilities under the annual plan for monitoring and evaluating fish that has been submitted to and approved by FERC as required by article 404 of the New License. Such additional amounts up to \$20,000 shall only be provided if WDFW provides a one-for-one match of cash or in-kind contributions by December 31 of the year following the expenditure of implementation costs by WDFW.

3.2.3 **Fish Rearing and Stocking.** Sufficient annual funding for rearing approximately 5,000 pounds of salmonid fingerlings and 33,000 pounds of catchable-size salmonids in accordance with Settlement Agreement Article 6(d) and the annual plan for monitoring and evaluating fish submitted to and approved by FERC as required by article 404 of the New License, or for other Lake Chelan fish management activities in accordance with Chapter 6 of the Comprehensive Plan. The Estimated Cost (defined in Section 4.4 of the Settlement Agreement) to Chelan PUD of rearing such poundage of fish is \$30,000 per year.

If, after coordination with the NPS, USDA Forest Service, and US Fish and Wildlife Service, and after consultation with the LCFF, WDFW decides to reduce or eliminate fish stocking into Lake Chelan, the resulting savings shall be available to WDFW for other Lake Chelan fish management activities. The funding provided for this measure is covered by a separate interagency agreement between the Parties (Chelan PUD Agreement No. 06-001, WDFW Agreement No. 06-1456), which is effective until May 31, 2011. The funding in this Section 3.2.3 is not additional funding over and above that provided in the existing interagency agreement.

3.3 **Wildlife Habitat Plan.** Pursuant to Settlement Agreement Article 9 and Chapter 9 of the Comprehensive Plan, Chelan PUD agrees to make available funds as follows:

3.3.1 **Wildlife Habitat Restoration.**

3.3.1.1 As specified in Settlement Agreement Article 9(a)(1), Chelan PUD shall make available \$220,000 to the Chelan-Douglas Land Trust, for the acquisition of conservation easements in perpetuity on privately-owned lands located on the north shore of Lake Chelan, in accordance with section 4.1.1 of the Comprehensive Plan. For purposes of this Settlement Agreement Article, all references to the Chelan-Douglas Land Trust refer to the Chelan-Douglas Land Trust or another organization selected pursuant to Settlement Agreement 9(a)(6). The goal is to secure easements on 400 acres of land, and priority shall be given to acquiring easements on lands between elevations 1,100 and 1,400 ft.

3.3.1.2 As specified in Settlement Agreement Article 9(a)(2) Chelan PUD shall make available additional funding of up to fifteen (15) percent of the cost of easement

acquisition (not to exceed \$33,000) to the Chelan-Douglas Land Trust, for fees associated with easement acquisition. Associated fees include administrative costs, appraisals, baseline inventories, escrow fees, hazardous substance assessments, legal fees, recording fees, stewardship fees, surveys, and fees relating to title reports and insurance.

3.3.1.3 As specified in Settlement Agreement Article 9(a)(3), Chelan PUD shall make available \$32,000 to the Chelan-Douglas Land Trust, for shrub-steppe/mule deer winter-range habitat restoration efforts on the lands, if any, for which an easement is acquired under paragraph 9(a)(1) of this Settlement Agreement Article. Beyond making the \$32,000 available, Chelan PUD shall have no responsibility for the success of the restoration efforts to be carried out by the Chelan-Douglas Land Trust, in coordination with Washington Fish and Wildlife. In its contract with the Chelan-Douglas Land Trust, Chelan PUD shall require the Chelan-Douglas Land Trust to coordinate with Washington Fish and Wildlife in order to assure the highest likelihood of habitat restoration success.

3.3.1.4 As specified in Settlement Agreement Article 9(a)(4), Chelan PUD and Washington Fish and Wildlife recognize the uncertainty of acquiring conservation easements on 400 acres, due to the variability of landowner participation. If less than 400 acres of conservation easements can be acquired, the funds remaining available under Settlement Agreement Articles 9(a)(1) and 9(a)(3) shall be made available by Chelan PUD to Washington Fish and Wildlife for habitat restoration within the Lake Chelan basin.

3.3.1.5 As specified in Settlement Agreement Article 9(a)(5), if easements on 400 acres of land can be acquired for less than the \$220,000 made available under Settlement Agreement Article 9(a)(1), fifty (50) percent of any funds remaining available shall become available to Washington Fish and Wildlife for habitat restoration within the Lake Chelan basin, and fifty (50) percent of the funds remaining available shall no longer be available.

3.3.1.6 As specified in Settlement Agreement Article 9(a)(6), to implement this section, Chelan PUD shall enter into a contract with the Chelan-Douglas Land Trust or another organization that Chelan PUD and Washington Fish and Wildlife find suitable. The contract shall provide that any easements under Settlement Agreement Article 9(a)(1) be acquired and maintained by the Chelan-Douglas Land Trust or other organization. If the organization with whom Chelan PUD initially contracts either dissolves or becomes unsuitable to Chelan PUD and Washington Fish and Wildlife, Chelan PUD shall enter into a contract with another organization that Chelan PUD and Washington Fish and Wildlife find suitable.

3.3.2 **Riparian Habitat Improvements.** Make available up to \$35,000 to enhance habitat in the Lake Chelan basin in accordance with Settlement Agreement Article 9(c)(2)(C).

3.3.3 **Transferability of Funds.** Pursuant to Settlement Agreement Article 9(d), Chelan PUD shall transfer available funds among Settlement Agreement Articles 9(a)(1), 9(a)(3), and 9(c)(2)(C) upon the recommendation of the Chelan-Douglas Land Trust to WDFW, and with the concurrence of WDFW, or upon the initiative of WDFW. If Settlement Agreement Article 9(a)(5) is applicable, only fifty (50) percent of the remaining Settlement Agreement Article 9(a)(1) funds shall be transferred, and fifty (50) percent of the remaining Settlement Agreement Article 9(a)(1) funds shall no longer be available.

In order for Chelan PUD to make available the funds specified in Subsections 3.3.1 to 3.3.3, the improvement measures carried out must be in accordance with the Wildlife Habitat Plan developed by the Lake Chelan Wildlife Forum (LCWF) and approved by FERC as required by article 406 of the New License. The WDFW must submit a detailed description of the habitat enhancements that were carried out, including a description of the location where the improvements occurred and a statement certifying that such improvements are in accordance with the approved plan, are intended to be self-sustaining, and will be reported to Chelan PUD annually by March 31 of each year. In turn, this description will be included in the report submitted annually by April 30 of each year to FERC as required by article 406 of the New License.

SECTION 4. ANNUAL PLANNING AND ESTIMATING REPORTS

As a condition of payment for any work performed under Section 19.3 of the Settlement Agreement, WDFW shall submit to Chelan PUD an annual planning report by January 31 of each year during the term of the New License and any subsequent annual licenses. However, the Parties have agreed that as a condition of payment or reimbursement of any work performed under the Settlement Agreement, the WDFW shall submit to Chelan PUD the annual planning report June 1 of each year of each year during the term of the New License and any subsequent annual licenses to allow for better planning and efficiency. The reports shall document, by measure and task, the following:

1. Preceding Year:
 - a. Detailed description of all work completed
 - b. Actual costs incurred in completing this work
2. Current Year:
 - a. Detailed description of the work to be undertaken
 - b. Detailed estimate of costs of work to be undertaken
3. Out-Year(s):
 - a. Description of proposed work in the out-year and as many subsequent years as possible
 - b. Projected costs of proposed work

To estimate future costs for each remaining measure WDFW shall, with Chelan PUD's assistance as needed, annually develop a Total Estimation Sheet by populating Task Detail

Estimation Sheets for each remaining task (see example in Attachment A). In this process WDFW is required to identify all of the funds to be expended, the type of funds, the anticipated year of expenditure, and any taxes or contingencies that are expected. To facilitate estimation, on May 1 of each year, Chelan PUD will provide WDFW with a statement, which describes the remaining available funding by measure (Settlement Agreement Article) using the CPI adjustment as of January 31 of each year as prescribed in Section 19.1 of the Settlement Agreement. The estimate identified by WDFW for the subsequent fiscal year will be reviewed and approved by Chelan PUD and will then become the next year's budget.

SECTION 5. DOCUMENTATION AND CERTIFICATION OF WORK COMPLETED

As a condition of payment for any work performed under the Settlement Agreement, on a quarterly basis WDFW shall provide Chelan PUD with an Invoice/Variance form for each measure that was anticipated to have costs charged against it. The Invoice/Variance form (see example in Attachment B) will be used to summarize work completed in the month, plans for the subsequent quarter, any variances from the plan, and all requested reimbursements. Each form must be signed by WDFW to certify the amount and cost of the work completed, and that such work was performed in a manner consistent with the Settlement Agreement. WDFW must support requested reimbursements with copies of invoices and payroll charges. Chelan PUD reserves the right to verify the certification by on-site inspection of all work and validation of the charges. The Chelan PUD Project Manager and/or Licensing & Compliance Manager, and/or their representative, shall accomplish this inspection and/or validation. In a given WDFW fiscal year (July 1st to June 30th), payments for satisfactory performance of work shall not exceed the annual budgeted amount, unless the Parties mutually agree to a higher amount prior to the commencement of any work which will cause the maximum payment to be exceeded.

SECTION 6. BILLING PROCEDURE AND TIMING OF PAYMENTS

All costs, balances, or payment amounts shall be in accordance with Section 19.1 of the Settlement Agreement and made on a reimbursable basis for actual costs incurred by the WDFW.

The WDFW will bill Chelan PUD quarterly for funds sufficient to cover the actual costs incurred during the specific payment period. Within sixty (60) days of receipt of an invoice, including documentation and certification of work completed, as specified in SECTION 5 of this Payment Agreement, and is not disputed by Chelan PUD, Chelan PUD shall make payment to the WDFW.

All reimbursement billings shall be completed within the same calendar year (January through December) as WDFW expenditures. Final invoices for each calendar year shall be delivered to Chelan PUD no later than January 31 of the following year.

All payments shall be sent to WDFW, as shown below:

Dianna Neiswanger, Contracts Specialist
WDFW Olympia Office
600 Capitol Way North
Olympia, WA 98501-1091
Phone: (360) 902-2438
Email: NEISWDLN@dfw.wa.gov
FAX: (360) 902-2941

All invoices shall be sent to Chelan PUD, as shown below:

Rosana Sokolowski, Licensing and Compliance Coordinator
Chelan PUD
327 North Wenatchee Avenue
Wenatchee, Washington 98801
Direct Phone: (509) 661-4175
Fax: (509) 661-8203
Email: rosana.sokolowski@chelanpud.org

No change in contacts for payments/billings shall be made either by the WDFW or Chelan PUD without written notification reasonably in advance of the proposed change.

SECTION 7. INDEMNIFICATION

WDFW and Chelan PUD accept responsibility for any property damage, injury or death caused by the acts of omissions of their respective employees, contractors, and agents acting within the scope of their employment, to the fullest extent permitted by respective applicable laws.

SECTION 8. DISPUTE RESOLUTION

Disputes arising out of the interpretation or implementation of this Payment Agreement, including but not limited to disagreements regarding documentation, payment, or related matters, shall be resolved using the dispute resolution process provided for in Section 16 of the Settlement Agreement.

SECTION 9. TERM OF AGREEMENT

This Payment Agreement will commence upon the date of the final signature of this document and shall be concluded on October 31, 2057, one year after the expiration of the New License, or any subsequent annual licenses, whichever is later.

SECTION 10. PUBLIC INFORMATION

Any information furnished to the WDFW or to Chelan PUD under this Payment Agreement is subject to the Public Disclosure Act (R.C.W. 42.56).

SECTION 11. LEGAL AUTHORITY

The Parties have the legal authority to enter into this instrument and the institutional, managerial and financial capability (including funds from Chelan PUD sufficient to pay the required payments) to ensure proper planning, management and completion of the requirements of this Payment Agreement.

SECTION 12. PARTICIPATION IN SIMILAR ACTIVITIES

This Payment Agreement in no way restricts WDFW or Chelan PUD from participating in similar activities with other public or private agencies, organizations and individuals.

SECTION 13. AMENDMENTS

This Payment Agreement may be modified or amended by written mutual consent of Chelan PUD and WDFW. No modification or amendment of the provisions of this contract shall be effective unless in writing and signed by the authorized representatives of Chelan PUD WDFW.

SECTION 14. CONTACTS FOR PAYMENT AGREEMENT

All communications and notices regarding this Payment Agreement shall be directed to the following contacts for each Party. Nothing in this SECTION 14 modifies or amends the provisions of the Settlement Agreement or New License articles as to the appropriate contact person or notice provisions. This provision is only intended to describe the contact person for issues under this Payment Agreement.

Chelan PUD Contact:

Michelle Smith, Licensing and Compliance Manager
Chelan PUD
327 North Wenatchee Avenue
Wenatchee, WA 98801
Phone: (509) 661-4180
Fax: (509) 661-8203
Email: michelle.smith@chelanpud.org

WDFW Contacts:

Dennis Beich, Regional Director
WDFW, 1550 Alder St. NW
Ephrata, WA 98823-9699
(509) 754-6066

Tony Eldred, WDFW District Office
3860 Chelan Highway N.
Wenatchee, WA 98801-1607
(509) 662-0452/(509) 679-0655

No change in contacts shall be made either by the WDFW or Chelan PUD without written notification reasonably in advance of the proposed change. The notification shall include a justification in sufficient detail to permit evaluation of the impact on the scope of work outlined in this Payment Agreement. Changes in contacts shall be approved by modifying this Payment Agreement.

SECTION 15. MISCELLANEOUS PROVISIONS

- 15.1 By entering into this Payment Agreement, no Party shall be deemed to have made any admission or waived any contention of fact or law relating to subsequent legal proceedings. This Payment Agreement shall not be offered in evidence or cited as precedent by any party to this Payment Agreement except a proceeding to establish the existence of or to enforce, implement or interpret this Payment Agreement. This subsection shall survive any termination of this Payment Agreement.
- 15.2 Nothing in this Payment Agreement shall be construed as limiting or expanding the statutory or regulatory responsibility of either party in performing functions granted to them by law.
- 15.3 Nothing in this Payment Agreement shall be construed as expanding the liability of either Party, or altering the obligations of the Parties under the Settlement Agreement.
- 15.4 Without limiting the applicability of rights granted to the public pursuant to applicable law, this Payment Agreement shall not create any right or interest in the public, or any member of the public, as a third-party beneficiary of this Agreement and shall not authorize any non-party to maintain a suit at law or equity pursuant to this Payment Agreement. The duties, obligations and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.
- 15.5 During the performance of this agreement the Parties agree to abide by the terms of Executive Order 11246 on nondiscrimination and will not discriminate against any person because of race, color, religion, sex or national origin.

SECTION 16. AUTHORIZING SIGNATURES

Each signatory to this Payment Agreement certifies that he/she is authorized to execute this Payment Agreement and to legally bind the Party he/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.

IN WITNESS HEREOF, the parties have signed their names and executed this Payment Agreement:

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PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY:

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE: