

MEMORANDUM OF UNDERSTANDING FOR
MITIGATION OF POTENTIAL LOSS OF SALMONIDS
RESULTING FROM CONSTRUCTION AT MUD MOUNTAIN DAM

This Memorandum of Understanding (MOU) is entered into this 15 day of JUNE, 1993, by and among the UNITED STATES ARMY CORPS OF ENGINEERS, ("Corps"), represented by the District Engineer, U.S. Army Engineer District, Seattle, executing this MOU, and the WASHINGTON DEPARTMENT OF FISHERIES ("WDF"), represented by its Director; the WASHINGTON DEPARTMENT OF WILDLIFE ("WDW"), represented by its Director; the MUCKLESHOOT INDIAN TRIBE ("MIT"), represented by its Council Chief; the PUYALLUP TRIBE OF INDIANS ("PTI"), represented by its Council Chairperson; the UNITED STATES FOREST SERVICE ("USFS"), represented by its Forest Supervisor, Mount Baker-Snoqualmie National Forest; the US FISH AND WILDLIFE SERVICE ("USFWS"), represented by its Field Supervisor, Olympia Ecological Services Office; and the NATIONAL MARINE FISHERIES SERVICE ("NMFS"), represented by its Director, Northwest Regional Office.

A. BACKGROUND

1. Construction of Mud Mountain Dam was authorized by the Flood Control Act of 1936. Operation and Maintenance was authorized under the Flood Control Act of 1938. Under Engineering Regulation 1110-2-417 (Project Operation Major Rehabilitation and Dam Safety Assurance Program), dated 30 November 1980 safety modifications have been authorized for Corps of Engineers dams, including Mud Mountain Dam (White River, Pierce County, Washington).

2. It has been recognized through the Final Supplemental Environmental Assessment that construction of a new intake tower under the aforesaid program is likely to impact outmigrating juvenile coho and spring chinook salmon, and steelhead trout, as well as adult spawned-out steelhead trout, for a period of up to three outmigration seasons (1992, 1993, and possibly 1994) due to increased use of the existing 23-foot-diameter tunnel and associated outlet works during construction.

3. Spring chinook salmon are of critical concern in the White River and other south Puget Sound drainages, and as such have been the subject of considerable restoration effort on the part of the State of Washington and several Native American tribes.

B. PURPOSE

In consideration of the promises and mutual benefits and advantages occurring hereunder to each party hereto, it is agreed by and among the Army Corps of Engineers, the Washington Departments of Fisheries and Wildlife, the Muckleshoot Indian Tribe, the Puyallup Tribe of Indians, the US Fish and Wildlife Service, and the National Marine Fisheries Service that the following actions will take place to minimize and compensate for potential losses of salmonids as a result of construction at Mud Mountain Dam:

C. SCOPE

1. Operation of Mud Mountain Dam. The Corps will operate Mud Mountain Dam to protect outmigrating fish by minimizing use of the 23-foot tunnel during the fish outmigration window (March through August) in the construction time period. Specifically:

a. The 9-foot tunnel will be operated exclusively, 100% open, whenever there is no need for unscheduled maintenance or other unforeseen circumstances, nor threat of inflow volumes which would be likely to overtop the construction-area cofferdam and inundate the intake tower

construction area. Nighttime and weekend operations (when personnel will not normally be on station for gate operation) will include use of the 23-foot tunnel whenever Corps meteorological and water management personnel have reason to believe that overtopping inflows might occur.

b. Once the cofferdam overtops, the 9-foot tunnel will be used exclusively unless the 23-foot tunnel is needed to evacuate water more quickly in order to minimize contractor downtime.

c. During those times that the 23-foot tunnel must be used, it will be with all Howell-Bunger valves 100% open so as to maintain the lowest pool possible, and to minimize pressure in water flowing through the 23-foot tunnel and its penstocks and outlet works. However, if flood control is required for communities downstream, the flow through the 23-foot tunnel will be regulated appropriately. The 23-foot tunnel will not otherwise be throttled unless unforeseen circumstances so dictate.

d. Any deviation from operational criteria stated in C.1.a-c will be coordinated in advance with the parties to this agreement whenever possible.

2. Spring Chinook Pond Rearing Program. The Corps will fund rehabilitation of an existing fish rearing pond, and one year of operation of that pond for each year in which construction requires use of the 23-foot tunnel in its initial configuration with Howell Bunger valves. One other pond will also be operated in one season as part of this program. This program is intended as compensation for the unavoidable loss of salmonids that would result from the use of the 23-foot tunnel in its existing configuration during the construction period. The specific program provisions are:

a. Rehabilitation and Operation of Huckleberry Pond, Huckleberry Creek. An existing pond on Huckleberry Creek on US Forest Service land will be rehabilitated in summer 1993 and prepared for imprinting of juvenile spring chinook salmon. These juveniles, provided from hatchery stock (spawned from wild broodstock) at WDF's Hupp Springs Hatchery or other appropriate source, will be brought to Huckleberry Pond for rearing from 400/lb to 50/lb. In the unlikely event that spring chinook fry are unavailable in any one of the required operational years, no operational funding will be provided for that year; but this agreement will remain in effect for 1 additional year to ensure that an appropriate number of years of pond operation with fry are provided for in order to address the impacts of construction. One group of juveniles (numbering 250,000) will be reared for about 4 months, during March or April through June. Following this period, they will be placed in a transport truck and transported to the Muckleshoot Tribe's White River Hatchery at Buckley. Following a 48-hour acclimation period, they will be released on their own volition into the White River below the Puget Sound Power and Light Company diversion. This operation would occur in 1994, and possibly 1995 if construction requires a third year (see C.2.b below) of use of the unmodified Mud Mountain Dam 23-foot tunnel for flow regulation. Following completion of this program, operation and maintenance of the pond will become the sole responsibility of the Muckleshoot and Puyallup Tribes. Separate funding agreements detailing work to be performed for construction compensation will be implemented with the appropriate parties.

b. 1993 Operation of Huckleberry Pond and Cripple Creek Pond. In order to have use of existing ponds prior to the time when rehabilitation of Huckleberry Pond can take place, the Corps will fund operation for the 1993 season of two ponds: Huckleberry Pond (cleaned out but unrehabilitated), and Cripple Creek Pond on the West Fork of the White. Operations will be as outlined in Section C.2.a. above, but will entail splitting of the 250,000 spring chinook between the two ponds.

Tasking:

US Army Corps of Engineers:

- a. Provide funds and/or in-kind services/materials for design and construction of pond.
- b. Provide construction management for pond rehabilitation.
- c. Provide funds for O&M to be performed by others (Corps will not operate ponds) as detailed in scoping for funds transfer.
- d. Provide complete and timely project-related information as appropriate for use by agency and tribal representatives.
- e. Provide appropriate review under Sec. 404, Clean Water Act of 1977.
- f. Obtain State of Washington Water Quality Certification.

US Forest Service:

- a. Provide Huckleberry Creek and Cripple Creek pond sites and access thereto at no cost to other parties, as shown on Exhibits A and B (attached).
- b. Provide environmental documentation and any necessary permits pursuant to Huckleberry Creek pond rehabilitation.
- c. Provide overall supervisory responsibility during construction of Huckleberry Creek weirs and pond.
- d. Identify and provide disposal site for pond excavation material.

US Fish and Wildlife Service:

- a. Provide documentation as prescribed in the Fish and Wildlife Coordination Act, as amended.

Washington Department of Fisheries:

- a. Provide design support for Huckleberry Creek pond rehabilitation.
- b. Provide consultation as appropriate.
- c. Provide spring chinook fry as needed and available.
- d. Transport chinook fry to rearing ponds from source, and from rearing ponds to White River Hatchery.
- e. Coded-wire tag chinook fry and document returns.
- f. Acquire water right from Washington Dept. of Ecology for 3 cfs for the months of February through June and 2 cfs for the remainder of the year. Water right will be in name of US Forest Service.

Puyallup Tribe of Indians:

- a. Provide technical consultation as appropriate.

Muckleshoot Indian Tribe:

- a. Provide spring chinook fry as needed and appropriate.
- b. Provide consultation as appropriate regarding design of Huckleberry Creek pond, and operation of Huckleberry Creek and Cripple Creek ponds.
- c. Provide materials, equipment, and labor under Corps funding for Huckleberry Creek and Cripple Creek pond operation, if appropriate funding mechanism is available.

D. FUNDS

All work defined in this MOU is subject to availability of funds as identified for this work. Funds will be transferred to the appropriate parties by separate, appropriate mechanisms. Funding is at a fixed price at the inception of those agreements.

E. DURATION

The term of this MOU shall not exceed 3 years, beginning on the date specified in the opening paragraph, unless extended 1 year to compensate for unavailability of chinook fry or unless otherwise amended.

F. AMENDMENT/TERMINATION

All parties will exercise good faith in fulfilling their obligations under this MOU. This MOU may be amended at any time by mutual consent of the parties. This MOU may be terminated upon 30-day written notice to all parties by any signatory party.

G. RELEASE

The Corps and its officers and employees shall not be liable in any manner to the State or Tribes for or on account of damage, including loss of fish, caused by operation and maintenance of rearing facilities by the State or Tribes. As authorized by law, each party to this MOU shall be responsible for damage to persons or property resulting from negligence on the part of itself or its employees, its agents, or its officers. No party to this MOU assumes any responsibility to the other parties for the consequences of any act or omission of any person, agency, firm or corporation not a party to this MOU.

H. APPROVAL OF SUBCONTRACTS

Any subcontracts under this MOU shall be subject to review and approval by the Corps.

I. RELATIONSHIP OF PARTIES

The parties to this MOU act in their independent capacities in the performance of their respective functions under it, and no party is to be considered the officer, agent, or employee of another.

J. INTEGRATION

The parties agree that this MOU sets forth the entire agreement and that there are no promises or understandings other than those stated herein.

K. SAVINGS/DISPUTE RESOLUTION

Nothing herein is intended to conflict with current laws or internal directives governing the parties. If the terms of this MOU are inconsistent with existing laws or directives of the parties, then those portions of the MOU which are determined to be inconsistent shall be invalid; but the remaining terms and conditions of this MOU shall remain in full force and effect. At the first opportunity, such changes as are deemed necessary will be accomplished either by amendment to this MOU or by execution of a new MOU, as agreed by the parties.

L. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or resident commissioner, shall be admitted to any part of this MOU, or to any benefit arising from it.

L. IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and year written.

THE UNITED STATES ARMY CORPS OF ENGINEERS, SEATTLE DISTRICT

Walter J. Cunningham
Walter J. Cunningham
Colonel, Corps of Engineers
District Engineer

Date: 27 FEB 93

WASHINGTON DEPARTMENT OF FISHERIES

for Robert Turner
Robert Turner,
Director

Date: _____

WASHINGTON DEPARTMENT OF WILDLIFE

for Curt Smitch
Curt Smitch,
Director
(concurring party)

Date: _____

PUYALLUP TRIBE OF INDIANS

Roleen L. Hargrove
Roleen L. Hargrove
Council Chairperson

Date: _____

ATTACHMENTS
Exhibit A
Exhibit B

MUCKLESHOOT INDIAN TRIBE

Virginia Cross
Virginia Cross
Council Chief

Date: _____

US FISH AND WILDLIFE SERVICE

David Frederick
David Frederick,
Field Supervisor,
Olympia Ecological Services Ofc.

Date: 3/24/93

US FOREST SERVICE

for Walt Weaver
Walt Weaver
Interim Forest Supervisor
Mt. Baker-Snoqualmie Nat'l Forest

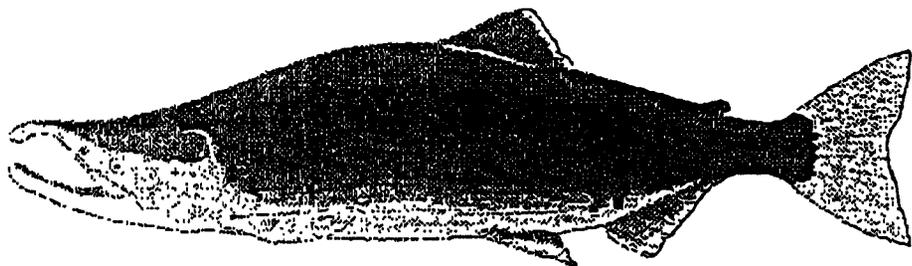
Date: 6-15-93

NATIONAL MARINE FISHERIES SERVICE (concurring party)

Rolland A. Schmitten
Rolland A. Schmitten, Director
Northwest Regional Office

Date: 3/25/93





DATE 12-31
TIME 10:27

U.S. ARMY CORPS OF ENGINEERS
SEATTLE DISTRICT
PLANNING BRANCH

TO: Gary Sprague

OFFICE: WPAW

PHONE: 360 902 2946

FROM: JEFFREY E. DILLON

OFFICE: ENVIRONMENTAL RESOURCES SECTION

PHONE: ~~764-3510~~ 6174



NOTES: _____

NUMBER OF PAGES 9 + cover

Contract No. W 45-106-eng-1932

AGREEMENT FOR CONSTRUCTION OF FISHWAY AND APPURTENANT FACILITIES FOR MUD MOUNTAIN DAM, WASHINGTON

Appropriation: .21 x 3113 Flood Control, General, Mud Mountain Dam
Payment to be made by Disbursing Officer, Seattle District, Corps of Engineers

THIS AGREEMENT, made and entered into this 2 day of February, 1946, by and between the UNITED STATES OF AMERICA, (hereinafter referred to as the "GOVERNMENT"), represented by the contracting officer, the STATE OF WASHINGTON, (hereinafter referred to as the "STATE"), represented by the Director of Fisheries and the Director of Game, and the PUGET SOUND POWER AND LIGHT COMPANY, a CORPORATION organized under the laws of Massachusetts, represented by its Vice President, C. F. Terrell, (hereinafter referred to as the "COMPANY").

WITNESSETH:

WHEREAS, many years heretofore the Company constructed a hydraulic power diversion headworks on the White River in the State of Washington, near Buckley, and in connection therewith did at its own expense construct, maintain and operate a fishway and fish ladder at said headworks for the passage of migratory fish to spawning grounds upstream, and

WHEREAS, pursuant to authority granted by the Flood Control Act of June 22, 1936, and subsequent Acts of Congress, the Government heretofore constructed Mud Mountain Dam and appurtenant works on the White River in the State of Washington, at a point upstream from the Company's headworks, which dam constitutes an obstruction making it impossible for migratory fish to pass the said Mud Mountain Dam to points upstream, and

WHEREAS, at the time construction was commenced on said Mud Mountain Dam, the Government by mutual agreement with the Company altered the Company's fishway and fish ladder at its headworks and installed a temporary fish trap therein, whereby the Government trapped migratory fish and transported them upstream by tank truck to spawning grounds above said Mud Mountain Dam, and

WHEREAS, after due consideration, it has been determined that the best method of providing passage for migratory fish in the said White River from below Mud Mountain Dam to the waters upstream therefrom is to construct and maintain a permanent fishway and fishtrap at the Company's said headworks near Buckley and to transport the fish therefrom by tank truck to the spawning grounds above said Mud Mountain Dam, and

Approved by authority of Chief of Engineers

[Signature]
L. E. MEBLENZ, Colonel, C.E.
Chief, Legal Division, U.S.A.C.

WHEREAS, it is to the best interests of the Government and the other parties hereto that the Government at its own expense construct, maintain and operate said proposed permanent fishway and fish trap in lieu of the fishladder operated and maintained by the Company, and that the Company convey to the Government the necessary easements for said structure and appurtenances and release sufficient water from its headworks, when available, to operate the same, all as approved by the State.

NOW, THEREFORE, in consideration of the premises, the parties hereto mutually agree as follows:

ARTICLE I DESCRIPTION OF WORK

The structure to be constructed under this agreement, hereinafter called the fishway, shall be built on the left bank of the White River just downstream from the forebay entrance to the Company's diversion flume and shall consist of a reinforced concrete series of ladders, fish trap and holding pool, and the necessary mechanical equipment for the elevation of the fish and their release into a specially constructed tank truck, together with the necessary roads. All work herein agreed to be done, shall be in accordance with the following plans and specifications, prepared by the Government and approved by the contracting officer representing the Government, the Director of Fisheries and the Director of Game representing the State, and C. F. Terrell, Vice President, in charge of Power Supply, representing the Company, copies of which plans and specifications are in possession of the parties hereto and herein incorporated and made a part of this agreement by this reference:

(a) A drawing prepared by the Government entitled "Mud Mountain Dam, Mnumclaw, Washington, Location of Fishways at P.S. P. & L. Dam, General Arrangement," in one sheet, dated 15 April 1947, File No. E-3-B-67.

(b) Drawings prepared by the Government entitled "Puyallup River Flood Control Project, Mud Mountain Dam, White River, Washington, Fishway Structures," in 29 sheets, dated 28 November 1947, File No. E-3-B-107.

By mutual agreement in writing between the parties hereto, changes or alterations may be made in the above drawings and specifications, and supplemental drawings and specifications may be adopted in the same manner where necessary for the best interests of the work. Upon approval in writing, such changes shall become a part of this agreement as though by reference. For the purpose of this paragraph, it is understood that the Vice President in charge of Power Supply of the Company, or his successor, will have the authority to approve said changes in drawings and specifications for the Company.

ARTICLE II OBLIGATIONS OF THE GOVERNMENT

(a) The Government shall, by contract or otherwise, furnish at its own expense all services, labor, materials, tools and equipment necessary to construct and it shall construct the above-mentioned fishway in accordance with the above approved drawings and specifications and shall construct, reconstruct, alter, and improve the necessary roads, and bridges in connection therewith, including but not limited to existing roads and bridges of the Company.

(b) The Government shall operate and maintain at its own expense and sole responsibility said fishway and the roads in connection therewith, and shall furnish and maintain and operate the equipment necessary to trap and transport the fish therefrom to a point in the White River upstream from Mud Mountain Dam.

(c) The Government shall prosecute the work covered herein and shall construct, operate and maintain the same in an efficient manner so as to avoid damage to the Company's dam and headworks or interference with the Company's operations and to prevent injury to property of the Company and the life and property of third persons. The gratings or covers for the fish trap provided for in the above mentioned plans and specification shall be kept in place over the fish trap at such reasonable times as the Company may require.

(d) The Government shall notify the Company in advance of the time when work of any kind in connection with the fish trap or fishway is commenced by giving the Company's agent at the works due notice thereof.

(e) The Government shall at its own expense remove all debris and trash resulting from the work performed by the Government or its contractors hereunder, and shall keep all facilities which it uses, constructs or operates on the Company's premises free of dead fish and other debris and shall maintain the premises of the Company which are used by the Government in connection with the fish trapping operations contemplated in this agreement in a neat and proper manner insofar only as such maintenance is made necessary by such operations.

ARTICLE III OBLIGATIONS OF THE COMPANY

(a) The Company agrees that without cost to the Government or the State, the Government shall be and it is hereby authorized to go upon the lands of the Company situated in Section 2, Township 19 North, Range 6 East, W. M. and Sections 34 and 35, Township 20 North, Range 6 East, W. M., upon which lands its existing headworks, flume and access roads are located, for the purpose of constructing, reconstructing, altering, improving, maintaining and operating the proposed fishway and attendant facilities and for the construction, reconstruction, alteration, improvement, maintenance and

operation of the necessary roads in connection therewith, all in accordance with the plans and specifications set forth in Article I hereof. This authority includes but is not limited to the right to remove a portion of the existing downstream revetment wall and to make the necessary alteration therein to provide a fishway entrance, the installation of gates at the upstream revetment wall at the forebay of its headworks, the removal and reconstruction of the existing fishway structure, the relocation of the existing tool house as shown on the drawings referred to, the removal and relocation of certain power poles, the construction, reconstruction, alteration and improvement and maintenance of an access road, a bridge over the Company's flume, and a bridge over the outfall of the by-pass diversion designated the Rock Chute.

(b) It is further agreed that the Company shall execute and deliver to the Government an instrument definitely describing the location of said fishway and other facilities and conveying to the Government a perpetual easement for the exercise of all of the rights granted by this agreement, reserving unto the Company or its agents and contractors the equal right at all times to use any and all roads and bridges constructed by the Government on Company lands, provided that the obligations imposed upon the Company by Article III, paragraphs (c), (e), (f) and (h) of this agreement shall continue in force and effect only so long as the Company shall maintain and operate said diversion headworks.

(c) Except in emergencies not ordinarily controllable, the Company agrees to hold and maintain a minimum water level behind its dam and headworks at elevation 667 feet according to the Company's present datum. The Company further agrees to furnish such amount of water as may be required for successful trapping of migratory fish but in no event more than twenty-five cubic feet per second when the river flow immediately above the point of its diversion does not exceed its legal water right at this works. If water is available in the river over and above an amount equal to its legal water right of 2000 c.f.s, the Company shall permit the diversion of any amount of water over 2000 c.f.s up to one hundred ten cubic feet per second for the operation of said fishway.

(d) The Company shall allow any employee or agent of the State or Government authorized to inspect, supervise, operate and maintain said fishway the right of ingress thereto and egress therefrom, at all times for such authorized purposes.

(e) The Company further agrees to cooperate to any reasonable extent with the State and Government in the operation of said fishway, and in case of emergency to furnish any available equipment to the State or the Government which may be of immediate use in maintaining adequate operation of said fishway, to prevent damage to the migratory fish which otherwise might result therefrom.

(f) The Company further agrees to maintain an open and unobstructed channel in that portion of the said White River extending downstream from the fishway entrance to the outfall of the by-pass diversion known as the Rock Chute.

(g) The Company further agrees that without expense to the Government, it will furnish all services, labor, material, tools and equipment necessary to and shall remove, rearrange, alter, relocate and reconstruct its electric power poles and lines now existing upon the premises upon which said fishway and attendant facilities are to be constructed or which will interfere with the maintenance and operation thereof. Said work by the company shall be completed within 30 days after receiving notice from the Government to commence work thereon. The Company shall procure any necessary permits and licenses and obey and abide by all applicable laws, ordinances, and other rules and regulations of the United States of America, the State of Washington, and any political subdivision thereof, wherein this work is done. The Company shall be responsible for all material and workmanship in connection with this work.

(h) The Company agrees to furnish and the Government agrees to purchase electric power for the construction, reconstruction, alteration, maintenance and operation of the said fishway, and appurtenances, installed or to be installed by the Government under this agreement at rates applicable to this class of service in accordance with the Company's published tariffs.

(i) It is understood and agreed that all materials, tools, equipment and machinery constructed, installed, attached to or placed upon the premises of the Company by the Government or the State in connection with structures and appurtenances to be constructed, installed, maintained and operated under this agreement shall be and remain the sole property of the Government or of the State respectively, provided, however, that should the removal of any fixed structure of the Government in any wise affect the Company's facilities, the Government, if so requested by the Company, shall replace the Company's facilities affected by such removal in the same condition as they were prior to this agreement or as otherwise mutually agreed upon.

(j) The Company shall not be responsible for the operation of said fishway or the success or failure thereof and shall not be responsible for operating or maintaining a fishway or fishladder at its headworks so long as this agreement is in effect.

ARTICLE IV OBLIGATIONS OF THE STATE

(a) The State shall cooperate with the Government in the construction, reconstruction, maintenance and operation of said fishway and shall furnish available technical advice to the Government whenever requested.

(b) The State agrees that the construction of the said fishway on the left bank of the White River covered by this agreement in accordance with the approved plans and specifications hereinabove set forth and the reasonable operation thereof, including the transportation of migratory fish therefrom to points on the river upstream

from Mud Mountain Dam, shall be deemed compliance with all laws and regulations requiring the construction and operation of facilities for the preservation of migratory fish at hydraulic works which obstruct their free migration insofar as said laws apply to the White River between a point immediately below the Company's works and the reservoir area upstream from Mud Mountain Dam.

(c) Upon completion of the fishway to be constructed under this agreement, in lieu of the fishway and fish ladder of the Company, the Company shall not be longer required to maintain and operate a fishway or fish ladder at its works near Buckley at its own expense and responsibility.

ARTICLE V OBLIGATION OF SUCCESSORS IN INTEREST

This agreement shall be binding upon all the parties hereto and their successors and assigns.

ARTICLE VI ANTI-DISCRIMINATION

(a) The State and the Company in performing the work required by this agreement, shall not discriminate against any employee or applicant for employment because of race, creed, color or national origin.

(b) The State and the Company agree that the provision of Paragraph (a) above will also be inserted in all of its subcontracts. For the purpose of this article, a subcontract is defined as any contract entered into by the State or the Company with any individual, partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity, for a specific part of the work to be performed in connection with the supplies or services furnished under this agreement, provided however, that a contract for furnishing of standard or commercial articles or raw material shall not be considered as a subcontract.

ARTICLE VII. CONVICT LABOR

The State and the Company shall not employ any person undergoing sentence of imprisonment at hard labor. This provision shall not be construed to prevent the State and the Company or any subcontractor hereunder from obtaining any of the supplies, or any component parts or ingredients thereof, to be furnished under this agreement or any of the materials or supplies to be used in connection with the performance of this agreement, directly or indirectly, from any Federal, State, or territorial prison or prison industry; Provided, that such article, materials or supplies are not produced pursuant to any contract or other arrangement under which prison labor is hired by or employed or used by any private person, firm or corporation.

ARTICLE VIII COVENANT AGAINST CONTINGENT FEES

The State and the Company each warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the agreement, or in its discretion, to deduct from the agreement price or consideration the amount of such commission, percentage, brokerage or contingent fees. This warranty shall not apply to commissions payable by the State or the Company upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the State or the Company for the purpose of securing business.

ARTICLE IX OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

ARTICLE X DISPUTES

Except as otherwise specifically provided in this agreement, all disputes concerning questions of fact arising under this agreement shall be decided by the contracting officer subject to written appeal by the State or the Company within 30 days to the Head of the Department concerned or his duly authorized representative whose decision shall be final and conclusive upon the parties hereto. In the meantime, the State and the Company shall diligently proceed with the work as directed.

ARTICLE XI DEFINITIONS

(a) The terms "Secretary of the Army" or "Head of the Department" as used herein shall have one and the same meaning and shall include the Under Secretary of the Army, and the term "his duly authorized representative" shall mean the Chief of Engineers, U. S. Army.

(b) Except for the original signing of this agreement and except as otherwise stated herein, the term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

ARTICLE XIII APPROVAL

This agreement shall be subject to the written approval of the Chief of Engineers, U. S. Army, and shall not be effective until so approved.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By [Signature]
L. H. HEWITT
Colonel, Corps of Engineers
(Contracting Officer)

WITNESSES:

[Signature]
[Signature]
(address)
Seattle, Washington

[Signature]
[Signature]
(address)
1508 Smith Tower, Seattle, Wash.

(address)

[Signature]
D. J. Torrance, Assistant Secretary
860 Stuart Bldg., Seattle 1, Wash.
(address)

STATE OF WASHINGTON

By [Signature]
Title Director of Fisheries

By [Signature]
Title Director of Game

PUGET SOUND POWER AND LIGHT COMPANY

By [Signature]
C. F. Terrell
Title Vice President

NOTE: Type or print names under all signatures.

I, EARL COE, certify that I am the Secretary of State of the STATE OF WASHINGTON, one of the parties herein; that HELO MOORE and DOH W. CLARKE who signed this agreement on behalf of said State, were then Director of Fisheries and Director of Game, respectively, of said State; that said agreement was duly signed for and on behalf of said State by authority of its governing statutes, and is within the scope of its corporate powers.

IN WITNESS WHEREOF, I have hereunto affixed my hand and the seal of the said State this 3rd day of March, 1948.

(CORPORATE SEAL)



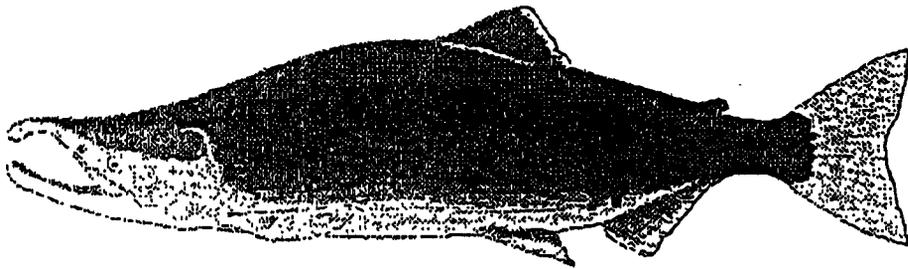
I, D. J. Torrance, certify that I am the Assistant Secretary of the FUGET SOUND POWER AND LIGHT COMPANY, one of the parties herein; that C. F. Terrell, who signed this agreement on behalf of said corporation, was then Vice President of said corporation; that said agreement was duly signed for and on behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

IN WITNESS WHEREOF, I have hereunto affixed my hand and the seal of the said corporation this 25th day of February, 1948

(CORPORATE SEAL)



D. J. Torrance
Assistant Secretary



DATE 12-31
TIME 10:27

U.S. ARMY CORPS OF ENGINEERS
SEATTLE DISTRICT
PLANNING BRANCH

TO: Gary Sprague

OFFICE: WDFW

PHONE: 360 902 2946

FROM: JEFFREY E. DILLON

OFFICE: ENVIRONMENTAL RESOURCES SECTION

PHONE: ~~764-3515~~ 6174



NOTES: _____

NUMBER OF PAGES 9 + cover

Contract No. W 45-106-eng-1932

AGREEMENT FOR CONSTRUCTION OF FISHWAY AND APPURTENANT FACILITIES FOR MUD MOUNTAIN DAM, WASHINGTON

Appropriation: .21 x 3113 Flood Control, General, Mud Mountain Dam
Payment to be made by Disbursing Officer, Seattle District, Corps of Engineers

THIS AGREEMENT, made and entered into this 2 day of February, 1946, by and between the UNITED STATES OF AMERICA, (hereinafter referred to as the "GOVERNMENT"), represented by the contracting officer, the STATE OF WASHINGTON, (hereinafter referred to as the "STATE"), represented by the Director of Fisheries and the Director of Game, and the PUGET SOUND POWER AND LIGHT COMPANY, a CORPORATION organized under the laws of Massachusetts, represented by its Vice President, C. F. Terrell, (hereinafter referred to as the "COMPANY").

WITNESSETH:

WHEREAS, many years heretofore the Company constructed a hydraulic power diversion headworks on the White River in the State of Washington, near Buckley, and in connection therewith did at its own expense construct and maintain and operate a fishway and fish ladder at said headworks for the passage of migratory fish to spawning grounds upstream, and

WHEREAS, pursuant to authority granted by the Flood Control Act of June 22, 1936, and subsequent Acts of Congress, the Government heretofore constructed Mud Mountain Dam and appurtenant works on the White River in the State of Washington, at a point upstream from the Company's headworks, which dam constitutes an obstruction making it impossible for migratory fish to pass the said Mud Mountain Dam to points upstream, and

WHEREAS, at the time construction was commenced on said Mud Mountain Dam, the Government by mutual agreement with the Company altered the Company's fishway and fish ladder at its headworks and installed a temporary fish trap therein, whereby the Government trapped migratory fish and transported them upstream by tank truck to spawning grounds above said Mud Mountain Dam, and

WHEREAS, after due consideration, it has been determined that the best method of providing passage for migratory fish in the said White River from below Mud Mountain Dam to the waters upstream therefrom is to construct and maintain a permanent fishway and fishtrap at the Company's said headworks near Buckley and to transport the fish therefrom by tank truck to the spawning grounds above said Mud Mountain Dam, and

Approved by authority of Chief of Engineers

[Signature]
L. E. KRESKIN, Colonel, C.E.
Chief of Engineers

WHEREAS, it is to the best interests of the Government and the other parties hereto that the Government at its own expense construct, maintain and operate said proposed permanent fishway and fish trap in lieu of the fishladder operated and maintained by the Company, and that the Company convey to the Government the necessary easements for said structure and appurtenances and release sufficient water from its headworks, when available, to operate the same, all as approved by the State.

NOW, THEREFORE, in consideration of the premises, the parties hereto mutually agree as follows:

ARTICLE I DESCRIPTION OF WORK

The structure to be constructed under this agreement, hereinafter called the fishway, shall be built on the left bank of the White River just downstream from the forebay entrance to the Company's diversion flume and shall consist of a reinforced concrete series of ladders, fish trap and holding pool, and the necessary mechanical equipment for the elevation of the fish and their release into a specially constructed tank truck, together with the necessary roads. All work herein agreed to be done, shall be in accordance with the following plans and specifications, prepared by the Government and approved by the contracting officer representing the Government, the Director of Fisheries and the Director of Game representing the State, and C. F. Terrell, Vice President, in charge of Power Supply, representing the Company, copies of which plans and specifications are in possession of the parties hereto and herein incorporated and made a part of this agreement by this reference:

(a) A drawing prepared by the Government entitled "Mud Mountain Dam, Enumclaw, Washington, Location of Fishways at P.S. P. & L. Dam, General Arrangement," in one sheet, dated 15 April 1947, File No. E-3-8-67.

(b) Drawings prepared by the Government entitled "Puyallup River Flood Control Project, Mud Mountain Dam, White River, Washington, Fishway Structures," in 29 sheets, dated 28 November 1947, File No. E-3-8-107.

By mutual agreement in writing between the parties hereto, changes or alterations may be made in the above drawings and specifications, and supplemental drawings and specifications may be adopted in the same manner where necessary for the best interests of the work. Upon approval in writing, such changes shall become a part of this agreement as though by reference. For the purpose of this paragraph, it is understood that the Vice President in charge of Power Supply of the Company, or his successor, will have the authority to approve said changes in drawings and specifications for the Company.

ARTICLE II OBLIGATIONS OF THE GOVERNMENT

(a) The Government shall, by contract or otherwise, furnish at its own expense all services, labor, materials, tools and equipment necessary to construct and it shall construct the above-mentioned fishway in accordance with the above approved drawings and specifications and shall construct, reconstruct, alter, and improve the necessary roads, and bridges in connection therewith, including but not limited to existing roads and bridges of the Company.

(b) The Government shall operate and maintain at its own expense and sole responsibility said fishway and the roads in connection therewith, and shall furnish and maintain and operate the equipment necessary to trap and transport the fish therefrom to a point in the White River upstream from Mud Mountain Dam.

(c) The Government shall prosecute the work covered herein and shall construct, operate and maintain the same in an efficient manner so as to avoid damage to the Company's dam and headworks or interferences with the Company's operations and to prevent injury to property of the Company and the life and property of third persons. The gratings or covers for the fish trap provided for in the above mentioned plans and specification shall be kept in place over the fish trap at such reasonable times as the Company may require.

(d) The Government shall notify the Company in advance of the time when work of any kind in connection with the fish trap or fishway is commenced by giving the Company's agent at the works due notice thereof.

(e) The Government shall at its own expense remove all debris and trash resulting from the work performed by the Government or its contractors hereunder, and shall keep all facilities which it uses, constructs or operates on the Company's premises free of dead fish and other debris and shall maintain the premises of the Company which are used by the Government in connection with the fish trapping operations contemplated in this agreement in a neat and proper manner insofar only as such maintenance is made necessary by such operations.

ARTICLE III OBLIGATIONS OF THE COMPANY

(a) The Company agrees that without cost to the Government or the State, the Government shall be and it is hereby authorized to go upon the lands of the Company situated in Section 2, Township 19 North, Range 6 East, W. M. and Sections 34 and 35, Township 20 North, Range 6 East, W. M., upon which lands its existing headworks, flume and access roads are located, for the purpose of constructing, reconstructing, altering, improving, maintaining and operating the proposed fishway and attendant facilities and for the construction, reconstruction, alteration, improvement, maintenance and

operation of the necessary roads in connection therewith, all in accordance with the plans and specifications set forth in Article I hereof. This authority includes but is not limited to the right to remove a portion of the existing downstream revetment wall and to make the necessary alteration therein to provide a fishway entrance, the installation of gates at the upstream revetment wall at the forebay of its headworks, the removal and reconstruction of the existing fishway structure, the relocation of the existing tool house as shown on the drawings referred to, the removal and relocation of certain power poles, the construction, reconstruction, alteration and improvement and maintenance of an access road, a bridge over the Company's flume, and a bridge over the outfall of the by-pass diversion designated the Rock Chute.

(b) It is further agreed that the Company shall execute and deliver to the Government an instrument definitely describing the location of said fishway and other facilities and conveying to the Government a perpetual easement for the exercise of all of the rights granted by this agreement, reserving unto the Company or its agents and contractors the equal right at all times to use any and all roads and bridges constructed by the Government on Company lands, provided that the obligations imposed upon the Company by Article III, paragraphs (c), (e), (f) and (h) of this agreement shall continue in force and effect only so long as the Company shall maintain and operate said diversion headworks.

(c) Except in emergencies not ordinarily controllable, the Company agrees to hold and maintain a minimum water level behind its dam and headworks at elevation 667 feet according to the Company's present datum. The Company further agrees to furnish such amount of water as may be required for successful trapping of migratory fish but in no event more than twenty-five cubic feet per second when the river flow immediately above the point of its diversion does not exceed its legal water right at this work. If water is available in the river over and above an amount equal to its legal water right of 2000 c.f.s, the Company shall permit the diversion of any amount of water over 2000 c.f.s up to one hundred ten cubic feet per second for the operation of said fishway.

(d) The Company shall allow any employee or agent of the State or Government authorized to inspect, supervise, operate and maintain said fishway the right of ingress thereto and egress therefrom, at all times for such authorized purposes.

(e) The Company further agrees to cooperate to any reasonable extent with the State and Government in the operation of said fishway, and in case of emergency to furnish any available equipment to the State or the Government which may be of immediate use in maintaining adequate operation of said fishway, to prevent damage to the migratory fish which otherwise might result therefrom.

(f) The Company further agrees to maintain an open and unobstructed channel in that portion of the said White River extending downstream from the fishway entrance to the outfall of the by-pass diversion known as the Rock Chute.

(g) The Company further agrees that without expense to the Government, it will furnish all services, labor, material, tools and equipment necessary to and shall remove, rearrange, alter, relocate and reconstruct its electric power poles and lines now existing upon the premises upon which said fishway and attendant facilities are to be constructed or which will interfere with the maintenance and operation thereof. Said work by the company shall be completed within 90 days after receiving notice from the Government to commence work thereon. The Company shall procure any necessary permits and licenses and obey and abide by all applicable laws, ordinances, and other rules and regulations of the United States of America, the State of Washington, and any political subdivision thereof, wherein this work is done. The Company shall be responsible for all material and workmanship in connection with this work.

(h) The Company agrees to furnish and the Government agrees to purchase electric power for the construction, reconstruction, alteration, maintenance and operation of the said fishway, and appurtenances, installed or to be installed by the Government under this agreement at rates applicable to this class of service in accordance with the Company's published tariffs.

(i) It is understood and agreed that all materials, tools, equipment and machinery constructed, installed, attached to or placed upon the premises of the Company by the Government or the State in connection with structures and appurtenances to be constructed, installed, maintained and operated under this agreement shall be and remain the sole property of the Government or of the State respectively, provided, however, that should the removal of any fixed structure of the Government in any wise affect the Company's facilities, the Government, if so requested by the Company, shall replace the Company's facilities affected by such removal in the same condition as they were prior to this agreement or as otherwise mutually agreed upon.

(j) The Company shall not be responsible for the operation of said fishway or the success or failure thereof and shall not be responsible for operating or maintaining a fishway or fishladder at its headworks so long as this agreement is in effect.

ARTICLE IV OBLIGATIONS OF THE STATE

(a) The State shall cooperate with the Government in the construction, reconstruction, maintenance and operation of said fishway and shall furnish available technical advice to the Government whenever requested.

(b) The State agrees that the construction of the said fishway on the left bank of the White River covered by this agreement in accordance with the approved plans and specifications hereinabove set forth and the reasonable operation thereof, including the transportation of migratory fish therefrom to points on the river upstream

from Mud Mountain Dam, shall be deemed compliance with all laws and regulations requiring the construction and operation of facilities for the preservation of migratory fish at hydraulic works which obstruct their free migration insofar as said laws apply to the White River between a point immediately below the Company's works and the reservoir area upstream from Mud Mountain Dam.

(c) Upon completion of the fishway to be constructed under this agreement, in lieu of the fishway and fish ladder of the Company, the Company shall not be longer required to maintain and operate a fishway or fish ladder at its works near Buckley at its own expense and responsibility.

ARTICLE V OBLIGATION OF SUCCESSORS IN INTEREST

This agreement shall be binding upon all the parties hereto and their successors and assigns.

ARTICLE VI ANTI-DISCRIMINATION

(a) The State and the Company in performing the work required by this agreement, shall not discriminate against any employee or applicant for employment because of race, creed, color or national origin.

(b) The State and the Company agree that the provision of Paragraph (a) above will also be inserted in all of its subcontracts. For the purpose of this article, a subcontract is defined as any contract entered into by the State or the Company with any individual, partnership, association, corporation, estate, or trust, or other business enterprise or other legal entity, for a specific part of the work to be performed in connection with the supplies or services furnished under this agreement, provided however, that a contract for furnishing of standard or commercial articles or raw material shall not be considered as a subcontract.

ARTICLE VII CONVICT LABOR

The State and the Company shall not employ any person undergoing sentence of imprisonment at hard labor. This provision shall not be construed to prevent the State and the Company or any subcontractor hereunder from obtaining any of the supplies, or any component parts or ingredients thereof, to be furnished under this agreement or any of the materials or supplies to be used in connection with the performance of this agreement, directly or indirectly, from any Federal, State, or territorial prison or prison industry; Provided, that such article, materials or supplies are not produced pursuant to any contract or other arrangement under which prison labor is hired by or employed or used by any private person, firm or corporation.

ARTICLE VIII COVENANT AGAINST CONTINGENT FEES

The State and the Company each warrants that it has not employed any person to solicit or secure this agreement upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to annul the agreement, or in its discretion, to deduct from the agreement price or consideration the amount of such commission, percentage, brokerage or contingent fees. This warranty shall not apply to commissions payable by the State or the Company upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the State or the Company for the purpose of securing business.

ARTICLE IX OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this agreement or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

ARTICLE X DISPUTES

Except as otherwise specifically provided in this agreement, all disputes concerning questions of fact arising under this agreement shall be decided by the contracting officer subject to written appeal by the State or the Company within 30 days to the Head of the Department concerned or his duly authorized representative whose decision shall be final and conclusive upon the parties hereto. In the meantime, the State and the Company shall diligently proceed with the work as directed.

ARTICLE XI DEFINITIONS

(a) The terms "Secretary of the Army" or "Head of the Department" as used herein shall have one and the same meaning and shall include the Under Secretary of the Army, and the term "his duly authorized representative" shall mean the Chief of Engineers, U. S. Army.

(b) Except for the original signing of this agreement and except as otherwise stated herein, the term "Contracting Officer" as used herein shall include his duly appointed successor or his authorized representative.

ARTICLE XIII APPROVAL

This agreement shall be subject to the written approval of the Chief of Engineers, U. S. Army, and shall not be effective until so approved.

IN WITNESS WHEREOF, the parties hereto have executed this agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

By [Signature]
L. H. HEWITT
Colonel, Corps of Engineers
(Contracting Officer)

WITNESSES:

[Signature]
1213 Smith Tower
(address)
Seattle, Washington

[Signature]
1502 Smith Tower, Seattle, Wash.
(address)

(address)

[Signature]
D. J. Torrance, Assistant Secretary
860 Stuart Bldg., Seattle 1, Wash.
(address)

STATE OF WASHINGTON

By [Signature]
Title Director of Fisheries

By [Signature]
Title Director of Game

PUGET SOUND POWER AND LIGHT COMPANY

By [Signature]
C. F. Terrell
Title Vice President

NOTE: Type or print names under all signatures.

I, EARL COE, certify that I am the Secretary of State of the STATE OF WASHINGTON, one of the parties herein; that WILLO MOORE and DOM W. CLARKE who signed this agreement on behalf of said State, were then Director of Fisheries and Director of Game, respectively, of said State; that said agreement was duly signed for and on behalf of said State by authority of its governing statutes, and is within the scope of its corporate powers.

IN WITNESS WHEREOF, I have hereunto affixed my hand and the seal of the said State this 3rd day of March, 1948.

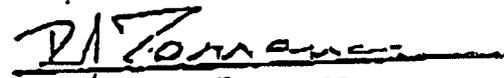
(CORPORATE SEAL)



I, D. J. Torrance, certify that I am the Assistant Secretary of the PUGET SOUND POWER AND LIGHT COMPANY, one of the parties herein; that C. F. Terrell, who signed this agreement on behalf of said corporation, was then Vice President of said corporation; that said agreement was duly signed for and on behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

IN WITNESS WHEREOF, I have hereunto affixed my hand and the seal of the said corporation this 25th day of February, 1948

(CORPORATE SEAL)



D. J. Torrance
Assistant Secretary