

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

9 1593

Public Utility District No. 1 of ) Project No. 2149-002  
Douglas County, Washington )

STIPULATION TO MODIFY  
ADULT FISH PASSAGE STUDIES CALLED FOR  
IN THE WELLS HYDROELECTRIC PROJECT  
SETTLEMENT AGREEMENT

The parties to the Wells Hydroelectric Project Settlement Agreement ("Settlement Agreement") dated October 1, 1990, and approved by the Federal Energy Regulatory Commission ("Commission") by order dated January 24, 1991 (Public Utility District No. 1 of Douglas County, Washington, 54 FERC ¶61, 056), hereby unanimously agree to modify the studies of adult salmon delay and mortality at the Wells Hydroelectric Project called for by Subsection III.G. of the Settlement Agreement. Section (E)(c) of the Commission's Order Approving Settlement Agreement requires Commission approval of all changes in study plans. The Settlement Agreement also denotes in Subsection V.A. that all study designs and modifications to study designs will be subject to agreement by all parties.

Subsection IV.A.3.(c)(2) of the Settlement Agreement provides for adjustment of hatchery-based compensation requirements to reflect any unavoidable adult losses identified by the studies conducted under Subsection III.G.

Technical representatives of the parties on the Wells Project Coordinating Committee (Subsection V.A., page 34) have

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unanimously agreed that it is infeasible to study the adult mortality of salmon at the Wells Hydroelectric Project at this time. Members of the Committee further agree that a comprehensive adult passage study would provide valuable information about any adult passage problems. An adult passage study, using radio telemetry, has been designed by the Committee and by the Rock Island and Mid-Columbia Coordinating Committees. The study would investigate adult passage through all non-federal projects in the Mid-Columbia, from Priest Rapids through Wells.

Public Utility District No. 1 of Douglas County, Washington ("Douglas") shall participate in and fund its share of an adult passage study in the Mid-Columbia using radio telemetry as outlined in the April 30, 1992, Request for Proposals (RFP), a copy of which is attached as Appendix A to this Stipulation. This proposed 1993 study using spring and summer chinook, the completed 1992 study using sockeye at the Wells Project, and a Wells Coordinating Committee-approved steelhead passage study in 1994, comprise the adult passage study program at the Wells Project. If the Wells Coordinating Committee determines that the results of the studies in 1992 and 1993 demonstrate that there are not unacceptable delays and/or losses at the Wells Project, and that the 1994 steelhead passage study demonstrates that there are not unacceptable losses at the Wells Project, then Douglas' obligations under Sections III.G and IV.A.3(c)(2) shall be deemed satisfied and discharged in full. If the adult passage study program identifies

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delays and/or losses for sockeye and/or chinook salmon and/or losses for steelhead which the Coordinating Committee deems unacceptable, Douglas will comply with the provisions of Section III.G.2 of the Settlement Agreement. If the Coordinating Committee determines that there are unavoidable and unmitigated adult losses, there will be an adjustment to the compensation requirement as provided in Section IV.A.3(c)(2). Estimates of the level(s) of adult losses will be made by the Coordinating Committee as provided in Section IV.A.3(c)(2).

By affixing their signatures on the signature pages attached hereto, the undersigned are certifying that they are authorized to consent to this agreement on behalf of the party they represent.

Douglas agrees to file a copy of this stipulation with the Commission and to request Commission approval of the modification. All parties to the Settlement Agreement respectfully request an expedited FERC approval of the modification set forth in this stipulation.

Dated this 7<sup>th</sup> day of April, 1993.

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# Exhibit A

## Appendix A

### Radio Telemetry Studies of Adult Salmonid Passage at Mid-Columbia Hydroelectric Projects

#### Study Outline

**Description:** The passage of spring and summer chinook salmon adults through the Mid-Columbia dams and reservoirs will be studied by radio tracking of tagged fish. The purposes of the study are to determine the length of time tagged fish take to pass each project and reservoir, the routes fish use to find fishway entrances, and to account for discrepancies in fish counts between dams. The study is expected to last at least two years, with the first year devoted to monitoring fish movements in response to the usual range of project and fishway operating conditions. Contingent on first year study results, the second year of study may include tests of fish passage under specific project or fishway operating conditions.

**Objectives:** Determine the date and time of arrival at each project's tailrace, entry into the fishway, arrival at intermediate points, and exit from the fishway. Determine the rates of fallout (number of times a fish may move in and out of fishway entrances before ascending and exiting the fishway) and fallback (fish that ascend and exit a fishway, only to return to the tailrace via the powerhouse or spillway). Determine the eventual fate (arrival at next project's tailrace, reservoir sighting or tributary turnoff) of tagged fish after passing or falling back over each project. Determine the proportion of fish using each fishway entrance (or group of entrances) at the projects.

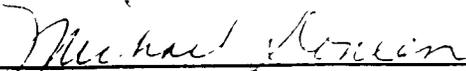
**Specified Equipment and Methodology:** The radio tags and receiving equipment will be the Digitally Encoded Radio Telemetry System, manufactured by Lotek Engineering Inc. The tags will include motion sensors. Fish will be collected and tagged at John Day Dam. An adult fish trap will be provided apart from this contract. The number of spring and summer chinook tagged will be sufficient to ensure arrival of a minimum of 100 tagged fish of both runs combined at Wells Dam (average 5% of spring chinook and average 20% of summer chinook passing John Day Dam). Mobile surveys will be done to locate fish in reservoirs between Mid-Columbia dams once per week. Fixed antennas will be placed as needed to record fish arrival at the locations stated in the objectives.

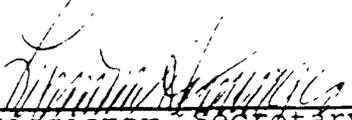
**Reporting Requirements:** The contractor will prepare weekly summaries of tag detections at each hydroelectric project, including preliminary analysis to determine elapsed time between detection of fish in the tailrace and exit from fishway to forebay (mean, range and standard deviation), proportion of fish using each major entrance, incidence of multiple entry into lower fishway (fallout), incidence of fallback, and incidence of fish detected in fishway that are not detected exiting the fishway. A preliminary data report summarizing all Columbia River detections and tributary turnoff will be submitted by October 15. A draft annual report will be submitted by December 1.

## Outline of Specific Tasks

- I. Determine tag needs and logistics.
  - A. Determine number of fish to tag of each species and tag size. Procure tags.
  - B. Finalize trapping/tagging site with USCOE. Execute contract for use of trapping facilities.
  - C. Line up tagging equipment, personnel, support services, etc.
  - D. Execute the tagging program.
  
- II. Determine tag tracking needs and logistics.
  - A. For each dam, develop the fixed antenna array needed to track tagged fish movements in the project tailrace, at fishway entrances, within the fishway and exiting the fishway. Determine the number of receivers and data loggers needed for the antenna array.
  - B. For each reservoir and the reach below Priest Rapids Dam, determine the access route and equipment needed to pick up tagged fish location with mobile equipment once per week. Determine number and type of mobile units needed.
  - C. For each tributary and perhaps selected reservoir sites, develop the fixed antenna and receiver array needed. Determine the number of receivers and data loggers needed.
  - D. Procure receivers, data loggers, antennas, housings and power supplies, rental of motor vehicles, boats, and flight services. Install and test tracking equipment.
  
- III. Determine personnel needs.
  - A. Determine number of people needed on-site for maintenance of equipment, downloading of data, mobile survey work, and data organization and preliminary processing.
  - B. Determine the supervisory structure, data processing requirements, support staff, and people responsible for reporting the results.
  - C. Procure personnel, necessary office space and supplies. Execute the adult passage study and reporting.

FOR PUBLIC UTILITY DISTRICT NO. 1  
OF DOUGLAS COUNTY, WASHINGTON:

  
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Commissioner, President

  
\_\_\_\_\_  
Commissioner, Secretary

Commissioner Davis, Absence excused  
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Commissioner

FOR PUGET SOUND POWER & LIGHT COMPANY:

  
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FOR PACIFIC POWER & LIGHT COMPANY:

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FOR THE WASHINGTON WATER POWER COMPANY:

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FOR THE PORTLAND GENERAL ELECTRIC  
COMPANY:

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FOR THE WASHINGTON DEPARTMENT OF  
FISHERIES:

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STIPULATION TO MODIFY ADULT  
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FOR PUBLIC UTILITY DISTRICT NO. 1  
OF DOUGLAS COUNTY, WASHINGTON:

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Commissioner

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Commissioner

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Commissioner

FOR PUGET SOUND POWER & LIGHT COMPANY:

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FOR PACIFIC POWER & LIGHT COMPANY:

*Brian D. Siskely*

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FOR THE WASHINGTON WATER POWER COMPANY:

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FOR THE PORTLAND GENERAL ELECTRIC  
COMPANY:

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FOR THE WASHINGTON DEPARTMENT OF  
FISHERIES:

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Commissioner

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FOR PUGET SOUND POWER & LIGHT COMPANY:

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FOR PACIFIC POWER & LIGHT COMPANY:

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FOR THE WASHINGTON WATER POWER COMPANY:

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FOR THE PORTLAND GENERAL ELECTRIC  
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FOR THE WASHINGTON DEPARTMENT OF  
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FOR PACIFIC POWER & LIGHT COMPANY:

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FOR PUGET SOUND POWER & LIGHT COMPANY:

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FOR THE WASHINGTON WATER POWER COMPANY:

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FOR THE PORTLAND GENERAL ELECTRIC  
COMPANY:

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FOR THE WASHINGTON DEPARTMENT OF  
FISHERIES:

*Judith M. Muckant*

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FOR THE WASHINGTON DEPARTMENT OF  
WILDLIFE:

*Curt Smith*

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FOR THE OREGON DEPARTMENT OF  
FISH AND WILDLIFE:

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FOR THE NATIONAL MARINE  
FISHERIES SERVICE:

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FOR THE U.S. FISH & WILDLIFE SERVICE:

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FOR THE CONFEDERATED TRIBES AND BANDS  
OF THE YAKIMA INDIAN NATION:

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FOR THE CONFEDERATED TRIBES OF THE  
UMATILLA INDIAN RESERVATION:

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FOR THE CONFEDERATED TRIBES OF THE  
COLVILLE RESERVATION:

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FOR THE OREGON DEPARTMENT OF  
FISH AND WILDLIFE:

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*Yakima Indian Nation*

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FOR THE NATIONAL MARINE  
FISHERIES SERVICE:

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FOR THE U.S. FISH & WILDLIFE SERVICE:

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FISH AND WILDLIFE:

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FOR THE NATIONAL MARINE  
FISHERIES SERVICE:

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FOR THE U.S. FISH & WILDLIFE SERVICE:

*Mani L. Blumenthal*

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FOR THE CONFEDERATED TRIBES AND BANDS  
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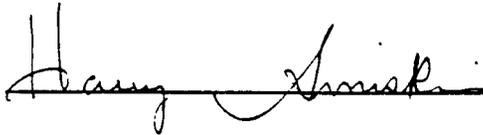
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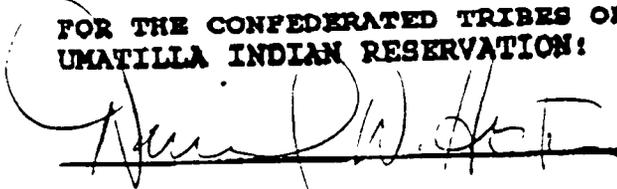
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FOR THE CONFEDERATED TRIBES OF THE  
COLVILLE RESERVATION:

A handwritten signature in black ink, appearing to read "Dale L. Galt", is written over a horizontal line.

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Ken Eikenberry

# ATTORNEY GENERAL OF WASHINGTON

HIGHWAYS LICENSES BUILDING • PB 71 • OLYMPIA WA 98504-8071

## MEMORANDUM

March 25, 1991

TO: Joseph Blum, Director of Fisheries  
Curt Smitch, Director of Wildlife

FROM: William C. Frymire, Assistant Attorney General

SUBJECT: Order Approving Wells Settlement Agreement

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*duplicate*

*B.D.*

Attached is a recent FERC Order approving the Wells Project Settlement Agreement. The order adopts in total, the Settlement Agreement filed by the Joint Fisheries Parties (WDF, WDW, ODF&W, NMFS, USFWS, Yakima Tribes, Umatilla Tribes and Colville Tribes), Public Utility District No. 1 of Douglas County (Douglas PUD), and a number of Douglas PUD's power purchasers.

The Wells Project is the northern most of the five main stem Columbia dams owned by several public utility districts. Wells Project is owned and operated by Douglas PUD.

We filed this Settlement Agreement along with an Offer of Settlement with FERC on October 30, 1990. The Settlement Agreement was the result of a great deal of hard work and many long negotiating sessions. Your agencies were ably represented by Rod Woodin of Fisheries and Gary Fenton and Tony Eldred of Wildlife. Of the many agency and tribal staff who spent a long time in these negotiations, Rod Woodin deserves particular credit for the detailed work he did in negotiating the settlement.

FERC has been reviewing the Settlement Agreement since we filed it with them in October, 1990. In November, 1990, FERC staff filed comments recommending adoption of the Settlement Agreement. In early December, 1990, the presiding administrative law judge certified the Settlement Agreement to the Commission for final decision. The attached Commission order approving the Settlement Agreement is their final decision.

We are very pleased with the FERC adoption of the agreement. We continue to believe the agreement is a very good agreement for mitigation and compensation of the project impacts.

FERC's adoption of the Settlement Agreement in full, is also very important to us because this is the fourth time FERC has adopted our complex comprehensive agreements without making substantive changes. We have been able to use our Wells and

ATTORNEY GENERAL OF WASHINGTON

Blum/Smitch  
March 25, 1991  
Page 2

prior Settlement Agreements; Vernita Bar, Rock Island, and South Fork Tolt, as models for our current negotiations with other utilities. The Skagit negotiations are an example of negotiations in which we have used the Wells Settlement Agreement as a model and basis for our standards.

It is unfortunate that Grant County PUD is unwilling to negotiate mitigation and compensation at their Priest and Wanapum dams in the same spirit as was Douglas PUD. Grant County PUD's Priest Rapids Project is currently scheduled for hearing this July.

In conclusion, the adoption of the Settlement Agreement by FERC terminates the Wells part of the Mid-Columbia proceeding. It is my understanding that the elements of Wells agreement are being implemented without major problems. I would be happy to answer any questions or provide additional details, if you desire. Please do not hesitate to call me at (206) 586-2428.

WDF:rad

Attachment

cc: Rob Costello  
Chris Drivdahl, Wildlife  
Kahler Martinson, Fisheries  
Rod Woodin, Fisheries  
Tony Eldred, Wildlife

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Docket Nos. P-2149-002 and  
E-9569-002

- 2 -

Before Commissioners: Martin L. Allday, Chairman;  
Charles A. Trabandt, Elizabeth Anne Moler,  
Jerry J. Langdon and Branko Terzic.

Public Utility District No. 1 ) Project No. 2149-002  
of Douglas County, Washington ) Docket No. E-9569-002

ORDER APPROVING SETTLEMENT AGREEMENT

(Issued January 24, 1991)

This is the most recent of a series of settlement agreements that have emerged from our consolidated proceeding on anadromous fish issues on the mid-Columbia River in Washington State. Before us today is a comprehensive, uncontested, long-term settlement of such issues arising out of the operation of Wells Project No. 2149, located in Douglas and Okanogan Counties, Washington. We will approve the settlement, with clarifications and conditions that are consistent with our approval of related recent settlements.

BACKGROUND

In 1979, the Commission consolidated and set for hearing in Docket No. E-9569 a set of related petitions seeking modification of the operation of five licensed projects on the mid-Columbia River to protect and enhance salmon and steelhead trout. 1/ The petitions were filed by various state and federal fishery agencies and Indian tribes, and sought to protect anadromous fish migration downstream through project facilities. Wells Project No. 2149 was one of the five projects. The proceeding has generated a series of interim and long-term settlements. Most recently, the Commission approved long-term settlements resolving the Vernita Bar Phase (Priest Rapids Dam) of the proceeding, 2/ and issues involving Rock Island Project No. 943-002 (Chelan County). 3/ We also have had occasion to approve a settlement of fishery issues in Project No. 2149-017, a related proceeding

- 1/ 6 FERC ¶ 61,210 (1979).  
2/ 45 FERC ¶ 61,401 (1988).  
3/ 46 FERC ¶ 61,033 (1989).

involving the raising of the surface elevation of the reservoir. 4/

On October 30, 1990, the parties in the above-captioned proceeding filed an offer of settlement with the presiding administrative law judge. On November 19, 1990, the Commission's trial staff filed comments in support of the settlement. On December 4, 1990, the presiding administrative law judge certified the settlement and the staff's comments to the Commission for decision.

The parties to the settlement are Public Utility District No. 1 of Douglas County, Washington (the PUD); Puget Sound Power & Light Company, Pacific Power and Light Company, the Washington Water Power Company, and Portland General Electric Company (collectively, the Power Purchasers); and the Washington Department of Fisheries, the Washington Department of Wildlife, the Oregon Department of Fish and Wildlife, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, the Confederated Tribes and Bands of the Yakima Indian Nation, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of the Colville Reservation (collectively, the Joint Fishery Parties).

As summarized by the trial staff in its comments, the settlement agreement provides for the following.

The agreement has a term from its execution date to the expiration of the license (2012) plus any annual licenses. During that time, the agreement is intended to satisfy the PUD's obligations under Article 41 of the license. The agreement is not subject to modification prior to March 1, 2001. There are procedures (discussed, in part, below) for the resolution of disputes.

The PUD has agreed to provide juvenile and adult fish passage and a hatchery program. The juvenile fish passage system will be a program of controlled spills using five bypass baffles. The agreement specifies criteria for the operation, timing, and performance of the bypass system. The adult passage system will use the existing fish ladder. Criteria are established for water depth over the weirs, entrance gate settings, and jet and trashrack operations.

The PUD's hatchery program is designed to mitigate fish passage losses at the Wells Project. The physical structures include adult collection sites, a central hatchery facility and acclimation facilities. The amount of compensation is to be

- 4/ 30 FERC ¶ 61,285 (1985).

determined by a formula using a five-year running average of adult runs by species. In 1991, the PUD will produce spring chinook yearlings, sockeye juveniles, and steelhead smolts. The production will then be evaluated and, based on those results, the PUD will either increase sockeye production or eliminate sockeye production and add production of summer chinook juveniles.

At completion of a project juvenile mortality/survival study, adjustment will be made to production levels, except for steelhead, to reflect the differences between the mortality rate developed in the study and the mortality rate assumed in developing the original production amounts. Adjustments will also be made to compensate for any unavoidable and unmitigated adult losses.

Once the five-year rolling average estimate of the juvenile run size reaches 110 percent of the estimated juvenile production used to establish the original production, the Joint Fisheries Parties can request a compensation increase in juvenile run size, except for steelhead.

The settlement also provides for continued studies and evaluations of the program. Studies will also be conducted on the potential unutilized habitat and on establishing sockeye in new habitat. The studies will be conducted under the direction of the Wells Project Coordinating Committee, which will be composed of one technical representative of each signatory to the agreement.

The Joint Fisheries Parties agree with the PUD that the Wells Project portion of the proceeding in Docket No. E-9569 should be terminated. These parties also agree to support the PUD when it requests relicensing of the project. The Joint Fisheries Parties further are of the view that the PUD's performance of its responsibilities under the agreement satisfies the PUD's fish protection and compensation obligations under the Federal Power Act and all other applicable laws and regulations.

In their offer of settlement, the parties indicate that it represents the culmination of two years of intensive negotiation, and that it "is intended to resolve, at least until March 1, 2004, the anadromous fish issues" pending in the proceeding.

The trial staff, in its comments supporting the settlement, requests that the Commission "make clear that the Commission's authority to require changes in structures and operations, should the need arise, is preserved" during the period when the settlement is not subject to modification. The trial staff also suggests adding certain reporting requirements to enable the

Commission to monitor compliance with the settlement. The trial staff does not propose modification of any of the substantive terms of the settlement, and no party opposes the settlement.

#### DISCUSSION

As we noted in approving an earlier settlement in this proceeding, <sup>5/</sup> the issues have been thoroughly ventilated and debated, and the settlement agreement is the result of a concerted effort to resolve these important matters in a way that is acceptable to all of the participants. We commend the participants for their efforts. We believe the settlement agreement is in the public interest, and we will adopt it. The agreement balances the continued operation of the project with an effective, long-term program for protection, mitigation, and enhancement of the fishery resources affected by the project.

We will clarify the dispute resolution provisions of the settlement agreement in the same manner as we did in our above-cited 1988 and 1989 orders approving related settlements. <sup>6/</sup> Section I.D. of the settlement agreement provides that, if the Wells Project Coordinating Committee cannot resolve a dispute among the signatories and if the amount in controversy is less than \$325,000, then any party may request the Commission to refer the dispute to (1) the presiding judge in the mid-Columbia Proceeding, Docket No. E-9569, (2) the Commission's Chief Administrative Law Judge, or (3) the Division of Project Compliance and Administration, Office of Hydropower Licensing, "in the order listed," for expedited review. For the reasons stated in our prior orders, the Commission will in most cases refer such disputes to the Division of Project Compliance and Administration, and will use its best efforts to resolve such disputes within the time frames set forth in the agreement. In appropriate circumstances, such as when there are material facts in dispute, we may refer a matter to an administrative law judge. In either event, the initial staff decision will be subject to de novo review by the Commission. And, as we emphasized in our 1989 order, any resolution by the Coordinating Committee, or a third party, pursuant to Section I.D. that contemplates a change in the license or in the operation of the project thereunder shall result in the filing of an appropriate application therefor by the licensee as soon as practicable after the dispute is resolved.

<sup>5/</sup> See 45 FERC at p. 62,259.

<sup>6/</sup> See 45 FERC at pp. 62,259-60 and 46 FERC at p. 61,197.

As we noted in our prior orders with respect to the settlements approved therein, <sup>7/</sup> approval of the settlement agreement does not affect the Commission's authority, as reserved in the license, to require, after notice and opportunity for hearing, alterations to project facilities or operations that may be warranted by changed circumstances. We intend that any such reserved authority would be exercised only after full consideration of the benefit sought to be achieved thereby, balanced against the possibility that as a consequence the settlement could be voided, thereby eliminating the benefits obtained thereunder. If any party voids the agreement, the licensee shall, within 30 days, so inform the Commission in writing.

Finally, we will adopt the reporting provisions proposed by the trial staff in its comments.

The Commission orders:

(A) The settlement agreement filed in this proceeding on December 4, 1990, is approved and made a part of the license for Wells Project No. 2149.

(B) The Wells Project No. 2149 portion of the proceeding in Docket No. E-9569 is terminated.

(C) The Commission's approval of the settlement agreement shall not constitute approval of, or precedent regarding, any principle or issue in these or any other proceedings.

(D)(1) Whenever a violation of the settlement agreement occurs, the licensee shall, within 30 days of the occurrence, file with the Commission, and send a copy to the Regional Office, a report containing an explanation of the circumstances surrounding the violation and the licensee's plan to avoid any repetition thereof.

(2) Whenever a dispute arises under Section I.D. of the settlement agreement that is resolved without referral to the Commission, the licensee shall, within 30 days, file with the Commission, and send a copy to the Regional Office, a report containing an explanation of the dispute and the nature of the resolution.

<sup>7/</sup> See 45 FERC at p. 62,260 and 46 FERC at p. 61,198.

(E) The licensee: (a) shall notify the Commission and the Commission's Portland Regional Office of all meetings of the Coordinating Committee; (b) shall file functional design drawings, including all information required by 18 C.F.R. § 380.3, at least 90 days prior to construction of any facilities under the agreement; (c) shall file for approval all changes in monitoring, evaluation, study and production plans, not specified in the agreement; and (d) shall file an annual report. The annual report shall be filed on April 30 of each year and shall include:

- (1) A description of plans developed during the previous year for any studies, evaluations, monitoring programs, production programs, system operations, or fish passage efforts;
- (2) The results of all studies, evaluations and monitoring of the previous year;
- (3) An outline of all actions taken towards fulfillment of the terms of the agreement;
- (4) An explanation of the reasons for exercising specific alternatives stipulated in the agreement;
- (5) A chronology of compliance for the previous year, outlining schedule changes, the reasons for the changes, and documentation that the Joint Agencies were consulted prior to implementation of the changes;
- (6) A schedule of activities for the next year; and,
- (7) Summaries or meeting minutes from each of the meetings of the Coordinating Committee for the previous year.

(F) This order is final unless a request for rehearing is filed within 30 days from the date of its issuance, as provided in Section 313(a) of the Federal Power Act. The filing of a request for rehearing does not operate as a stay of the effective

Docket Nos. P-2149-002 and  
E-9569-002

- 7 -

date of this order or of any other date specified in this order,  
except as specifically ordered by the Commission. The licensee's  
failure to file a request for rehearing shall constitute  
acceptance of the order.

By the Commission.

( S E A L )

*Lois D. Cashell*  
Lois D. Cashell,  
Secretary.

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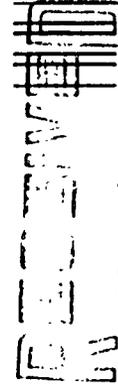
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

OFFICIAL BUSINESS  
PENALTY FOR PRIVATE USE, \$300

RECEIVED  
FEB 4 1991  
OFFICE OF ATTORNEY GENERAL  
FISH & WILDLIFE DIV. OLYMPIA



POSTAGE AND FEES PAID  
FEDERAL ENERGY  
REGULATORY COMMISSION  
FERC 35





DEPARTMENT OF GAME

608 South Elliott Ave.  
Wenatchee, WA 98801

Dave Gufler  
Jim DeShazo ✓  
Ray Duff

July 24, 1984

Gentlemen:

You have all requested copies of whatever fish and wildlife agreements we have with Douglas PUD for Wells Dam mitigation. Attached is a copy of the original fish agreement. I understand (understood...understead?) from Merrill Spence that Region 2 and the PUD later amended the original agreement. Specifically, I understand the main points of change were 50,000 lbs of steelhead and 20,000 rainbow, in place of 325,000 smolts and 30,000 lbs of rainbow annually. Ken Williams doesn't know anything about a new contract or formal amendment. He and Joe Foster are going to check their files and send me a copy if they come up with something.

On the wildlife agreement, I don't have a copy; only the FERC Order Approving Settlement, which is so condensed as to be of little value. I am contacting Tillett/Blomstrom to check Oliver's old files. If there's a copy of the wildlife agreement anywhere, it's probably there. If/when I can produce something additional, I'll send it along to you.

$$\begin{array}{r} 54,000 \\ 6 \overline{) 325,000} \end{array} + 30,000 = 84,000 \text{ lbs}$$

UNITED STATES OF AMERICA  
FEDERAL POWER COMMISSION

Toney  
6  
[Stamp]  
AUG 10 1972

Before Commissioners: John N. Nassikas, Chairman;  
Albert B. Brooke, Jr., and  
Pinkney Walker.

Public Utility District No. 1 of ) Project No. 2149  
Douglas County, Washington )

ORDER APPROVING SETTLEMENT

(Issued August 10, 1972)

On July 12, 1962, a license was issued to Public Utility District No. 1 of Douglas County, Washington (Licensee), authorizing construction of the Wells Project No. 2149. (28 FPC 128). By Commission Order issued September 18, 1962, that license was amended as to the provisions relating to the mitigation of losses to fish and wildlife resources which may result from project construction, alteration, or operation. (28 FPC 492). Pertinent articles of the license as amended read as follows:

Article 41. The Licensee shall construct, maintain and operate such protective devices and shall provide such measures and facilities for mitigating losses to fish and wildlife resources as may result from project construction, alteration, or operation and shall comply with such reasonable modifications of the project structures and operation in the interest of fish and wildlife resources, provided that such modifications shall be reasonably consistent with the primary purpose of the project, as may be prescribed hereafter by the Commission upon its own motion or upon recommendation of the Secretary of the Interior or the Washington State Departments of Fisheries and Game after notice and opportunity for hearing and upon a finding that such modifications are necessary and desirable and consistent with the provisions of the Act: Provided further, that subsequent to approval of the final design drawings prior to commencement of construction no modifications of project structures in the

interest of fish and wildlife resources which involve a change in the location, height or main structure of a dam, or the addition of or changes in outlets at or through a dam or a major change in generating units, or a rearrangement or re-location of a powerhouse, or major changes in a spillway structure shall be required.

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

On June 7, 1971, the Washington State Department of Game (Game) filed its Petition for Hearing, on the issues of the extent of loss of fish and wildlife due to construction and operation of the project, and measures to be required to mitigate losses in accordance with Articles 41 and 43 of the license for Project No. 2149.

On June 13, 1972, an Order Providing for Hearing and Settlement Dates was issued, providing for public hearing to commence on July 25, 1972, concerning the establishment of wildlife losses directly attributable to the construction of Wells Project No. 2149, and providing for enlargement of the proceedings in the

event the parties could not reach a contemplated agreement as to game fish losses and mitigation thereof. The order noted that negotiations conducted after the filing of the request for emergency hearing had proceeded to a tentative agreement regarding necessary game fish mitigation measures, and that it was anticipated that a formal agreement would be forthcoming making a hearing on those issues unnecessary.

By order issued on June 13, 1972, the date for commencement of public hearing was extended to August 15, 1972. It was again noted that the parties were approaching an agreement on the matter of mitigation of game fish losses.

On July 20, 1972, the Licensee and the State of Washington Department of Game reached a settlement, and filed a formal agreement dated July 17, 1972, attached hereto as Appendix "A", and by this reference made a part hereof, pertaining to the mitigation of fish losses, reciting that the settlement was the result of extended negotiations regarding the Licensee's obligation for game fish losses under its license, particularly Article 41 thereof.

The substance of the agreement delineates the obligations of the Licensee, with respect to the mitigation of game fish losses in order to successfully comply with the mandates of Article 41 during the period of the license. The agreement calls for the construction and maintenance of both a fish hatchery and a rearing pond, constructed in accordance with Department of Game design criteria, for which the Licensee shall be responsible for continuously providing water of adequate quality and quantity to carry out the program. Title to the fish hatchery lands, related equipment, rearing pond and related facilities, and the property presently owned by the District between the upstream and downstream dike of Washburn Pond and the existing Washington State Primary Highway shall remain in the District and shall not be utilized in any manner by the District which is not compatible with the fish facilities.

The mitigation program itself will commence with the Department rearing 30,000 pounds of rainbow and 325,000 steel-head migrants at the hatchery for which the District will reimburse it on an actual cost basis. The agreement provides for variations in the program upon mutual consent in the event

that the steelhead migrant rearing program is mutually agreed to be unsatisfactory or the Department subsequently determines the rearing pond does not afford satisfactory trout management. Provision is also made for operation and maintenance of the hatchery and rearing pond, for reimbursement and budgetary considerations, for establishment of a reporting and investigating system, and for residence facilities.

Section 7 of the Agreement sets forth a program of streambank access, requiring the District to acquire at its own expense a total of 14 miles of streambank, as defined in the agreement, on the Methow, Okanogan, or Similkameen Rivers or their tributaries, and up to 10 access areas for parking, etc., at its own expense. There is also provision for an initial payment by the District for streambank easements or access.

The Commission finds:

(1) It is appropriate and in the public interest that the issues of the extent of game fish losses and the mitigation thereof occasioned by the construction of Wells Project No. 2149 be resolved by way of a settlement in the form of a formal agreement dated July 17, 1972, attached hereto and designated above as appendix "A", filed by the Licensee and the Department of Game.

(2) Approval of the agreement as compliance by the Licensee with Article 41, with regard to game fish losses and mitigation is appropriate and consistent with the Federal Power Act.

The Commission orders:

The agreement dated July 17, 1972, as adopted by Public Utility District No. 1 of Douglas County Washington and the State of Washington Department of Game filed with this Commission and attached hereto as Appendix "A" is hereby approved.

By the Commission.

( S E A L )

Mary B. Kidd,  
Acting Secretary.

1 RESOLUTION NO. 3039

2 A RESOLUTION AUTHORIZING EXECUTION OF AGREEMENT  
3 WITH THE STATE OF WASHINGTON DEPARTMENT OF GAME  
4 FOR MITIGATION OF GAMEFISH LOSSES IN CONNECTION  
5 WITH THE WELLS HYDROELECTRIC PROJECT

6 RECITALS:

7 (1) The District and the State of Washington Department  
8 of Game have been in negotiations over an extended period of time  
9 pertaining to finalizing an agreement setting forth the District's  
10 obligation for mitigation of gamefish losses under its License  
11 No. 2149 from the Federal Power Commission and, in particular,  
12 Article 41 thereof. Such an agreement has been completed,  
13 approved by personnel of both parties, and executed by the State  
14 of Washington Department of Game. A copy of said agreement is  
15 attached hereto and by reference made a part hereof.

16 (2) The Commissioners of the District and District  
17 personnel, being thoroughly apprised of the District's obligation  
18 under its License, believe the proposed agreement meets the Dis-  
19 trict's obligation, and it is for the best interests of the Dis-  
20 trict that it execute the same and thereby authorize all expendi-  
21 tures required thereunder.

22 NOW, THEREFORE, BE IT RESOLVED that that certain agree-  
23 ment hereinabove referred to between the District and the State  
24 of Washington Department of Game pertaining to mitigation of game-  
25 fish losses in connection with the Wells Hydroelectric Project  
26 as required by License No. 2149 from the Federal Power Commission  
27 is hereby approved and the Commissioners of the District are  
28 hereby authorized to execute the same.

29 IT IS FURTHER RESOLVED that all payments required to be  
30 made thereunder are hereby authorized and approved.  
31

UNANIMOUSLY ADOPTED this 17th day of July, 1972.

*Howard Prey*  
Howard Prey, President

*Lloyd McLean*  
Lloyd McLean, Vice President

ATTEST:

*Michael Doneen*  
Michael Doneen, Secretary

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A G R E E M E N T

CONFORMED COPY

THIS AGREEMENT is made and entered into this 17th day  
of July 19 72 by and between:

PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY, WASHINGTON,  
hereinafter referred to as "the District",

and

THE STATE OF WASHINGTON, DEPARTMENT OF GAME, hereinafter referred  
to as "the Department".

R e c i t a l s

1. The District is a municipal corporation organized under the laws of the State of Washington, and is authorized under Federal Power Commission License No. 2149 to construct and operate the Wells Hydroelectric Project on the Columbia River;
2. The Department, as an agency of the State of Washington, is charged with the responsibility of preserving the sports fishery and wildlife on the Columbia River within the area affected by the Wells Hydroelectric Project, and with the responsibility of preserving the migration of steelhead in the Columbia River;
3. Federal Power Commission License No. 2149, Article 41, provides as follows:

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

4. The parties desire to enter into this agreement in order to define the responsibilities and obligations of the District for the period of the License and to provide a means of meeting these responsibilities and obligations under Article 41 of the License set forth above by the methods and pursuant to the limitations defined in this agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

SECTION 1. DEFINITIONS

- (a) "Steelhead migrants" shall mean steelhead trout six (6) inches in length or greater.
- (b) "Catchable-size rainbow trout" shall mean rainbow trout six (6) inches in length or greater.
- (c) "Fingerlings" shall mean rainbow or steelhead trout less than six (6) inches in length.
- (d) "Program" shall mean the hatching, raising, and planting of the steelhead migrants and rainbow trout, together with the obtaining of eggs in connection therewith, provided for under the terms of this agreement.
- (e) "Streambank easement" shall mean corridor paralleling the stream edge and twenty-five (25) feet in width from the water's edge.

SECTION 2. FISH HATCHERY

The District has constructed and will maintain a fish hatchery and lands owned by it in Chelan County, Washington, adjacent to the Wells Hydroelectric Project (F.P.C. No. 2149).

The hatchery has been constructed in accordance with the design criteria of the Department of Game. The hatchery shall have sufficient capacity and equipment to hold steelhead brood stock and hatch and rear steelhead fingerlings for transfer to Washburn Island and to hatch, raise and release steelhead migrants and rainbow trout to fulfill the District's obligation for gamefish mitigation.

Title to hatchery lands and related equipment shall be and remain in the District.

It shall be solely the District's responsibility to continuously supply water to the hatchery of adequate quality and quantity to insure that the hatchery will be able to carry out the program.

The hatchery facility and well water supply are designed for the joint use thereof by the Department of Game and the Department of Fisheries and shall be so used insofar as is practicable.

SECTION 3. REARING POND

The District has constructed and shall maintain a rearing pond and appurtenant facilities on lands owned by it at Washburn Island in Okanogan County, Washington.

The rearing pond has been designed in cooperation with the Department of Game to have sufficient capacity and equipment to rear, capture and release adequate migrant steelhead each year to fulfill the District's obligation for steelhead mitigation. The District shall be responsible to supply water of adequate quality and quantity for said facilities.

Title to the rearing pond and related facilities and that property presently owned by the District between the upstream and downstream dike of Washburn Pond and the existing Washington State Primary Highway to the Northeast shall be and remain in the District and shall not be utilized in any manner by the District which is not compatible with the fish facilities.

SECTION 4. THE PROGRAM

30,000 lb,

325,000 <sup>at</sup> S14 M16

The program shall commence with the Department rearing 30,000 pounds of rainbow and rearing 325,000 steelhead migrants at the hatchery and the Washburn Island rearing pond constructed by the District. The District shall reimburse the Department for rearing the 30,000 pounds of rainbow of age one year or less, on the basis of actual cost incurred by the Department. These costs shall include, but not be limited to salaries of personnel, feed and planting of fish. When the steelhead migrant rearing program at the rearing pond is mutually agreed to be a satisfactory program, all steelhead migrants will be reared at the rearing pond and catchable rainbow trout at the hatchery located adjacent to the project. If it is determined by mutual agreement that rearing of steelhead at the rearing pond is not a satisfactory means for accomplishing the desired results, the District will provide other facilities mutually agreed upon to rear the required number of steelhead necessary to produce 325,000 migrants at Wells Dam. The District will then be required to maintain the existing pumping facilities and dikes in good repair and pay costs of pumping. In the event that the Department subsequently determines the rearing pond does not afford satisfactory trout management, alternative management program mutually agreed upon may be instituted.

If at such time as the Department and District mutually deem it advisable, all or a portion of steelhead migrant program may be transferred to the catchable rainbow trout program on an equivalent weight basis.

SECTION 5. OPERATION AND MAINTENANCE OF HATCHERY AND REARING POND REIMBURSEMENT FOR COSTS

The District shall reimburse the Department for Program operation, maintenance and replacement expenses of the hatchery and rearing pond within the limits of approved annual budgets for the life of the Project. Reimbursement for items not contained in the annual budget shall be only by the mutual consent of the parties. If the District is capable of and desirous of doing certain parts of the maintenance work, it shall be permitted to do so, provided that if the District fails to perform maintenance work it has agreed to perform, the Department may, after first giving the District notice, do the necessary maintenance work at the expense of the District.

The District shall reimburse the Department on a monthly basis, or as the parties may otherwise agree, for the entire reasonable and necessary direct administration costs incurred in carrying out the Program. All of such costs shall be itemized and shall include, but not be limited to, the cost of all eggs, feed, labor and other items of the Program.

The Department shall operate said hatchery and rearing pond in an efficient, economical and workmanlike manner and consistent with good business and operating practices.

The Department shall submit to the District for its approval on or before June 1 of each year, a proposed budget for the operation and maintenance of the hatchery and rearing pond and its related equipment for each forthcoming fiscal year and shall consult with the District with regard to items contained in the budget if so requested.

The District shall have the right at all reasonable times to inspect the hatchery and its related equipment and shall have the right during the regular office hours of the hatchery to inspect the records of the Department relating to its expenditures for the operation of the hatchery and its related equipment and shall be entitled to be furnished such other information as may be reasonably requested from time to time in order for the District to determine the reasonableness and necessity of the costs incurred or to be incurred by the Department.

The Department shall also furnish the District a report in writing, at least annually, covering the program for the preceding year.

#### SECTION 6. RESIDENCE FACILITIES

The District shall make available one residence in the vicinity of the hatchery. At such time as the steelhead migrant rearing program at the rearing pond is determined by mutual agreement to be a satisfactory program the District will provide a residence for the Department in the vicinity of the rearing pond. In the interim, the District will permit the rental of a residence in the vicinity of Brewster on a temporary basis. The maintenance of both residences will be provided in the annual budget.

The design specifications, size and maintenance of these residences shall be such as is generally provided for by the Department for the normal use of its hatchery personnel. Title to and ownership of such residences shall be with the Department.

Occupants will pay rent in accordance with the Department's policy and this rent will be applied to reduce the annual budget. In the event of vacation of the premises by the Department, the title to the houses and real property shall return to the District free and clear of encumbrances.

SECTION 7. STREAMBANK ACCESS AND EASEMENT

The program of streambank access shall consist of the following:

1. Acquisition of a total of 14 miles of streambank on the Methow, Okanogan or Similkameen Rivers or their tributaries, at the District's expense.
2. Up to 10 access areas with a maximum expenditure of \$12,750.00. The cost shall be borne by the District.
3. Development of the access areas for parking, etc. shall be at the Department's expense.
4. Initial payment of \$5,000.00 to the Department for the purpose of acquiring streambank easements or fisherman access areas on Methow, Okanogan, or Similkameen Rivers or their tributaries.

If the District wishes to "cash-out" the remaining access program the Department will be allowed to purchase the footage remaining to be acquired under Paragraph 1, Section 7 of this agreement and the District will reimburse the Department for the Department's actual costs including personnel and administration charges. The maximum costs to the District for completion of said program in this event shall be based upon the following sliding scale:

<u>Miles Left To Be Acquired</u>	<u>Maximum Cash-Out Price Per Foot</u>	<u>Maximum Total Cost Exposure</u>
9	\$ 2.75	\$130,680.00
7	\$ 2.50	\$ 92,400.00
5	\$ 2.25	\$ 59,400.00
3	\$ 2.00	\$ 31,680.00
1	\$ 1.75	\$ 9,240.00

In this event the remaining footage to be acquired will be acquired within 18 months or as mutually agreed to by both the Department and the District.

APPROVED AS TO FORM

Richard G. Jeffers  
RICHARD G. JEFFERS  
Attorney for the District

PUBLIC UTILITY DISTRICT NO. 1  
OF DOUGLAS COUNTY, WASHINGTON

By Howard Prey  
Howard Prey, President

By Lloyd McLean  
Lloyd McLean, Vice President

ATTEST: Michael Doneen  
Michael Doneen, Secretary

APPROVED AS TO FORM

J. L. Coniff  
J. L. CONIFF  
Assistant Attorney General

STATE OF WASHINGTON,  
DEPARTMENT OF GAME

[Signature]