

AGREEMENT COVERING CONTRIBUTION TOWARD  
COST OF CONSTRUCTION AND OPERATION OF  
SALMON REARING POND AND APPURTENANT  
FACILITIES ON ELWHA RIVER

THIS AGREEMENT is made and entered into this 25 day  
of April, 1975, by and between CROWN ZELLERBACH COR-  
PORATION, a Nevada corporation (herein called "Crown") and the  
STATE OF WASHINGTON, DEPARTMENT OF FISHERIES (herein called  
"Department").

Recitals

1. Crown has filed two applications with the Federal Power  
Commission (herein called "FPC") both of which are presently  
pending, covering:
  - (a) A license to operate and maintain a facility con-  
structed in 1913-14, known as Crown's Elwha Hydro-  
electric Power Development (Project No.2683), and
  - (b) A relicense to continue operation and maintenance of  
a facility constructed in 1925-26, known as Crown's  
Glines Canyon Hydroelectric Power Development (Project  
No.588).

The above two facilities are collectively referred to herein  
as Crown's "Elwha Power Facility," and are located near  
Port Angeles, Washington, on the Elwha River. Said two

applications are collectively referred to herein as "Said FPC Applications."

2. Incident to processing said FPC Applications covering continued operation and maintenance of Crown's Elwha Power Facility, Crown has reviewed with representatives of the U.S. Department of Interior (U.S. Fish and Wild Life Service), U.S. Department of Commerce (National Marine Fisheries Service) and with a representative of the State of Washington Department of Fisheries possible methods by which Crown could contribute toward the construction and operation of facilities for the restoration and enhancement of runs on the Elwha River of Elwha strain of chinook salmon (hereinafter called "salmon", "chinook", "juvenile chinook" or "adult salmon").
3. Crown is willing, on the conditions set forth herein, to contribute a sizable sum of money toward construction and operation of a salmon rearing facility (herein called "Rearing Facility" to be designed, constructed, maintained, owned, and operated by the Department on property which the city of Port Angeles owns and has agreed to make available to the Department for said purpose.

NOW, THEREFORE, Crown and the Department, parties hereto, hereby agree as follows:

PART I - INTENT

It is the intent of the parties to this Agreement that Crown will, as its sole obligation hereunder, contribute

the sums specified on the conditions set forth herein and that the Department, together with additional funds appropriated by the State of Washington, will use said funds to acquire the site, design, construct, maintain and operate said Rearing Facility for the purposes and on the conditions set forth herein.

The "Base Operating Contribution" (as adjusted) to be paid by Crown, as set forth at Part IV (b) hereof, is stipulated by the Department as adequate to cover the operating costs of producing eighty-five thousand (85,000) pounds of juvenile chinook annually, the number of fish stipulated as adequate to return eight thousand five hundred (8,500) adult salmon to the Elwha River annually. (The 85,000 pound level of production is referred to herein as "Crown's Compensation Level.") It is the intent of the Department to utilize the Rearing Facility for the production of salmon in excess of Crown's Compensation Level. The Department retains the right to distribute at its own discretion any fish in excess of Crown's Compensation Level.

## PART II - TERM; TERMINATION

The term of this Agreement shall commence on the date first set forth above and, unless earlier terminated, shall end with expiration or cancellation of the last of the two licenses issued by the FPC for Crown's Elwha Power Facility.

Crown shall have the right to terminate this Agreement, and Crown's obligations to the Department hereunder, by providing the Department at least ninety (90) days prior written notice, said right of termination to be exercised under the following circumstances only:

- (a) In the event Crown is restricted or prohibited from operation of its Elwha Power Facility (or any part thereof) by law, regulation or court ruling, or by inability to secure or maintain in effect any license or permit from the FPC or from any other Government agency from whom a license or permit is required; or
- (b) In the event Crown discontinues generation of power at Crown's Elwha Power Facility, and such discontinuance is made pursuant to and in accordance with the rules and regulations of the FPC if required by law; or
- (c) In the event Crown's Elwha Power Facility is damaged or destroyed and if, as a result thereof, fish passage becomes unimpeded past the Elwha Power Facility site; or
- (d) In the event Crown sells or assigns its rights in Crown's Elwha Power Facility (or any part thereof), provided, however, it is understood and agreed that the purchaser or assignee will be bound by the terms, conditions, and recitals of this Agreement. Provided further, however, that it is further understood that from and after any sale or assignment by Crown that the Department will look

solely to the purchaser or assignee for compliance with obligations to furnish costs in construction and operation of said Rearing Facility.

- (e) In the event that the Department for whatever reason discontinues operation of said Rearing Facility for the purpose or rearing salmon for deposit in the Elwha River or deposits outside the Elwha River any portion Crown's Compensation Level (i.e., the first 85,000 pounds of juvenile chinook produced).
- (f) In the event Crown's Elwha Power Facility is taken over by the United States or other governmental agency under the provisions of the Federal Power Act or other legislation or is taken over by the United States or other governmental agency having power to do so under the right of eminent domain.

PART III - DESIGN, CONSTRUCTION, MAINTENANCE, OPERATION AND OWNERSHIP OF REARING FACILITY

The Department agrees at its sole cost and expense, subject only to Crown's contribution of construction costs as provided for in Part IV (a), to acquire the site for, design, construct, maintain, manage, operate, and own said Rearing Facility as a facility of the State of Washington, the design and location of said Rearing Facility to be substantially in accordance with Exhibit A attached hereto and incorporated herein by this

reference. It shall be the sole obligation of the Department to secure and pay for any and all water rights, property interests, permits, licenses, and governmental approvals of any and every type necessary or convenient for the design, construction, maintenance, ownership, and operation of said Rearing Facility. The cost and expense of all equipment, materials, supplies, and operating and management personnel, and all other costs and expenses paid or incurred, directly or indirectly related to operation of said Rearing Facility, shall likewise be the sole obligation of the Department, subject only to Crown's contribution toward operating costs as provided for in Part IV (b).

#### PART IV - CROWN'S CONTRIBUTION

As its sole and only obligation hereunder, Crown agrees to pay to the Department, as indicated, the following sums of money:

- (a) Contribution Toward Construction Costs - Within a period of sixty (60) days following notice of completion of said Rearing Facility, Crown shall pay the Department an amount equal to approximately twenty-three and six-tenths percent (23.6%) of the reasonable actual construction costs; provided, however, in no event shall this amount exceed one hundred forty-five thousand one hundred forty dollars (\$145,140). The Department agrees to submit to

Crown for Crown's review, promptly upon completion of construction, an itemized account of all actual costs in constructing said Rearing Facility.

- (b) Contribution Toward Operating Costs - Beginning with the fiscal year (begin July 1/end June 30) in which the Rearing Facility commences operation and continuing each fiscal year thereafter during the term of this Agreement (excepting, however, any fiscal year in which Crown elects to deposit or tenders fish to the Department for deposit directly into the Elwha River, as per provisions of Part IV(d) below), Crown will pay to the Department an amount equal to the reasonable actual operating costs of said Rearing Facility allocable on a proportionally equal basis (allocation to be in accordance with Exhibit C-1 hereof) for producing the juvenile chinook salmon actually deposited into the Elwha River during said fiscal year; provided, however, in no event shall the costs allocated to Crown hereunder be based on more than 85,000 pounds of juvenile chinook salmon, nor shall costs allocated to Crown hereunder exceed thirty-three thousand five hundred dollars (\$33,500) during any fiscal year (herein called the "Base Operating Contribution" which is subject to adjustment pursuant to (c) below). The amount payable during the fiscal year by Crown under this subparagraph (b) shall be estimated at the beginning of the fiscal year, based on the budget for said year. Crown agrees to remit said

estimated amount to the Department in four equal quarterly payments as of September 30, December 31, March 31, and June 30. Promptly following the end of said fiscal year, a final accounting for said year will be made, at which time any appropriate adjustment in payments will be made.

- (c) Adjustment of Base Operating Contribution - The Base Operating Contribution referred to at (b) above is equal to twenty-three and six-tenths percent (23.6%) of the estimated annual operating costs at the maximum production of three hundred sixty thousand (360,000) pounds, as set forth in Exhibit B attached hereto and incorporated herein by this reference. Said Base Operating Contribution of thirty-three thousand five hundred dollars (\$33,500) is for the base fiscal year 1971 and shall be adjusted each fiscal year thereafter to reflect the following:

- (i) For the Feed Component of Cost thereof, the percentage of change in the Department's contract price after competitive bidding for the Department's entire needs for Oregon Moist Pellet No. 2 or substitute of equivalent quality, F.O.B. plant, using the July 1971 cost which is \$0.1456 per pound, provided, however, if Crown produces evidence that the Department contract price is not the lowest available price, then the lowest

available price shall be used for purposes of this adjustment.

- (ii) For the Labor and Miscellaneous Other Components Cost thereof, the percentage of change in the United States Department of Labor BLS Labor Index covering average hourly earnings for non-supervisor workers on private non-agricultural payrolls by industry for SIC Code 2031,6 for "Canned, Cured and Frozen Seafood," using the June 1971 figure, which is two dollars and forty-seven cents (\$2.47) gross earnings per hour (Index Base Period 1967).

The percentage change in each Index will be determined by comparing the Index for the month of June each year with the month of July 1971 for contract fish food index (as defined in (i) above) and the month of June 1971 for Labor and Miscellaneous Other Component Cost Index (as defined in (ii) above). The Feed Component portion (twenty-seven thousand one hundred eighty dollars (\$27,180)) of the Base Operating Contribution will be adjusted by the same percentage as the percentage change in the Department's contract price as thus determined. Likewise, the Labor and Miscellaneous Other Components portion (six thousand three hundred twenty dollars (\$6,320)) of the Base Operating Contribution will be adjusted by the same percentage as the percentage change in the Canned, Cured and Frozen Seafood Index as thus determined. An example

of the procedure to be followed is set forth in Exhibit C-2.

- (d) Deposit of Juvenile Chinook into Elwha River - Crown may, with concurrence of or acceptance by the Director of the Department, in compliance with RCW 75.16.020 as now enacted or hereafter amended, for any fiscal year during the term of this Agreement, deposit or cause to be deposited eighty-five thousand (85,000) pounds of juvenile chinook salmon directly into the Elwha River, or Crown may tender delivery of said juvenile chinook to the Department, for deposit by the Department, in either of which event Crown shall be deemed to have satisfied its obligation under subparagraph IV (b) above for said fiscal year, and no contribution toward operating costs shall be payable by Crown under this Agreement for said fiscal year.

For any fiscal year in which Crown intends to exercise its option under paragraph IV (d) above, Crown agrees to provide the Department written notice thereof prior to adoption of the Department Budget for said fiscal year.

PART V - OTHER UNDERTAKINGS BY  
THE DEPARTMENT

Crown's obligations under this Agreement are subject to the following conditions:

- (a) The Department stipulates and agrees that Crown's undertakings hereunder will satisfy all legal requirements of t

State of Washington Department of Fisheries and that the Department will not raise objections or otherwise intervene to oppose Crown's applications before the Federal Power Commission to obtain licenses covering continued operation and maintenance of Crown's Elwha Power Facility as it presently exists. The Department shall evidence this Agreement by supplying to Crown and to the FPC such appropriate documentation as Crown may request. It is understood that Crown's Elwha Hydroelectric Project (Project No. 2683) will not be used for daily or weekly flow regulation for power generation purposes.

- (b) The Department shall maintain and supply to Crown when and as requested or required hereunder complete and accurate records covering construction, production and operating costs for said Rearing Facility. The Department will submit to Crown for review, at least thirty (30) days prior to adoption, the budget for each fiscal year hereunder.
- (c) The Department shall use said Rearing Facility for the purpose of rearing juvenile chinook salmon for deposit in the Elwha River up to a level of production of eighty-five thousand (85,000) pounds of juvenile chinook each fiscal year. Production capacity in excess thereof may be used by the Department for propagation of additional salmon at no cost to Crown.
- (d) The Department shall indemnify and hold Crown harmless from and against all loss, damage, liability, claim, or demand,

including failure to comply with any law or regulation, resulting from design, construction, maintenance, ownership or operation of said Rearing Facility.

- (e) The Department agrees to obtain the concurrence of the city of Port Angeles to the terms and conditions hereof.

PART VI - OTHER CONDITIONS

- (a) This Agreement constitutes the entire agreement between the parties with regard to contributions toward a Salmon Rearing Pond and shall be amended only by a writing signed by all parties hereto.
- (b) Any notices required or permitted to be given hereunder shall be in writing, postage prepaid, addressed as follows:

- (i) Notices to Crown:

Crown Zellerbach Corporation  
One Bush Street  
San Francisco, California 94119  
Attention: Manager of Real Estate

- (ii) Notices to Department:

Department of Fisheries  
State of Washington  
General Administration Bldg., Room 115  
Olympia, Washington  
Attention: Director

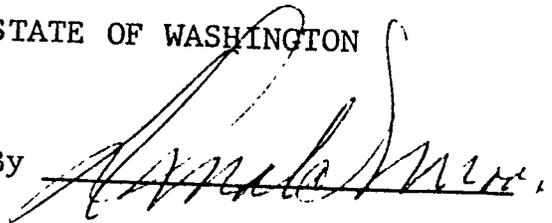
- (c) This Agreement may be assigned by Crown to any person, firm, corporation or governmental agency to whom Crown

sells or assigns its Elwha Power Facility or any part thereof.

Executed and agreed to as of the date first above written.

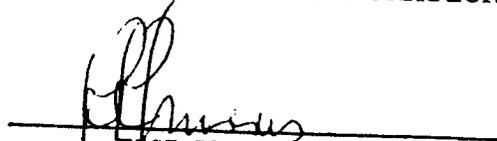
STATE OF WASHINGTON

By



CROWN ZELLERBACH CORPORATION

By



VICE PRESIDENT

EXHIBIT A

DESIGN AND LOCATION  
OF REARING FACILITY

Drawings describing the Design and Location are attached hereto, numbered 3574-1 through 3574-29; S81A-2-1 through S81A-2-8 and S81B-1.

EXHIBIT B

EXTIMATED ANNUAL OPERATING COSTS AND  
BASE OPERATING CONTRIBUTION

	<u>Annual Costs</u>	<u>Base Operating Contribution</u>
Labor Costs at Elwha	\$ 13,973	\$ 3,300
Labor Costs at Hatchery	2,795	660
Misc. Support Materials	10,000	2,360
Feed Costs	115,200	27,180
Total	<u>\$141,968</u> =====	<u>\$33,500</u> =====

EXHIBIT C-1

EXAMPLES DESCRIBING ALLOCATION  
OF OPERATING COSTS UNDER PART IV (b)

Example 1

Production less than 85,000 pounds of juvenile chinook fish,  
Crown is allocated total cost but in no event in excess of Base  
Operating Contribution as adjusted.

Example 2

Production = 127,500 pounds juvenile chinook fish  
Estimated Cost = \$40,000

Crown's allocation =  $\frac{85,000}{127,500} \times 40,000 = \$26,667$

Example 3

Production = 127,500 pounds juvenile chinook fish  
Estimated Cost = \$100,000

Crown's allocation =  $\frac{85,000}{127,500} \times 100,000 = \$66,667$  (but not to exceed  
maximum of \$33,500)

Example 4

Production = 360,000 pounds juvenile chinook fish  
Estimated Cost = \$145,000

Crown's allocation =  $\frac{85,000}{360,000} \times 145,000 = \$34,220$  (but not to exceed  
maximum of \$33,500)

EXHIBIT C-2

EXAMPLE DESCRIBING AN ADJUSTMENT OF  
BASE OPERATING CONTRIBUTION UNDER PART IV (c)

A) Components of Base Operating Contribution:

Feed Components	\$27,180
Labor and Other Components	<u>6,320</u>
Total	<u>\$33,500</u>

B) Example Adjustment of Base Operating Contribution  
July 1971 to June 1974

(i) Department's contract price for Oregon Moist Pellet No.2

July 1971 - \$0.1456 per pound

June 1974 - \$0.232 per pound

Percentage of increase - 59%

(ii) BLS Labor Index: July 1971 - \$2.47

June 1974 - \$3.11

Percentage of increase - 26%

Computation:

Adjustment of Feed Cost = \$27,180 x 159% = \$43,216

Adjustment of Labor Cost = 6,320 x 126% = 7,963

Base Operating Contribution as adjusted      \$51,179  
for fiscal year 1974-5                              =====