

**EXHIBIT NO. \_\_\_(KO-4)**  
**DOCKET NO. UE-06 \_\_\_/UG-06 \_\_\_**  
**2006 PSE GENERAL RATE CASE**  
**WITNESS: KRIS OLIN**

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

**v.**

**PUGET SOUND ENERGY, INC.,**

**Respondent.**

**Docket No. UE-06 \_\_\_**  
**Docket No. UG-06 \_\_\_**

**THIRD EXHIBIT (NONCONFIDENTIAL) TO THE  
PREFILED DIRECT TESTIMONY OF  
KRIS OLIN  
ON BEHALF OF PUGET SOUND ENERGY, INC.**

**FEBRUARY 15, 2006**



PAMELA W. KRUEGER  
Direct: (425) 635-1414  
Fax: (425) 635-2414  
Internet: KRUEP@PERKINSCOIE.COM

The PSE Building  
10885 N.E. Fourth Street, Suite 700  
Bellevue, WA 98004-5579  
PHONE: 425.635.1400  
FAX: 425.635.2400  
www.perkinscoie.com

November 24, 2004

Ms. Magalie Roman Salas  
Federal Energy Regulatory  
Commission Secretary  
Mail Code: DLC, HL-11.1  
888 First Street, NE  
Washington, D.C. 20426

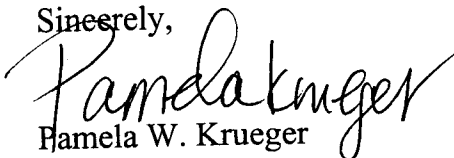
**Re: Baker River Hydroelectric Project, FERC No. 2150 -  
Baker River Hydroelectric Project Comprehensive Settlement  
Agreement**

Dear Ms. Salas:

Enclosed for filing with the Commission, on behalf of Puget Sound Energy, Inc., is the original and fourteen copies of Baker River Hydroelectric Project Comprehensive Settlement Agreement for the Baker River Hydroelectric Project, FERC Project No. 2150-033.

If you have any questions, please contact me at 425-635-1414.

Sincerely,



Pamela W. Krueger

PWK:kc

Enclosures

cc: FERC Service List for P-2150  
Settlement Agreement Signatories

[07772-1126/BA043290.003]

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · HONG KONG · LOS ANGELES  
MENLO PARK · OLYMPIA · PORTLAND · SAN FRANCISCO · SEATTLE · WASHINGTON, D.C.

Perkins Coie LLP (Perkins Coie LLC in Illinois)



November 23, 2004

The Honorable Magalie R. Salas  
Secretary  
Federal Energy Regulatory Commission  
Room A-1, East  
888 First Street, NE  
Washington, D.C. 20426

**Re: Submittal of Offer of Settlement for Baker River Hydroelectric Project  
(FERC Project No. P-2150)**

Dear Secretary Salas:

On behalf of Puget Sound Energy, Inc. ("PSE"), licensee for the Baker River Hydroelectric Project, FERC Project No. P-2150 ("Project"), please find enclosed the Baker River Hydroelectric Project Comprehensive Settlement Agreement ("Settlement Agreement") providing for the relicensing of the Project. As of November 23, 2004, this document was executed by the licensee, PSE, and 23 parties, including federal agencies, tribes, state agencies, counties, local governments, and non-governmental organizations representing environmental and recreational interests (collectively, the "Sponsoring Parties").<sup>1</sup> The Sponsoring Parties include all active participants in the Project's alternative licensing process.

PSE submits this Settlement Agreement as an offer of settlement on behalf of the Sponsoring Parties pursuant to Rule 602 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.602). PSE respectfully requests the Commission incorporate the Proposed License Articles without modification, in conformance with the expectations of the Sponsoring Parties. Enclosed herein for filing with the Commission as PSE's Offer of Settlement are the following:

---

<sup>1</sup> PSE files herein an original of the Settlement Agreement, including attachments, which includes the original signatures provided by all parties. PSE certifies that this filing to the Commission provides a true and correct copy of the signature pages provided by the Sponsoring Parties.

The Honorable Magalie R. Salas  
Federal Energy Regulatory Commission  
November 23, 2004  
Page 2

- Joint Explanatory Statement<sup>2</sup>
- Settlement Agreement, including:
  - Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement
  - Appendix A: Proposed License Articles 101 through 603, plus appendices to Proposed License Articles:
    - Article 101: Fish Propagation
    - Article 102: Aquatics Reporting
    - Article 103: Upstream Fish Passage Implementation Plan
    - Article 104: Connectivity between Lake Shannon and Baker Lake
    - Article 105: Downstream Fish Passage Implementation Plan
    - Article 106: Flow Implementation
    - Article 107: Flood Storage
    - Article 108: Gravel
    - Article 109: Large Woody Debris
    - Article 110: Shoreline Erosion
    - Article 201: Programmatic Agreement

---

<sup>2</sup> The Sponsoring Parties have agreed to this Joint Explanatory Statement as a general overview of the Settlement Agreement. However, upon further review and discussion, the Sponsoring Parties may wish to supplement this Joint Explanatory Statement. Any such supplementation will be filed as an addendum to this filing.



The Honorable Magalie R. Salas  
Federal Energy Regulatory Commission  
November 23, 2004  
Page 3

- Article 301: Recreation Management Report
- Article 302: Aesthetics Management
- Article 303: Baker Lake Resort Redevelopment Plan
- Article 304: Baker Reservoir Recreation Water Safety Plan
- Article 305: Lower Baker Developed Recreation
- Article 306: Upper Baker Visitor Information Services Funding
- Article 307: Upper Baker Visitor Interpretive Services Funding
- Article 308: Dispersed Recreation Management Funding
- Article 309: Bayview Campground Rehabilitation Funding
- Article 310: Upper Baker Trail and Trailhead Construction Funding
- Article 311: Lower Baker Trail Construction
- Article 312: Developed Recreation Monitoring and Funding
- Article 313: Upper Baker Developed Recreation Maintenance Funding
- Article 314: Upper Baker Trail and Trailhead Maintenance Funding
- Article 315: Lower Baker Trail Maintenance
- Article 316: USDA-FS Forest Road Maintenance Funding
- Article 317: Access to Baker Lake
- Article 318: Law Enforcement

The Honorable Magalie R. Salas  
Federal Energy Regulatory Commission  
November 23, 2004  
Page 4

- Article 401: Water Quality
- Article 501: Terrestrial Resource Management Plan
- Article 502: Forest Habitat
- Article 503: Elk Habitat
- Article 504: Wetland Habitat
- Article 505: Aquatic Riparian Habitat Protection, Restoration and Enhancement Plan
- Article 506: Osprey Nest Structures
- Article 507: Loon Floating Nest Platforms
- Article 508: Noxious Weeds
- Article 509: Plants of Special Status
- Article 510: *Carex flava*
- Article 511: Decaying and Legacy Wood
- Article 512: Bald Eagle Night Roost Surveys
- Article 513: Bald Eagle Management Plans
- Article 514: Use of Habitat Evaluation Procedures
- Article 515: Late Seral Forest Growth
- Article 516: Mountain Goats
- Article 517: Grizzly Bear Road Management
- Article 601: Baker River Coordinating Committee
- Article 602: Required Funding

The Honorable Magalie R. Salas  
Federal Energy Regulatory Commission  
November 23, 2004  
Page 5

- Article 603: Adaptive Management
- Appendix A-1 to Articles: Noxious Weed Management Guidelines and Treatment Options
- Appendix A-2 to Articles: Species and Locations Requiring Site-Specific Management Plans for Plants of Special Status
- Appendix A-3 to Articles: Additional Guidelines for Plans for Plants of Special Status
- Appendix A-4 to Articles: *Carex flava* Guidelines
- Appendix A-5 to Articles: Recreation Implementation of Schedule.
- Appendix A-6 to Articles: Baker River Relicense Recreation Studies – Study R12 Dispersed Site Inventory, Location Terminology
- Appendix B: Agreement Between Skagit County and Puget Sound Energy, Inc.

The Settlement Agreement is a considerable achievement, capping nearly five years of active engagement in the alternative licensing process. The Settlement Agreement is a negotiated compromise worked out among the parties concerning extensive protection, mitigation and enhancement measures for the Project that address aquatic, terrestrial, recreational, cultural, and other resources. The Settlement Agreement reflects a consensus of all active participants in the relicensing, in regard to a wide variety of issues identified through the alternative licensing process. The Proposed License Articles put forward by the Sponsoring Parties address issues ranging from instream flows to noxious weeds; flood control to creation of various resource protection, mitigation and enhancement funds; trailhead maintenance to cultural resources; elk habitat to creation of a coordinating committee to implement the terms of the Settlement Agreement. Relicensing the Project on the terms set forth in the Settlement Agreement will allow PSE to continue to generate economical, readily-

The Honorable Magalie R. Salas  
Federal Energy Regulatory Commission  
November 23, 2004  
Page 6

available energy and to protect and enhance resources for the benefit of the surrounding environment for many years to come.

Under the Proposed License Articles, the Sponsoring Parties will continue to work cooperatively to implement environmental protection, mitigation and enhancement measures as well as recreational enhancements. Article 601 establishes a process for creating a Baker River Coordinating Committee and Resource Groups to implement the terms of the Settlement Agreement and to participate on license implementation committees. Article 602 establishes Baker River Project Funds to support protection, mitigation, and enhancement measures identified during the term of the license. Pursuant to Article 603, adaptive management strategies would be used to adjust plans according to changed conditions during the term of the new license. Given this continuing process for collaboration in the implementation of the license and the multi-million dollar investments in refurbishments, upgrades, and enhancements pledged by PSE under the Settlement Agreement, the Sponsoring Parties have reached an agreement that would support the Commission's issuance of a license with a term of forty-five (45) years or more.<sup>3</sup>

By copy of this letter, all participants are hereby notified, in compliance with Rule 602(d)(2) (18 C.F.R. § 385.602(d)(2)), that comment on this offer of settlement may be filed with the Commission no later than 20 days after the date of this filing and that reply comment may be filed not later than 30 days after the date of this filing, unless otherwise provided by the Commission.

Paper copies of this filing are being served upon all parties listed on the official service list for the Project in accordance with Rules 602 and 2010 (18 C.F.R. §§ 602, 2010). See attached Certificate of Service. C.D.'s are also available and will be provided upon request to:

---

<sup>3</sup> The Sponsoring Parties do not object to a term of 45 years or more.

The Honorable Magalie R. Salas  
Federal Energy Regulatory Commission  
November 23, 2004  
Page 7

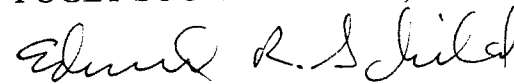
Connie Freeland  
Puget Sound Energy, Inc.  
P.O. Box 97034 PSE-09S  
Bellevue, WA 98009-9734  
connie.freeland@pse.com

The Sponsoring Parties request that the Commission accept the enclosed Settlement Agreement and issue a new license for the Project that adopts and is fully consistent with the terms and conditions set forth therein.

If you have any questions regarding this filing, please feel free to contact me at (425) 635-1414. Thank you for your consideration of the enclosed Settlement Agreement.

Respectfully submitted,

PUGET SOUND ENERGY, INC.



Edward R. Schild  
Director Energy Production & Storage

Enclosure

cc: Service List for FERC Project P-2150  
Settlement Agreement Signatories

**Joint Explanatory Statement In Support  
of the  
Offer of Settlement,  
Puget Sound Energy, Inc.,  
Baker River Hydroelectric Project  
(FERC Project No. 2150)**

**A. INTRODUCTION**

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission") (18 C.F.R. § 385.602) and in conjunction with its submission of the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement, dated November 30, 2004 ("Settlement"), the Parties jointly provide this Joint Explanatory Statement ("Statement"). This Statement presents an overview and explanation of the Settlement reached by Puget Sound Energy, Inc. ("PSE") and all participants in the licensing proceeding.

The Parties respectfully request that the Commission approve the Settlement and incorporate without modification the Proposed License Articles set forth in Appendix A of the Settlement as license articles in a new license for the Baker River Hydroelectric Project, FERC No. 2150 ("Baker Project" or "the Project").

**B. BACKGROUND**

On April 30, 2004, PSE filed an Application for a New License with FERC for its Baker Project. In May of 2004, PSE and a supermajority<sup>1</sup> of the participants in the Baker Project's approved Alternative Licensing Process ("Baker ALP") reached an Understanding of Conceptual Agreement ("UCA") relating to issues pending in the relicensing. Subsequently, Baker ALP participants engaged in a negotiated settlement process to achieve a balance of competing resource and other public interests in the Baker Project relicensing. This process produced a consensus of all active, interested participants in the Baker ALP on protection, mitigation and enhancement measures (captured in the Proposed License Articles) for the Project that address aquatic resources, terrestrial resources, cultural resources, recreation and aesthetic resources, flood control storage, and hydropower generation, as required by Sections 4(e), 10(a), 10(j), and 18 of the Federal Power Act. The Parties submit that the Settlement is fair

---

<sup>1</sup> At the time of the UCA, Skagit County was the only active participant in the Baker ALP that had not been part of the consensus. However, the Settlement represents the consensus of all active participants in the Baker ALP, including Skagit County.

and reasonable and in the public interest within the meaning of Rule 602, 18 C.F.R. § 385.602(g)(3). The settling parties include federal and state resource agencies, Indian tribes, national and local non-governmental organizations, municipalities and other governmental subdivisions of the state, and an individual citizen.

The Parties intend that the Settlement supersede any inconsistent prior filings by the Parties in this proceeding, including previous comments, recommendations, terms, conditions, or prescriptions filed by the Parties. The Parties may file revised comments, recommendations, terms, conditions, and/or prescriptions consistent with the Settlement.

This Statement provides a framework for understanding the outcome of the Baker ALP, which is detailed in the Settlement. Nothing in this Statement is intended to modify the terms of the Settlement. Any conflict between the language in the Settlement and this Statement should be resolved in favor of the Settlement. This Statement should not be used to interpret Settlement terms. The Settlement should be read and evaluated as a stand-alone proposal that supersedes the proposals in PSE's Application for a New License.

### **C. SETTLEMENT PROCESS COMPLETION**

Since relicensing discussions began in the Spring of 2000, PSE has coordinated a collaborative process (the Baker ALP), which was approved by FERC in 2001, with the hope of achieving a collaborative, consensus-based settlement for the relicensing of the Project, as outlined in PSE's April 28, 2004 letter to the Commission submitted with its application. For more than four years, the participants of the ALP have invested significant time and resources actively participating in negotiations regarding the relicensing of the Project. Since the Application was submitted, resource working groups, the Baker Legal Working Group, and the Baker Policy Team continued to meet and, through collaborative efforts of all of the parties, have been able to arrive at a final comprehensive settlement agreement. All settling parties worked diligently to meet the agreed November 30, 2004 deadline for submission of this Settlement to FERC, having to balance a number of competing demands. In particular, since June 2004, the parties have attended over 30 days of full-day work sessions to achieve the goal of submitting a comprehensive settlement agreement. The Settlement includes provisions to implement its terms, addresses how the settling parties will play an ongoing oversight role in PSE's license implementation, and provides a framework for facilitating ongoing communication and collaboration among all of the parties.

### **D. THE SETTLEMENT**

The Settlement is comprised of two parts: the general provisions contained in the body of the agreement, and the appendices.

## **1. General Provisions.**

The body of the Settlement contains: a list of all of the parties; a set of defined terms; an implementation section relating to various pre- and post-license issuance issues; a decision-making and dispute resolution section relating to the parties' commitment to work together to resolve any future disputes; a section defining remedies available to the parties if the new license is inconsistent with the settlement; ongoing access to administrative and judicial remedies and license enforcement, and party withdrawal provisions; and, finally, a general conditions and limitations section that sets forth parties' ongoing legal obligations, reservations of authority, reserved rights, and other general provisions.

## **2. Appendices.**

There are two appendices, the first pertaining to all parties and the second containing an agreement that includes only PSE and Skagit County.

Appendix A contains a comprehensive set of Proposed License Articles that the parties intend FERC to adopt without modification. Section 2.4 of the Settlement acknowledges that it will not be inconsistent with the Settlement (a defined term in the Settlement) for FERC to include license articles in the L-Form (as defined by 18 C.F.R. § 2.9) or to include reservations of authority. The Proposed Articles include: Articles 101-110, 401, 505, and 602, which address, generally, aquatic species, water quality, flood control and other reservoir management issues; Article 201 addresses cultural resource issues; Articles 301-318 address recreational and aesthetic resource issues; Articles 501-517 address terrestrial species and habitat issues; and Articles 601-603 address license implementation issues. A slightly more detailed justification statement for each article is attached as an appendix to this Statement. The parties reserve the right to file additional, prepared supplemental details consistent with the settlement as deemed necessary or appropriate following submission of the Settlement.

Appendix B contains a two-party agreement between PSE and Skagit County relating to cooperation and support efforts for additional flood control measures.

## **E. ANALYSIS SUPPORTING SETTLEMENT**

This Settlement relies on various documents, studies, and analyses developed during the Baker ALP, including, but not limited to, the Preliminary Draft Environmental Assessment ("PDEA") issued April 30, 2004 for the Project (FERC Accession Nos. 20031003-0208, 20031003-0211, 20031003-0212, 20031003-0214), and any documents filed with respect to the application for the new license for the Project. Studies that were prepared since the submission of the PDEA that were



relied on, in whole or in part (and will be referred to or referenced in the revised PDEA due January 30, 2005) include:

Study #	Title
R5	Aesthetic / Visual Resources Study
R9	Electronic Monitoring
R11 / 15	Recreation Capacity and Suitability Analysis (R11) and Recreation Trail Analysis (R15)
R12	Dispersed Site Inventory Study
R13	Recreation Visitor Survey Study
R16	Recreation Needs Analysis

Study #	Title
A02	LB River Habitat Mapping
A05	Water Quality Sampling
A09a	Skagit River Flow and Habitat Assessment
A09b	Salmonid Redd Selection and Maintenance in the Middle Skagit River in Response to River Fluctuations
A09c	Distribution, Timing and Depth of Salmonid Redds
A09d	Distribution and Timing of Juvenile Salmonids
A15	UB Delta Scour
A16	Lower Baker River Alluvial Fan Assessment
A24	Hydrologic and Geomorphic Analysis
A25	Unnatural Predation
R-A37	Without Project Alternative (evaluation of Aquatic & Riparian Habitat)
R-A38	Bull Trout Population Assessment & Risk Analysis (partially complete)

The parties to the Settlement concur that the record developed to date in this proceeding, as well as the additional analyses listed above, supports the Proposed License Articles contained in the Settlement. Each Proposed License Article was based upon a thorough review of the technical data available or produced as a part of the Baker ALP. The record prepared and filed to date provides a compelling basis on which to approve the Settlement and incorporate the Proposed License Articles in a new license for the Baker Project. By using the Commission's alternative licensing procedures, all interested parties had the opportunity to participate in the development of the record, development in the studies that were performed, and cooperative scoping for environmental review and preparation of the PDEA. PSE established a

publicly accessible website for the Baker Project that posted all available and non-confidential information and studies. In addition to the meetings of the technical working groups, public meetings and all-participant meetings were conducted to keep all interested parties informed throughout the collaborative process. The success of the collaborative process was due in large part to the shared technical knowledge and open communication among all interested parties that allowed for the parties to reach solutions based on sound science.

## **Explanatory Statement Appendix**

### **Proposed Article Justification Statements**

#### **Aquatics Articles**

##### **a. Article 101 – Fish Propagation**

*Rationale for Action:* The fish propagation and enhancement programs and facilities section is a firm commitment to equitably address compensation for continuing impacts of the Project on salmonid species.

These measures are in accord with three general principles:

- Proven low impact methods.
- Successful and efficient supplementation methods.
- Sufficient magnitude to support the need.

These measures are based on the proposition that these programs and facilities shall provide the number of outmigrants necessary to support the subbasin fishery resource. The supplementation programs in aggregate with the Habitat Enhancement, Restoration and Conservation (HERC) Fund are designed to address Project effects going forward.

##### **b. Article 102 – Aquatics Reporting**

*Rationale for Action:*

This article requires comprehensive reporting of all measures pertaining to aquatic species.

##### **c. Article 103 – Upstream Fish Passage Implementation Plan**

*Rationale for Action:* The Project interrupts connectivity of migrating fish species to upstream locations. The Project, therefore, needs to provide means of access to migrating fish for connectivity. To address this issue, a Fish Passage Technical Working Group (FPTWG), composed of experts in the field of fish passage from federal and state fisheries agencies and private companies, was convened to evaluate any concept potentially available to pass fish, including volitional and assisted facilities and programs. After careful, deliberate, and extensive review of a wide range of volitional and assisted passage options, documented by a number of

Technical Memoranda, the FPTWG agreed on a proposed facility concept for Lower Baker for upstream migration utilizing a trap and haul concept similar to existing programs but requiring substantial modification to existing facilities including sorting capability. The proposal satisfied the interests of the parties and, while not final in design, is sufficiently detailed to constitute resolution of the issue of access above the Project.

**d. Article 104 - Connectivity Between Lake Shannon and Baker Lake**

*Rationale for Action:* The Project interrupts connectivity of aquatic species within the Baker system and isolates streams tributary to Lake Shannon reservoir and the lower Baker River and the Skagit River. The Project, therefore, needs to provide a means of access to fish for connectivity. The FPTWG, composed of experts in the field of fish passage, extensively reviewed a wide range of volitional and assisted passage options. The trap and haul option selected for upstream migration bypasses Lake Shannon and, therefore, may isolate species desiring to migrate upstream past the Upper Baker Development or into Lake Shannon. The FPTWG sought to address the need of connectivity associated with populations isolated by Upper Baker Dam between Baker Lake and Lake Shannon. The FPTWG made provision for investigation of facilities and/or programs for other species' population connectivity needs within the basin.

Ecosystem need for connectivity between populations segregated for many years may be important. Connectivity to co-mingle these populations can be achieved in a variety of ways apart from passage facilities per se. Therefore, the proposal for sequential development of programs and/or facilities constitutes a reasonable and prudent approach.

**e. Article 105 – Downstream Fish Passage Implementation Plan**

*Rationale for Action:* The Project interrupts connectivity of migrating fish species to downstream locations. The Project, therefore, needs to provide a safe and efficient means of egress to migrating fish for connectivity. The floating surface collector was selected as the downstream fish passage facility after extensive review of a wide range of volitional and assisted options by the FPTWG, composed of experts in the field of fish passage.

Recent migratory investigations indicate that existing attraction barge facilities at Upper Baker are an effective means to address fish passage. However, the existing technology is over 50 years old, and major advances in understanding and technical capability have been developed in the ensuing years. Moreover, conventional passage

technology, well suited for rivers with flowing water, is not readily applicable to fluctuating deepwater reservoirs. It is unknown whether conventional passage technology would work successfully in a deep reservoir with fluctuating levels and intermittent operation, or if it would work better than existing technology.

Improvements in the technology are clearly available to address many if not most of the dissuasive features of the existing fish passage facilities. It is appropriate, therefore, to build on the solid foundation of existing knowledge and successful technology combined with the potential benefits of prototype facility investigation to develop passage technology appropriate for deep reservoir migration patterns and consistent with other resource uses. Therefore, the proposal for sequential development of programs and/or facilities constitutes a reasonable and prudent approach.

**f. Article 106 – Flow Implementation**

*Rationale for Action:* The Baker Project has the ability to control most flows originating from the Baker basin, except when the Baker River exceeds the storage capacity of the Project or when the project is under the direct control of the Army Corps of Engineers for flood control operations. Operation of the Project under the proposed license will alter flow in the lower Baker River and the Skagit River downstream of the Project. The proposed action modifies the timing and duration of most hydraulic and hydrologic relationships downstream of Lower Baker Dam. Flow alterations affect physical habitat and food production for all aquatic species.

Rapid reductions in streamflow (downramping) downstream of hydropower dams have been documented to cause direct and indirect mortality to juvenile fish. Downramping regulation and minimization of flow fluctuation amplitude significantly reduce the resultant mortality and loss to the public fishery resource.

Amplitude is a significant factor correlated with fish and redd stranding during downramps, independent of downramping rate restrictions. Large amplitude flow fluctuations cause massive reductions in stream channel wetted perimeter that move suitable habitat a large horizontal distance, leaving both juvenile and adult fish stranded in potholes and side channels that subsequently drain.

The flow regime established in this article addresses the concerns for protection of habitat and aquatic species in relation to the capacity of the Baker Project to influence such conditions in the Skagit River. The additional generation capacity will permit the Project to achieve the Washington state downramping guidelines. The modeling efforts using Hydrops (a model developed specifically for the Baker Project) allowed the development of an instream flow regime below the Project that provides for adequate fish protection and economical Project operations.

**g. Article 107 – Flood Storage**

*Rationale for Action:* Skagit County desires to increase the secured capacity flood storage emanating from the Baker Project. This article authorizes enhanced flood control measures to reduce the risk of flooding for the general welfare, public health and safety of the citizens of Skagit County and generally in the Project area. The amount of increased flood storage is designed to assist in achieving the County's goal for flood control in the Skagit River system.

**h. Article 108 - Gravel**

*Rationale for Action:* The downstream movement of most sediment, including all bedload (cobble and gravel), is blocked by the Baker Project. At present only a portion of the Baker River's suspended sediment load passes the Project. This action will periodically assess conditions of sediment supply in the Skagit River combined with a commitment to implement gravel augmentation when and if the need for such an action is identified.

**i. Article 109 - Large Woody Debris**

*Rationale for Action:* Most downstream movement of large woody debris (LWD) is blocked by the Project. Upstream of the Project, LWD does not flow downstream except during flooding events.

The development and implementation of the Large Woody Debris Management Plan would provide for collection of wood from the Baker system, and for utilization both within the Project area and for transport around the Project, downstream to locations in the Skagit system. The amount and size of wood that could be collected and transported around the Project was determined by an assessment of wood currently in or available to the Baker Project area. LWD collected annually at the Project would be used to benefit aquatic and riparian ecosystems, with associated terrestrial benefits, in the Baker and Skagit River watersheds.

**j. Article 110 – Shoreline Erosion**

*Rationale for Action:* Shoreline erosion occurs naturally in lakes and rivers as waves and flow dislodge material on the bed and banks. This action may be exacerbated by periodic inundation and drawdown of a power reservoir. This measure has been proposed to address key points of erosion on the shoreline that may endanger infrastructure, recreation sites, important cultural/historical sites, aesthetic/ecological sites (terrestrial, aquatic, water resources) or other environmentally sensitive areas during the term of the license.

## **2. Cultural Resources Article**

### **a. Article 201 - Programmatic Agreement**

*Rationale for Action:* The Historic Properties Management Plan (HPMP) outlines cultural resources programs and measures for compliance with FERC regulations and other federal and state law, including the National Historic Preservation Act (NHPA), the Archaeological Resources Protection Act, the Native American Graves Protection and Repatriation Act, and the American Indian Religious Freedom Act. The HPMP describes how PSE will carry out its NHPA Section 106 responsibilities for the Project, including the review and consultation process to avoid, minimize, or mitigate the potential adverse effects to historic properties from Project undertakings.

## **3. Recreation Articles**

### **a. Article 301 – Recreation Management Report**

*Rationale for Action:* This article requires comprehensive reporting of all measures pertaining to recreational activities that are implemented by the licensee during the term of the license.

### **b. Article 302 - Aesthetics Management**

*Rationale for Action:* FERC regulations require that a license application for an existing project address protection of recreational and scenic values of the project and identify measures proposed to ensure that the project blends, to the extent possible, with the surrounding environment. The Aesthetics Management Plan (AMP) to be developed under this article would coordinate landscaping, oversee painting of equipment, enhance views of the reservoir, and improve facilities to reduce visual effects of the Project.

### **c. Article 303 - Baker Lake Resort Redevelopment Plan**

*Rationale for Action:* The location of the Baker Lake Resort represents a desirable setting for a campground on Baker Lake. Due to the short water-related peak recreation season in western Washington, the resort is not a viable business under its current operation. Redeveloping this site to a development level #3 USFS campground would retain overnight recreation activities while better addressing seasonal lakefront campground demand.

**d. Article 304 – Baker Reservoir Recreation Water Safety Plan**

*Rationale for Action:* Compliance with FERC regulations requires licensees to consider and address safety issues related to project facilities and operations. Baker Lake and Lake Shannon are Project features that attract recreational enthusiasts. A water safety management program oriented toward increasing awareness of potential hazards, delineating designated swimming areas, and providing water safety information displays could decrease recreational accidents on the lakes.

**e. Article 305 – Lower Baker Developed Recreation**

*Rationale for Action:* Lake Shannon is a FERC-licensed hydroelectric project reservoir. Recreational activity on the reservoir and the immediate surrounding areas is currently available, although most public access is only across private land, and is somewhat constrained by topographical and geologic features of the surrounding environment. Current recreational access does not provide for boat access to support additional recreational activities. FERC requires licensees to provide for reasonable public access to project reservoirs for recreational purposes. Proposed Article 305 seeks to provide legal access to Lake Shannon and provide for a more manageable level of recreational facilities, including the development of a small boat access site, to sustain the varied recreational activities that occur on or near the reservoir.

**f. Article 306 – Upper Baker Visitor Information Services Funding**

*Rationale for Action:* Effective visitor information services are an important and necessary component of a successful recreation management program, which is provided through this article.

Visitor feedback through relicensing survey studies indicates a desire for increased information about recreational opportunities, safety/regulatory information and services provided in the Baker Lake area. An effective summer visitor information services program will be provided through off-site orientation, on-site staffing support during peak use periods, and development of a small visitor information facility as recreationists enter the upper Baker basin.

**g. Article 307 – Upper Baker Visitor Interpretive Services Funding**

*Rationale for Action:* Visitor feedback through a visitor survey study also indicated a desire for more and/or better interpretive opportunities in the Project area. Broader based surveys and agency recreation plans typically identify growing



participation and interest in interpretive programs. Effective interpretation of local resources and history, including use of National Forest System land for hydroelectric power production, is an important and necessary component of an integrated recreation management program that provides a full range of services to visitors, which is provided through this article.

**h. Article 308 - Dispersed Recreation Management Funding**

*Rationale for Action:* Baker Lake is a Project feature that provides an attraction and opportunity for a variety of recreational activities. Dispersed camping along the reservoir and in the surrounding areas is currently available on lands where the management regime permits this practice. Dispersed camping is a recreation opportunity that is valued by a segment of the user public. Current dispersed recreation practices can result in undesirable health, safety and aesthetic conditions for the users as well as damage to natural resources. This measure presents an opportunity for improving the quality of recreational experiences associated with these sites and providing improved protection for visitors and resources.

**i. Article 309 – Bayview Campground Rehabilitation Funding**

*Rationale for Action:* Baker Lake is a Project feature that attracts recreational interest and activity. Bayview Campground is adjacent to Baker Lake and was originally planned for development as a large-capacity campground to make use of the recreational opportunities available on this Project feature. Redevelopment of the campground will supplement the existing developed recreation capacity and contribute to meeting expected future demand.

**j. Article 310 – Upper Baker Trail and Trailhead Construction Funding**

*Rationale for Action:* Baker Lake is a Project feature that attracts both day use and overnight visitors to the area. Trail systems associated with developed sites on this feature provide a limited range of opportunities for trail-based recreation. The opportunity for developed site users to take short walks or hikes without driving to other locations would be a desirable improvement. The addition of non-motorized multi-use trails will not only add to the current trail capacity in the basin, but also serve currently unserved or under-served user groups.

**k. Article 311 – Lower Baker Trail Construction**

*Rationale for Action:* Lake Shannon is a Project feature that attracts visitors to the Project area. Other Project features in the vicinity, including fish handling facilities and the Lower Baker Dam, are also public attractions. The construction of a multiuse trail in this area would add to the recreational opportunities in the vicinity of the Lower Baker Development, and provide a low-elevation, early season, recreation opportunity.

**l. Article 312 – Developed Recreation Monitoring and Funding**

*Rationale for Action:* Baker Lake is a Project feature that attracts recreational interest and activity. In the future, demand for camping is expected to exceed the capacity of existing campgrounds at Baker Lake. Development of additional overnight capacity in the Project area will supplement the existing supply and help accommodate expected future demand.

**m. Article 313 – Upper Baker Developed Recreation Maintenance Funding**

*Rationale for Action:* Baker Lake is a Project feature that attracts recreational interest and activity. Horseshoe Cove, Shannon Creek, Panorama Point, and Maple Grove campgrounds are located on the lake and were developed to make use of the recreational opportunities created by this Project feature. Bayview Campground and the Baker Lake Resort may achieve a similar level of development at some future time. Funding to absorb a portion of the operational expenses incurred at these sites is an appropriate means of addressing management costs resulting from meeting recreational demand associated with the Project.

**n. Article 314 – Upper Baker Trail and Trailhead Maintenance Funding**

*Rationale for Action:* Baker Lake is a Project feature that attracts day and overnight recreational enthusiasts. Many of these users engage in multiple activities during their visits to the area. A certain percentage of current and future trail use, which appears to vary among the different trails in the upper basin, is attributed to this user group. Funding for trail and trailhead maintenance is an appropriate means of addressing the needs of the trail users.

**o. Article 315 – Lower Baker Trail Maintenance**

*Rationale for Action:* Maintenance activities to trail section(s) created as part of proposed Article 311 are provided to ensure the functionality of any trail section(s) constructed for the term of the license.

**p. Article 316 – USDA-FS Forest Road Maintenance Funding**

*Rationale for Action:* The continued presence of the Baker Lake represents an appealing destination for recreationalists. This presents a need to provide access for land and water-based activities at developed facilities and appropriate dispersed areas for current and potential users through the term of the license. Additionally, Project personnel utilize these roads to carry out their operations and maintenance responsibilities.

**q. Article 317 – Access to Baker Lake**

*Rationale for Action:* Since the construction of the Upper Baker Dam, public access to the east side of Baker Lake has been available across the top of the dam. This article allows for this use to continue through the term of the new license.

**r. Article 318 - Law Enforcement**

*Rationale for Action:* Baker Lake is a Project feature that attracts substantial numbers of recreational users. The northern reaches of the Baker River basin that lie within Whatcom County are physically isolated from the County as a whole. Consequently, maintaining an adequate law enforcement presence and rapid emergency response in the Baker River basin is essential to public safety and the maintenance of an acceptable social environment for recreational visitors.

**4. Water Quality Article**

**a. Article 401 – Water Quality**

*Rationale for Action:* The Project is required to comply with applicable water quality standards required by the Clean Water Act (CWA) in accordance with the water quality certification (WQC) to be issued by Washington State Department of Ecology (Ecology) under section 401 of the CWA. This article confirms this compliance, describes certain numeric parameters considered as of the date of settlement, and addresses certain plan requirements.

## **5. Terrestrial Articles**

### **a. Article 501 - Terrestrial Resource Management Plan**

*Rationale for Action:* This article would incorporate the planning, monitoring and reporting aspects of most other terrestrial resource articles into a single reporting document for clarity and consistency. The plan would develop objectives and establish habitat needs to guide management on Project wildlife habitat lands through the term of the next license.

### **b. Article 502 - Forest Habitat**

*Rationale for Action:* The objective of this action is to protect and enhance deciduous forest habitats of the types and amounts that could develop within the areas now occupied by the Project reservoirs if the Project were not relicensed. This action is intended to provide a habitat type that is in short supply (deciduous forest), in the Baker basin, and elsewhere throughout the Puget Sound lowlands and valleys. Management to protect or enhance this habitat type would be expected to benefit a number of plant and animal species that are restricted and/or unique to these habitats at low elevation. The Oregon/Washington Bird Conservation Plan identifies deciduous riparian habitats as a conservation priority in the Puget Sound lowlands and valleys. Five of seven birds are identified as focal species for deciduous riparian habitats in the Puget Sound lowlands and valleys that are affected by the Baker Project. Two of these, willow flycatcher and Swainson's thrush, are priority species for the physiographic area. Additional benefits to these species would be accomplished by Article 505.

### **c. Article 503 - Elk Habitat**

*Rationale for Action:* The Nooksack Elk Herd is an important resource associated with the Project area. The Project has been managed to provide recreational, aesthetic and spiritual opportunities to the public and Indian tribes. The size of the herd has decreased considerably over the past 15 years, and the reason(s) for the decline are the subject of a number of studies. Foraging habitat is a limiting factor for the herd. The recent dramatic decline of commercial timber harvest on most lands within the range of the herd has decreased the amount of early-seral forest, which is an important source of forage for elk in western Washington. While non-federal lands in the range continue to be clear-cut harvested at regular intervals, the use of herbicides and other practices to achieve rapid forest crown cover result in these areas providing limited forage.

The Project has the potential to affect elk in two ways. First, the Project occupies land that might otherwise provide potential habitat for elk if the Project

were not relicensed. Second, human activity associated with the Project can disturb elk and displace them (temporarily or permanently) from otherwise suitable habitats surrounding the Project. This proposed action addresses both potential effects of the Project by ensuring a stable source of foraging habitat. Habitat and funding targets were determined by calculating the amounts of habitat that could become available in the Project area if the new license were not issued.

The spatial distribution of elk foraging habitat is also important. If land acquisition was limited to onsite habitat, there would be two large blocks where the reservoirs now exist. In order to use these habitats, elk would have to concentrate in those areas, a behavior they normally exhibit only during the fall and winter. Consequently, local elk would not be able to make optimal use of the habitat during the spring and summer. Hiding cover (dense brush and/or trees taller than elk) would also be limited due to the large sizes of forage patches, so portions of the patches would go unused even during the fall and winter. This action item will allow for foraging habitat to be located throughout the Baker River and Nooksack River basins, in locations and patch sizes designed for optimal utilization by elk.

Ensuring the availability of elk forage over the term of the new license will make a significant contribution to the long-term sustainability of the herd. This action will contribute significantly to the long-term maintenance of the Nooksack Elk Herd by ensuring a stable source of foraging habitat.

**d. Article 504 - Wetland Habitat**

*Rationale for Action:* Surveys of potentially suitable amphibian breeding habitat in the spring of 2002 found that a significant amount of amphibian reproduction occurs within the drawdown zone of both reservoirs. Changing water levels can have significant impacts on amphibian reproduction, eliminating substantial portions of the annual reproduction effort. During the reservoir drawdown, isolated ponds within the drawdown zone provide attractive reproductive habitat for a wide variety of amphibians. Lack of suitable habitat in the Project vicinity may encourage significant migrations to the reservoirs and these isolated ponds.

Habitat and funding targets were determined by calculating the amounts of habitat that could become available in the Project area if the new license were not issued. The area of potential wetlands in both Project reservoirs under a no future flood control scenario was averaged over a 50-year analysis period. The wetlands within the reservoirs are present, but have reduced value due to seasonal inundation. This article provides wetland habitat for wetland-and riparian-dependent species.

**e. Article 505 – Aquatic Riparian Habitat Protection, Restoration and Enhancement Plan**

*Rationale for Action:* Due to fluctuations of the reservoirs, functional riparian habitat near the Project is present only at the upper end of Baker Lake and along the lower Baker River below Lake Shannon. There is a shortage of this critical habitat type that benefits listed anadromous and terrestrial species, as well as other aquatic and terrestrial species within the watershed. The only other riparian habitat is primarily associated with tributary streams, which in most cases are small, with a steep gradient and a rather poorly developed riparian zone.

Although wetland and riparian habitat combined account for only a small percent of the total area, a disproportionately large number of common and special status species occur in these communities. Avian species are observed in riparian, wetland, and shoreline areas far more than in any other habitat type represented in the Project area.

An Aquatic Riparian Habitat Protection, Restoration and Enhancement Plan (ARP) will be developed to identify actions to protect and enhance low-elevation bottomland ecosystems in the Skagit River basin, which includes the Baker River sub-basin, that have habitats similar to those which might be available if a license were not issued to the Project. This measure will allow for the acquisition of important riparian habitat in or near the Baker basin to improve and enhance that habitat to meet basin objectives for fish and wildlife resources.

**f. Article 506 - Osprey Nest Structures**

*Rationale for Action:* Lake Shannon supports a relatively stable population of osprey that rely on artificial nesting platforms due to the limited availability of natural nest structures. The persistence of the osprey population at Lake Shannon will depend, at least in the short term, on the presence of natural or man-made structures. Currently, PSE maintains nine man-made nesting structures on Lake Shannon, with several of them being used annually. Measures required in this article will maintain this program. There are also three natural osprey nests on Lake Shannon, but rarely are they all used in any given year. A limited number of additional natural structures are suitable for osprey nesting at this time along the reservoir. Many trees are tall enough, but lack dead or broken tops suitable for nest construction, and there are few suitable snags. Maintaining 10 man-made nest platforms for the license period will allow for adequate nesting opportunities while natural nest trees and snags develop. Modifying an additional 10 trees will begin the process of osprey eventually switching from relying on artificial platforms to using natural nest platforms.

**g. Article 507 – Loon Floating Nest Platforms**

Rationale for Action: Common loons are present on the Project reservoirs throughout the year, but they have never been observed nesting. Explanations for the absence of loon nesting include the lack of suitable nest sites along the reservoir shorelines due to reservoir fluctuations, and the high levels of human activity on the reservoirs during the nesting season. Common loons elsewhere in North America have been prevented from nesting by fluctuations in lake water levels and human disturbance. Floating platforms have been used successfully to provide stable, secure nest sites. The common loon is a Washington State Sensitive Species. If this measure is successful, it could increase the small population of breeding pairs in western Washington.

**h. Article 508 - Noxious Weeds**

Rationale for Action: Noxious weeds have negative effects on native plant and animal communities. Local, state and federal policies require the control of noxious weeds. The Project area has been invaded by a number of noxious weeds. For at least some of these weeds, the Project is a contributing factor to their presence and spread in the Baker River basin. The effective implementation of noxious weed control plans for the Project area would reduce or avoid negative impacts to native communities, and would be consistent with regional noxious weed control policies.

**i. Article 509 - Plants of Special Status**

Rationale for Action: State and federal laws and policies require the protection of plants with special status due to their scarcity and/or susceptibility to human disturbance. The Project area has the potential to support a number of species of special status. Much of the existing Project area has been surveyed for those species and a small number of occurrences were documented. Specific management plans will be developed for these locations, in accordance with state and federal guidelines. Areas of potential new Project activities (e.g., recreation developments, new generation facilities) will be surveyed and may require means and measures to address these species. This article will help ensure compliance with laws and policies governing plants of special status over the term of the new license.

**j. Article 510 - *Carex flava***

Rationale for Action: State and federal laws and policies require the protection of plants with special status due to their scarcity and/or susceptibility to human disturbance. The Project area supports the only known *Carex flava* population in

the Baker River basin. Extensive research on the impacts of reed canarygrass has documented that competition between *Carex flava* and reed canarygrass is occurring, and is considered the principal threat to maintaining the viability of *Carex flava* in the Project area. However, while control of these invasive species is important, it is generally considered experimental for large-scale implementation. Development and implementation of a management plan is proposed for the protection of this species by addressing this threat and providing for monitoring and evaluation of the species in the area to ensure the viability of these populations.

**k. Article 511 - Decaying and Legacy Wood**

Rationale for Action: The Baker River basin supports at least eight species of primary cavity nesters, 28 species of secondary cavity nesters, 48 species that breed, travel, rest and/or forage on logs, and 41 species that nest and/or forage primarily on large live trees. Commercial forestry, agriculture and development, including the Project, in and around the Baker basin have substantially reduced the availability of these habitat features on the landscape. This article provides decaying wood (snags and logs) and legacy wood (residual large live trees, snags and logs), which support habitat elements that are important to many species, and essential to some.

**l. Article 512 - Bald Eagle Night Roost Surveys**

Rationale for Action: The goal of this action is to identify bald eagle communal winter night roosts in the vicinity of the Baker Project area and in the Baker River watershed. PSE will provide those data to the appropriate landowners and regulatory agencies to assist in the protection of those sites.

**m. Article 513 - Bald Eagle Management Plans**

Rationale for Action: The bald eagle is listed as a threatened species in Washington by both the USFWS and WDFW. Current state and federal management plans often do not address all the habitat needs of the species. Additional habitat protection for nesting and roosting bald eagles provided by this action will have positive effects on the population of bald eagles in the Baker River watershed.

**n. Article 514 – Use of Habitat Evaluation Procedures**

Rationale for Action: Monitoring the implementation of the license is necessary to determine whether the goals and objectives of the individual articles are met, through periodic assessments of habitat quantity and quality, using Habitat Evaluation Procedures, or another appropriate methodology selected in consultation with the Terrestrial Resources Implementation Group (TRIG). Monitoring is



intended to assist resource managers in determining the current conditions of lands acquired to assess site management needs and the success of management activities over the term of the license.

**o. Article 515 – Late Seral Forest Growth**

*Rationale for Action:* Portions of Baker Lake reservoir are bordered by late-seral coniferous forest that is nesting habitat for the northern spotted owl and the marbled murrelet. The habitat edge created at the interface of the reservoir and the late-seral forest may increase the risk of predation by great horned owls (*Bubo virginianus*), goshawks (*Accipiter gentilis*) and Corvids (ravens, crows and jays). This action is intended to compensate for any such edge effects by reducing similar edges between late-seral forest and young forest, and to accelerate late-seral stage forest growth, in select areas that were clear-cut harvested and planted by the USFS in the late twentieth century.

**p. Article 516 - Mountain Goats**

*Rationale for Action:* The mountain goat population in the Baker River watershed is depressed, and reductions in the value of summer habitat has been proposed as a contributing factor. Based on local studies of mountain goat reactions to hikers, the value of summer habitat (subalpine shrubs and grasses) has decreased because goats are using portions of the habitat less than they would otherwise due to the presence of hikers. Based on studies conducted during relicensing, mountain goat summer range in the Baker River watershed is being impacted. The enhancement program would provide additional summer forage habitat away from established hiking trails and areas of heavy off-trail use by humans.

**q. Article 517 – Grizzly Bear Road Management**

*Rationale for Action:* The Baker Project area is within the North Cascades Grizzly Bear Recovery Area. The Baker Bear Management Unit ("BMU") currently has reduced spring and early summer habitat value due to high levels of human activity in the basin and a reduced area of spring and early summer forage along the Baker River that is occupied by the Project.

Because grizzly bear use habitats within 1/3 mile of roads is 47% as much as habitats unaffected by roads, the value of habitats within 1/2 mile of roads can be improved by eliminating motorized use. This article will provide resources to address improving spring and summer habitat needs by closing roads near important habitats in the Baker BMU.

## **6. Shared Resource (BRCC, Funding, and ADM) Articles**

### **a. Article 601 – Baker River Coordinating Committee**

*Rationale for Action:* The Baker River Coordination Committee ("BRCC") establishes a means of ongoing communication for Settlement implementation, oversight of license implementation by the Settlement signatories and their designated representatives, and a decision-making framework for issues that arise during license implementation.

The BRCC will improve protection of ecological, cultural, and recreation resources by ensuring there is a high level of communication and coordination among parties to the agreement and PSE to implement the comprehensive protection, mitigation and enhancement measures provided for in the Settlement. Implementation of the BRCC will likewise ensure that the collaborative processes and relationships developed during the settlement process will be maintained and continued during implementation of the requirements of the new Project license.

### **b. Article 602 – Required Funding**

*Rationale for Action:* The funding article specifies many of the funding accountability provisions for PSE to meet during the term of the license, establishes the Baker Project funds, and describes how certain funding obligations are to be met.

The Baker Project funds are intended to offset existing or unforeseen impacts on fish, wildlife, and cultural resources not otherwise addressed in other license articles and to provide for additional recreation development in the event there are unanticipated increases in recreation demand or development of new recreation uses related to the Baker Project. The funds may also be used to implement alternative strategies for resource protection, mitigation and enhancement identified under the provisions of Article 603. Further purposes of the funds include, but are not limited to:

- Increase anadromous fish populations and their habitat within the Baker River and Skagit basins pursuant to applicable goals and objectives;
- Promote the objectives of the Northwest Forest Plan and other federal mandates;
- Undertake actions for the enhancement, conservation, or restoration of presently unidentified cultural resources; and

- Encourage efforts to promote or enhance partnership opportunities, collaborative relationships with stakeholders, and community benefits.

**c. Article 603 – Adaptive Management**

*Rationale for Action:* This article confirms the commitment of PSE to consider alternative strategies for resource protection, mitigation and enhancement during the term of the license.

**Baker River Hydroelectric Project Relicensing  
Comprehensive Settlement Agreement**

This settlement agreement (Settlement) is entered by and among the Parties described in Section 1 of this Settlement as of November 30, 2004 (Effective Date).

**RECITALS**

WHEREAS Puget Sound Energy, Inc. (PSE) owns and operates the Baker River Hydroelectric Project, FERC No. 2150, located in the State of Washington (the Project); and

WHEREAS the Project is comprised of the Upper Baker Development, which is located in unincorporated Whatcom County, Washington and the Lower Baker Development, which is located in the Town of Concrete and in Skagit County, Washington; and

WHEREAS PSE engaged interested parties in a collaborative, alternative licensing process approved by the Federal Energy Regulatory Commission prior to filing its license application to relicense the Project, which is set to expire April 30, 2006; and

WHEREAS the parties to this Settlement have reached resolution of issues related to the relicensing of the Project, as described in this Settlement.

**1 PARTIES**

Pursuant to 18 C.F.R. § 385.602, the following parties enter this Settlement: Puget Sound Energy, Inc. (PSE); the United States Department of Agriculture, Forest Service (USDA-FS); the United States Fish and Wildlife Service (USFWS); the National Park Service (NPS); the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries); the Upper Skagit Indian Tribe (USIT); the Sauk-Suiattle Indian Tribe (SSIT); and the Swinomish Indian Tribal Community (SITC); the Washington State Department of Ecology (Ecology); the Washington Department of Fish and Wildlife (WDFW); the Washington Department of Natural Resources (WDNR); Skagit County (SC); the City of Anacortes (Anacortes); the Town of Concrete (Concrete); the Public Utility District No. 1 of Skagit County (Skagit PUD); the Interagency Committee for Outdoor Recreation (IAC); The Nature Conservancy of Washington (TNC); the North Cascades Conservation Council (NCCC); the North Cascades Institute (NCI); the Rocky Mountain Elk Foundation (RMEF); the Skagit Fisheries Enhancement Group (SFEG); the Washington Council of Trout Unlimited (WA Trout); the Wildcat Steelhead Club (WSC); and Bob Helton. Each will be referred to individually as a "Party" and collectively as the "Parties." The Upper Skagit Indian Tribe, the Swinomish Indian Tribal Community, and the Sauk-Suiattle Indian Tribe may be referred to as "Tribe," or, collectively as the "Tribes."

## 2 INTRODUCTION AND DEFINITIONS

### 2.1 Purpose and Scope

The Parties have entered into this Settlement for the purpose of resolving issues in connection with the issuance of a New License for the Project, as described in this Settlement. This Settlement is intended to establish PSE's obligations for the protection, mitigation and enhancement of natural resources affected by the Project. It also specifies procedures to be used among the Parties to ensure the implementation of those obligations consistent with this Settlement, and with other legal and regulatory mandates, and to establish a framework for future collaborative efforts among the Parties during the term of the New License. For these purposes, the Parties agree that this Settlement is fair and reasonable and in the public interest within the meaning of 18 C.F.R. § 385.602(g)(3). As part of the Settlement, the Parties request that FERC accept and incorporate, without material modification, as license articles in the New License all of the Proposed License Articles set out in Appendix A.

### 2.2 Definitions

"Section 4(e)" means Section 4(e) of the Federal Power Act, 16 U.S.C. § 797(e).

"Section 7" means Section 7 of the Endangered Species Act, 16 U.S.C. § 1536.

"Section 10(j)" means Section 10(j) of the Federal Power Act, 16 U.S.C. § 803(j).

"Section 10(a)" means Section 10(a) of the Federal Power Act, 16 U.S.C. § 803(a).

"Section 18" means Section 18 of the Federal Power Act, 16 U.S.C. § 811.

"401 Certification" means a Water Quality Certification issued by the State of Washington, Department of Ecology, pursuant to authority under Section 401 of the Federal Water Pollution Control Act, 33 U.S.C. § 1341.

"ACOE" means the United States Army Corps of Engineers.

"Consensus" means the lack of objection to a proposal, as defined in Proposed License Article 601.

"Consistent with the Settlement" means not Inconsistent with the Settlement as defined in Section 2.4.

"Consultation," for purposes of this Settlement, means communication between PSE and other Parties as defined in Proposed License Article 601.

"CWA" means the Clean Water Act, or the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387.

*Settlement Agreement  
Baker River Hydroelectric Project*

“CZMA” means Coastal Zone Management Act, 16 U.S.C. §§ 1451 to 1465.

“CZMA Consistency Determination” means a Coastal Zone Management Consistency Act Determination issued by the State of Washington, Department of Ecology, pursuant to authority under the CZMA.

“Effective Date” means November 30, 2004.

“ESA” means Endangered Species Act, 16 U.S.C. §§ 1531 to 1544.

“FERC” or “the Commission” means the Federal Energy Regulatory Commission, defined in 16 U.S.C. § 2602.

“Fish Resource Parties” means NOAA Fisheries, USFWS, WDFW, SSIT, SITC, and USIT.

“Fish Co-Managers” means WDFW, SSIT, SITC, and USIT.

“FPA” means the Federal Power Act, 16 U.S.C. §§ 791a to 828c.

“Inconsistent with the Settlement” is defined in Section 2.4.

“Joint Explanatory Statement” means the agreed separate explanatory statement required to be filed with the offer of settlement pursuant to 18 C.F.R. § 385.602(c).

“Mandatory Conditions” means the 401 certification issued by Ecology, Section 4(e) conditions issued by USDA-FS, and Section 18 fishway prescriptions issued by NOAA Fisheries or USFWS.

“New License” means the license issued by the Commission for the Baker River Hydroelectric Project, FERC No. 2150, following the expiration of the current license on April 30, 2006.

“Notice” is defined in Section 6.22.

“Offer of Settlement” means the agreed FERC filing representing the Parties’ formal offer of settlement to the Commission, filed pursuant to 18 C.F.R. § 385.602, and as further defined in Section 3.1.

“Party” or “Parties” is defined in Section 1.

“PDEA” means the Preliminary Draft Environmental Assessment submitted by PSE to the Commission in conjunction with PSE’s application for the New License.

“Proposed License Article” means an article in the form attached hereto in Appendix A for the Commission’s approval and incorporation into the New License.

### 2.3 Term

The term of this Settlement shall commence on the Effective Date and shall continue unless terminated as otherwise provided herein for the term of the New License, plus the term(s) of any annual license(s) that may be issued after the New License has expired.

The Parties to this Settlement recommend that the term of the New License be up to 45 years. The Parties do not object to a term of 45 years or more.

### 2.4 Definition of “Inconsistent with the Settlement”

Inconsistent with the Settlement means any modification to, addition to, or deletion of a Proposed License Article in either the New License or any Mandatory Condition, or any other action by any Party, that materially reduces the bargained for benefits of the Settlement to a Party or otherwise materially adversely affects the interests of a Party. FERC’s modification to, addition to, or deletion of timely Mandatory Conditions that are Consistent with the Settlement shall be considered Inconsistent with the Settlement; provided that each Party reserves the right to contest the Consistency of such a condition as provided in Section 4.4. The Parties agree that FERC’s inclusion of license articles in the L-Form (as defined by 18 C.F.R. § 2.9) that are included in the New License, shall not be considered Inconsistent with the Settlement. The Parties further agree that FERC’s inclusion of language in any license article reserving FERC’s authority to require changes to implementation schedules, plans, or other requirements of any of the Proposed License Articles during the term of the New License or the inclusion in Mandatory Conditions of the issuing agency’s authority to reopen its Mandatory Conditions, shall not be considered Inconsistent with the Settlement. In the event that NOAA Fisheries, USDA-FS, USFWS, or Ecology includes a reservation of authority under any statute in a Mandatory Condition, and the reservation of authority is included as a condition of the New License, the inclusion of such reservation shall not be considered to be Inconsistent with the Settlement, provided that each Party shall be deemed to have reserved the right to contest the exercise of such reserved authority at any time in the future.

## 3 IMPLEMENTATION

### 3.1 PSE’s Submission of Offer of Settlement to FERC

Within 30 days after the Effective Date, PSE shall file with FERC an offer of settlement pursuant to Rule 602 (18 C.F.R. § 385.602) consisting of a fully executed copy of this Settlement, including all Exhibits and Appendices, and the Joint Explanatory Statement (Offer of Settlement). In the Offer of Settlement, PSE shall request that FERC incorporate the Proposed License Articles as conditions of the New License. PSE shall use reasonable efforts to obtain a FERC order approving this Settlement and issuing the New License in a timely manner.

To the extent that any Proposed License Article requires PSE to implement any of its requirements prior to the issuance of the New License, and PSE takes an action or provides

funding prior to issuance of the New License, PSE shall not be required to perform the same action or provide the same funding following issuance of the New License and, if requested by PSE, any Party will confirm, in writing, the extent of PSE's early implementation of the Settlement or New License pursuant to this Settlement.

### **3.2 Other Filings by Parties Prior to License Issuance**

The Parties concur with the Offer of Settlement and Joint Explanatory Statement filed with FERC in support of this Settlement. Any Party filing a recommendation, condition, and/or prescription with FERC pursuant to that Party's authority under Sections 4(e), 10(a), 10(j), and 18 of the FPA, intends that the recommendation, condition, and/or prescription shall be consistent with the Proposed License Articles. Subject to Section 6.2 of this Settlement, the Parties intend: (a) that any information, comments or responses to comments filed by the Parties with FERC, or in other fora, in the context of this relicensing proceeding will not be Inconsistent with this Settlement; (b) to use appropriate efforts to obtain a FERC order approving this Settlement and issuing the New License consistent with this Settlement in a timely manner; (c) to permit PSE to submit the Settlement in all proceedings required to implement it and/or related to the regulation of the Project, and to represent that the Parties support the Settlement's resolution of the issues connected to relicensing the Project; and (d) for each Party to express such support in any written or other communications in each such proceeding in which that Party participates.

#### **3.2.1 Relationship of Settlement to ESA Section 7 Consultation**

As of the Effective Date, consultation under Section 7 of the ESA has not been completed. Subject to Section 6.2, NOAA Fisheries and USFWS intend that the measures contained in this Settlement will be adequate to avoid jeopardizing the continued existence of listed species and, further, will minimize any incidental take occurring as a result of Project operations for species presently listed as threatened or endangered.

If FERC adopts the Proposed License Articles as the proposed action, this federal action shall be the basis for a Section 7 consultation between FERC and NOAA Fisheries and USFWS, and any biological opinion relating to relicensing of the Project shall address and evaluate this federal action. FERC has designated PSE as its non-Federal representative for the purpose of preparing a draft biological assessment for early consultation related to the New License, pursuant to Letter Order, dated March 5, 2001. PSE shall prepare this draft biological assessment based upon this federal action.

#### **3.2.2 Relationship of Settlement to Clean Water Act 401 Certification and Coastal Zone Management Act Consistency Determination**

As of the Effective Date, Ecology has not issued a 401 Certification or a CZMA Consistency Determination related to the Project. Ecology believes, based on existing analyses and information, that the Proposed License Articles are consistent with Section 401 of the CWA.



As provided in Section 6.3 of this Settlement, Ecology reserves its authority to issue a 401 Certification in a manner consistent with applicable law, including any appropriate conditions.

As of the Effective Date, Skagit County and the Town of Concrete have not issued a decision regarding the Project's consistency with the Shoreline Management Act (SMA), to support Ecology's CZMA Consistency Determination, or any necessary permits under the SMA or the Skagit County Shoreline Management Master Program. Each of Skagit County and the Town of Concrete believe, based on existing analyses and information, that the Proposed License Articles are consistent with the SMA and Skagit County Shoreline Management Master Program, subject to any necessary permits, including any appropriate conditions. As provided in Section 6.3, Skagit County and the Town of Concrete reserve their respective authority to issue a decision under the SMA and the Skagit County Shoreline Management Master Program in a manner consistent with applicable law.

**3.2.3 Relationship of Settlement to Magnuson-Stevens Fishery Conservation and Management Act (MFCMA)**

As of the Effective Date, consultation under the MFCMA has not been completed. Subject to Section 6.2, NOAA Fisheries intends that the measures contained in this Settlement will be adequate to either avoid adversely affecting essential fish habitat for those species regulated under a federal fisheries management plan, or will be adequate to comply with conservation measures recommended by NOAA Fisheries to avoid, minimize, or otherwise offset potential adverse effects to essential fish habitat.

**3.3 401 Certification and CZMA Consistency Determination**

**3.3.1 Issuance of 401 Certification**

If Ecology issues an order providing certification under Section 401 of the CWA that is not Inconsistent with the Settlement, no Party will appeal the 401 Certification or support in any way any appeal of the 401 Certification by any Party or non-Party to this Settlement.

**3.3.2 Issuance of CZMA Consistency Determination**

If Ecology issues a CZMA Consistency Determination under Section 307 of the CZMA that is not Inconsistent with the Settlement, no Party will appeal the CZMA Consistency Determination or support in any way any appeal of the CZMA Consistency Determination by any Party or non-Party to this Settlement.

### **3.4 Actions following License and Related Regulatory Approvals Inconsistent With the Settlement**

#### **3.4.1 Mandatory Terms and Conditions Inconsistent with the Settlement**

If a Mandatory Condition is Inconsistent with this Settlement, this Settlement shall be deemed modified to conform to the inconsistency, unless a Party provides Notice to the other Parties that it objects to the inconsistency and initiates dispute resolution as described in Section 4 of this Settlement within 30 days after the date the Party receives Notice of the inconsistent condition and/or prescription. In the event that any Party must file an administrative or judicial appeal of the condition and/or prescription to preserve a Party's right to administrative or judicial appeal before commencing or completing the dispute resolution process described in Section 4 of this Settlement, any Party may, without commencing or completing the dispute resolution procedures, seek administrative or judicial review, if the Party asserts that the final condition, recommendation, and/or prescription is Inconsistent with the Settlement, provided, however, that the disputing Party will complete the dispute resolution procedures described in Section 4.

#### **3.4.2 Conditions of New License Inconsistent with the Settlement**

If the New License is Inconsistent with the Settlement, this Settlement shall be deemed modified to conform to the inconsistency, unless a Party provides Notice to the other Parties that it objects to the inconsistency and initiates dispute resolution as described in Section 4 of this Settlement within 30 days after the date of the FERC Order issuing the New License. If the disputing Party or Parties seek administrative rehearing or judicial review of the FERC order, the Party's request for rehearing or review shall constitute notice to the other Parties of the dispute. In the event that any Party must seek rehearing or judicial review to preserve a Party's right to appeal before commencing or completing the dispute resolution process described in Section 4 of this Settlement, that Party may, without commencing or completing the dispute resolution procedures, seek administrative rehearing or judicial review of the New License or any other FERC order related to Project relicensing, as provided by the FPA, if the Party asserts that the License is Inconsistent with the Settlement, provided, however, that the disputing Party will complete the dispute resolution procedures described in Section 4.

#### **3.4.3 Provisions Omitted from New License**

If the New License does not contain all of the Proposed License Articles because FERC expressly determines that it does not have jurisdiction to adopt or enforce the deleted Proposed License Articles, the Parties agree to be bound by the Settlement, including those provisions omitted by FERC, provided the Proposed License Article is otherwise enforceable under this Settlement or applicable laws and no Party believes the omission will materially reduce the bargained for benefits of the Settlement to a Party or otherwise materially adversely affect the interests of a Party. A Party may seek rehearing and ultimately withdraw from this Settlement as provided in Section 5 if the Party asserts the non-enforceability of the Proposed License Article under the FPA materially reduces the bargained-for benefits of the Settlement for a

*Settlement Agreement*  
*Baker River Hydroelectric Project*

Party or otherwise materially adversely affects the interests of the Party. The Parties reserve any remedies under applicable law to enforce the Proposed License Articles in this Settlement but omitted by FERC.

3.4.4 Order on 401 Certification Inconsistent with the Settlement

Ecology shall provide Notice of the 401 Certification to all Parties. If the 401 Certification is Inconsistent with the Settlement, this Settlement shall be deemed modified to conform to the inconsistency, unless a Party provides notice to the other Parties that it objects to the inconsistency and initiates dispute resolution as described in Section 4 of this Settlement within 30 days after the date of the issuance of the 401 Certification. In the event that any Party must file an administrative or judicial appeal of the 401 Certification to preserve a Party's right to administrative or judicial appeal before commencing or completing the dispute resolution process, any Party may do so, if the Party asserts that the 401 Certification is Inconsistent with the Settlement, provided, however, that the disputing Party will complete the dispute resolution procedures described in Section 4. Ecology shall not be required to institute any dispute resolution process for its 401 Certification, and may elect, but is not required, to participate in the dispute resolution procedures of Section 4 of this Settlement. In the event Ecology issues an order, or provides notice of intent to issue an order, enforcing or amending the 401 Certification pursuant to its reserved authority described in Section 6.3, PSE shall provide Ecology's order or notice to the Parties within ten (10) days of receipt.

3.4.5 CZMA Consistency Determination Inconsistent with the Settlement

If the CZMA Consistency Determination is Inconsistent with the Settlement, this Settlement shall be deemed modified to conform to the inconsistency, unless a Party provides notice to the other Parties that it objects to the inconsistency and initiates dispute resolution as described in Section 4 of this Settlement within 30 days after the date of the issuance of the CZMA Consistency Determination. In the event that any Party must file an administrative or judicial appeal of the CZMA Consistency Determination to preserve a Party's right to administrative or judicial appeal before commencing or completing the dispute resolution process described in Section 4 of this Settlement, any Party may, without commencing or completing the dispute resolution procedures, seek administrative or judicial review, if the Party asserts that the CZMA Consistency Determination is Inconsistent with the Settlement, provided, however, that the disputing Party will complete the dispute resolution procedures described in Section 4.

**3.5 License Modifications and Reopeners**

A Party shall not seek or support any attempt by a Party or non-Party to modify the new License, or otherwise reopen the New License during the term of this Settlement, except in the event of a change after the Effective Date in either: (A) factual circumstances, such that a Party believes that its interests in the Settlement are materially and adversely affected; or (B) statute, rule, or other applicable law, as a result of which a Party believes that the Settlement may not comply with applicable law.

If a Party seeks to modify or otherwise reopen the New License due to new information, that Party shall provide all Parties at least 90 days' Notice to consider the new information and that Party's position. A Party shall not be required to comply with this 90-day Notice provision if it believes an emergency situation exists, or if required to meet its responsibilities under applicable law.

No Party seeking a modification or reopener may oppose an intervention request by any other Party that satisfies FERC's procedural requirements in a proceeding for a Project license reopener that any Party has concluded would materially adversely affect this Settlement, unless the Party seeking the modification or reopener disputes such material adverse effect. A licensing order that results from any proceeding initiated under this section that would materially adversely affect this Settlement is subject to the dispute resolution procedures of Section 4. Further, a licensing order that results from any proceeding initiated under this section that would materially adversely affect this Settlement may be considered by PSE as significant new information, allowing PSE to invoke the license amendment provision in Section 3.6.

This section does not apply to any reopener contained in the 401 Certification.

### **3.6 License Amendment**

PSE shall not seek a license amendment during the term of this Settlement, except in the event of a change after the Effective Date in either: (A) factual circumstances, such that PSE believes that its interests in the Settlement are materially and adversely affected; or (B) statute, rule, or other applicable law, as a result of which PSE believes that the Settlement may not comply with applicable law. Notwithstanding the foregoing, PSE may seek license amendments that are Consistent with the Settlement.

Prior to filing a proposed license amendment which would affect this Settlement, PSE shall provide the Parties at least a 90-day Notice of its intention to do so, and promptly following the giving of such Notice, shall consult with Parties responding within 30 days of such Notice regarding the need for and the purpose of the amendment, provided PSE shall not be required to comply with this 90-day Notice provision if it believes an emergency situation exists or if required to meet its responsibilities under applicable law or an order of an agency with jurisdiction over PSE. In any application for a Project license amendment that would materially adversely affect this Settlement, PSE shall provide with its application documentation of its consultation with the responsive Parties, summarize the positions and recommendation of the responsive Parties and provide its response to those positions and recommendations.

PSE shall not oppose an intervention request by any Party that satisfies FERC's procedural requirements in a proceeding for a Project license amendment that any Party has concluded would materially adversely affect this Settlement, unless PSE disputes such material adverse effect. A proposed Project license amendment that, as approved by FERC, would materially adversely affect this Settlement is subject to the dispute resolution procedures of Section 4.

Further, a Project license amendment that, as approved by FERC, would materially adversely affect this Settlement may be considered by a Party as significant new information, allowing that Party to invoke the reopener provision in Section 3.5.

### **3.7 Settlement Amendments**

The Parties may amend this Settlement, as executed, at any time after the Effective Date. Every amendment must be in writing and signed by all Parties. A Party proposing an amendment shall provide Notice pursuant to Section 6.22. The Notice shall state the substance and basis of the proposed amendment. The Parties shall make best efforts to informally meet and confer within 30 days of the Notice. Within 60 days of the Notice, or such different period as may be established by mutual consent, each other Party shall provide a written confirmation of its consent to or rejection of the proposed amendment. In the event a Party does not respond within 60 days of the Notice, the Party proposing the amendment shall make a second attempt to provide Notice via certified mail, return receipt requested, to the non-responding Party. If a Party does not respond within 30 days after the second notice, it shall be presumed to have accepted the proposed amendment.

If an amendment is proposed before issuance of a New License and has the unanimous consent of the Parties, it shall go into effect upon the Parties' execution of an Amended Settlement Agreement, which PSE shall promptly file with FERC as an amended Offer of Settlement.

If an amendment is proposed after issuance of the New License and has the unanimous consent of the Parties, it shall go into effect immediately following all Parties' execution of the amendment unless the amendment requires a modification of the New License. If the amendment requires modification of the New License, the Parties shall seek modification of the New License, and any related permits or authorizations, to conform to the proposed amendment of the Settlement. In the event any Party did not respond to notices required by this Section 3.7 and did not execute the amendment, PSE shall submit the documentation of compliance with the notice requirements of this Section 3.7 when submitting any proposed modification to FERC.

### **3.8 Measures Agreed to But Not to Be Included In License**

In addition to the Proposed License Articles, PSE and Skagit County, but none of the other Parties, have agreed to certain other commitments set out in Appendix B.

## **4 COORDINATION, DECISION MAKING, AND DISPUTE RESOLUTION**

### **4.1 Ongoing Collaboration**

The Parties intend to act collaboratively and to cooperate in the performance of this Settlement.

**4.1.1 Cooperation regarding Flood Control – Drawdown Target Elevations**

PSE typically utilizes operational reservoir buffers of approximately eight (8) feet in the Upper Baker Reservoir and approximately five (5) feet in the Lower Baker Reservoir. PSE and Skagit County agree that during the flood control season, PSE shall employ reasonable best efforts to achieve reservoir drawdown targets when a flood event is imminent that are within the operational buffer range used by PSE. The drawdown target elevation for Upper Baker Reservoir is 704.92 (NAVD 88) and the drawdown target elevation for Lower Baker Reservoir is 423.66 (NAVD 88). PSE shall maintain such drawdown for the duration of time as determined by the ACOE. PSE shall not seek compensation for operating the reservoirs in accordance with the foregoing protocol for reservoir drawdown.

**4.1.2 Cooperation regarding Flood Control – Amendment to the Water Control Manual**

PSE and Skagit County shall seek an agreement with the ACOE to amend the ACOE Baker River Project “Water Control Manual” to reflect the following protocol for reservoir drawdown when a flood event is imminent:

Upon receipt of notification from the National Weather Service or such other service as ACOE may rely upon to initiate flood control operations indicating that a significant storm with a reasonable likelihood of causing a flood event is imminent, the ACOE shall notify PSE per established communications protocol, and upon receipt of such notice per established communications protocol, PSE shall initiate drawdown, by all currently available and practicable means and methods, at the Upper Baker River reservoir to a target elevation of 704.92 (NAVD 88), and at the Lower Baker River reservoir to a target elevation of 423.66 (NAVD 88). PSE shall maintain such drawdown for the duration of time determined by ACOE in response to such notification and ensuing events. In the implementation of the foregoing protocol, PSE shall pursue such target reservoir levels, at the ACOE's direction, by employing its reasonable best efforts.

**4.2 Commitment to Dispute Resolution**

All disputes among the Parties regarding any Party’s performance or compliance with the Settlement shall be, at the request of any Party, subject to the non-binding dispute resolution procedures described in Sections 4.2, 4.3, and 4.4, except to the extent that the Settlement provides otherwise. Each Party participating in dispute resolution shall cooperate in good faith to promptly schedule, attend, and participate in the dispute resolution, to the extent resources allow. The dispute resolution participants agree to devote such time, resources, and attention to the dispute resolution as are needed to attempt to resolve the dispute at the earliest time possible, to the extent resources allow.

Nothing in this Section is intended, or shall be construed, to affect or limit the authority of any agency or tribe with applicable and relevant jurisdiction to resolve a dispute brought before it in accord with its own procedure and applicable law. Each Party shall promptly implement all final agreements reached, consistent with its applicable statutory and regulatory responsibilities. Any resolution of the dispute agreed to by the Parties who participated in the dispute resolution procedure shall be documented by PSE in a Notice to the Parties. If the resolution of the dispute requires an amendment to the Settlement, the Parties to the dispute will comply with Section 3.7 to propose the amendment to the Parties who did not participate in the dispute resolution procedures.

The dispute resolution procedures of this Section 4 do not preclude any Party from timely filing and pursuing any administrative or judicial appeal in conformance with applicable rules for any action that is Inconsistent with the Settlement or of any action that relates to subjects not resolved by this Settlement. However, the Parties shall follow dispute resolution procedures to the extent reasonably practicable while any such appeal of an inconsistent or non-related action is pursued.

#### **4.3 Dispute Resolution Procedure**

A Party claiming a dispute shall give Notice of the dispute within thirty (30) days of the Party's actual knowledge of the act, event, or omission that gives rise to the dispute. At a minimum and in any dispute subject to these procedures, the Parties shall hold at least one informal meeting within 30 days after Notice to attempt to resolve the disputed issue(s).

If the informal meeting fails to resolve the dispute, the disputing Parties may by unanimous agreement attempt to resolve the dispute using a neutral mediator unanimously selected by the disputing Parties within 15 days after Notice by a Party that the informal meetings did not resolve the dispute. The mediator shall mediate the dispute during the next sixty (60) days after the selection of the mediator. Unless otherwise agreed among the Parties, each Party shall bear its costs for its own participation in the dispute resolution. The disputing Parties shall agree how to share in the costs of the mediator before engagement of a mediator.

Any of these time periods may be reasonably extended or shortened by agreement of the Parties, or as necessary to conform to the procedure of an agency or court with jurisdiction over the dispute.

If the Parties are unable to resolve a dispute as provided in this Section, the matter in dispute may be referred to FERC or a Party may exercise any right or authority available under applicable law.

Disputes arising under Proposed Article 601 may be submitted to the Commission for consideration only if the disputing party alleges an inconsistency: 1) between a proposed plan or implementation schedule and an article; 2) between proposed implementation actions and an approved plan; or 3) between proposed implementation actions and the intent of an article, even if consistent with an approved plan.

**4.4 Reasons for Invoking Dispute Resolution Procedures Before Issuance of New License**

The dispute resolution procedures set forth in this Section 4 of the Settlement apply before the issuance of the New License if any of the following events occurs:

- a) consensus is not achieved in the early implementation of any Proposed License Article requiring consensus;
- b) any Party takes an action Inconsistent with the Settlement;
- c) the final biological opinion developed by USFWS or NOAA Fisheries pursuant to the ESA requires in its incidental take statement reasonable and prudent measures, or terms and conditions implementing the reasonable and prudent measures, that are Inconsistent with the Settlement;
- d) any Party files a condition, recommendation, and/or prescription pursuant to its authority under Sections 4(e), 10(a), 10(j), and 18 of the FPA, or comment on any filed condition, recommendation, and/or prescription, that is Inconsistent with the Settlement;
- e) Ecology files a 401 certification that is Inconsistent with the Settlement, except that Ecology would not be required to participate in dispute resolution as part of any appeal of the 401 Certification;
- f) Ecology files a CZMA Consistency Determination that is Inconsistent with the Settlement;
- g) FERC issues a Final Historic Properties Management Plan that materially revises the Draft Historic Properties Management Plan (HPMP) filed by PSE on April 26, 2004;
- h) any Party provides Notice that it intends to withdraw from this Settlement after another Party withdraws in accordance with Section 5.7 of this Settlement;
- i) any Party invokes the provisions of force majeure as provided in Section 6.18.2; or
- j) any Party takes any action that materially and adversely affects this Settlement.

**4.5 Reasons for Invoking Dispute Resolution Procedures After Issuance of New License**

The dispute resolution procedures set forth in this Section 4 of the Settlement apply after the issuance of the New License if any of the following events occurs:



- a) consensus is not achieved in the implementation of any article requiring consensus;
- b) a third party not a Party to this Settlement successfully petitions FERC or otherwise obtains a court order modifying the operation of the Project in a manner that is Inconsistent with the Settlement;
- c) any Party issues an administrative order in conflict with the New License or any other regulatory approval related to the New License;
- d) any Party provides Notice that it intends to withdraw from this Settlement after another Party withdraws in accordance with Section 5.7 of this Settlement;
- e) the New License is Inconsistent with the Settlement;
- f) any Party invokes the provisions of force majeure as provided in Section 6.18.2; or
- g) any Party takes any action that materially and adversely affects this Settlement.

## **5 REMEDIES**

### **5.1 Stay of Effectiveness of License During Administrative and Judicial Appeals**

If rehearing, administrative or judicial review is sought in any proceeding related to the issuance of the New License, PSE may seek a stay of any order related to the New License. As a result of any rehearing, administrative or judicial review, if a Party determines that a proceeding related to the New License is commenced because of any action that is Inconsistent with the Settlement, that Party will support, or at a minimum not object to, PSE's stay request, unless a Party believes the stay would materially adversely affect its interest in the Settlement.

### **5.2 Dismissal of Administrative or Judicial Appeal following Settlement Amendment**

If a Party has filed an administrative appeal, rehearing request, or requested judicial review of any action by another Party that is Inconsistent with the Settlement, and the Parties subsequently agree to modify this Settlement to conform to the inconsistent action, the filing Party or Parties shall withdraw the appeal, or recommend such withdrawal, as appropriate.

### **5.3 Enforcement of New License**

Any Party may petition FERC to enforce the provisions of the New License or otherwise exercise any authority available under applicable law, without resort to the dispute resolution procedures required in Section 4, if PSE fails to comply with the New License and such failure is not a delay excused under force majeure of this Settlement. This shall not prevent the Parties

from voluntarily engaging in dispute resolution in accordance with Section 4.3 of this Settlement if requested by PSE.

#### **5.4 Enforcement of Settlement After Dispute Resolution**

Any Party may seek in a court of competent jurisdiction specific performance of the Settlement by any other Party, after compliance with the dispute resolution procedures if required by Section 4. Damages at law will not be available as a remedy for any claim arising under this Settlement. Jurisdiction for enforcement of the New License will be governed by the FPA or other applicable general law.

#### **5.5 Right of a Party to Withdraw from Settlement**

Any Party may withdraw from this Settlement by complying with the procedure set forth in Section 5.6 of this Settlement if any of the following occurs:

- a) a Party claims a material breach or violation of this Settlement;
- b) a Party claims PSE has failed to comply with the New License, has complied with Section 5.3, and FERC acts, or fails to act, in a manner that the Party determines is Inconsistent with the Settlement.
- c) a Party claims a final condition, recommendation, and/or prescription filed with FERC pursuant to any Party's authority under Sections 4(e), 10(a), 10(j), or 18 of the FPA is Inconsistent with the Settlement and has complied with Sections 3.4.1 and 4 of this Settlement to attempt to resolve the inconsistency;
- d) a Party claims a final order issuing a New License or other related regulatory approval is Inconsistent with the Settlement and has complied with the Section 3.4.2 or Section 3.4.3 of this Settlement to resolve the inconsistency;
- e) a Party complies with the dispute resolution procedures regarding a dispute arising under Section 4.5;
- f) any other Party withdraws from the Settlement and the withdrawing Party has complied with the requirements of Section 5.7;
- g) new information, analyses, or comments are submitted into evidence in any environmental review or regulatory process related to the Project that materially alters any Party's understanding of a material fact that objectively would have altered its willingness to enter into this Settlement had it been known at the time of this Settlement; or
- h) the circumstance resulting from a force majeure event has not been resolved after a Party has complied with Section 6.18.2.

**5.6 Procedure for Withdrawing from Settlement**

Any Party intending to withdraw from this Settlement as allowed by Section 5 of this Settlement must first provide 60 days advance written Notice of its intent to withdraw following completion of the dispute resolution procedures under Section 4 of this Settlement toward eliminating the reason for the withdrawal. Except as provided in Section 6.12 of this Settlement, the withdrawal of a Party does not terminate this Settlement for the remaining Parties. If a Party withdraws as allowed by this Settlement, that Party shall not be bound by this Settlement, other than Sections 6.1 and 6.9, following such withdrawal except as might be established through an action for specific performance.

**5.7 Procedure Prior to Withdrawal as a Result of Withdrawal of Another Party**

Any Party may withdraw from the Settlement after completion of the dispute resolution procedures if another Party withdraws from the Settlement, and the later withdrawing Party reasonably determines, after an opportunity to meet and discuss with the remaining Parties, that the first withdrawal materially adversely affects their interest in the Settlement, by giving Notice identifying the reason for withdrawal within 30 days of the effective date of withdrawal by the Party creating the right to withdraw.

**5.8 Effect on Settlement of the Withdrawal of any Party or Parties**

Upon the effective date of the withdrawal of any Party, the remaining Parties shall have no further obligation to the withdrawing Party under this Settlement, and any Party may oppose any filing submitted to FERC or in any proceeding related to the Project by a withdrawing Party.

**5.9 Skagit County's Right to Withdraw Under Certain Conditions**

Skagit County's support for this Settlement is contingent on PSE and the ACOE entering into a long-term contract with terms and conditions that allow the County to determine that suitable arrangements have been made to compensate PSE for the reservation of flood control space in the Upper Baker Reservoir. If such a contract has not been entered into by February 1, 2005, the County may withdraw from this Settlement on February 1, 2005 or at any time thereafter prior to the issuance of a New License for the Project, without complying with Section 5.6. Skagit County shall provide Notice of its withdrawal.

In the event that the contract has not been entered into by February 1, 2005, and the County has not withdrawn from this Settlement, and if PSE and the ACOE subsequently enter an agreement that the County determines provides the required suitable arrangements, the County's right to withdraw under this Section 5.9 is terminated as of the date of Notice that the County approves the long-term contract.

## **6 GENERAL CONDITIONS AND LIMITATIONS**

### **6.1 General Conditions**

This Settlement does not establish any principle or precedent with regard to any issue addressed in this Settlement or with regard to any Party's participation in any other pending or future licensing proceeding. Further, a Party shall not be deemed to have consented to any operation, management, valuation, or other principle underlying any of the matters covered by this Settlement, except as expressly provided herein. By entering into this Settlement, a Party shall not be deemed to have made any admission or waived any contention of fact or law that it did make or could have made in any FERC proceeding relating to the issuance of a new license for the Project. This Settlement shall not be offered in evidence or cited as precedent by any Party to this Settlement in any other adjudicative proceeding, except in a proceeding to establish the existence of or to enforce or implement this Settlement or, if necessary, to support the Washington Utilities and Transportation Commission approval of the New License. This Section 6.1 shall survive any termination of this Settlement.

### **6.2 Compliance with Statutory or Other Legal Obligations**

The Parties' representations in this Settlement are based on information and analysis as of the Effective Date. Nothing in this Settlement is intended nor shall be construed to affect, predetermine, or limit any Party from complying with its obligations under applicable laws and regulations, including, without limitation, considering and responding to comments received and information and analyses developed in any environmental review, or regulatory or permitting process related to the Project in accordance with this Settlement, nor is it intended nor shall it be construed to predetermine the outcome of any environmental, regulatory, or permitting process related to the Project. Except as otherwise provided in this Settlement, nothing in this Settlement shall be construed as limiting any Party's participation subsequent to the Effective Date in any environmental review proceedings, to the extent the process addresses environmental impacts not otherwise addressed in the PDEA.

### **6.3 Reservations of Authority**

Nothing in this Settlement is intended in any way to expand or diminish any existing authority or to confer or consent to any approval authority or regulatory jurisdiction that does not already exist under applicable federal or state law, or diminish the deference due under applicable law. Each Party reserves all claims, rights, and responsibilities that it may otherwise have with respect to matters requiring decisions by regulatory parties to be made following this Settlement or matters not addressed by this Settlement. Nothing in this Settlement is intended to expand or diminish the existing authority of Skagit County or the Town of Concrete under the CZMA, SMA, or the Skagit County Shoreline Management Master Program.

#### **6.4 Federally-Reserved Water Rights**

Nothing in this Settlement is intended in any way to affect, diminish, impair, or predetermine any federally-reserved or state-law-based water right that the United States or any tribe may have in the Skagit and Baker River or their tributaries.

#### **6.5 Tribal Rights**

Notwithstanding anything herein to the contrary, nothing in this Settlement, the act of signing this Settlement by any of the Tribes, or any of the actions taken to further the purposes of this Settlement shall:

a) create, expand, govern, derogate, diminish, abrogate, relinquish, waive, impair, substitute for, or apply to any treaty, sovereign, or federal right (including attendant rights of access and exercise), including, but not limited to, hunting, fishing and gathering rights, in any way, or the responsibilities of the United States toward tribes under any federal treaty, executive order or statute;

b) confer management decision making authority to any Party not recognized as a manager of the resource at issue nor is it to be construed to diminish, waive, restrict, or abrogate any management authority of a recognized manager; or

c) be construed as limiting, waiving, or otherwise impairing any claim a Tribe may have with respect to matters not resolved by this Settlement.

#### **6.6 State Water Rights**

Nothing in this Settlement is intended in any way to affect, diminish, or impair PSE's, or any other Party's, water rights. This Settlement, however, and specifically the flow regime and ramping rates adopted as Proposed License Article 106, is intended to affect the exercise of PSE's water rights during the term of the New License.

#### **6.7 Reservation of Environmental Credits**

This Settlement shall not be construed to limit PSE's ability to retain all tangible environmental rights not required for PSE's implementation of the Proposed License Articles, including, without limitation, carbon dioxide sequestration rights, for all property related to the Project whether currently owned by PSE or otherwise to be acquired in conformance with any of the Proposed License Articles.

#### **6.8 General Limitations of Settlement**

Nothing in the Settlement is intended nor shall be construed to affect or restrict any Party's participation in or comments about compliance with the New License, license amendment proceedings as authorized under Section 3.6, the proposal of interim conditions for annual

licenses after the expiration of the New License, relicensing of the Project subsequent to the New License, or any other project licensed to PSE under the FPA.

**6.8.1 Nothing to Preclude Joint Recreational Development with Skagit County**

Skagit County seeks to increase the level of developed recreational facilities at Lake Shannon, with the goal of developing, operating, and maintaining a day use facility, forty standard overnight campsites, a paved boat launch, safe public drinking water, six vault toilets, a picnic shelter, picnic tables, fire rings, and permanent legal access to such facilities. Nothing in this Settlement is intended to preclude Skagit County from pursuing or developing additional recreational facilities at Lake Shannon, provided, however, that neither PSE's obligations as set forth in Proposed Article 305, nor any of the obligations of the other Parties to this Settlement, shall increase as a result of any additional recreational facilities developed by Skagit County, nor shall the development otherwise be Inconsistent with the Settlement.

Upon completion of any required permitting for facilities to be developed by Skagit County, PSE may, with the approval of the Recreation Resources Group and Terrestrial Resources Implementation Group, as defined in Proposed License Article 601, prepare and submit a request to FERC to authorize the use and/or conveyance of Project lands for these purposes, pursuant to Article 44(d)(6) of the license in effect on the Effective Date or as adopted in the New License, provided that the proposed use and/or conveyance is consistent with Proposed Article 305. The Parties contemplate that the approved conveyance would not require the additional recreational facilities to remain within the FERC project boundary, except to the extent required by the obligations of Proposed License Article 305.

6.8.2 Nothing in this Settlement shall be construed to authorize any Party to take action to cause irreparable harm to any Party's interests with respect to the Project.

**6.9 Confidentiality**

Upon execution of this Settlement, all negotiation documents related to its development, execution, and submittal to FERC shall be deemed confidential and shall not be discoverable or admissible in any forum or proceeding for any purpose to the fullest extent allowed by applicable law, including 18 C.F.R. § 385.606, except those documents submitted to FERC as a part of the Offer of Settlement. This provision does not apply to the results of resource studies or other technical information developed for use by the Parties. This provision does not apply to any information that was in the public domain prior to the development of the Settlement or that became part of the public domain at some later time through no unauthorized act or omission by any Party. This provision does not apply to any information held by: (a) a federal agency that is not protected from disclosure pursuant to the Freedom of Information Act; or (b) a Washington State agency that is not protected from disclosure under the Public Records Act, RCW 42.17.360 et seq., or other applicable law; provided, however, that prior to the release of any such information, the federal or state agency shall make reasonable efforts to notify PSE of receipt of a request for release of the information and a

reasonable opportunity for PSE to seek a protective order preventing the disclosure of the information. This Section 6.9 shall survive termination of the Settlement.

#### **6.10 Responsibility for Costs**

PSE shall pay for the cost of actions required of PSE by this Settlement, except as may otherwise be specifically identified in implementation schedules and plans incorporated into the Proposed License Articles. The Parties acknowledge that several Proposed License Articles contain funding limits, and PSE shall not be in breach of this Settlement for failure to provide funding in excess of the stated limits, unless this Settlement is amended in accordance with Section 3.7. PSE shall have no obligation to reimburse or otherwise pay any other Party for its assistance, participation, or cooperation in any activities pursuant to this Settlement except as provided in implementation schedules and plans incorporated into the Proposed License Articles or as expressly agreed to by PSE or as required by law.

#### **6.11 Reserved**

#### **6.12 Termination of Settlement**

The Settlement shall terminate as to all Parties and have no further force or effect upon expiration of the New License and any annual licenses issued after expiration thereof or upon withdrawal from the Settlement of PSE, except that Sections 6.1 and 6.9 shall survive termination of the Settlement. In the event that PSE has committed resources or funds required by any of the Proposed License Articles prior to the termination, PSE shall have no further obligations from the date of termination and may close any and all funds established to carry out the requirements of the Proposed License Articles. Nothing in this provision is intended to relieve PSE from performing any existing obligations in any contracts related to the termination of those contracts as a result of termination of this Settlement.

#### **6.13 Successors and Assigns**

The Settlement shall apply to, and be binding on, the Parties and their successors and assigns. No change in ownership of the Project or transfer of the existing or New License by PSE shall in any way modify or otherwise affect any Party's interests, rights, responsibilities, or obligations under the Settlement. Unless prohibited by applicable law, PSE shall provide in any transaction for a change in ownership of the Project or transfer of the existing or New License, that the new owner shall be bound by, and shall assume the rights and obligations of, the Settlement, upon completion of the change of ownership and approval by FERC of the license transfer. In the event that applicable law prohibits the new owner from assuming the rights and obligations of the Settlement, any Party may withdraw from the Settlement. Nothing in this Settlement precludes any Party from participating in any transfer proceeding pursuant to 18 C.F.R. § 9.1-9.3 (Application for Transfer of License). At least 30 days prior to the effective date of any successor-in-interest or assignment, the predecessor-in-interest or assignor shall provide Notice to the other Parties of the transfer in interest.

#### **6.14 No Third Party Beneficiaries**

Without limiting the applicability of rights granted to the public pursuant to applicable law, the Settlement shall not create any right or interest in the public, or any member thereof, as a third-party beneficiary hereof, and shall not authorize any non-Party to maintain a suit at law or equity pursuant to the Settlement. The duties, obligations, and responsibilities of the Parties with respect to third parties shall remain as imposed under applicable law.

#### **6.15 Entire Agreement**

This Settlement, together with the Appendices A through A-6, sets forth the entire agreement of the Parties with respect to the subject matters addressed in this Settlement related to the relicensing of the Project and supersedes any oral or written agreements among the Parties prior to the Effective Date with respect to the subject matters addressed in this Settlement related to the relicensing of the Project, except for existing special use permits between PSE and the USDA-FS. Appendix B is part of the entire agreement only for PSE and SC.

#### **6.16 Severability**

The terms of the Settlement are not severable one from the other. The Settlement is made with the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire Settlement.

#### **6.17 Interpretation of Agreement**

This Settlement was drafted based upon the collective efforts of the Parties, and any interpretation of this Settlement shall not be construed by a Party against any of the other Parties of this Settlement. All Parties contributed materially to the drafting of this Settlement. The Settlement shall not be construed against any Party on the ground that it had a primary responsibility for such drafting.

#### **6.18 Force Majeure**

No Party shall be in breach of the Settlement as a result of a failure to perform or for delay in performance of any provision of the Settlement due to any cause reasonably beyond the control of, and which occurs without the fault or negligence of, the Party. This may include, without limitation, natural events, labor or civil disruption, or malfunction or failure of Project works. The Party whose performance is affected by force majeure shall notify the other Parties in writing within 24 hours, or otherwise as soon as reasonably practicable, after becoming aware of any event that such performing Party contends constitutes force majeure. Such notice will identify the event causing the delay or anticipated delay, estimate the anticipated length of delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of the measures. The performing Party shall make all reasonable efforts to promptly resume performance of this Settlement and, when able, to resume performance of its obligations and give the other Parties written Notice to that effect.



**6.18.1 Consultation with NOAA Fisheries and USFWS**

If PSE is unable to perform any obligation pursuant to any provision of this Settlement as a result of force majeure that may adversely affect a species listed as endangered or threatened under the ESA, PSE shall, within 3 days after notifying the other Parties of the existence of an event constituting force majeure, consult with NOAA Fisheries and USFWS to eliminate or sufficiently reduce any take of species listed as endangered or threatened that is not authorized in the Incidental Take Statements of existing biological opinions. Nothing in this Section 6.18 precludes NOAA Fisheries and USFWS from conducting consultation with FERC. In the event the circumstances resulting from the force majeure event cannot be resolved without amendment to this Settlement and/or amendment of the New License, PSE shall notify all Parties to this Settlement and seek consensus regarding actions or measures needed to address the circumstances arising from the force majeure event.

**6.18.2 Right of Withdrawal due to Duration of Force Majeure**

If PSE's inability to perform any obligation pursuant to any provision of this Settlement continues or is reasonably anticipated to continue for more than 180 days due to force majeure, any Party other than PSE may seek specific performance, withdraw from this Settlement, or pursue any other right or authority or seek any remedy available under applicable law after complying with the dispute resolution procedures set forth in Section 4. If any Party withdraws from this Settlement pursuant to this Section, PSE may oppose the assertion of such other right, authority or remedy that Party seeks to assert under any applicable law or notify FERC that PSE has withdrawn from this Settlement and seek such further FERC action as PSE deems appropriate.

**6.19 No Joint Venture**

By entering into this Settlement, none of the Parties, except PSE, has accepted any legal liability or responsibility for the operation of the Project.

**6.20 Availability of Agency Funds**

Participation in this Settlement for a Party that is a federal agency is subject to the requirements of the Anti-Deficiency Act, 31 United States Code, Section 1341, and the availability of appropriated funds. Nothing in this Settlement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the United States Treasury. The Parties acknowledge that the Parties that are federal agencies shall not be required under this Settlement to expend any federal agency's appropriated funds unless and until an authorized official of each such agency affirmatively acts to commit such expenditures as evidenced in writing. Participation in this Settlement by Parties that are state agencies is subject to the availability of appropriated funds. Nothing in this Settlement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of Washington. The Parties acknowledge that the Parties that are state agencies shall not be required under this Settlement to expend any appropriated funds unless and until an

authorized official of each such agency affirmatively acts to commit such expenditures as evidenced in writing.

### **6.21 Governing Law**

The New License and any terms of the Settlement over which a federal agency has jurisdiction shall be governed, construed, and enforced in accordance with the relevant statutory and regulatory authorities of such agency. By executing the Settlement, no Party is consenting to the jurisdiction of any court unless such jurisdiction otherwise exists. In the event an action proceeds in state court, the action shall be brought in courts of the State of Washington. All activities undertaken pursuant to the Settlement shall be in compliance with all applicable federal or state laws.

### **6.22 Notice**

Except as otherwise provided in this paragraph, any Notice required by the Settlement shall be written. It shall be sent to all Parties by first-class mail or comparable method of distribution, and if required by the New License, filed with FERC. For the purpose of this Settlement and unless otherwise specified, a Notice shall be effective 7 days after the date on which it is mailed or otherwise distributed. When the Settlement requires Notice in fewer than 7 days, Notice shall be provided by telephone, facsimile, or electronic mail and shall be effective when provided. For the purpose of Notice, the Parties shall, within 30 days of the Effective Date, provide PSE, Attn: Connie Freeland, P.O. 97034, PSE-09S, Bellevue, WA 98009-9734, with the name of their designated representatives for receiving Notice, and PSE shall, within 30 days of the Effective Date, provide a list of designated representatives for Notices to all Parties. The Parties shall provide Notice of any change in the authorized representatives designated to receive Notices to PSE, and PSE shall maintain the current distribution list of such representatives.

## **7 APPROVAL AND EXECUTION**

### **7.1 Authority of Signatories**

Each signatory to the Settlement certifies that he or she is authorized to execute the Settlement and to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such Party.

### **7.2 Multiple Counterparts**

The Settlement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of the Settlement may be detached from any counterpart of the Settlement without impairing the legal effect of any

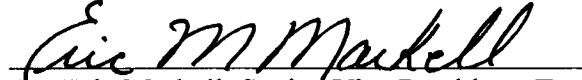
***Settlement Agreement  
Baker River Hydroelectric Project***

signatures thereon, and may be attached to another counterpart of the Settlement identical in form hereto but having attached to it one or more signature pages.

*Settlement Agreement  
Baker River Hydroelectric Project*

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

PUGET SOUND ENERGY, INC.



By: Eric Markell, Senior Vice President, Energy Resources

Date Signed: 11.12.04

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Relicensing Settlement Agreement:

UNITED STATES, DEPARTMENT OF AGRICULTURE, FOREST SERVICE



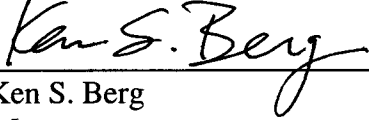
---

By: Linda Goodman  
Its: Regional Forester,  
Pacific Northwest Region

**Settlement Agreement**  
**Baker River Hydroelectric Project**

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:


UNITED STATES, Fish and Wildlife Service



By: Ken S. Berg  
Its: Manager,  
Western Washington Fish and Wildlife Office  
Date Signed: NOV 18 2004

*Settlement Agreement*  
*Baker River Hydroelectric Project*

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

UNITED STATES, National Oceanic and Atmospheric Administration, Fisheries <sup>1</sup>  By: D. Robert Lohn Its: Regional Administrator Date Signed: <u>11/22/04</u>
--

---

<sup>1</sup> NOAA Fisheries takes no position on the license term set forth in Section 2.3.

*Settlement Agreement*  
*Baker River Hydroelectric Project*

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

UNITED STATES, National Park Service



By: William Paleck

Its: Superintendent, North Cascades Park Complex

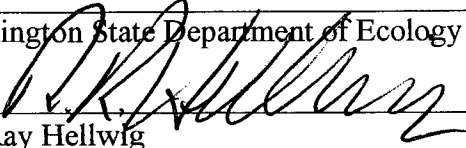
Date Signed: 11-22-04



*Settlement Agreement  
Baker River Hydroelectric Project*

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

Washington State Department of Ecology

  
By: Ray Hellwig

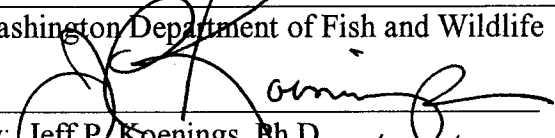
Its: Regional Director

Date Signed: 11-17-04

*Settlement Agreement  
Baker River Hydroelectric Project*

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

Washington Department of Fish and Wildlife

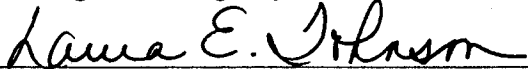


By: Jeff P. Koenings, Ph.D.  
Its: Director  
Date Signed: 11/15/04

*Settlement Agreement  
Baker River Hydroelectric Project*

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

Washington Interagency Committee for Outdoor Recreation




By: Laura Eckert Johnson

Its: Director

Date Signed: 11/16/04

*Settlement Agreement  
Baker River Hydroelectric Project*

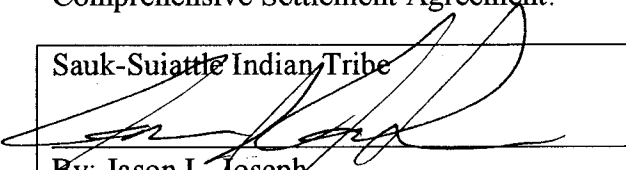
The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

Washington Department of Natural Resources	
<i>Doug Sutherland</i>	
By: Doug Sutherland Its: Commissioner of Public Lands Date Signed: <i>11/15/14</i>	

*Settlement Agreement  
Baker River Hydroelectric Project*

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

Sauk-Suiattle Indian Tribe



By: Jason L. Joseph  
Its: Chairman  
Date Signed: 11-23-04

*Settlement Agreement  
Baker River Hydroelectric Project*

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

Swinomish Indian Tribal Community

*Brian Cladoosby*

By: Brian Cladoosby

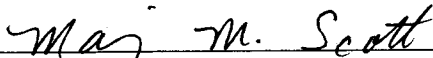
Its: Chairman

Date Signed: *November 22, 2005*

*Settlement Agreement  
Baker River Hydroelectric Project*

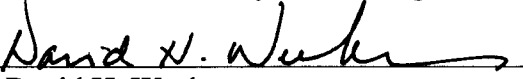
The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

Upper Skagit Indian Tribe

  
By: Marilyn Scott  
Its: Chairman  
Date Signed: 11/23/04

*Settlement Agreement  
Baker River Hydroelectric Project*

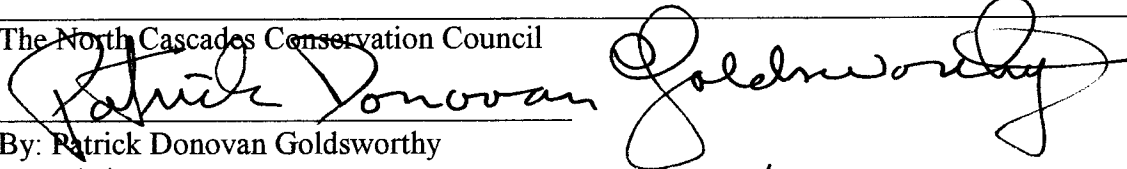
The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

The Nature Conservancy of Washington  
  
By: David H. Weekes  
Its: Washington State Director  
Date Signed: 11/23/04



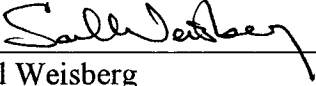
*Settlement Agreement  
Baker River Hydroelectric Project*

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

The North Cascades Conservation Council  
  
By: Patrick Donovan Goldsworthy  
Its: Chairman  
Date Signed: November 16, 2004

*Settlement Agreement  
Baker River Hydroelectric Project*

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

The North Cascades Institute

By: Saul Weisberg
Its: Executive Director
Date Signed: 11/17/04

*Settlement Agreement  
Baker River Hydroelectric Project*

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

The Rocky Mountain Elk Foundation, Inc.



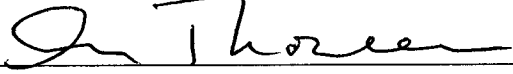
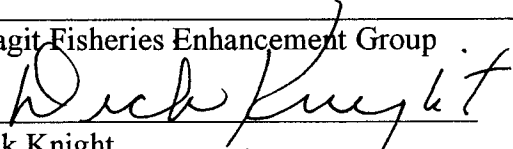
By: Robert D. Nelson

Its: Hydropower Coordinator

Date Signed: 11/19/04

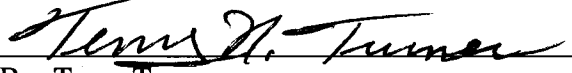

*Settlement Agreement  
Baker River Hydroelectric Project*

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

<p>The Skagit Fisheries Enhancement Group</p> <p style="text-align: center;"></p> <p>By: Arn Thoreen Its: Board of Directors' Representative</p>
<p>The Skagit Fisheries Enhancement Group</p> <p style="text-align: center;"></p> <p>By: Dick Knight Its: President Date Signed: <u>11/17/04</u></p>

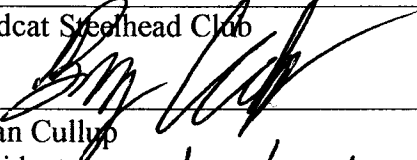
**Settlement Agreement**  
**Baker River Hydroelectric Project**

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

<p>The Washington Council of Trout Unlimited</p> <p></p> <p>By: Terry Turner Its: President/CEO</p>
<p>The Washington Council of Trout Unlimited</p> <p></p> <p>By: Ric Abbett Its: Corporate Executive Date Signed: <u>11/16/04</u></p>

**Settlement Agreement  
Baker River Hydroelectric Project**

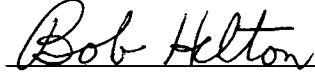
The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

The Wildcat Steelhead Club

By: Bryan Cullup
Its: President
Date Signed: 11/18/04

*Settlement Agreement  
Baker River Hydroelectric Project*

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

Bob Helton



Skagit County Citizen

Date Signed: Nov. 5, 2004

**Settlement Agreement  
Baker River Hydroelectric Project**

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON

Ted W. Anderson  
Ted W. Anderson, Chairman

Don Munks  
Don Munks, Commissioner

Kenneth A. Dahlstedt  
Kenneth A. Dahlstedt, Commissioner

*for* Melinda Miller  
Melinda Miller, Civil Deputy

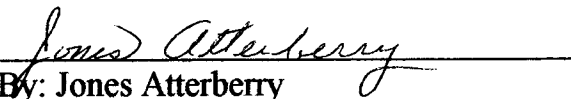
Attest: JoAnne Giesbrecht  
JoAnne Giesbrecht,  
Clerk of the Board

Date Signed: November 15, 2004



The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Relicensing Settlement Agreement:

Public Utility District No. 1 of Skagit County, Washington



By: Jones Atterberry

Its: Commission, President

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Relicensing Settlement Agreement:

City of Anacortes


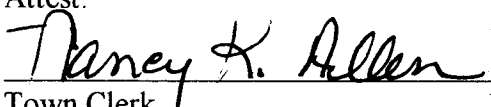
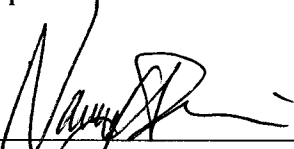
*H. Dean Maxwell*

By: H. Dean Maxwell

Its: Mayor

*Settlement Agreement  
Baker River Hydroelectric Project*

The undersigned party/party representative(s), by affixing its (their) signature(s) below, hereby authorizes the party to enter the Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement:

Town of Concrete

By: John Rantschler
Its: Mayor
Date Signed: <u>11/22/04</u>
Attest:

Town Clerk
Approved as to Form

Attorney for Town of Concrete

**APPENDIX A: Proposed License Articles**

**Article 101  
Fish Propagation**

The licensee shall be responsible for fish propagation and enhancement programs and facilities at the Baker River Project during the term of the license, as described in this article.

Plan and Requirements. Within six months following license issuance, licensee shall, following consultation with USFWS, NOAA Fisheries, WDFW, the Upper Skagit Indian Tribe, the Sauk-Suiattle Indian Tribe, and the Swinomish Indian Tribal Community (“Fish Resource Parties”), and USDA-FS, develop a fish propagation Facilities Plan (“FPFP”) that contains detailed requirements for licensee’s implementation of the facilities and programs required by this article, including the following:

(a) Licensee shall construct ancillary facilities and/or modify Sockeye Spawning Beach 4 for improved functionality and productivity, by doing the following: 1) isolating the water supply to each of the existing segments, 2) installing concrete walls between segments, 3) improving alarm systems, and 4) reviewing conditions of Sulphur Springs water supply intake site and developing a plan to control sediment infusion that may include capping the intake area to prevent sliding material from moving into the water supply;

(b) Licensee shall construct additional fish culture facilities at the Sulphur Springs site, to provide for a total of 20,000 pounds of instantaneous cultured fish capacity (exclusive of eggs and anadromous adults) and 7,000 pounds of egg incubation capacity (including egg incubation capacity that may be provided in Beach 4), which shall include some or all of the following structures, facilities, and equipment necessary for adult holding, spawning, and egg incubation: water chiller(s), fry starter(s), troughs or ponds, rearing ponds, and loading facilities;

(c) Licensee shall provide for fishery facility operations in a manner that will enable the sequential development of population enhancement for sockeye, based upon: 1) a study completed no later than two years following license issuance evaluating and, if possible, determining the capacity of Baker Lake and Lake Shannon for the production of sockeye smolts from fry, 2) a phased approach for increasing sockeye fry capacity from production limits derived empirically from monitoring and analyses of returning broodstock and subsequent smolt production, and 3) operational tests of the limits of Sockeye Spawning Beach 4 productivity to optimize output toward the goal of producing approximately four (4) million fry;

(d) Licensee shall decommission the site of Sockeye Spawning Beaches 1, 2 and 3, in accordance with the following: 1) to the extent feasible, retain Beaches 2 and/or 3 until replacement production from new facilities required by this article are developed, which retention may require modifications, such as leak reduction, to keep them functional and improve their performance prior to decommissioning, 2) decommissioning shall not occur until approval from the USDA-FS is obtained, and 3) decommissioning may include: configuring the ponds into a channel with a natural meander to optimize fish usage,

**Settlement Agreement  
Baker River Hydroelectric Project**

removing existing structures and restoring landscaping, and initiating adult salmon returns to the site with a temporary supplementation program;

(e) Licensee shall continue the existing programs described in the schedule below, unless modified or terminated at the direction of the Sauk-Suiattle Indian Tribe, Swinomish Indian Tribal Community, Upper Skagit Indian Tribe, and Washington Department of Fish and Wildlife ("Fish Co-managers"). Licensee shall fund and implement fish propagation and enhancement programs, when and if directed by the Fish Co-managers according to the following: 1) fisheries management objectives provided to licensee by the Fish Co-managers, 2) weight and production targets established by the Fish Co-managers, within the capacity and production limits (maximum of 20,000 pounds for no more than three months annually) of the facilities required by this article, 3) species mix, life stages, and quantities, based on Fish Co-managers' direction, within the capacity and production limits of the facilities required by this article, and 4) facility production is limited to the space available at the Sulphur Springs site;

(f) Licensee shall, beginning no later than five years following license issuance, make funding available to the Fish Co-managers for the purpose of evaluation, planning, permitting and implementation of a reservoir nutrient enhancement program in an amount not to exceed \$60,000 annually during the term of the license. Any funds not expended in one year may be carried over into succeeding years, or, at the direction of the Fish Co-managers, due to program assessment potential or other relevant biological factors, may be transferred to the Habitat, Enhancement Restoration and Conservation (HERC) Fund;

(g) Within six months following license issuance for the existing facilities, and within six months following completion of construction of facilities required by this article, licensee shall prepare, and update periodically as needed, a fish facility operations manual that includes the following elements, as appropriate: facility layout, flow distribution schematic and plan, emergency response plan, emergency personnel call-out procedures, security plan, any current management protocols provided by the Fish Resource Parties, reporting procedures, any operations plan approved by the Fish Co-managers, an equipment and suppliers' list, any fish distribution plan approved by the Fish Co-managers, any spill containment plan approved by the Fish Co-managers, and any hygiene plan for disease control approved by the Fish Co-managers;

(h) Licensee shall develop and implement a set of operational protocols for the fisheries enhancement program to be approved by the Fish Co-managers that contains at least the following elements: 1) the method for selecting and engaging an annual contractor, who is required to be accountable to the Fish Co-managers and qualified to implement the program required by this article, 2) the form of annual contract and budget, to be issued for 5-year periods, with each 5-year contract commitment to be secured 12 months prior to the expiration of the current 5-year contract, 3) the process by which the Fish Co-managers will consider and approve studies to be performed by licensee or other entities to optimize fish program success, 4) the method for preparing an annual audit, to be provided to the Aquatics Resource Group ("ARG") December 31 of each year, of the operation of the facilities based on a June 1 to May 31 operating year, and 5) a method for developing a

***Settlement Agreement  
Baker River Hydroelectric Project***

report format to include in the contract for facility operation by June 1 of each year, containing information regarding operations, problems, facility status, future need, and results of the program; and

(i) Licensee shall make funds available to the Fish Co-managers to hire an on-site manager for the fisheries enhancement program required by this article, following notification of selection of an on-site manager by the Fish Co-managers and based upon any agreement between the Fish Co-managers and the licensee. The manager will be selected by the Fish Co-managers.

After required consultation in the development of the FPPF, licensee shall provide a minimum of 30 days for the consulted parties and other members of the ARG to comment and to make recommendations before filing the FPPF with the Commission. The licensee shall include with the FPPF, documentation of consultation and copies of comments and recommendations on the FPPF after it has been prepared and provided to the consulted parties and other members of the ARG, and specific descriptions of how the comments are accommodated by the plan. If licensee does not accept a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.

Schedule. Licensee shall comply with the requirements of this article according to the following initial schedule, which may be revised following consultation with the Fish Resource Parties:

**Settlement Agreement**  
**Baker River Hydroelectric Project**

Schedule for implementation of Fish propagation/enhancement programs for the Baker River Project.

Estimated Start Year	Year of License	Actions
2005	-1	<p>Initiate design and permitting for Phase 1 hatchery construction with a capacity for 7 million fry (egg capacity ~ 7.8 million) (Phase 1 Hatchery).</p> <p>Initiate design and permitting rearing facilities for up to 20,000 lbs. instantaneous capacity (Phase 1 Hatchery).</p> <p>Initiate design and permitting for holding and handling facilities for 6,000 adult sockeye hatchery broodstock (Phase 1 Hatchery).</p> <p>Initiate design and permitting for improvements to Spawning Beach 4 (SB4).</p> <p>Continue the following existing programs:</p> <ul style="list-style-type: none"> <li>• Operation of Sockeye Spawning Beaches 2 or 3, and 4.</li> <li>• Artificial incubation of 1,000,000 + sockeye eggs.</li> <li>• Rearing of 130,000 sockeye for releases in June (~60,000), fall (~60,000), and the following spring (5,000 – 10,000).</li> <li>• Spawning, incubation and rearing of coho. The egg take is the result of sampling for tag recovery from adults and stocking needs of Lake Shannon. Fifteen thousand are reared for a year and release for fish passage testing.</li> <li>• 20,000 rainbow trout for release into Depression Lake.</li> </ul>
2006	0	<p>Construct Phase 1 Hatchery and SB4 improvements.</p> <p>Resume basin Sockeye fry productivity study.</p>
2007-2012	~ 1- 6	<p>Initiate Baker system capacity test by sequential increases in production currently estimated at ~1 million fry per year until the sockeye fry capacity of SB4 plus Phase 1 hatchery or the Baker system carrying capacity is reached (1st hatchery fry expected spring 2008).</p>
2009-2011	~ 3- 5	<p>Initiate and implement decommissioning of site of Sockeye Spawning Beaches 1, 2, and 3.</p>



**Settlement Agreement**  
**Baker River Hydroelectric Project**

<b>Estimated Start Year</b>	<b>Year of License</b>	<b>Actions</b>
2012-2016	~ 6-10	Hold production stable for Baker system capacity testing at Phase 1 Hatchery and SB4 capacity (total anticipated fry production ~10.5 million).
2015	~ 9	Based on previous capacity study results initiate design and permitting for:  Hatchery expansion to a capacity of 11 million fry (total facility fry capacity ~14.5 million) Phase 2 Hatchery.  Additional holding and handling facilities for and additional 2,500 adult sockeye hatchery broodstock (total 8,500 adults) Phase 2 Hatchery.
~ 2016	~ 10	Construct Phase 2 Hatchery improvements (as appropriate).
~ 2017- license term	~ 11	Resume sequential increases in production currently estimated at ~1 million fry per year until the sockeye fry capacity of SB4 plus Phase 2 Hatchery or the Baker system carrying capacity is reached.

**Reporting.** After consultation with the ARG, the WDFW, the Swinomish Indian Tribal Community, the Upper Skagit Indian Tribe and Sauk-Suiattle Indian Tribe, licensee shall submit a final annual report that includes an annual audit on fish propagation facilities and programs required by this article, based on a June 1 to May 31 operating year, which shall be submitted to the Commission in accordance with Article 102. For the purposes of this article, the audit shall involve a periodic review and report on operational indices that includes financial accounting, fish handling and disease management operations, hazardous materials handling, Spill Prevention and Control Countermeasures compliance, and other parameters that may be designated from time to time. The licensee shall allow a minimum of 30 days for the Parties to comment and to make recommendations before filing the report of operations with the Commission, and comments will be provided on or before November 30. The licensee shall include with the audit or report, documentation of comments and recommendations on the annual report, and specific descriptions of how any comments are accommodated in the report. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.

**Article 102  
Aquatics Reporting**

Within one year of license issuance the licensee shall prepare and file with the Commission a report regarding plans and other measures for the restoration, management and enhancement of fish species in the Baker River basin. Licensee shall submit the report annually, and provide updates and revisions as required by the schedule below. The licensee shall allow a minimum of thirty (30) days for the ARG to comment before filing the report with the Commission, in accordance with the schedule below. The licensee shall include with the report, documentation of comments, and specific descriptions of how comments are accommodated in the report. If the licensee does not adopt a comment, the filing shall include the licensee's reasons, based on Project-specific information.

The report, at a minimum, shall: summarize existing plans or other measures of agencies and tribes, including Endangered Species Act recovery plans and the Aquatic Conservation Strategy of the Northwest Forest Plan; and describe how the licensee, agencies, and tribes coordinate in the implementation of their respective plans and measures. The licensee shall consider this report in the course of implementing Article 101 (Fish Propagation), Article 103 (Upstream Fish Passage), Article 104 (Connectivity), Article 105 (Downstream Fish Passage), Article 106 (Flow Implementation), Article 109 (LWD), Article 505 (Riparian/Aquatic Habitat), and Article 602 (HERC Fund). The report shall also include the status of development or implementation of plans or other measures and annual reporting required by Articles 101, 103, 104, 105, 106, 108, 109, 110, 401, 505, and 602 according to the Aquatics Reporting Schedule, as follows;

**Settlement Agreement**  
**Baker River Hydroelectric Project**

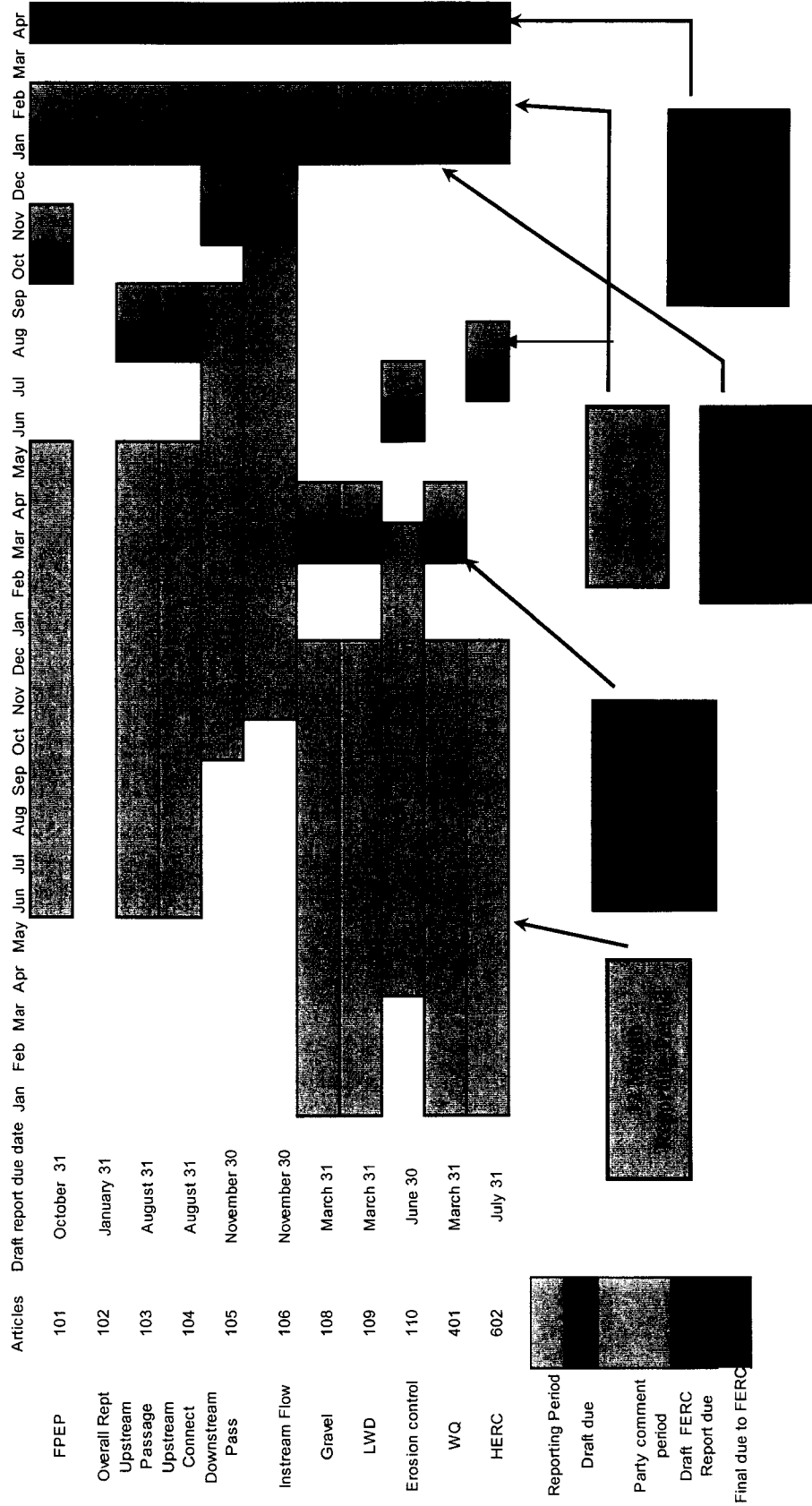
**Aquatics Reporting Schedule**

<b>Article Number</b>	<b>Annual Report due?</b>	<b>Update Report from Article 102</b>	<b>Reporting period</b>	<b>Draft report due date</b>
101	x		Previous 12 months, June 1 to May 31	October 31
102	x		Varies - 12 Months	January 31
103	x	x	Previous 12 months, June 1 to May 31	August 31
104	x	x	Previous 12 months, June 1 to May 31	August 31
105	x		Previous 12 months, September 1 - August 31	November 30
106	x		Previous 12 months, October 1 - September 30	November 30
108			Previous 12 months, January 1 - December 31	March 31
109		x	Previous 12 months, January 1 - December 31	March 31
110	x		Previous 12 months, January 1 - December 31	March 31
401	x		Previous 12 months, April 1 - March 31	June 30
505		x	Previous 12 months, January 1 - December 31	July 31
602	x	x	Previous 12 months, January 1 - December 31	July 31

**Settlement Agreement  
Baker River Hydroelectric Project**

In complying with the reporting schedule, licensee shall be governed by the following illustration of plan drafting, commenting, and reporting:

**Reporting Schedule for Aquatics Articles 101-110, 401, and 602**



**Article 103  
Upstream Fish Passage Implementation Plan**

Licensee shall provide safe and effective upstream passage at the Baker River Project by using trapping, sorting, holding and hauling facilities located on the Baker River and other operations and facilities as appropriate for the Baker River Project, in accordance with the plan described in this article. Facilities include new facilities and renovations to existing facilities.

Licensee shall develop, submit to NOAA Fisheries and USFWS for approval, and file with the Commission for approval, an Upstream Fish Passage Implementation Plan (UFPIP). The licensee shall develop the UFPIP in consultation with the ARG and specifically with NOAA Fisheries, USFWS, WDFW, the Upper Skagit Indian Tribe, the Sauk-Suiattle Indian Tribe, and the Swinomish Indian Tribal Community.

Licensee shall develop and submit the UFPIP in phases, according to the schedule that follows, or on an alternative schedule specified in the UFPIP within six months of license issuance:

- UFPIP – Upstream Passage Construction & Design. No less than 60 days before initiation of construction and no later than 2 years after license issuance, the licensee shall file with the Commission its complete plans and specifications and schedule for construction of facilities for attraction, capture, and transport of upstream migrating fish at the Lower Baker Development.
- UFPIP – Upstream Passage Operation & Maintenance (O&M). No less than 60 days before initiation of operation, the licensee shall file with the Commission its complete plans and specifications for O&M of upstream passage facilities. The O&M plan shall include at least the following elements: a) fish handling, b) hauling frequencies, c) frequency and magnitude of attraction flows, d) species protocol, e) trap operational flows, f) a schedule, g) the method for providing annual updates, and h) trap reporting requirements.
- UFPIP – Upstream Passage Quality Assurance/Quality Control. No less than 60 days before initiation of operation, licensee shall file with the Commission for approval a quality assurance/quality control plan for the upstream passage facilities to confirm that the approved plans will be constructed as approved.
- UFPIP – Upstream Passage Emergency Response Plan. No less than 120 days prior to the initiation of operation of any of the fish passage facilities required by this article, licensee shall file with the Commission a preliminary response plan addressing operational contingencies and emergencies, and shall file a final plan with the Commission within 120 days from startup testing.
- UFPIP – Fish Passage Annual Reporting. The licensee shall file with the Commission an annual report describing the operation of the upstream fish

***Settlement Agreement  
Baker River Hydroelectric Project***

passage facilities for the past year at the Lower Baker Dam, pursuant to Article 102. The report shall include the numbers and species of fish captured in the trap and the associated disposition of those fish. The report shall include a description of problems and associated remedies for such problems, describe any modifications of the facilities implemented in the prior year, and audit and report operational compliance.

The licensee shall allow a minimum of 30 days for the consulted parties to comment and to make recommendations before filing each of the above plan components with the Commission. The licensee shall include with each of the plan components and reports required by this article, documentation of consultation and copies of comments and recommendations on the completed plan component, documentation of the approval of USFWS and NOAA Fisheries or documentation of the status of the review by USFWS and NOAA Fisheries, and specific descriptions of how the other consulted parties' comments are accommodated by the plan. If the licensee does not accept a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.

Licensee shall make funding available in an amount not to exceed \$20,000 annually during the term of the license for beneficial modifications beyond the scope of any modifications required to meet performance standards. The licensee may, in consultation with the ARG, modify facilities or operations as a result of performance reporting, changing needs and new technologies, provided that such modifications shall not proceed without the approval of the NOAA Fisheries and USFWS. Modifications shall be submitted to the Commission for approval.

**Article 104  
Connectivity between Lake Shannon and Baker Lake**

Licensee shall provide a fishway between Lake Shannon and Baker Lake for native char and other native fish species that become isolated by the Project. No later than three years after license issuance, the licensee shall conduct an investigation, in consultation with the ARG, and specifically with NOAA Fisheries, USFWS, WDFW, the Upper Skagit Indian Tribe, the Sauk-Suiattle Indian Tribe, and the Swinomish Indian Tribal Community, to develop and initiate studies with regard to the type of fishway, its location and timing, and the species and numbers of fish to be collected and transported upstream of Upper Baker Dam, following approval from NOAA Fisheries and USFWS. The investigation may include tagging, radio-tagging or other methods.

Fishways provided according to this article may range from, but may not necessarily be limited to, collect and haul operations, a temporary weir and trap on Sulphur Creek or a similar facility installed below Upper Baker Dam, up to a more permanent trap and haul facility below Upper Baker Dam. The facility shall include design accommodations for other aquatic species that do not compromise the primary design focus on native char and may be significantly lesser in scope and complexity than the adult fish trap downstream of Lower Baker Dam. Investigation is necessary to narrow the range of prospective fishway alternatives within this range.

If testing demonstrates that the approved prototype fishway does not appropriately achieve fish species connectivity, licensee shall propose an alternative plan to the ARG for approval by USFWS and NOAA Fisheries.

Licensee shall develop, submit to NOAA Fisheries and USFWS for approval, and file with the Commission for approval, a Fish Connectivity Implementation Plan (FCIP). The licensee shall develop the FCIP in consultation with the ARG and specifically with NOAA Fisheries, USFWS, WDFW, the Upper Skagit Indian Tribe, the Sauk-Suiattle Indian Tribe, and the Swinomish Indian Tribal Community.

The licensee shall develop and submit the FCIP in phases, according to the schedule that follows, or on an alternative schedule submitted to the Commission for approval by licensee within six months of license issuance:

- FCIP – Fish Connectivity Construction & Design. No less than 60 days before initiation of construction and no later than 3 years after license issuance, the licensee shall file with the Commission its complete plans, specifications, and schedule for construction of facilities and/or operations for attraction, capture, and transport of upstream migrating fish from Lake Shannon to Baker Lake.
- FCIP – Fish Connectivity Operation & Maintenance (O&M). No less than 60 days before initiation of operation, the licensee shall file with the Commission its complete plans and specifications for O&M of upstream passage facilities. The O&M plan shall include at least the following elements:
  - a) fish handling, b) hauling frequencies, c) frequency and magnitude of

***Settlement Agreement  
Baker River Hydroelectric Project***

attraction flows, d) species protocol, e) trap operational flows, f) a schedule, g) the method for providing annual updates, and h) trap reporting requirements.

- FCIP – Fish Connectivity Quality Assurance/Quality Control. No less than 60 days before initiation of operation, licensee shall file with the Commission for approval a quality assurance/quality control plan for the upstream passage connectivity facilities and/or operations to confirm the approved plans will be constructed and/or operated as approved.
- FCIP – Fish Connectivity Emergency Response Plan. No less than 120 days prior to the initiation of operation of any of the fish passage facilities required by this article, licensee shall file with the Commission a preliminary response plan addressing operational contingencies and emergencies, and shall file a final plan with the Commission within 120 days from startup testing.
- FCIP – Fish Connectivity Annual Reporting. Licensee shall file with the Commission an annual report describing the operation of the upstream fish passage connectivity facilities for the past year at the Upper Baker and Lower Baker Developments, pursuant to Article 102. The report shall include the numbers and species of fish captured in the trap and the associated disposition of those fish. The report shall include a description of problems and associated remedies for such problems, any modifications of the facilities implemented in the prior year, and audit and report operational compliance.

The licensee shall provide a minimum of 30 days for the consulted parties to comment and to make recommendations before filing each of the above plan components with the Commission. The licensee shall include with each of the plan components and reports required by this article, documentation of consultation and copies of comments and recommendations on the completed plan component after it has been prepared and provided to the consulted parties, documentation of the approval of USFWS and NOAA Fisheries or documentation of the status of the review by the USFWS and NOAA Fisheries, and specific descriptions of how the other consulted parties' comments are accommodated by the plan. If the licensee does not accept a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.



**Article 105  
Downstream Fish Passage Implementation Plan**

Licensee shall provide safe and effective downstream passage at the Baker River Project by using attraction, guidance, trapping, sorting, holding and hauling facilities located on the Project reservoirs and other operations and facilities as appropriate for the Baker River Project, in accordance with the plan described in this article. Required facilities include new facilities and may include renovation of some existing facilities.

Licensee shall develop, submit to NOAA Fisheries and USFWS for approval, and file with the Commission for approval, a Downstream Fish Passage Implementation Plan (DFPIP). The licensee shall develop the DFPIP in consultation with the ARG and specifically with NOAA Fisheries, USFWS, WDFW, the Upper Skagit Indian Tribe, the Sauk-Suiattle Indian Tribe, and the Swinomish Indian Tribal Community.

The plan shall be implemented in phases, according to the schedule that follows, or on an alternative schedule to be submitted to the Commission for approval by licensee within six months of license issuance:

- DFPIP – Downstream Passage Construction & Design. No less than 60 days before initiation of construction and no later than 2 years after license issuance, the licensee shall file with the Commission its complete plans and specifications for construction of facilities for attraction, capture, and transport of downstream migrating fish at the Upper Baker and Lower Baker Developments.

The downstream passage construction and design actions shall include licensee's provision of safe and effective downstream passage at the Upper Baker and Lower Baker Developments, which may include the following features: a) a guide net; b) a floating surface collector (FSC); c) a transition structure between the guide net and FSC; d) a transportation conduit; e) a floating fish trap; f) transfer facilities; g) hauling vehicles, and h) stress-relief ponds, in accordance with the plan described in this article. The downstream passage facilities shall be developed and installed according to the following sequence:

- 1) Upper Baker phase one shall include a 500 cfs capacity floating surface collector (with 1,000 cfs pumping capacity) and ancillary facilities, to be scheduled to be operational by March 2008;
- 2) Lower Baker phase one shall include a 500 cfs capacity floating surface collector (with 1,000 cfs pumping capacity) and ancillary facilities, to be operational by March 2012;
- 3) Upper Baker phase two shall be provided if Upper Baker phase one fails to meet performance criteria described in the DFPIP and the Services' section 18 prescription, and shall include a 1,000 cfs capacity floating

***Settlement Agreement  
Baker River Hydroelectric Project***

surface collector to be installed no later than five (5) years after completion of phase one, if needed; and

- 4) Lower Baker phase two shall be provided if Lower Baker phase one fails to meet performance criteria described in the DFPIP and the Services' section 18 prescription, and shall include expansion of the existing 500 cfs floating surface collector to 1,000 cfs capacity, if needed.
  - 5) If at any time before a phase two expansion segment is constructed for either the Upper Baker or Lower Baker FSC, NOAA Fisheries and the USFWS determine that phase two is not required as a prescriptive measure due to the success of phase one downstream passage, and both NOAA Fisheries and USFWS provide documentation to the licensee and to FERC that no further prescriptive measures are required, \$800,000 will be made available to fund projects identified pursuant to Article 405 for each unnecessary expansion.
- DFPIP – Downstream Passage Operation & Maintenance (O&M). No less than 60 days before initiation of operation, the licensee shall file with the Commission its complete plan and specifications for O&M of downstream passage facilities. The O&M plan shall include at least the following elements: a) the seasonal period of operation, b) special floating surface collector operations, c) fish sampling, d) fish handling protocols, e) holding and release protocols, f) transport loading rates, g) trap counts reported weekly, h) a schedule, and i) the method for providing annual updates.
  - DFPIP – Downstream Passage Quality Assurance/Quality Control. No less than 60 days before initiation of operation, licensee shall file with the Commission for approval a quality assurance/quality control plan for the downstream passage facilities to confirm the approved plans will be constructed as approved.
  - DFPIP – Downstream Passage Emergency Response Plan. No less than 120 days prior to the initiation of operation of any of the fish passage facilities required by this article, licensee shall file with the Commission a preliminary response plan addressing operational contingencies and emergencies, and shall file a final plan with the Commission within 120 days from startup testing.
  - DFPIP – Fish Passage Annual Reporting. Licensee shall file with the Commission an annual report describing the operation of the downstream fish passage facilities for the past year at the Upper Baker and Lower Baker Developments, pursuant to Article 102. The report shall include the number and species of fish captured in the trap and the associated disposition of those fish. The report shall include a description of problems and associated remedies for such problems, any modifications of the facilities implemented in the prior year, and audit and report operational compliance.

***Settlement Agreement  
Baker River Hydroelectric Project***

If there are any unexpected delays for the schedules set forth in this article, licensee shall convene a meeting of the ARG to identify an acceptable alternative to properly protect, mitigate and enhance downstream fish passage in the context of the schedule for all downstream passage facilities, which may include, without limitation, an accelerated schedule for fish passage at one reservoir if the schedule is delayed for fish passage at the other reservoir.

The licensee shall allow a minimum of 30 days for the consulted parties to comment and to make recommendations before filing the plan with the Commission. The licensee shall include with the plan, documentation of consultation and copies of comments and recommendations on the completed plan after it has been prepared and provided to the consulted parties, documentation of the approval of USFWS and NOAA Fisheries or documentation of the status of the review by the USFWS and NOAA Fisheries, and specific descriptions of how the consulted parties' comments are accommodated by the plan. If the licensee does not accept a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.

If licensee needs to submit an alternative schedule to the Commission, licensee shall prepare the schedule in consultation with the ARG. Licensee shall provide a copy of the proposed alternative schedule to the Commission, and shall forward any comments on the alternative schedule to the Commission along with the proposed alternative schedule. Upon approval, the alternative schedule becomes a requirement under the license, and the licensee shall implement the alternative schedule, including any changes required by the Commission.

Licensee shall make funding available in an amount not to exceed \$20,000 annually during the term of the license for beneficial modifications beyond the scope of any modifications required to meet performance standards. The licensee may, in consultation with the ARG, modify facilities or operations as a result of performance reporting, changing needs and new technologies, provided that such modifications shall not proceed without the approval of the NOAA Fisheries and USFWS. Modifications shall be submitted to the Commission for approval.

**Article 106  
Flow Implementation**

Licensee shall release flows and manage reservoirs at the Baker River Project for the protection, restoration and/or enhancement of fish and wildlife resources, riparian vegetation, aesthetic resources, water quality, recreation resources, flood control and health and safety, as described in this article and Article 107.

(A) Interim Operations. Until the new units described in this article are constructed, licensee shall conduct operations in accordance with the Interim Protection Plan (IPP) analyzed in the Biological Opinion for Endangered Species Act Section 7 Consultation for the Baker River Hydroelectric Project (FERC No. 2150), NOAA Fisheries Consultation No. 2002/01040, or as approved by the Commission. During this interim period, licensee shall use best efforts to protect other species of salmonids not addressed in the IPP by reducing the maximum flow from generation of 4,100 cfs to 3,200 cfs from the Lower Baker Development, or less if possible, during the spawning season, from September 1 to December 31. The licensee shall investigate methods and make best efforts to reduce ramping rates toward the standards established in Aquatics Table 1 below. In making its best efforts, licensee shall consider the best interests of the fish resources by limiting the rate of change of incrementally decreasing flows, limiting the amount of daily amplitude change, and minimizing the difference between spawning and incubation flows. These flows may not necessarily be preferred for energy generation, but will be within the operational limitations of the existing Lower Baker dam and powerhouse.

(B) Flow Implementation Plan. Within four years of license issuance, the licensee shall prepare and submit for the Commission's approval a Flow Implementation Plan (FIP). The FIP shall: 1) specify the schedule for construction of two new generating units each with 750 cfs capacity, as provided in subsection (E); 2) require the implementation of Aquatics Table 1 or 2 as provided in sub-section (C), following construction; 3) provide the process and criteria for proposing modifications to Aquatics Table 1 or 2; and 4) provide the process and criteria for amending the FIP. The licensee shall develop the plan in consultation with the ARG, including specifically Ecology, USFWS, NOAA Fisheries, USDA-FS, WDFW, the Swinomish Indian Tribal Community, Upper Skagit Indian Tribe, and Sauk-Suiattle Indian Tribe. The licensee shall allow a minimum of 60 days for the consulted entities to comment and to make recommendations before filing the plan with the Commission. The plan shall include documentation of consultation, copies of comments and recommendations, and the licensee's responses. If the licensee does not accept a recommendation, the plan shall include the licensee's reasons based on Project-specific information.

(C) Plan Implementation. Following construction of the facilities required by this article, the licensee shall release flows as provided in Aquatics Table 1. In the event that the Army Corps' of Engineers' (ACOE) District Engineer directs the licensee to operate the Lower Baker reservoir to provide up to 29,000 acre-feet of storage in accordance with Article 107, licensee shall implement Aquatics Table 2, following the construction of any necessary facilities modifications, and the FIP shall be revised to incorporate Aquatics Table 2.

***Settlement Agreement  
Baker River Hydroelectric Project***

(D) Aquatics Table 1 or 2 Modifications. Aquatics Table 1 or 2 may be modified, as appropriate to protect, mitigate, and enhance aquatic resources. If licensee obtains or receives new information that suggests different flows may better protect, mitigate, and enhance aquatic resources, then licensee will provide the new information to the ARG to allow consideration of a modification to Aquatics Table 1 or 2. The ARG may propose a modification provided that the modification shall not require licensee to make additional funds available or to increase the total expected cost or other impact on Project generation or capacity, subject to the reserved authority of the Commission or Ecology. Modifications may be proposed at any time prior to completion of the FIP or through the plan amendment process thereafter. Following approval by the Commission, the licensee shall implement the modifications as required by the FIP.

**Settlement Agreement  
Baker River Hydroelectric Project**

**Aquatics Table 1**

<b>Lower Baker Development</b>						<b>Upper Baker Development</b>					
Engineering Module: Three turbines (one 4,100 cfs turbine, two 750-cfs turbines)						No changes to turbine configuration					
Period	Min. Instream Flow (cfs)	Max. Instream Flow (cfs) <sup>(1)</sup>	Downramping Rates <sup>(2)</sup>	Flood Control Storage (AF)	Max Pool Level (ft) (NAVD 88)	Min Pool Level (ft) (NAVD 88)	Period	Flood Control Storage (AF)	Max Pool Level (ft) (NAVD 88)	Min Pool Level (ft) (NAVD 88)	Max Daily Pool Level Change
Aug 1-31	1,000	3,600			442.35	404.75	Aug 1-31	727.77	724.8	724.8	Max pool fluctuation ≤ 0.5 ft per rolling 24-hr period
Sep 1-3	1,000	3,600			442.35	404.75	Sep 1-3	727.77	724.8	724.8	
4-9	1,000	3,600	1-inch per hour day and night		442.35	404.75	4-9	727.77	720.8	720.8	
10-30	1,000	3,200			442.35	404.75	10-30	727.77	718.8	718.8	
Oct 1-7	1,000	3,200 <sup>(1)</sup>			442.35	389	Oct 1-7	727.77	713.8	713.8	
8-15	1,000	3,200 <sup>(1)</sup>			442.35	389	8-15	727.77	685	685	
16-20	1,000	3,200 <sup>(1)</sup>			442.35	389	16-20	727.77	685	685	
21-31	1,200	3,600 <sup>(1)</sup>			442.35	389	21-31	727.77	685	685	
Nov 1-15	1,200	3,600 <sup>(1)</sup>			442.35	389	Nov 1-15	724.47	685	685	No constraints on max daily pool level changes
16-30	1,200	3,600 <sup>(1)</sup>	2-inches per hour day and night	No flood control requirement	442.35	389	16-30	711.56	685	685	
Dec 1-31	1,200	3,600 <sup>(1)</sup>			442.35	389	Dec 1-31	711.56	685	685	
Jan 1-31	1,200	5,600			442.35	389	Jan 1-31	711.56	685	685	
Feb 1-15	1,200	5,600			442.35	389	Feb 1-15	711.56	685	685	
16-28	1,200	5,600			442.35	389	16-28	711.56	685	685	
Mar 1-31	1,200	5,600			442.35	389	Mar 1-31	711	685	685	
Apr 1-30	1,200	3,600	0 inches per hour day and 2 inches per hour night		442.35	389	Apr 1-30	718	685	685	
May 1-8	1,200	3,600			442.35	389	May 1-8	727.77	685	685	
9-14	1,200	3,600			442.35	389	9-14	727.77	713.8	713.8	
15-22	1,200	3,600			442.35	389	15-22	727.77	718.8	718.8	
23-31	1,200	3,600			442.35	389	23-31	727.77	724.8	724.8	
Jun 1-15	1,200	5,600			442.35	404.75	Jun 1-15	727.77	724.8	724.8	
16-30	1,200	5,600	1-inch /hour day and night		442.35	404.75	16-30	727.77	724.8	724.8	
Jul 1-31	1,200	5,600			442.35	404.75	Jul 1-31	727.77	724.8	724.8	

<sup>(1)</sup> Maximum release constraints eliminated when Baker Lake inflow > 10 % monthly exceedance flow OR Skagit River above the Baker River confluence > 24,000 cfs October through December.  
<sup>(2)</sup> Downramping rates measured at the Baker River at Concrete, but based on stage changes observed at Transect 1 on the mainstem Skagit River below the Baker River confluence (RM 56.5).  
<sup>(3)</sup> Maximum elevation unless otherwise directed by the District Engineer (ACOE) during Flood Season.

No minimum flow requirements.  
 No maximum instream flow constraint.  
 No downramping limitations for environmental interests.

NOTE: All elevations are referenced to NAVD 88. Operations in effect for all years (no special dry year conditions)

**Settlement Agreement  
Baker River Hydroelectric Project**

**Aquatics Table 2**

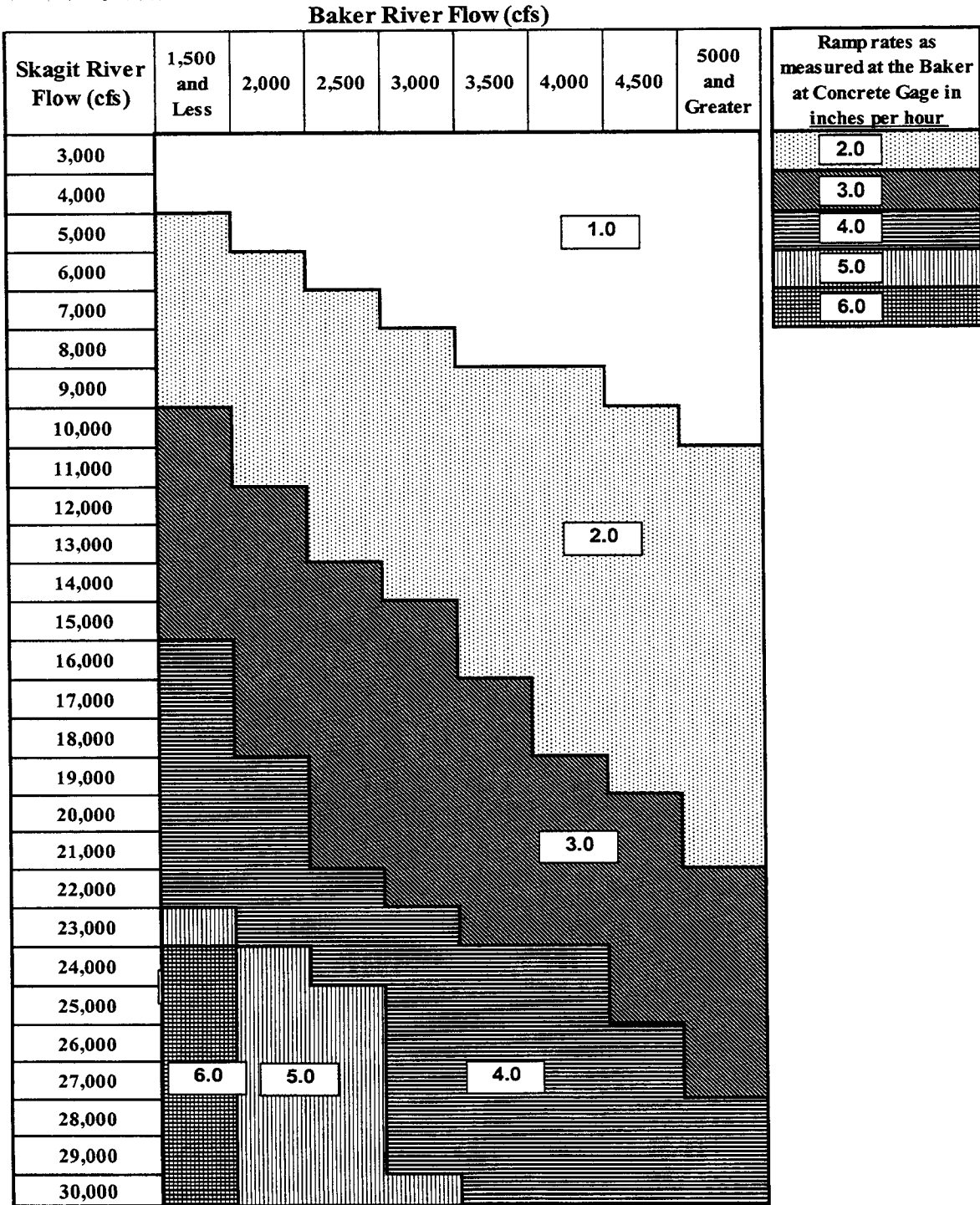
<b>Lower Baker Development</b>				<b>Upper Baker Development</b>			
Engineering Module: Three turbines (one 4,100 cfs turbine, two 750-cfs turbines)							
Period	Min. Instream Flow (cfs)	Max. Instream Flow (cfs) <sup>(1)</sup>	Downramping Rates <sup>(2)</sup>	Flood Control Storage (AF)	Max Pool Level (ft) (NAVD 88)	Min Pool Level (ft) (NAVD 88)	Max Daily Pool Level Change
Aug 1-31	1,000	3,600			442.35	404.75	Max pool fluctuation ≤ 0.5 ft per rolling 24-hr period
Sep 1-3	1,000	3,600			442.35	404.75	
4-9	1,000	3,600	1-inch per hour day and night	No flood control requirement prior to 10/1	442.35	404.75	
10-30	1,000	3,200			442.35	404.75	
Oct 1-7	1,000	3,200 <sup>(1)</sup>			428.55	389	
8-15	1,000	3,200 <sup>(1)</sup>			428.55	389	
16-20	1,000	3,200 <sup>(1)</sup>			428.55	389	
21-31	1,200	3,600 <sup>(1)</sup>			428.55	389	
Nov 1-15	1,200	3,600 <sup>(1)</sup>		29,000 AF 10/01 to 03/01	428.55	389	
16-30	1,200	3,600 <sup>(1)</sup>	2-inches per hour day and night		428.55	389	
Dec 1-31	1,200	3,600 <sup>(1)</sup>			428.55	389	
Jan 1-31	1,200	5,600			428.55	389	
Feb 1-15	1,200	5,600			428.55	389	
16-28	1,200	5,600			428.55	389	
Mar 1-31	1,200	5,600			442.35	389	
Apr 1-30	1,200	3,600	0 inches per hour day and 2 inches per hour night		442.35	389	
May 1-8	1,200	3,600			442.35	389	
9-14	1,200	3,600			442.35	389	
15-22	1,200	3,600			442.35	389	
23-31	1,200	3,600			442.35	389	
Jun 1-15	1,200	5,600			442.35	404.75	
16-30	1,200	5,600	1-inch /hour day and night		442.35	404.75	
Jul 1-31	1,200	5,600			442.35	404.75	

<sup>(1)</sup> Maximum release constraints eliminated when Baker Lake inflow > 10 % monthly exceedance flow OR Skagit River above the Baker River confluence > 24,000 cfs October through December.  
<sup>(2)</sup> Downramping rates measured at the Baker River at Concrete, but based on stage changes observed at Transect 1 on the mainstem Skagit River below the Baker River confluence (RM 56.5).  
<sup>(3)</sup> Maximum elevation unless otherwise directed by the District Engineer (ACOE) during Flood Season.

**NOTE:** All elevations are referenced to NAVD 88. Operations in effect for all years (no special dry year conditions)

No changes to turbine configuration  
 No flood control requirement prior to 10/15  
 No flood control requirement after 03/01  
 No minimum flow requirements.  
 No maximum instream flow constraint.  
 No downramping limitations for environmental interests.

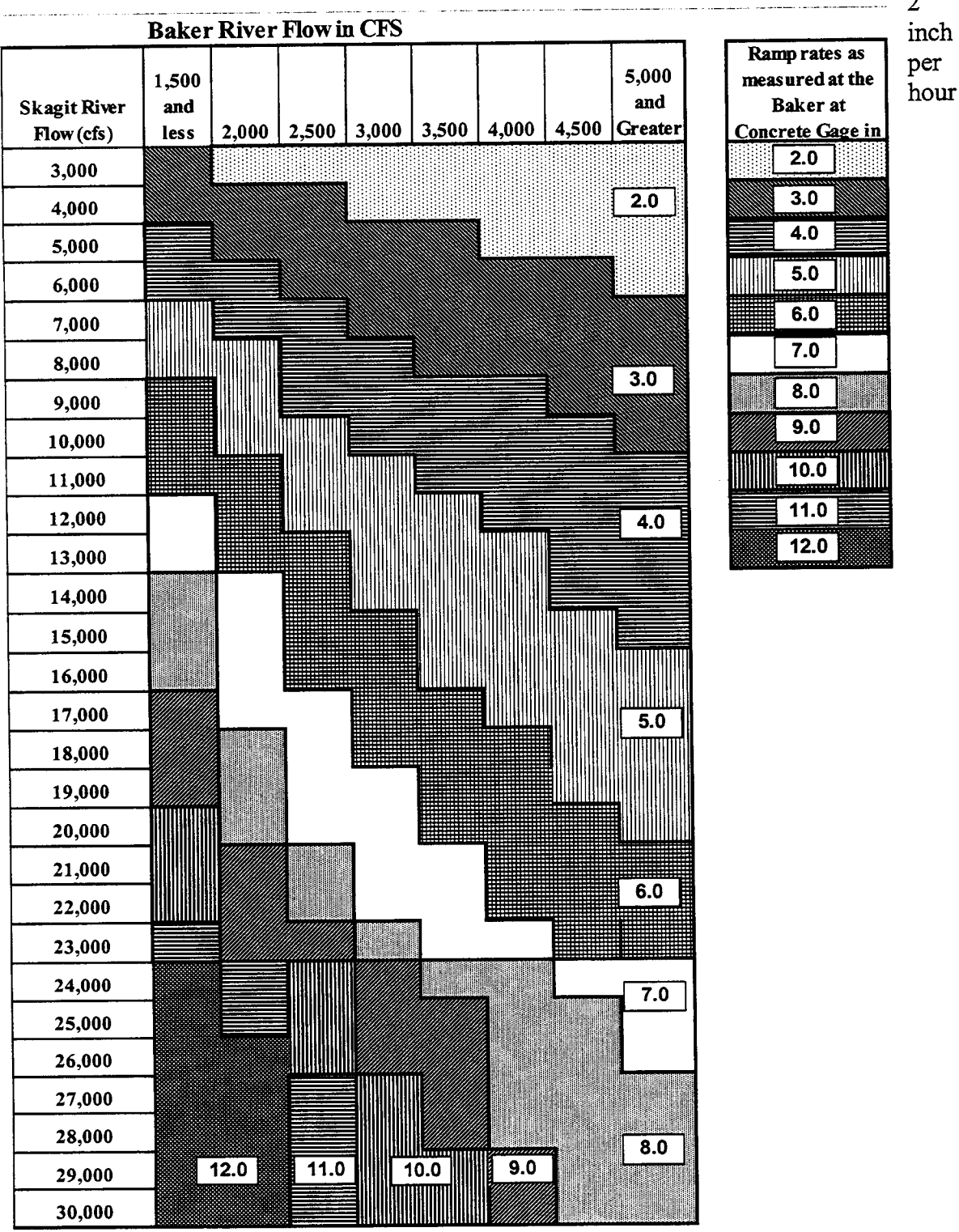
Aquatics Ramping Rate Figure A: Relationship between flows in the Baker River and Skagit River (Transect 1/Dallas Gage) and resulting in ramping schedule for the Baker River Project as measured at the Baker River at Concrete Gage to effect the Skagit river for seasons requiring 1 inch per hour





*Settlement Agreement  
Baker River Hydroelectric Project*

Aquatics Ramping Rate Figure B. Relationship between flows in the Baker River and Skagit River (Transect 1/Dallas Gage) and resulting in ramping schedule for the Baker River Project as measured at the Baker River at Concrete Gage to effect the Skagit river for seasons requiring



***Settlement Agreement  
Baker River Hydroelectric Project***

(E) Construction of New Units. To achieve this flow regime and meet these ramping rates, the licensee shall, upon Commission approval of a construction plan and schedule: 1) install two new generating units with approximately 750 cfs capacity each at the Lower Baker Development, to come on line within six years after license issuance; and, if needed, 2) alter the existing facilities.

(F) Ramping Rates. The licensee shall, beginning as early as reasonably practicable following license issuance and installation of the two new generating units at the Lower Baker Development, change the ramping rates for all licensee-controlled streamflow releases per Aquatics Table 1 or 2. The ramping rates shall apply on the Skagit River at transect 1, but will be measured on the Baker River based upon an established relationship shown on a table or curve to be developed by licensee by seeking input from the ARG, WDFW, the Upper Skagit Indian Tribe, the Sauk-Suiattle Indian Tribe, the Swinomish Indian Tribal, the USFWS, NOAA Fisheries, and USDA-FS, and in consultation with Ecology, and in accordance with any approval received from Ecology.

These ramping restrictions are to be in effect whenever the flow, as calculated at the Skagit River above the Baker River confluence, is less than or equal to 26,000 cfs. The relationship between flows and ramping is depicted on Aquatics Ramping Rate Figures A and B above.

(G) Monitoring Flows and Ramping Rates. Instream flows and ramping rates shall be monitored at the USGS gage (Station 12193500) Baker River at Concrete or via other approved means. Results of monitoring shall be made available to the Commission as part of the report required by this article. In the event that the gaging site USGS #12193500 Baker River at Concrete is no longer operable and another gage is used which is influenced by extraneous conditions (gages of the Skagit River, or tributaries, wind action, fluctuations in flow from upstream projects, for example), these ramping compliance conditions will be revisited.

(H) Temporary Modification to Flows and Ramping Rates – Natural Events. The flow regime required by this article may be temporarily suspended and modified in the event that drought conditions, or some other natural event outside of the control of licensee, limit licensee's ability to comply with the requirements of this article. Prior to operating outside of the conditions of this article, licensee shall: 1) notify the ARG and, at least, NOAA Fisheries, USFWS, Ecology, WDFW, the Sauk-Suiattle Indian Tribe, the Swinomish Indian Tribal Community, the Upper Skagit Indian Tribe, and Skagit County; 2) hold a meeting to identify potential options and solutions, which may include, but not be limited to, controlled generation and specified release patterns to protect fish to the extent practicable; and 3) obtain approval from Ecology. Controlled generation and specified release pattern solutions include, but are not limited to, the following:

If the total Project live storage (Baker Lake and Lake Shannon combined) drops below 160,000 acre-feet, licensee shall notify the ARG and reduce generation at the Lower Baker Development to the minimum instream flow in effect at that time until Project storage has been restored above 160,000 acre-feet.

***Settlement Agreement  
Baker River Hydroelectric Project***

(I) Temporary Modification to Flows and Ramping Rates – Emergencies. In the event that a condition affecting the safety of the Project or Project works, as defined by 18 C.F.R. § 12.3(b)(4), occurs and does not allow for consultation to occur before responding, then flows and ramping rates may be temporarily modified following any consultation with Ecology that is possible given the exigencies of the event. If the flow is so modified, the licensee shall notify Ecology, the Commission and the ARG as soon as practicable after the condition is discovered, without unduly interfering with any necessary or appropriate emergency repair, alarm, or other emergency action procedure. Licensee shall provide all members of the ARG with a copy of any written report required by 18 C.F.R. § 12.10(a)(2) within ten (10) days of filing with the Commission.

(J) Reporting Violations. In the event of a violation of the flow release or ramping schedule, the licensee shall report such violations as soon as discovered, but no later than 24 hours. Email notification, or other reporting mechanisms, agreeable to the parties, shall be made to the Commission, Ecology, and the ARG. The licensee shall provide a follow-up report to the Commission, Ecology, and the ARG within two weeks of the incident stating what occurred, licensee's response, and any measures licensee proposes to reduce future similar occurrences.

(K) Annual Reporting. Within two years of license issuance and annually thereafter according to the schedule set forth in Article 102, the licensee shall prepare and submit a Flow Implementation Report (FIR) regarding implementation of this article's requirements. The licensee shall develop the report in consultation with the ARG, including specifically Ecology, USFWS, NOAA Fisheries, USDA-FS, WDFW, the Swinomish Indian Tribal Community, Upper Skagit Indian Tribe and Sauk-Suiattle Indian Tribe. The licensee shall provide a minimum of 60 days for the consulted entities to comment before filing the FIR with the Commission. The FIR shall include documentation of consultation, copies of comments, and licensee's responses based on Project-specific information.

(L) Conflicts. If a conflict arises between the ramping rates or flow regimes in Article 106 and the additional flood control measures implemented as a part of Article 107(b) or (c), then the licensee shall modify its operations to the minimum extent necessary to avoid the conflict in a manner to protect aquatic resources.

**Article 107  
Flood Storage**

(a) The licensee shall so operate the Upper Baker River reservoir as to provide each year 16,000 acre-feet of space for flood regulation between October 15 and March 1 as replacement for the valley storage eliminated by the development. Utilization of this storage space shall be as directed by the District Engineer, Corps of Engineers. In addition to the above-specified 16,000 acre-feet, the licensee shall provide in the Upper Baker River reservoir space for flood control during the storage drawdown season (about September 1 to April 15) up to a maximum of 58,000 acre-feet as may be requested by the District Engineer, provided that suitable arrangements shall have been made to compensate the licensee for the reservation of flood control space other than the 16,000 acre-feet specified herein.

(b) Additionally, from October 1 to March 1, licensee shall operate the Lower Baker storage reservoir to provide up to 29,000 acre-feet of storage for flood regulation, at the direction of the District Engineer, Corps of Engineers, acting on behalf of the Secretary of the Department of the Army, subject to the following: (i) such storage shall be provided only in accordance with arrangements that are acceptable to the Corps of Engineers; and (ii) such storage shall be provided only after suitable arrangements have been made to compensate the licensee for the 29,000 acre-feet of storage for flood regulation specified herein.

(c) Licensee shall consult with the ARG, and specifically Skagit County and the Corps of Engineers, to develop means and operational methods to operate the Project reservoirs in a manner addressing imminent flood events and consistent with the requirements of the license. Appropriate means and methods may include, without limitation, additional reservoir drawdown below the maximum established flood pool. Licensee shall submit a report to the Commission within three years following license issuance describing any operational changes developed as a result of this consultation.

**Article 108  
Gravel**

Within two years of license issuance, or on an alternative schedule submitted to the Commission for approval, the licensee shall develop and file with the Commission for approval a Baker River Gravel Management Plan (BRGMP) for the purposes of evaluating sediment interruption by the Baker Project and identifying any gravel augmentation measures to be implemented by the licensee. Gravel augmentation identified in the plan shall not exceed 12,500 tons annually. Licensee shall develop the plan in a manner that considers cost-effective evaluation measures and does not require a comprehensive assessment of sediment dynamics in the Skagit River Basin. The BRGMP, at a minimum, shall describe the existing and proposed:

1. Gravel augmentation measures intended to improve the geomorphic function of the Lower Baker River alluvial fan and affected downstream reach of the Skagit River to the extent of Project impediment to sediment transport, which includes the mainstem river channel and associated depositional features located within the Skagit River floodplain and may address the following: 1) location and contribution of gravel/cobble-sized material in the affected reach, 2) condition and substrate attrition rates in the reach immediately upstream, 3) substrate attrition rates within the affected reach, and 4) substrate sizes in relation to biological needs of salmonids and other aquatic organisms;
2. Procedures for evaluating and monitoring the conditions in the Skagit River to determine when and if gravel augmentation is or becomes warranted and to track long-term trends in substrate profile degradation; and
3. Implementation guidelines and triggers for gravel/cobble augmentation. Triggers may be based on various factors, which may include, without limitation, the condition of the middle Skagit River absent Project influence, fluvial geomorphic changes throughout the term of the license, and/or habitat suitability for salmonids or other aquatic organisms using the middle Skagit River.

The licensee shall develop the BRGMP following consultation with the ARG. The licensee shall allow a minimum of 60 days for the consulted entities to comment and to make recommendations before filing the plan with the Commission. The licensee shall include with the plan, documentation of consultation and copies of comments and recommendations on the completed plan after it has been prepared and provided to the ARG, and specific descriptions of how ARG comments are accommodated by the plan. If the licensee does not accept a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.

If licensee needs to submit an alternative schedule to the Commission, licensee shall prepare the schedule in consultation with the ARG. Licensee shall provide a copy of the proposed alternative schedule to the ARG at least 30 days prior to submitting the alternative schedule to the Commission, and shall forward any comments on the alternative schedule to the Commission along with the proposed alternative schedule. Upon approval,

***Settlement Agreement***  
***Baker River Hydroelectric Project***

the alternative schedule becomes a requirement under the license, and the licensee shall implement the alternative schedule, including any changes required by the Commission.

Licensee shall perform the evaluation and monitoring, and gravel augmentation measures as required by the plan.

**Article 109  
Large Woody Debris**

Within two years of license issuance, or on an alternative schedule submitted to the Commission for approval, the licensee shall develop and file with the Commission for approval a Large Woody Debris Management Plan (LWDMP). The LWDMP shall provide for the reasonable transport of large woody debris (wood over 12 inches (30 cm) in diameter and over 8 feet (244 cm) long) from Project reservoirs to mutually agreeable stockpile areas in the Baker basin to be identified in the plan. The plan shall identify the following 20-year targets for transport: 1) 2,960 pieces 30-60 cm diameter, 2) 540 pieces 60-90 cm diameter, and 3) 160 pieces greater than 90 cm diameter. The plan shall set forth specific annual transport requirements that will allow licensee to achieve the 20-year targets if LWD is available. Licensee's obligation shall not extend to security of the stockpiled LWD, unless located on Project lands. The plan shall establish (i) wood transfer quantities for the first twenty years of the license term and (ii) a formula for reconfiguring the quantities relating to size and piece number allocation within the period after the first twenty years that is based on actual LWD accumulation over the first twenty years of the license. The plan shall include an implementation schedule.

The licensee shall develop the LWDMP after consultation with the ARG and Terrestrial Resources Implementation Group (TRIG). The licensee shall allow a minimum of 60 days for the consulted entities to comment and to make recommendations before filing the plan with the Commission. The licensee shall include with the plan, documentation of consultation and copies of comments and recommendations on the completed plan after it has been prepared and provided to the ARG and TRIG, and specific descriptions of how the ARG and TRIG comments are accommodated by the plan. If the licensee does not accept a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.

If licensee needs to submit an alternative schedule to the Commission, licensee shall prepare the schedule in consultation with the ARG. Licensee shall provide a copy of the proposed alternative schedule to the ARG at least 30 days prior to submitting the alternative schedule to the Commission, and shall forward any comments on the alternative schedule to the Commission along with the proposed alternative schedule. Upon approval, the alternative schedule becomes a requirement under the license, and the licensee shall implement the alternative schedule, including any changes required by the Commission.

**Article 110  
Shoreline Erosion**

Within one year of license issuance, or on an alternative schedule to be submitted to the Commission for approval, the licensee shall develop and file with the Commission for approval a Reservoir Shoreline Erosion Control Management Plan (RSECMP) and Implementation Schedule, defining the measures the licensee shall undertake to control shoreline erosion in a manner consistent with Article 201. The plan shall incorporate the results of pre-filing relicensing Study A14a, Reservoir Shoreline Erosion and Deposition, and shall define the measures that licensee will undertake to control shoreline erosion.

If licensee needs to submit an alternative schedule to the Commission, licensee shall prepare the schedule in consultation with the ARG. Licensee shall provide a copy of the proposed alternative schedule to the ARG at least 30 days prior to submitting the alternative schedule to the Commission, and shall forward any comments on the alternative schedule to the Commission along with the proposed alternative schedule. Upon approval, the alternative schedule becomes a requirement under the license, and the licensee shall implement the alternative schedule, including any changes required by the Commission.

The RSECMP, and any subsequent updates, shall require the licensee to develop site-specific plans for erosion control, erosion prevention, and/or remediation activities wherever National Forest Service lands or resources may be affected. Prioritization for treatment of identified sites that are at risk of harm shall be in accordance with plans developed in consultation with the USDA-FS, and shall include the first priority for the following: recreation sites, heritage resources, and aesthetic/cultural sites and the second priority for Severe and High Erosion Categories and any sites affecting facilities or resources that emerge during the term of the license. The RSECMP shall include:

- survey protocols, fieldwork schedules, and reporting requirements for site-specific evaluation (to be used in the design of the treatments), including measurements of geology, vegetation, erosion rates and mechanisms, documented with photographs, maps and GPS locations;
- selection criteria and prioritization of sites for treatment;
- descriptions of appropriate treatment techniques including treatment standards and goals, methods, materials, costs and timing;
- evaluation of the probability of success for treatments and consideration of alternatives;
- schedules for treatment implementation, including all necessary NEPA/SEPA and permitting;
- schedules for maintenance of treatments as needed;



*Settlement Agreement*  
*Baker River Hydroelectric Project*

- development and implementation of a monitoring plan to assess the effectiveness of erosion control treatments and to monitor erosion trends at untreated sites;
- evaluation and treatment of erosion at newly emergent sites that are affecting resources;
- annual reporting requirements; and
- provisions for updating the Plan at five year intervals utilizing adaptive management and monitoring to assess future treatment and maintenance actions.

Appropriate erosion treatment techniques will be determined based on potential effectiveness and safety. Erosion control measures may include, but are not limited to: a) vegetation and/or bioengineering; b) anchored logs; c) riprap vestment; d) rock wall; e) crib wall; f) perched beach; and g) drift sills.

The licensee shall develop the RSECMP in consultation with the USDA-FS. The licensee shall allow a minimum of 30 days for the USDA FS to comment and to make recommendations before filing the plan with the Commission. The licensee shall include with the RSECMP, documentation of consultation and copies of comments and recommendations on the RSECMP after it has been prepared and provided to the agency, and specific descriptions of how the agency's comments are accommodated by the RSECMP. If the licensee does not accept a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.

Licensee shall make funding available in an amount not to exceed \$600,000, in accordance with the following schedule: \$100,000 in each of Years 2, 3, and 4 following license issuance and \$100,000 every ten years thereafter during the term of the license.

**Article 201  
Programmatic Agreement**

The licensee shall implement the “Programmatic Agreement Between the Federal Energy Regulatory Commission and the Washington State Historic Preservation Officer for Managing Historic Properties that May be Affected by a License Issuing to Puget Sound Energy for the Continued Operation of the Baker River Hydroelectric Project in Skagit and Whatcom Counties, Washington - FERC Project No. P-2150” (Programmatic Agreement)[Note: Title to be Determined], executed on \*\*\*[to be filled in by FERC], including, without limitation, but not limited to the Historic Properties Management Plan (HPMP) attached to the Programmatic Agreement. The HPMP is approved and the licensee shall implement its provisions.

For license Article 201, licensee shall provide an annual summary of expenditures made during the preceding year in conformance with the requirements of the license, as well as an accounting of funding expenditures, interest earned, disbursements made as required by any article, and a report indicating adjustments made for inflation in accordance with Article 602. The figure below depicts the annual reporting schedule.



**Article 301  
Recreation Management Report**

Within three years following license issuance, and annually thereafter, the licensee shall prepare and file with the Commission a Recreation Management Report (“RMR”) regarding plans and other measures for protection, mitigation, and enhancement of recreation resources in the Project area.

The RMR, at a minimum, shall: (1) report on the status of development or implementation of plans or other measures required by: (a) Article 302 (Aesthetic Management), (b) Article 303 (Baker Lake Resort), (c) Article 304 (Water Recreation Safety), (d) Article 305 (Lake Shannon Access), (e) Article 311 (New Facilities), and (f) Article 315 (Law Enforcement Planning); (2) report on the status and development of plans and other measures being undertaken by the USDA-FS with funding provided by licensee, based on any information provided to licensee by the USDA-FS, pursuant to (a) Article 306 (Visitor Information), (b) Article 307 (Visitor Interpretation), (c) Article 308 (Dispersed Recreation), (d) Article 309 (USDA-FS Bayview Campground), (e) Article 310 (USDA-FS New Trails and Trailheads), (f) Article 311 (USDA-FS New Campgrounds), (g) Article 312 (USDA-FS Campground Maintenance), (h) Article 313 (USDA-FS Trail and Trailhead Maintenance), and (i) Article 314 (USDA-FS Forest Roads, Road Maintenance); and (3) a compilation of the plans required by (a) Article 302 (Aesthetic Management Plan for Project Facilities), (b) Article 303 (Baker Lake Resort Plan), (c) Article 304 (Water Recreation Water Safety Plan), (c) Article 305 (Lake Shannon Recreation Plan), (d) Article 311 (Developed Recreation Monitoring Plan), and (e) Article 315 (Law Enforcement Plan).

The RMR shall also include an implementation schedule, substantially in the form attached as Appendix A-5 entitled “Recreation Implementation Schedule.” The licensee shall review the Recreation Implementation Schedule annually in consultation with the Recreation Resources Group (“RRG”), and shall update it if there are: a) any changes in priorities for use of funding, b) acknowledgement of satisfaction of licensee’s funding obligation related to completion of any action required by a specific article, c) any new or modified USDA-FS management objectives that may change uses of funding, d) any change in USDA-FS priorities due to funding sources from third parties and the effect, if any, on the Recreation Implementation Schedule, and e) any reports accounting for funds expended by all parties under this article. Any Recreation Implementation Schedule update shall be submitted to the Commission for approval.

The licensee shall include documentation of consultation on the Recreation Implementation Schedule, copies of review comments by the USDA-FS and RRG on the completed RMR and updates to the RMR, and specific descriptions of how the comments of the USDA-FS and the RRG are accommodated in the RMR or update. The licensee shall allow a minimum of 60 days for the USDA-FS and RRG to comment before filing the RMR or update with the Commission.

For license Articles 301-318 and 602, licensee shall provide an annual summary of expenditures made during the preceding year in conformance with the requirements of the

***Settlement Agreement  
Baker River Hydroelectric Project***

license, as well as an accounting of funding expenditures, interest earned, disbursements made as required by any article, and a report indicating adjustments made for inflation in accordance with Article 602. The figure below depicts the annual reporting schedule.

*Settlement Agreement  
Baker River Hydroelectric Project*

Reporting Schedule for Recreation Articles 301-318, and 602

Articles	Draft report due date	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Recreation Management Report	January 31															
Aesthetics Management Baker Lake Redevelopment Plan	July 31															
Baker Reservoir Recreation Water Safety Plan	July 31															
Lower Baker Developed Recreation Upper Baker Visitor Information Services Funding	July 31															
Upper Baker Visitor Interpretive Services Funding	July 31															
Dispersed Recreation Management Funding	July 31															
Bayview Campground Rehabilitation Funding	July 31															
Upper Baker Trail and Trailhead Funding	July 31															
Lower Baker Trail Construction	July 31															
Developed Recreation Monitoring and Funding	July 31															
Upper Baker Developed Recreation Maintenance Funding																

**Article 302  
Aesthetics Management**

Within two years of license issuance, or on an alternative schedule to be submitted to the Commission for approval, the licensee shall file the Aesthetics Management Plan (AMP) with the Commission for approval.

If licensee needs to submit an alternative schedule to the Commission, licensee shall prepare the schedule in consultation with the RRG. Licensee shall provide a copy of the proposed alternative schedule to the RRG at least 30 days prior to submitting the alternative schedule to the Commission, and shall forward any comments on the alternative schedule to the Commission along with the proposed alternative schedule. Upon approval, the alternative schedule becomes a requirement under the license, and the licensee shall implement the alternative schedule, including any changes required by the Commission.

The licensee shall develop the AMP in consultation with the RRG and specifically the USDA-FS. Within eighteen months of license issuance, the licensee shall submit a draft of the AMP to the RRG for review and comment. The licensee shall include, with the AMP filed with the Commission, an implementation schedule, documentation of consultation, copies of consulting entity comments and recommendations on the completed plan and schedule, after they have been prepared and provided to consulting entities, and specific descriptions of how the entities' comments are accommodated by the plan and schedule. The licensee shall allow a minimum of 30 days for entities to comment and to make recommendations before filing the plan revision and schedule with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.

The AMP shall contain an implementation schedule, a list of local native plants species that may be used for landscaping, and a list of approved exterior colors and materials for selected Project facilities. The AMP shall include provisions for the licensee to implement the following actions to reduce visual effects: 1) paint the pump station (off peak pump discharge facility) in neutral earth-tone colors and plant native vegetation to screen the facility from the West Pass Dike boat launch area, 2) plant native vegetation to screen the yards, buildings, and fence of the Upper Baker Operations and Maintenance Yards from the Kulshan Campground and Forest Service Road 1106, 3) paint the existing crane at the Lower Baker Dam a neutral earth-tone color during the next normal painting cycle, and 4) plant landscaping in the area near the visitor's center and associated parking area at the Lower Baker River Operations Complex Center. The AMP shall not require the licensee to implement any action in a manner that would prevent the safe operation of the Project and associated facilities or interfere with dike and road maintenance.

The licensee shall make funds available to the USDA-FS in an amount not to exceed that shown in the Recreation Implementation Schedule required by Article 301. The funds will be used to implement the following actions for non-Project facilities in the vicinity of Baker Lake: 1) vegetation management at Panorama Point, Horseshoe Cove, Shannon Creek, Bayview Campground, and Maple Grove Campground, and 2) vegetation

***Settlement Agreement  
Baker River Hydroelectric Project***

management between USDA-FS developed sites and/or viewpoints, and Baker Lake in two to four locations averaging less than ¼ acre in size.



**Settlement Agreement**  
**Baker River Hydroelectric Project**

**Article 303**  
**Baker Lake Resort Redevelopment Plan**

Within two years of license issuance or on an alternative schedule to be submitted to the Commission for approval, the licensee shall file the Baker Lake Resort Redevelopment Plan (BLRP) with the Commission for approval.

If licensee needs to submit an alternative schedule to the Commission, licensee shall prepare the schedule in consultation with the RRG. Licensee shall provide a copy of the proposed alternative schedule to the RRG at least 30 days prior to submitting the alternative schedule to the Commission, and shall forward any comments on the alternative schedule to the Commission along with the proposed alternative schedule. Upon approval, the alternative schedule becomes a requirement under the license, and the licensee shall implement the alternative schedule, including any changes required by the Commission.

The licensee shall develop the BLRP in consultation with the RRG and TRIG and specifically the USDA-FS. Within eighteen months of license issuance, the licensee shall submit a draft of the BLRP to the RRG and USDA-FS for review and comment. The licensee shall include, with the BLRP filed with the Commission, an implementation schedule, documentation of consultation, copies of consulting entity comments and recommendations on the completed plan and schedule, after they have been prepared and provided to consulting entities, and specific descriptions of how the entities' comments are accommodated by the plan and schedule. The licensee shall allow a minimum of 30 days for entities to comment and to make recommendations before filing the plan revision and schedule with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.

The plan shall provide for redevelopment of the resort to a USDA-FS "Development Level 3" campground, as defined in the USDA-FS "Recreation Management Systems Meaningful Measures for Quality Recreation Management," dated January 2002, as amended, and the "Built Environment Image Guide for National Forests and Grasslands," dated December 2001 and shall, at a minimum, provide for the necessary decommissioning of the existing site in addition to what would be required under the termination of the Special Use Authorization, including building removal and the development of between 30-50 campsites.

The licensee shall, for the purpose of contributing to the redevelopment of Baker Lake Resort, make funding available to the USDA-FS in an amount not to exceed that shown in the Recreation Implementation Schedule attached as Appendix A-5. In the event licensee has taken any action to redevelop or decommission the site pursuant to the Special Use Authorization, any expenditures related to the actions taken will be credited against the required funding for this article.

**Article 304  
Baker Reservoir Recreation Water Safety Plan**

Within one year of license issuance, or on an alternative schedule to be submitted to the Commission for approval, the licensee shall file Baker Reservoir Recreation Water Safety Plan (BRRWSP) with the Commission for approval.

If licensee needs to submit an alternative schedule to the Commission, licensee shall prepare the schedule in consultation with the RRG. Licensee shall provide a copy of the proposed alternative schedule to the RRG at least 30 days prior to submitting the alternative schedule to the Commission, and shall forward any comments on the alternative schedule to the Commission along with the proposed alternative schedule. Upon approval, the alternative schedule becomes a requirement under the license, and the licensee shall implement the alternative schedule, including any changes required by the Commission.

The licensee shall develop the BRRWSP in consultation with the RRG. Within six months following license issuance, the licensee shall submit a draft of the BRRWSP to the RRG for review and comment. The licensee shall include, with the BRRWSP filed with the Commission, an implementation schedule, documentation of consultation, copies of consulting entity comments and recommendations on the completed plan and schedule, after they have been prepared and provided to consulting entities, and specific descriptions of how the entities' comments are accommodated by the plan and schedule. The licensee shall allow a minimum of 30 days for entities to comment and to make recommendations before filing the plan revision and schedule with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.

The BRRWSP shall require the licensee to:

1) Within one year of license issuance, make funds available to the USDA-FS for the purpose of constructing and installing eight to twelve (8-12) bulletin boards at locations listed in the Recreation Water Safety Plan, in accordance with the Recreation Implementation Schedule attached as Appendix A-5.

2) Within two years of license issuance, prepare, in consultation with the RRG, information about the Baker Lake area including reservoir safety and provide displays and tear-sheet maps for visitors at the following specific sites: the USDA-FS/National Park Service office in Sedro-Woolley, all developed lake shore campgrounds at Baker Lake, the West Pass Dike public boat launch, PSE's Concrete Visitor Information Center if the facility is being operated, and two to four selected boat-in access points. Licensee shall review the maps and displays every sixth year of the license term and revise them to include any additional boat launches, developed sites, or other recreation facilities and pertinent information.

3) Within three years of license issuance, construct floating log booms, buoys, or functionally equivalent structures to separate existing designated swimming areas from boat traffic at Horseshoe Cove and Baker Lake Resort. If there are remaining funds

***Settlement Agreement  
Baker River Hydroelectric Project***

available during the construction of any new designated swimming areas, or if selected as a proper use of RAM funds, in accordance with Article 602, similar floating log booms, buoys, or functionally equivalent structures may be constructed to separate swimming areas from boat traffic. For the term of the license, licensee shall maintain such structures and provide adequate safety signage demarking swimming areas at Horseshoe Cove and Baker Lake Resort, and annually monitor reservoir hazards to recreation.

The licensee shall make funding available to the USDA-FS to contribute to its efforts in carrying out the purposes of this article in an amount not to exceed that shown in the Recreation Implementation Schedule attached as Appendix A-5.

**Article 305  
Lower Baker Developed Recreation**

Licensee shall file Lower Baker Developed Recreation Plan (LBDRP) with the Commission for approval in accordance with this article.

Within one year of license issuance, licensee shall, in cooperation with Skagit County, initiate efforts to acquire a public access site on Lake Shannon for the purpose of providing additional recreational Project access. Site acquisition and selection criteria shall be developed in consultation with the RRG. This action shall include, and may be limited to, identifying an access area suitable for the construction of a concrete boat launch, parking area, and day use area, that has an existing access road, commensurate with the States Organization for Boating Access ("SOBA") Design Handbook for Recreational Boating and Fishing Facilities standards for "small access sites." The development of the small access site shall not conflict with the implementation of the floating surface collector required by Article 103, if the staging and launch is in the same location as the identified small access site.

Licensee shall acquire land for a Lake Shannon access site within ten years of license issuance. If licensee is unable to acquire a suitable and cost-effective access site on Lake Shannon, licensee shall, in consultation with the RRG and specifically Skagit County, identify and acquire a suitable and cost-effective access site at an alternative location that provides equivalent public opportunities for water access in the general vicinity of the Project as could be provided on Lake Shannon. If licensee identifies a location that is not along the shoreline of Lake Shannon, licensee shall submit the alternate location to the Commission for approval. Within five years of site acquisition, licensee shall develop the site acquired according to SOBA standards for small access sites, and in accordance with the LBDRP.

The licensee shall develop the LBDRP in consultation with the RRG and ARG and specifically Skagit County. Within one year of site and access acquisition, the licensee shall submit a draft of the LBDRP to the RRG, ARG, and specifically Skagit County for review and comment. The licensee shall include, with the LBDRP filed with the Commission, an implementation schedule, documentation of consultation, copies of consulting entity comments and recommendations on the completed plan and schedule, after they have been prepared and provided to consulting entities, and specific descriptions of how the entities' comments are accommodated by the plan and schedule. The licensee shall allow a minimum of 30 days for entities to comment and to make recommendations before filing the plan revision and schedule with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.

If the licensee needs to vary any of the timing requirements of this article, licensee shall submit an alternative schedule to the Commission for approval. If licensee needs to submit an alternative schedule to the Commission, licensee shall prepare the schedule in consultation with the RRG, ARG, and specifically Skagit County. In the event the licensee elects to submit an alternative schedule, the licensee shall forward a copy of the proposed

**Settlement Agreement**  
**Baker River Hydroelectric Project**

alternative schedule to the RRG, ARG, and Skagit County at least 30 days prior to submitting the alternative schedule to the Commission, and shall forward any comments to the alternative schedule to the Commission along with the proposed alternative schedule. Upon approval, the alternative schedule becomes a requirement under the license, and the licensee shall implement the alternative schedule, including any changes required by the Commission.

Following site development, licensee shall operate and maintain this access area for the term of the license also in accordance with the approved plan. If property is acquired in a manner that allows development to exceed small boat access site standard, or in the event a party other than licensee develops recreational facilities in addition to those required by this article, following proper approval of any related use or conveyance of Project lands under Article 44(d)(6) of the previous license, or current Article \_\_\_ [FERC to fill in], licensee shall not be required to fund maintenance above what would be required for a small boat access site.

The licensee shall make funding available in an amount not to exceed that shown in the Recreation Implementation Schedule required by Article 301 for the planning, acquisition, and development of the new access area required by this article. Any funding not required for planning, acquisition, and development shall be made available to supplement the operation and maintenance of the access area. In addition to any funds remaining after completion of planning, acquisition, and development of the new access area, funding for operation and maintenance of the new Project access area required by this article shall not exceed the annual amounts set forth on the Recreation Implementation Schedule attached as Appendix A-5 for the term of the license.

**Article 306  
Upper Baker Visitor Information Services Funding**

Within one year of license issuance, the licensee shall make funds available to the USDA-FS for the purpose of contributing to visitor information services provided by the USDA-FS in the Baker River basin. The funds will contribute to the following: 1) planning, design, and construction of a small Upper Baker Visitor Information Station (VIS), with a small parking area, information kiosks, and sanitation facilities commensurate with available funding; 2) support with staffing and operations from Memorial Day through Labor Day for visitor information services at Baker Lake during peak use periods; and 3) summer recreation season support from Memorial Day through Labor Day for the Mt. Baker Ranger District VIS in Sedro-Woolley during peak use periods, commensurate with available funds. The licensee shall make funding available in an amount not to exceed that shown in the Recreation Implementation Schedule attached as Appendix A-5.

**Article 307**

**Upper Baker Visitor Interpretive Services Funding**

Within one year following license issuance, the licensee shall make funds available to the USDA-FS for the purpose of contributing to the planning, staffing, and production of materials to provide interpretive services in the Project area, with an emphasis on Baker Lake. The funds will be used for the preparation of a comprehensive Interpretation and Education Plan ("IEP") by the USDA-FS to facilitate the performance of interpretive services, including production of support materials. Themes of the IEP may include: 1) local culture and history; 2) aquatic, terrestrial and other natural resources; and 3) stewardship and Project features. The licensee shall make funding available in an amount not to exceed that shown in the Recreation Implementation Schedule attached as Appendix A-5.

**Article 308  
Dispersed Recreation Management Funding**

Within one year of license issuance, licensee shall make funds available to the USDA-FS for the purposes of contributing to the preparation and implementation of a Dispersed Recreation Management Plan (DRMP). The DRMP may describe management actions, routine O&M, monitoring objectives, and design plans to carry out hardening actions at three to six high priority sites identified on Exhibit R-2 of the Dispersed Site Inventory Study, Study R-12, attached as Appendix A-6. The DRMP may also include descriptions of initial management actions which are intended to limit the adverse impacts of dispersed recreation use through increased monitoring, routine maintenance, information, and site hardening. The licensee shall make funding available in an amount not to exceed that shown in the Recreation Implementation Schedule attached as Appendix A-5.



**Settlement Agreement**  
**Baker River Hydroelectric Project**

**Article 309**  
**Bayview Campground Rehabilitation Funding**

Within one year of license issuance, license shall make funds available to the USDA-FS for the purpose of contributing to the rehabilitation and reconstruction of the 28-unit Bayview Campground. Funds may be used to contribute to rehabilitation and reconstruction of the existing campground to a similar level of development as other USDA-FS sites developed according to USDA-FS "Development Level 4," as defined in "Recreation Management Systems, Meaningful Measures for Quality Recreation Management, dated January 2002, as amended, and "Built Environment Image Guide for National Forests and Grasslands," dated December 2001. The licensee shall make funds available in an amount not to exceed that shown in the Recreation Implementation Schedule attached as Appendix A-5.

**Article 310  
Upper Baker Trail and Trailhead Construction Funding**

Within four years following license issuance, licensee shall make funds available to the USDA-FS for the purpose of contributing to trail-based recreation in the Project vicinity. The funds are intended to contribute to USDA-FS efforts to provide up to six miles of new multi-season, multi-use, non-motorized trails. Funds made available may be used for trail planning and construction consistent with the USDA-FS trail development standards, as set forth in the Trails Management Handbook, FSH 2309.18. The licensee shall make funding available, for the purpose of contributing to trail based recreation at Upper Baker, in an amount not to exceed that shown in the Recreation Implementation Schedule attached as Appendix A-5.

**Article 311  
Lower Baker Trail Construction**

Within twelve years of license issuance, or on an alternative schedule to be submitted to the Commission for approval, the licensee shall file Lower Baker Trail Construction Plan (LBTCP) with the Commission for approval.

If licensee needs to submit an alternative schedule to the Commission, licensee shall prepare the schedule in consultation with the RRG. In the event the licensee elects to submit an alternative schedule, the licensee shall forward a copy of the proposed alternative schedule to the RRG and Skagit County at least 30 days prior to submitting the alternative schedule to the Commission, and shall forward any comments on the alternative schedule to the Commission along with the proposed alternative schedule. Upon approval, the alternative schedule becomes a requirement under the license, and the licensee shall implement the alternative schedule, including any changes required by the Commission.

The licensee shall develop the LBTCP in consultation with the RRG. Within six years of license issuance, the licensee shall submit a draft of the LBTCP to the RRG for review and comment. At least 30 days prior to submitting the LBTCP to the Commission for approval, the licensee shall provide a revised draft of the LBTCP to the RRG for review and comment. The licensee shall include, with the LBTCP filed with the Commission, an implementation schedule, documentation of consultation, copies of consulting entity comments and recommendations on the completed plan and schedule, after they have been prepared and provided to consulting entities, and specific descriptions of how the entities' comments are accommodated by the plan and schedule. The licensee shall allow a minimum of 30 days for entities to comment and to make recommendations before filing the plan revision and schedule with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.

The LBTCP shall include provisions for site selection, development criteria and construction of up to two miles of trail in the vicinity of the Town of Concrete, in a manner consistent with the requirements of Articles 201, 508 and 509. The licensee shall make funding available in an amount not to exceed that shown in the Recreation implementation Schedule attached as Appendix A-5.

**Article 312  
Developed Recreation Monitoring and Funding**

Within five years of license issuance, or on an alternative schedule to be submitted to the Commission for approval, the licensee shall file the Upper Baker Developed Recreation Monitoring and Funding Plan (DRMFP) with the Commission for approval.

If licensee needs to submit an alternative schedule to the Commission, licensee shall prepare the schedule in consultation with the RRG. In the event the licensee elects to submit an alternative schedule, the licensee shall forward a copy of the proposed alternative schedule to the RRG at least 30 days prior to submitting the alternative schedule to the Commission, and shall forward any comments on the alternative schedule to the Commission along with the proposed alternative schedule. Upon approval, the alternative schedule becomes a requirement under the license, and the licensee shall implement the alternative schedule, including any changes required by the Commission.

The licensee shall develop the DRMFP in consultation with the RRG and specifically the USDA-FS. Within four years of license issuance, the licensee shall submit a draft of the DRMFP to the RRG and USDA-FS for review and comment. The licensee shall include, with the DRMFP filed with the Commission, an implementation schedule, documentation of consultation, copies of consulting entity comments and recommendations on the completed plan and schedule, after they have been prepared and provided to consulting entities, and specific descriptions of how the entities' comments are accommodated by the plan and schedule. The licensee shall allow a minimum of 30 days for entities to comment and to make recommendations before filing the plan revision and schedule with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.

The plan shall provide for monitoring of site use and occupancy levels at the following fee campgrounds: Horseshoe Cove, Panorama Point, Bayview, Shannon Creek, and Baker Lake Resort. Data from this monitoring shall be provided annually to USDA-FS. Licensee shall not be required to provide data readily available to the USDA-FS or duplicative of information collected routinely by the USDA-FS in conjunction with its monitoring and maintenance of the listed campgrounds.

The plan shall require the licensee to evaluate monitoring results no later than eight (8) years following license issuance, and annually thereafter until additional recreational development is implemented, in order to determine, in consultation with the USDA-FS and based on monitoring results, whether the licensee shall contribute to expansion of recreation site capacity in a manner compatible with the existing levels of development on National Forest System lands adjacent to Baker Lake. The determination of whether additional recreation site development at Baker Lake is necessary shall be based upon monitoring reports that document site use levels reaching or exceeding 60% of combined site occupancy for Horseshoe Cove, Panorama Point, Bayview, Shannon Creek, and Baker Lake Resort campgrounds during the months of July and August for two consecutive years.

***Settlement Agreement  
Baker River Hydroelectric Project***

The licensee shall make funds available in an amount not to exceed that shown in the Recreation Implementation Schedule attached as Appendix A-5 following consultation with the USDA-FS indicating that additional recreation sites are needed.

**Article 313  
Upper Baker Developed Recreation Maintenance Funding**

Within one year of license issuance, and annually thereafter, in order to continue to provide recreation opportunities on National Forest System lands at Baker Lake, licensee shall make funds available to the USDA-FS for the purpose of contributing to the USDA-FS efforts in the operation and maintenance in a manner commensurate with maintenance routinely provided by the USDA-FS in the Mt. Baker-Snoqualmie National Forest at the following developed facilities: Shannon Creek (development level 3); Panorama Point (development level 3); Bayview (development level 4); Horseshoe Cove (development level 4); Maple Grove (development level 2); and Baker Lake Resort (development level 3) (if under USDA-FS management) and future developed facilities constructed in accordance with Articles 303, 309, and 312.

For any license term exceeding 30 years, licensee shall consult with the USDA-Forest Service to establish the actual level of funding required to accomplish rehabilitation or replacement of developed recreation facilities estimated in the Recreation Implementation Schedule attached as Appendix A-5. The licensee shall provide such funding for the purpose of maintaining these sites to the standard of development identified above in accordance with "Recreation Management Systems, Meaningful Measures for Quality Recreation Management," dated January 2002, as amended, and "Built Environment Image Guide for National Forests and Grasslands," dated December 2001 or the equivalent standards and legal requirements in place at the time replacement is required.

Funding provided by this article is intended to contribute to the USDA-FS efforts to attain National Quality Standards as generally described in Appendices A and B of the USDA-FS, Recreation Management Systems Meaningful Measures, January 2002 Publication, and the "Built Environmental Image Guide for National Forests and Grasslands," dated December 2001, as they may be amended from time to time, to the extent possible with available funding, and also for the purpose of allowing the USDA-FS to conduct deferred maintenance of these existing facilities.

Licensee's obligation for funding is estimated in an amount shown in the Recreation Implementation Schedule required by Article 301. Maintenance and operations funds shall be provided in fixed amounts for the first 10 years of the license in accordance with the RMR Implementation Schedule attached as Appendix A-5. At the end of license year 10, licensee shall consult with the USDA-FS to adjust the required maintenance and operations funds to be provided to the USDA-FS for years 11-15 following license issuance, based upon an assessment of licensee's average obligations for the preceding 5 years. Following the establishment of the adjusted amount, operations and maintenance funds shall be fixed consistent with the preceding analysis and shall remain in effect until the end of license year 15. At the end of license year 15, licensee shall consult with the USDA-FS to adjust the required operations and maintenance funds to be provided to the USDA-FS for years 16-20 using the same procedures as in year 11. Following the establishment of the adjusted amount, operations and maintenance funds shall be fixed consistent with the preceding

***Settlement Agreement  
Baker River Hydroelectric Project***

analysis and shall remain in effect until year 20. At the end of license year 20, licensee shall consult with the USDA-FS to adjust the required operations and maintenance funds to establish a fixed annual payment for the remaining period of the license based upon the analysis of the prior 20 years.

The licensee shall enter into and file with the Commission a reimbursable maintenance agreement with the USDA-FS, on terms and conditions satisfactory to both the USDA-FS and licensee and consistent with the requirements of this article, that sets forth how the licensee funds and receives credit for maintenance expenditures at USDA-FS developed campgrounds. If the USDA-FS collects fees directly or from services provided by a third party concessionaire, and has the Congressional approval to retain the fees, then the collected fees will be directly spent on either maintenance or capital improvements at the facility at which they were collected unless directed otherwise by Congress. Funds collected less overhead retained and expended at the site by USDA-FS shall commensurately reduce the licensee's annual obligation at the site, in accordance with the mutually acceptable agreement between licensee and the USDA-FS.

**Article 314  
Upper Baker Trail and Trailhead Maintenance Funding**

Within one year of license issuance and annually thereafter, the licensee shall make funds available to the USDA-FS for the purpose of contributing to the USDA-FS efforts to provide for recreation use on trails and trailheads on National Forest System lands in the vicinity of Baker Lake. The funds will be used for routine operation, maintenance, and facility replacement of the following USDA-FS trails and trailheads: Baker River Trail (#606); Baker Lake Trail (#610); and Baker Lake North and South trailheads. The licensee shall make funding available to the USDA-FS in an amount not to exceed that shown in the Recreation Implementation Schedule attached as Appendix A-5.



**Article 315  
Lower Baker Trail Maintenance**

Following the development of the trail required by Article 311, licensee shall maintain the trail with available funds, in an amount not to exceed \$620 annually during the remaining term of the license, in accordance with the Recreation implementation Schedule attached as Appendix A-5.

**Article 316**  
**USDA-FS Forest Road Maintenance Funding**

Within six months of license issuance, and annually thereafter, licensee shall make funding available to the USDA-FS for the purpose of contributing to the routine maintenance of portions of up to 25 miles of the following existing Forest Roads directly providing access to the Project and Project-related facilities: FR 11 (Baker Lake Highway); FR 1106 (Depression Lake); FR 1107 (Anderson Road); FR 1118 (Horseshoe Cove and Bayview); FR 1122 (Lower Sandy Creek); FR 1136 (Lower Boulder Creek); FR 1137 (Panorama Point); FR 1142 (Baker Lake Resort); FR 1150 (Shannon Creek Campground); and FR 1168 (Baker River Trailhead North). Funding is intended to be used, in part, for contributing to the USDA-FS to pave FR 1106 during the sixth year following license issuance and for periodic resurfacing. Licensee shall make funds available in an amount not to exceed that shown in the Recreation Implementation Schedule attached as Appendix A-5.

*Settlement Agreement*  
*Baker River Hydroelectric Project*

**Article 317**  
**Access to Baker Lake**

During the term of the license, licensee shall provide public road access to the east side of Baker Lake on existing FR 1106, except as may be restricted by short-term public safety or Project security requirements.

**Article 318  
Law Enforcement**

Within one year of license issuance, licensee shall invite federal, state, and local enforcement agency personnel identified by USDA-FS, NPS, Skagit and Whatcom Counties and Town of Concrete law enforcement departments, and WDFW to a meeting or meetings convened for the purpose of developing a Law Enforcement Plan (LEP) to provide for the coordination of the activities of law enforcement personnel with jurisdiction in the Project area and the Baker Basin. The LEP is intended to increase the effectiveness and efficiency of law enforcement. The LEP may include provisions for law enforcement presence, other types of public contact personnel presence, enhanced emergency communication and response procedures, public safety and security, protection measures for facilities, natural resources, recreation resources, and heritage resources within the Project area and Baker Basin generally. The actual elements of the LEP will be determined by the designated participating agency and law enforcement personnel.

Within two years of license issuance, licensee shall file a report on the LEP (LEP Report) with the Commission. At least 30 days prior to submitting the LEP Report to the Commission, the licensee shall provide a draft of the LEP Report to the RRG for review and comment. The licensee shall include, with the LEP Report filed with the Commission, copies of comments on the LEP Report and specific descriptions of how the entities' comments are accommodated by the LEP Report. If the licensee does not adopt a comment, the filing shall include the licensee's reasons, based on Project-specific information.

Licensee shall make funding available for the development and implementation of the original LEP and subsequent revisions as provided for in the LEP in an amount not to exceed that shown in the Recreation Implementation Schedule attached as Appendix A-5. In the event an LEP is not developed by participating agencies and law enforcement personnel within three years following license issuance, licensee shall retain the accumulated specified funding until the LEP is completed. Expenditures in preparation of the LEP and any subsequent monitoring and updates shall not exceed \$55,000, in accordance with the Recreation Implementation Schedule Costs attached as Appendix A-5 for participation in the development of the plan, subsequent revisions, and generally in the planning process shall not be considered an authorized use of the funding.

**Article 401  
Water Quality**

Licensee shall comply with the terms and conditions of the 401 Certification issued by Ecology. Prior to the issuance of the 401 Certification, numeric water quality parameters of concern were identified to include but not be limited to: temperature, dissolved oxygen, total dissolved gas, and turbidity. With respect to these parameters, licensee shall also comply with the terms and conditions of the 401 Certification and to the extent the 401 Certification modifies the following, the following generally stated requirements shall be modified:

1) Temperature

The natural condition for temperature will be determined using studies and analyses performed within the first five years (or such other period determined by Ecology) following license issuance with the objective of meeting the water quality standards. Designated and existing uses include but are not limited to: salmon and trout spawning, core rearing, and migration; primary contact recreation; domestic, industrial, and agricultural water supply; stock watering; wildlife habitat; harvesting; commerce and navigation; boating; and aesthetic values for Lake Shannon and Baker Lake, and specifically, native char for Baker Lake and all tributaries, and extraordinary primary contact recreation for Baker Lake.

Compliance is anticipated to be measured at the following compliance points: for Baker Lake, upstream of the Baker River dam forebay and Upper Baker tailrace; and for Lake Shannon, at Lower Baker dam forebay, Lower Baker tailrace, and Lower Baker fish weir. Additional or alternative compliance points may be deemed necessary by Ecology in the 401 certification.

2) Dissolved Oxygen

The natural condition for dissolved oxygen will be determined using studies and analyses performed within the first five years (or such other period determined by Ecology) following license issuance with the objective of meeting the water quality standards.

Compliance is anticipated to be measured at the following compliance points: for Baker Lake, the forebay and Upper Baker tailrace, and for Lake Shannon, the forebay and Lower Baker fish weir. Additional or alternative compliance points may be deemed necessary by Ecology in the 401 certification.

3) Total Dissolved Gas (TDG)

Licensee shall comply with water quality standards for TDG, except when flows in the Baker River exceed the rate equivalent to the seven-day, ten-year flood frequency, as defined in WAC 173-201A-060(4)(a), and no further action beyond all known and available prevention, control, and treatment (AKART) shall be required unless monitoring

***Settlement Agreement  
Baker River Hydroelectric Project***

detects non-exempt TDG exceedances, at which time licensee shall be required to propose appropriate action as authorized by Ecology. This action may involve a site-specific standard to achieve compliance with applicable water quality standards. Further studies may be required during the term of the license regarding the appropriate methods to reduce overall TDG production. Licensee shall minimize TDG production through the use of AKART, including at least the installation of two new generating units as required by Proposed Article 106(E), and the utilization of the new generating units in a manner consistent with reducing overall TDG production.

4) Turbidity

Licensee shall operate the Project reservoirs to maintain a minimum surface elevation of 389 feet at Lake Shannon and 685 feet at Baker Lake to minimize the resuspension of sediments as a result of Project operations, and discharges from the Project shall not exceed background levels of turbidity occurring within tributaries that discharge into the Project reservoirs as provided in applicable regulations.

Compliance shall be measured at the following compliance points: Upper and Lower Baker tailraces, except as otherwise exempted under WAC 173-201A-110. Additional or alternative compliance points may be deemed necessary by Ecology in the 401 Certification.

Required Plans

The licensee shall develop in consultation with Ecology, a Water Quality Monitoring Plan, and shall, following approval by Ecology, submit the plan to the Commission for approval. The Water Quality Monitoring Plan shall assess compliance with water quality standards, and summarize the monitoring schedule that will be employed to monitor compliance with the standards. The plan shall include monitoring throughout the life of the license, and require summary reports to be submitted annually to the Commission and Ecology. The plan may allow that requests for reduction in sampling frequencies and/or parameters be made to Ecology for consideration.

The licensee shall develop in consultation with Ecology, a Water Quality Protection Plan, and shall, following approval by Ecology, submit the plan to the Commission for approval. The Water Quality Protection Plan shall address the control of potential sources of pollutant releases from Project construction, operations or emergencies. The plan shall include all Project-related facilities, including, but not limited to, access roads, boat ramps, transmission corridors, structures, portable toilets, hatcheries and fish collection, handling and transportation facilities, and staging areas for all activities related to Project operation, maintenance and repair. The format and content of the Water Quality Protection Plan shall be prepared at the direction of Ecology, but it shall include, and may not be limited to, the following individual plan elements:

1. Stormwater Pollution Prevention Plan (SWPPP). The SWPPP shall specify the Best Management Practices (BMPs) and other control measures to prevent

***Settlement Agreement***  
***Baker River Hydroelectric Project***

contaminants entering the Project's surface water and groundwaters. The SWPPP shall address the pollution control measures for licensee's activities that could lead to the discharge of stormwater or other contaminated water from upland areas. The SWPPP should also specify the management of chemicals, hazardous materials and petroleum (spill prevention and containment procedures), including refueling procedures, the measures to take in the event of a spill, and reporting and training requirements. The SWPPP shall include appropriate water quality monitoring protocols and notification requirements.

2. In-Water Work Protection Plan. The In-Water Work Plan shall be consistent with the SWPPP and shall specifically address the BMPs and other control measures for licensee activities that require work within surface waters. In addition to construction projects, this work includes, but is not limited to, the application of herbicides, pesticides, fungicides, disinfectants, and lake fertilization. An appropriate water quality monitoring plan shall be developed and implemented for all in-water work.

**Article 501  
Terrestrial Resource Management Plan**

Within one year from license issuance, or on an alternative schedule to be submitted to the Commission for approval, the licensee shall file the Terrestrial Resource Management Plan (TRMP) with the Commission for approval.

If licensee needs to submit an alternative schedule to the Commission, licensee shall prepare the schedule in consultation with the Terrestrial Resources Implementation Group (TRIG). In the event the licensee elects to submit an alternative schedule, the licensee shall forward a copy of the proposed alternative schedule to the TRIG at least 30 days prior to submitting the alternative schedule to the Commission, and shall forward any comments on the alternative schedule to the Commission along with the proposed alternative schedule. Upon approval, the alternative schedule becomes a requirement under the license, and the licensee shall implement the alternative schedule, including any changes required by the Commission.

The licensee shall develop the TRMP in consultation with the TRIG, and shall review the TRMP annually thereafter during the first ten years of the license, and every fifth year for the remaining term of the license. Within six months from license issuance, the licensee shall submit a draft of the TRMP to the TRIG for review and comment. At least 30 days prior to submitting the TRMP (or any revisions to the TRMP) to the Commission for approval, the licensee shall provide a revised draft of the TRMP (or any revisions to the TRMP) to the TRIG for review and comment. The licensee shall include, with the TRMP (or any revisions to the TRMP) filed with the Commission, an implementation schedule, documentation of consultation, copies of consulting entity comments and recommendations on the completed plan and schedule, after they have been prepared and provided to consulting entities, and specific descriptions of how the entities' comments are accommodated by the plan and schedule. The licensee shall allow a minimum of 30 days for entities to comment and to make recommendations before filing the plan and schedule with the Commission. If the licensee does not adopt a recommendation, the filing shall include the licensee's reasons, based on Project-specific information.

The TRMP shall include the planning and implementation requirements identified in the following Articles: Article 502 (Forest Habitat); Article 503 (Elk Habitat); Article 504 (Wetland Habitat); Article 506 (Osprey Nest Structures); Article 507 (Loon Floating Nest Platforms); Article 508 (Noxious Weeds); Article 509 (Plants of Special Status); Article 510 (*Carex flava*); Article 511 (Decaying and Legacy Wood); Article 512 (Bald Eagle Winter Roost Surveys); Article 513 (Bald Eagle Management Plans); and Article 514 (Use of Habitat Evaluation Procedures). The TRMP shall be consistent with Articles 502-517. Planning shall not be required for Articles 505, 515, 516, and 517. The TRMP shall include a schedule for monitoring only as required by Articles 506, 507, 508, 509, 510, and 514.

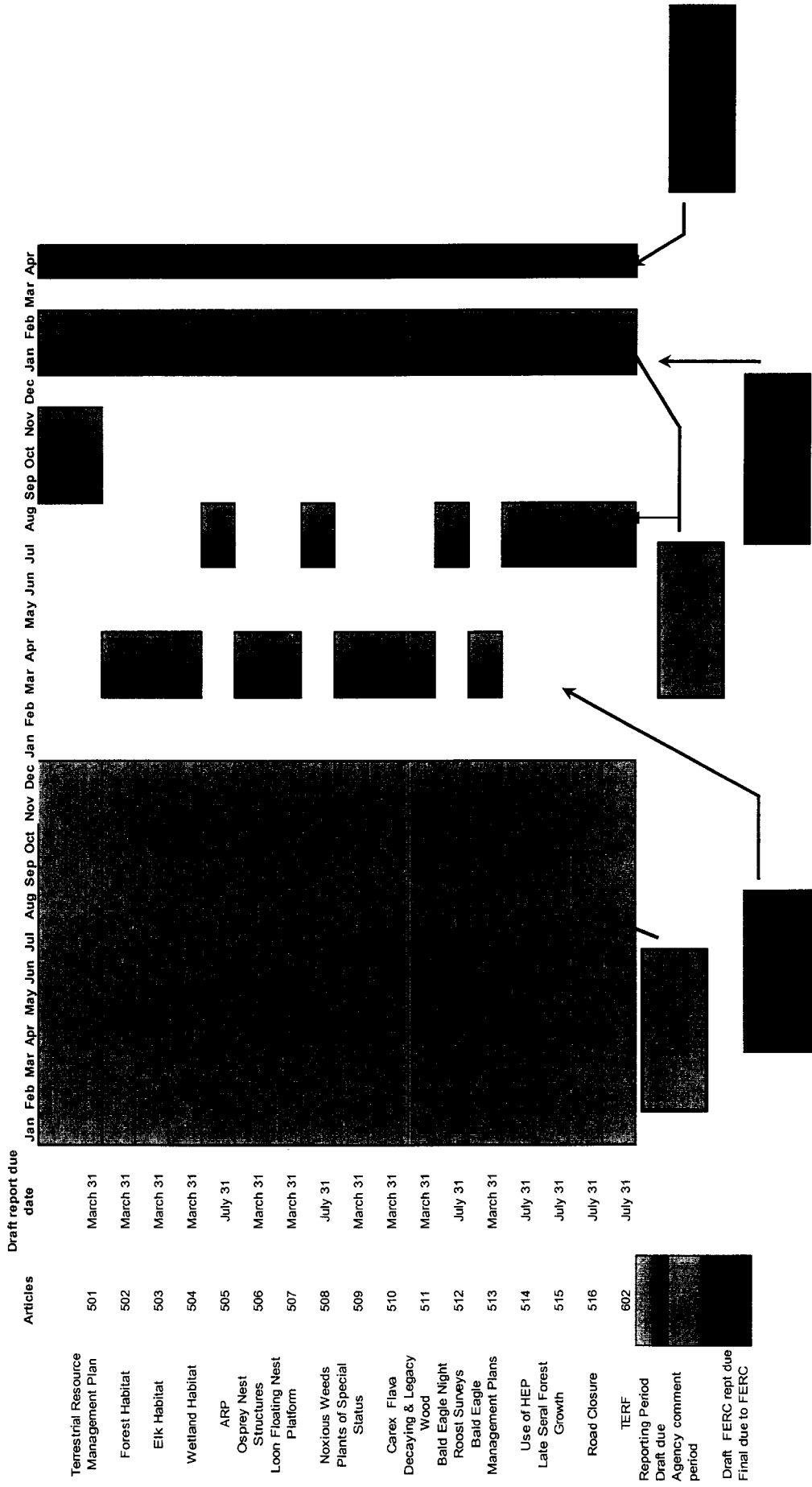
For license Articles 501-518, licensee shall provide an annual summary of expenditures made during the preceding year in conformance with the requirements of the license, as



***Settlement Agreement***  
***Baker River Hydroelectric Project***

well as an accounting of funding expenditures, interest earned, disbursements made as required by any article, and a report indicating adjustments made for inflation in accordance with Article 602. The figure below depicts the annual reporting schedule.

**Reporting Schedule for Terrestrial Articles 501-517, and 602**



**Article 502  
Forest Habitat**

The licensee shall acquire and manage deciduous forest bird habitat, such as: deciduous forest land, mixed forest land, and riparian forest land, for the purpose of increasing, protecting, and/or enhancing habitat for deciduous forest dwelling species, including, without limitation, populations of neotropical migratory bird species that are in decline in the Puget Sound region. Qualifying deciduous forest habitat land shall be comprised of land with 40% or greater deciduous tree composition. In the plan required by Article 501, the licensee shall include criteria and procedures for site selection, acquisition, and management, developed in consultation with the TRIG. Such criteria and procedures shall: (A) consider any potential to impair, diminish, or abrogate tribal treaty or cultural rights, by providing that the licensee shall identify suitable alternative sites or management activities if the designated representative of any affected tribe notifies the TRIG of its conclusion that a particular site or management activity will impair, diminish, or abrogate specific tribal treaty or cultural rights and describes the basis for its conclusion; (B) consider the potential for integration of the site acquisition and management required by this article and other articles to optimize the resulting ecosystem benefits; (C) consider appropriate land acquisition costs; (D) consider the potential to secure grant funds to supplement the funds otherwise for implementation of this article; (E) consider whether any sites so acquired are appropriately included in the Project boundary, and if so, provide for the filing of an appropriate request to the Commission; and (F) provide for continuing consultation with the TRIG in the implementation of the approved plan. Licensee shall undertake habitat planning, acquisition, and enhancement activities consistent with the purposes of this article in consultation with the TRIG. Licensee shall, when considering land acquisition or management activities, evaluate the extent of required noxious weed management in accordance with criteria developed in Article 508.

Funding for the acquisition, planning, and habitat enhancement and management (including noxious weed management) required by this article is not to exceed \$450,000 (2006\$), and shall be made available according to the following schedule: 1) \$430,000 shall be made available within three years of license issuance, and 2) \$5,000 shall be made available in each of years 4-7 from license issuance.

If funds are available twenty-five years following license issuance, and licensee, in consultation with the TRIG, determines lands are not available and/or habitat enhancement or management actions are not feasible for any of the intended purposes of this article, the remaining funds required by this article may be made available to the Terrestrial Enhancement and Research Fund (TERF) established pursuant to Article 602. Unless otherwise approved by the Commission in accordance with the requirements of Article 601, acquired lands shall remain in licensee's ownership during the term of the license.

For license Articles 501-517, licensee shall provide an annual summary of expenditures made during the preceding year in conformance with the requirements of the license, as well as an accounting of funding expenditures, interest earned, disbursements made as

*Settlement Agreement  
Baker River Hydroelectric Project*

required by any article, and a report indicating adjustments made for inflation in accordance with Article 602.

For the purposes of this article, acquisition costs may include: transaction costs, such as completion of appropriate site assessments for hazardous materials and noxious weeds; land surveys, including timber cruise if needed; appraisals; habitat surveys; filing fees; excise taxes; title searches, reports, fees and insurance; closing costs; preparation of land acquisition agreements and any required governmental approvals. Acquisition costs may exclude: internal personnel and administrative costs of the parties associated with land acquisitions, such as staff salaries and benefits; attorney fees and other legal expenses incurred by the licensee or any other party not related to the preparation of land acquisition agreement and any required government approvals; and fees paid by the licensee to third parties for administrative costs associated with a third parties' acquisition of interests in land on behalf of the licensee. Prior to completing any transaction, the licensee will notify the TRIG and ARG, as appropriate, if it appears that transaction costs will be significantly higher than expected at the time of license issuance, and shall, in consultation with the TRIG and ARG, determine whether to proceed with a transaction with significant transaction costs.

**Article 503  
Elk Habitat**

Within one year of license issuance, or on an alternative schedule to be submitted to the Commission for approval, the licensee shall begin efforts to acquire elk foraging habitat land for the purpose of providing significant and reliable foraging resources for the Nooksack Elk Herd during the term of the license, to improve habitat conditions for its recently declining population.

If licensee needs to submit an alternative schedule to the Commission, licensee shall prepare the schedule in consultation with the TRIG. In the event the licensee elects to submit an alternative schedule, the licensee shall forward a copy of the proposed alternative schedule to the TRIG at least 30 days prior to submitting the alternative schedule to the Commission, and shall forward any comments on the alternative schedule to the Commission along with the proposed alternative schedule. Upon approval, the alternative schedule becomes a requirement under the license, and the licensee shall implement the alternative schedule, including any changes required by the Commission.

The licensee, in consultation with the TRIG, shall develop site acquisition and selection criteria, in order to obtain lands suitable for long-term management as elk habitat. Such criteria and procedures shall: (A) consider any potential to impair, diminish, or abrogate tribal treaty or cultural rights, by providing that the licensee shall identify suitable alternative sites or management activities if the designated representative of any affected tribe notifies the TRIG of its conclusion that a particular site or management activity will impair, diminish, or abrogate specific tribal treaty or cultural rights and describes the basis for its conclusion; (B) consider the potential for integration of the site acquisition and management required by this article and other articles to optimize the resulting ecosystem benefits; (C) consider appropriate land acquisition costs; (D) consider the potential to secure grant funds to supplement the funds otherwise for implementation of this article; (E) consider whether any sites so acquired are appropriately included in the Project boundary, and if so, provide for the filing of an appropriate request to the Commission; and (F) provide for continuing consultation with the TRIG in the implementation of the approved plan.

Initially site selection criteria should be based on the following geographic criteria in order of priority: a) within the core area of the Nooksack Elk Herd, b) within the peripheral area of the Nooksack Elk Herd if consultation with WDFW determines that animal damage complaints are unlikely to occur, and c) in the Sauk Game Management Unit if consultation with WDFW determines that animal damage complaints are unlikely to occur. Based on consensus within the TRIG, these geographic priorities should be revisited in response to changes in scientific information, landownership patterns, game management agreements or WDFW's elk management plan. Licensee shall, when considering land acquisition or management activities, evaluate the extent of required noxious weed management in accordance with criteria developed in Article 508.

*Settlement Agreement  
Baker River Hydroelectric Project*

Phase I. Initial acquisition. The licensee shall make good faith efforts to acquire, if possible, tract(s) having a total area of approximately 300 acres, and a combined elk forage equivalency value of at least 1,437, calculated as described in the Elk Habitat Table below. If the licensee is unable to acquire initial tract(s) with the required elk forage equivalency value, funding made available for the initial tract(s) shall be carried over for general acquisition purposes consistent with this article.

General. Funding for the total costs associated with acquisition is not to exceed \$3,700,000 (2006\$), with the first phase of acquisitions not to exceed \$1,200,000. Funding shall be made available for the following acquisition periods: \$1,200,000 within three months of license for the initial tract(s), another \$1,250,000 within one year following license issuance, and the remaining \$1,250,000 within five years following license issuance. Any funding not required for acquisition purposes may be made available to supplement the enhancement, management, and maintenance of acquired elk forage lands. If funds are available twenty-five years following license issuance, and licensee, in consultation with the TRIG, determines lands are not available and/or habitat enhancement or management actions are not feasible for any of the intended purposes of this article, the remaining funds required by this article may be made available for the TERF, as described in Article 602.

Within one year of each acquisition, the licensee shall prepare, or update, the elk forage habitat enhancement and management element of the Terrestrial Resources Management Plan, in accordance with Article 501. Acquired lands shall be managed and maintained in accordance with the plan developed in accordance with Article 501.

The licensee's annual obligation for total costs associated with planning, habitat enhancement, management (for elk forage purposes and noxious weed management purposes), and maintenance of acquired lands is not to exceed \$50,000 per year during the term of the license. In the event of a shortfall in acquisition funds, the funds to be made available for planning, habitat enhancement, management (for elk forage purposes and noxious weed management purposes), and maintenance of acquired lands may be converted for use for acquisition purposes following the licensee's consultation with the TRIG in accordance with Article 501.

The licensee shall use the following Elk Habitat Table below to calculate the elk forage equivalency value for the initial tract(s) by multiplying the acres of each habitat type by the corresponding elk forage equivalency score, and summing the products for all habitat types in the tract(s).

**Elk Habitat Table**

**Elk forage equivalency rankings of habitat types in the Baker River basin.**

<b>Habitat Type; Successional Stage</b>	<b>Elk Forage Equivalency Rank</b>	<b>Elk Forage Equivalency Score per acre</b>
Upland Conifer Forest; Shrub/Seedling Stage	Good	3
Riparian Conifer Forest; Shrub/Seedling Stage	Good	3
Upland Mixed Forest; Shrub/Seedling Stage	Good	3
Riparian Mixed Forest; Shrub/Seedling Stage	Good	3
Upland Deciduous Forest; Shrub/Seedling Stage	Good	3
Upland Deciduous Forest; Sapling/Pole and Small Tree Stages	Moderate	1
Riparian Deciduous Forest; Shrub/Seedling Stage	Good	3
Riparian Deciduous Forest; Sapling/Pole and Small Tree Stages	Moderate	1
Forested Wetland; Shrub/Seedling Stage	Good	3
Shrub Wetland; Grass/Forb and Shrub/Seedling Stages	Good	3
Wet Meadow; Herbaceous Wetland Stage	Good	3
Cultivated Pasture (under management to provide elk forage)	Excellent	9
All Other Habitats	To be determined by TRIG	

Unless otherwise approved by the Commission in accordance with the requirements of Article 601, all lands acquired in accordance with this article shall remain in licensee's ownership during the term of the license.

For the purposes of this article, acquisition costs may include: transaction costs, such as completion of appropriate site assessments for hazardous materials and noxious weeds; land surveys, including timber cruise if needed; appraisals; habitat surveys; filing fees; excise taxes; title searches, reports, fees and insurance; closing costs; preparation of land acquisition agreements and any required governmental approvals. Acquisition costs may exclude: internal personnel and administrative costs of the parties associated with land acquisitions, such as staff salaries and benefits; attorney fees and other legal expenses incurred by the licensee or any other party not related to the preparation of land acquisition agreement and any required government approvals; and fees paid by the licensee to third

***Settlement Agreement***  
***Baker River Hydroelectric Project***

parties for administrative costs associated with a third parties' acquisition of interests in land on behalf of the licensee. Prior to completing any transaction, the licensee will notify the TRIG or ARG, as appropriate, if it appears that transaction costs will be significantly higher than expected, and shall, in consultation with the TRIG or ARG, determine whether to proceed with a transaction with significant transaction costs.



**Article 504  
Wetland Habitat**

The licensee shall acquire wetland habitat lands for conservation of wetlands and wetland-dependent species, placing a priority on acquiring high quality, functioning wetland breeding habitat for native amphibian and other native species, for the purpose of conserving wetlands and providing long-term protection for species using the wetland habitat. The licensee shall, in consultation with the TRIG, develop site acquisition and selection criteria in accordance with the general geographic preferences set forth in Article 505. Such criteria and procedures shall: (A) consider any potential to impair, diminish, or abrogate tribal treaty or cultural rights, by providing that the licensee shall identify suitable alternative sites or management activities if the designated representative of any affected tribe notifies the TRIG of its conclusion that a particular site or management activity will impair, diminish, or abrogate specific tribal treaty or cultural rights and describes the basis for its conclusion; (B) consider the potential for integration of the site acquisition and management required by this article and other articles to optimize the resulting ecosystem benefits; (C) consider appropriate land acquisition costs; (D) consider the potential to secure grant funds to supplement the funds otherwise for implementation of this article; (E) consider whether any sites so acquired are appropriately included in the Project boundary, and if so, provide for the filing of an appropriate request to the Commission; and (F) provide for continuing consultation with the TRIG in the implementation of the approved plan. Licensee shall, when considering land acquisition or management activities, evaluate the extent of required noxious weed management in accordance with criteria developed in Article 508. Following acquisition, the licensee shall undertake habitat enhancement and management (including noxious weed control) activities in accordance with a plan prepared after consultation with the TRIG and in accordance with Article 501.

Funding for acquisition is not to exceed \$340,000 (2006\$), and shall be made available within four years of license issuance. Funding for planning and for habitat enhancement, habitat management, and noxious weed management of existing or acquired parcels is not to exceed \$190,000 and shall be made available according to the following schedule: \$10,000 shall be made available within four years of license issuance, \$140,000 shall be made available in the fifth year following license issuance, and \$20,000 shall be made available in each of the sixth and seventh years following license issuance. If funds are available twenty-five years following license issuance, and licensee, in consultation with the TRIG, determines lands are not available and/or habitat enhancement or management actions are not feasible for any of the intended purposes of this article, the remaining funds required by this article may be made available to the TERF established pursuant to Article 602. Unless otherwise approved by the Commission in accordance with the requirements of Article 601, acquired lands shall remain in licensee's ownership during the term of the license.

For the purposes of this article, acquisition costs may include: transaction costs, such as completion of appropriate site assessments for hazardous materials and noxious weeds; land surveys, including timber cruise if needed; appraisals; habitat surveys; filing fees; excise taxes; title searches, reports, fees and insurance; closing costs; preparation of land

***Settlement Agreement***  
***Baker River Hydroelectric Project***

acquisition agreements and any required governmental approvals. Acquisition costs may exclude: internal personnel and administrative costs of the parties associated with land acquisitions, such as staff salaries and benefits; attorney fees and other legal expenses incurred by the licensee or any other party not related to the preparation of land acquisition agreement and any required government approvals; and fees paid by the licensee to third parties for administrative costs associated with a third parties' acquisition of interests in land on behalf of the licensee. Prior to completing any transaction, the licensee will notify the TRIG, as appropriate, if it appears that transaction costs will be significantly higher than expected at the time of license issuance, and shall, in consultation with the TRIG, determine whether to proceed with a transaction with significant transaction costs.

**Article 505  
Aquatic Riparian Habitat Protection, Restoration and Enhancement Plan**

Within two years of license issuance, licensee shall submit an Aquatic Riparian Habitat Protection, Restoration and Enhancement Plan (“ARP”) to the Commission for approval for the purpose of identifying actions to protect and enhance low-elevation bottomland ecosystems in the Skagit River basin, which includes the Baker River sub-basin, focusing on habitat for protection, acquisition, restoration and maintenance for anadromous salmonids, other aquatic species and riparian-dependent birds and amphibians.

Licensee shall develop the ARP in consultation with the TRIG and ARG, specifically including the USDA FS, WDFW, WDNR, The Nature Conservancy, the Upper Skagit Indian Tribe, the Sauk-Suiattle Indian Tribe, and the Swinomish Indian Tribal Community. Within one year of license issuance, licensee shall submit a draft of the ARP to the TRIG and the ARG for review and comment. At least 30 days prior to submitting the ARP to the Commission for approval, licensee shall provide the ARP to the TRIG and the ARG for review and comment. Licensee shall include, with the ARP, an implementation schedule, documentation of consultation, copies of consulting entity comments and recommendations on the completed plan and schedule, and specific descriptions of how the entities’ comments are accommodated by the plan and schedule. If licensee does not adopt a recommendation, the filing shall include the licensee’s reasons, based on Project-specific information.

The ARP shall be prepared based on the following criteria:

- (a) candidate sites shall be examined for their potential to provide long-term benefits. Implementation proposals shall be based on a comparison of the predicted benefits arising at a specific site in relation to the costs of the action or actions proposed for the site, with the same factors for other sites with similar potential, based on a reasonable range of options for alternative sites;
- (b) the location of sites for the purposes of implementation shall be used to aid in prioritizing locations in the following order: i) within the Baker River basin, ii) within the middle Skagit River and tributaries immediately downstream of the Baker River (from the confluence with the Baker River to the Pipeline Crossing at RM 24.3), iii) within the lower Skagit River and estuary, and iv) elsewhere in the Skagit River basin, or as may otherwise be established in the ARP;
- (c) i) consideration of any potential to impair, diminish, or abrogate tribal treaty or cultural rights, by providing that the licensee shall identify suitable alternative sites or management activities if the designated representative of any affected tribe notifies the TRIG and ARG of its conclusion that a particular site or management activity will impair, diminish, or abrogate specific tribal treaty or cultural rights and describes the basis for its conclusion; ii) consideration of the potential for integration of the site acquisition and management required by this article and other articles to optimize the resulting ecosystem benefits; iii) consideration of

***Settlement Agreement  
Baker River Hydroelectric Project***

appropriate land acquisition costs; iv) consideration the potential to secure grant funds to supplement the funds otherwise for implementation of this article; v) consideration of whether any sites so acquired are appropriately included in the Project boundary, and if so, provide for the filing of an appropriate request to the Commission; and vi) providing for continuing consultation with the TRIG and ARG in the implementation of the approved plan;

- (d) the plan shall be structured to allow for flexibility in revising site selection criteria and reprioritizing types of habitat lands to be protected, acquired, restored and/or managed in response to changing needs and conditions over the term of the license;
- (e) when considering land acquisition or management activities, evaluate the extent of required noxious weed management in accordance with criteria developed in Article 508;
- (f) to aid in the evaluation of a specific resource project and site selection proposed under the ARP, licensee shall provide information to the TRIG and ARG regarding any other resource projects being considered pursuant to other license article requirements similar to the project being considered, or that provide similar potential biological benefits and have the potential for integration with related enhancement actions; and
- (g) monitoring needs.

In addition to these general guidelines, the ARP shall require that up to \$1,000,000 of the funds available for implementation of the ARP be expended within the Baker River watershed, as established in the ARP. For funds expended outside the Baker Basin, a minimum of 50% shall be spent on riverine/riparian habitat acquisition with anadromous fish benefits. A minimum of 50% of the funds so spent on riverine/riparian habitat shall be spent on habitat that benefits both anadromous species and deciduous forest/wetland species, unless otherwise agreed by the TRIG and ARG.

Licensee shall provide funding for implementation of the ARP in a total amount not to exceed \$10,200,000, according to the following schedule for funding: \$50,000 available annually starting the first year following license issuance and concluding in the sixth year following license issuance for planning and site evaluation activities; \$300,000 available within two years following license issuance for initial protection, restoration, enhancement, and management activities; and \$2,000,000 available in each of years 3, 8, 13, and 18 following license issuance, and up to \$1,600,000 if phase two of Article 105 is not implemented.

For the purposes of this article, acquisition costs may include: transaction costs, such as completion of appropriate site assessments for hazardous materials and noxious weeds; land surveys, including timber cruise if needed; appraisals; habitat surveys; filing fees; excise taxes; title searches, reports, fees and insurance; closing costs; preparation of land acquisition agreements and any required governmental approvals. Acquisition costs may

***Settlement Agreement  
Baker River Hydroelectric Project***

exclude: internal personnel and administrative costs of the parties associated with land acquisitions, such as staff salaries and benefits; attorney fees and other legal expenses incurred by the licensee or any other party not related to the preparation of land acquisition agreement and any required government approvals; and fees paid by the licensee to third parties for administrative costs associated with a third parties' acquisition of interests in land on behalf of the licensee. Prior to completing any transaction, the licensee will notify the TRIG and ARG, as appropriate, if it appears that transaction costs will be significantly higher than expected, and shall, in consultation with the TRIG and ARG, determine whether to proceed with a transaction with significant transaction costs.

If funds are available twenty-five years following license issuance, and licensee, in consultation with the TRIG and ARG, determines lands are not available and/or habitat enhancement or management actions are not feasible for any of the intended purposes of this article, the remaining funds required by this article may be made available to the HERC and/or TERF funds.

**Article 506  
Osprey Nest Structures**

Within one year following license issuance, the licensee shall provide and maintain a minimum of ten artificial osprey nest structures at Lake Shannon. The ten nest structures shall consist of up to nine of the artificial structures currently maintained by licensee, and one or more new artificial structures to be installed at the site of a former natural snag nest or artificial nest structure. The licensee shall place the structures in a manner that is designed to provide a sufficient number of suitable osprey nest sites at Lake Shannon to support an estimated seven breeding pairs.

Within two years following license issuance, the licensee, in consultation with the TRIG, shall select and modify ten existing trees near Lake Shannon to promote their eventual use as osprey nest sites. The licensee shall select ten mature trees on lands suitable for osprey nesting owned and/or controlled by the licensee. Modification of the trees may involve topping, killing, or other appropriate techniques, based on site-specific evaluations, to promote the development of tree and snag nest sites available for osprey nesting at Lake Shannon.

During the term of the license, the licensee shall monitor osprey nesting and productivity annually between April 1 and August 31 at both Lake Shannon and Baker Lake, in accordance with the TRMP required by Article 501. At two-year intervals during the term of the license, the licensee shall inspect the ten artificial nest structures at Lake Shannon and maintain the structures in conditions suitable for use by nesting osprey. By December 31 in the second year of each two-year inspection and maintenance cycle, the licensee shall submit a draft nest inspection and monitoring report to the TRIG for a 30-day review and comment period. The report shall describe inspection results, maintenance activity, and nesting activity at both natural and artificial nests on Lake Shannon and Baker Lake during the preceding two years. During each report review period, the licensee, in consultation with the TRIG, shall determine whether additional artificial nest sites or modifications to the placement and design of new structures are needed to achieve the goal of seven breeding pairs on Lake Shannon to increase nesting success to meet the goal. This evaluation will include consideration of results of site evaluation, site monitoring, and best available science. The licensee shall file final nest inspection and monitoring reports with the Commission by June 1 of the year following each two-year inspection and maintenance cycle, allowing for a minimum of thirty days review and comment by the TRIG prior to filing.

**Article 507  
Loon Floating Nest Platforms**

Within one year after license issuance, licensee shall, in consultation with the TRIG, install and maintain three common loon floating nest platforms in suitable locations, consistent with the requirements of Article 304, on one or both of the Project reservoirs, in accordance with the Terrestrial Resources Management Plan required by Article 501, for the purpose of establishing nesting use on the Project reservoirs to increase nesting loon populations in Western Washington.

Licensee, in consultation with the TRIG, may substitute the placement of one floating nest platform on Project reservoirs with making funding available to a third party for the purpose of placing and maintaining a floating nest platform on non-Project lands. Funding made available for this purpose is not to exceed \$2,500 for construction and placement of the nest platform, and \$1,000 annually for maintenance.

Following installation of any floating nest platforms on Project reservoirs, licensee shall place log booms, boundary buoys, or other appropriate devices to establish use restriction zones around each nesting platform to restrict public access. The nest platforms and public access restriction devices on Project reservoirs shall be in place between April 1 and July 31 of each year. Licensee may remove and store the nest platforms required by this article when they are not required to be in place. Following review and comment by the TRIG, licensee shall install three additional floating nest platforms in the Project reservoirs if nesting success is determined at any time during the term of the floating nest platform program.

During the first fifteen years following platform installation, licensee shall monitor all floating nest platforms installed in the Project reservoirs twice per month between April 1 through July 31 to determine nesting activity, and the effectiveness of access restriction devices. By December 31 of each year, licensee shall file draft monitoring reports with the TRIG for a 30-day review and comment period. Annual monitoring reports shall summarize loon observations, nesting attempts, nesting activity, nest productivity, and platform maintenance activity within the Project reservoirs during the previous breeding season. Final reports shall be filed with the Commission by June 1 of the following year.

During the sixteenth year following platform installation, licensee shall submit a draft effectiveness report summarizing the results of the 15-year monitoring period to assess loon breeding success on the installed nesting platforms. The report shall make recommendations as to the continuation of the floating nest platform program based on the presence or absence of nesting activity, according to the following general criteria: observed loon nest-building activity or use of nests suggests loon nesting success, and a lack of breeding attempts on one or more of the platforms by the end of the 15-year period suggests lack of platform success. If the floating nest platform program is continued past year 15, annual monitoring and reporting shall continue.

***Settlement Agreement  
Baker River Hydroelectric Project***

If the report determines the program is unsuccessful, licensee shall, following consultation with the TRIG, either remove the loon nesting platforms and make the remaining funds available from the program to the TERF, or make the remaining funds available for a similar program by a third party at another location on non-Project lands. Any funds made available to third parties for nesting platforms installations, monitoring, and management for a similar program on non-Project lands shall terminate licensee's obligations under this article. For purposes of this article, "remaining funds" shall be calculated by multiplying the number of years remaining in the license term by the actual average annual cost of maintenance and monitoring during years 6 through 15 following nest platform installation.



**Article 508  
Noxious Weeds**

During the term of the license, the licensee shall manage noxious weeds on Project lands pursuant to the most restrictive applicable federal and state regulations, including, but not limited to: 1) Washington's State Noxious Weed Control regulations found at WAC 16-750, 2) Best Management Practices published by the USDA-FS (for weed control on USDA-FS lands) for the Mt. Baker-Snoqualmie National Forest, and 3) noxious weed control regulations adopted by Skagit or Whatcom Counties, in accordance with a plan developed in consultation with the TRIG as required by Article 501. The licensee shall file the plan with the Commission for approval, following consultation in accordance with Article 501. The plan shall address site-specific and species-specific management and monitoring programs, based on the guidelines and treatment options identified in the tables attached as Appendix A-1, which are based upon the results of pre-licensing Terrestrial Study T-6 and the Forest-Wide Environmental Assessment for Noxious Weed Management on the Mt. Baker-Snoqualmie National Forest, published by the USDA-FS in May 1999. The initial plan shall adjust treatment of all lands within the Project boundary, and those lands outside the Project boundary that were surveyed for noxious weeds during pre-licensing studies, as documented in the T-6 Final Study Report, December 23, 2003. The plan shall address how noxious weed management considerations will be addressed when evaluating land acquisition proposals or other activities pursuant to Articles 502, 503, 504, and 505.

The portion of the plan addressing the seven high quality wetland areas located on National Forest System (USDA-FS) lands, as identified in pre-licensing Terrestrial Study T-2/T-5 as WB 17, 20, 21, 25, 28, 29, and 30, shall place priority on the control of reed canarygrass (*Phalaris arundinacea*) for the protection and enhancement of these wetlands. Licensee shall provide funding for the portion of the plan addressing these seven identified wetlands in an amount not to exceed \$25,000 in each of years 1-5 following license issuance, and shall provide \$15,000 annually thereafter during the term of the license.

Funding for noxious weed surveys and management for lands acquired following license issuance pursuant to Articles 502, 503, 504, and 505 shall be drawn from the funds of these articles. Licensee shall file related amendments to the plan with the Commission for approval by December 31 of any year in which land is acquired.

**Article 509  
Plants of Special Status**

Within six months following license issuance, the licensee shall file with the Commission a plan for the management of plants of special status on existing Project lands and the following non-Project lands, to be more precisely identified during the development of the plan: 1) areas with potential to have impact from Project activities, based on USDA-FS pre-field review process, and 2) areas surveyed during pre-licensing rare plant surveys, as indicated by Baker River Project Relicense Study, T-16, as amended.

The licensee shall prepare the plan in consultation with the TRIG, and specifically, the USFWS, USDA-FS, and the Washington Natural Heritage Program of the Washington Department of Natural Resources, as required by Article 501, and in accordance with the guidelines in Appendix A-3. The plan shall be consistent with the noxious weed management plan described in Article 508. Amendments to the plan associated with the acquisition of new lands that result in a revision to the Project boundary are not mandatory, but will be determined on a case-by-case basis, in consultation with the TRIG, in conformance with Article 501.

For the purposes of this article, "Plants of Special Status" shall include: 1) plant species listed as Endangered, Threatened or Proposed for Listing under the federal Endangered Species Act; 2) plant species listed as Endangered, Threatened or Sensitive by the State of Washington; and 3) on federal lands administered by the USDA-FS, plant species on the Pacific Northwest Regional Forester's Sensitive Species List. The plant species that were known to occur at the time of license application that required site-specific management plans are listed in Appendix A-2, and shall provide the initial basis for planning actions. A site-specific management plan shall be included in the overall plan for *Carex flava*, in accordance with Article 510.

**Article 510**  
***Carex flava***

During the term of the license, licensee shall manage yellow sedge (*Carex flava*) at Baker Lake for its protection, especially in areas where it is located in close proximity to reed canarygrass, according to a plan developed in accordance with Article 501 and filed with the Commission for approval within six months of license issuance, following consultation with the TRIG, including specifically the USFWS, USDA-FS and the Washington Natural Heritage Program of the Washington Department of Natural Resources. The plan shall require inventorying and mapping of known *Carex flava* populations, the development of control strategies for reed canarygrass around *Carex flava* populations, a method for monitoring and evaluating success of the plan, a planting plan if 20% or more of the *Carex flava* population decreases from the time of license issuance, and additional measures that are identified as a result of plan monitoring, as described in more detail in Appendix A-4. Plan updates shall be completed at least every ten years, or more regularly if needed to address monitoring and evaluation results, or when the species is no longer a State or federal sensitive species.

**Article 511  
Decaying and Legacy Wood**

Within three years following license issuance, and annually thereafter, the licensee shall manage snags, logs and residual live trees (“Decaying and Legacy Wood”) located on existing or acquired Project lands for the purpose of enhancing Decaying and Legacy Wood structure to increase its value to snag and log dependent species. The management will be conducted in accordance with a plan filed with the Commission for approval in accordance with Article 501 within one year from license issuance. The licensee shall develop the plan in consultation with the TRIG, and will provide a 90-day review and comment period on a draft prior to filing with the Commission as required by Article 501.

In preparing the plan, licensee shall refer to Johnson, D.H. and O’Neil, T.A., “DecAID Model, Wildlife-habitat relationships in Oregon and Washington,” Oregon State University Press, 2001.

The Decaying and Legacy Wood Plan shall address the snag, log and residual live tree habitats of vertebrate species likely to inhabit the lands on a seasonal or year-round basis. The plan shall include measures to retain snags, logs and residual live trees where they already exist, and to promote the development of these features where they do not exist. The plan may also include measures to provide artificial structures to meet short-term habitat needs where natural snags, logs and residual live trees are not present and are not expected to develop over the term of the license. All measures in the plan shall be appropriate to the habitat types present on the lands. Existing snags, logs and residual live trees shall be retained in appropriate numbers as determined by land management objectives for each site in conformance with the plan. If existing snags and logs are insufficient to support the land management objectives in the plan to support population densities of primary cavity excavators, and live trees of appropriate size are present, the licensee shall create additional snags or downed logs from live trees, or alternative methods. The licensee shall file any amendments to the Decaying and Legacy Wood element of the plan, as required by Article 501, that result from the acquisition of any new Project lands.

Funding for preparing the plan and managing Decaying and Legacy Wood according to the plan is not to exceed \$35,000 each year in the first two years following license issuance, to allow for planning and initial site work, and is not to exceed \$10,000 each year throughout the remaining term of the license. If funds are available twenty-five years following license issuance, and licensee, in consultation with the TRIG, determines habitat enhancement or management actions are not feasible for any of the intended purposes of this article, any remaining funds required by this article may be made available to the TERF established pursuant to Article 602.

**Article 512**  
**Bald Eagle Night Roost Surveys**

During the first three years after license issuance, and again between years 15-17 from license issuance, licensee, in consultation with TRIG, shall design and conduct surveys to identify bald eagle (*Haliaeetus leucocephalus*) communal winter night roosts in the vicinity of the Baker River Project. The purpose of the surveys will be to systematically determine the location of bald eagle night roosts in the Baker River basin in the Project vicinity, and to assist WDFW, USFWS, and USDA-FS with the identification of areas in need of bald eagle protection. Licensee shall provide the results of the surveys to affected landowners, WDFW, USFWS and the USDA-FS within three months of completion of each round of surveys, and shall file survey results with the Commission annually.

Licensee's funding for the surveys is not to exceed \$25,000 for each 2-3 year survey period. To the extent the first \$25,000 is not expended for the first survey period, any remaining funds shall be carried over to the succeeding survey period. Any funds remaining following completion of the second survey period shall be made available to the TERF, as described in Article 602.

**Article 513  
Bald Eagle Management Plans**

Within one year following license issuance, licensee shall develop a management plan for each bald eagle (*Haliaeetus leucocephalus*) nest site and communal winter night roost known to exist on lands within the Project boundary at the time of license issuance, to provide for the long-term protection of and management for bald eagles, as required by Article 501. The plan shall identify measures to protect and manage known nesting or winter roost sites on licensee owned lands within the Project boundary and methods to survey for and protect these sites on lands acquired during the license term.

Within one year after acquiring new Project lands, licensee shall develop a management plan for each bald eagle nest site and communal winter night roost known to occur on the land acquired. During the term of the license, the planning requirement shall apply to the discovery of new bald eagle nest sites or communal winter night roosts, and shall be in conformance with the plan developed in accordance with Article 501.

All plans, and any amendments to plans, shall be consistent with recommendations contained in the Pacific Bald Eagle Recovery Plan (U.S. Fish and Wildlife Service, 1986), Washington State Bald Eagle Protection Rules (WAC 232-12-292), and Watson, J.W., and E.A. Rodrick, Bald Eagle (*Haliaeetus leucocephalus*), Management Recommendations for Washington's Priority Species, Volume IV: Birds, Washington Department of Fish and Wildlife, Olympia (2002) (editors Larsen, E.M., J.M. Azerrad, and N. Nordstrom, 2004), or similar guidance or rules in effect at the time any plan is developed. Final plans, and any plan amendments, shall be filed with the Commission. Within one year of any change in the state or federal status of the bald eagle, licensee, in consultation with the WDFW and USFWS, shall review all plans prepared under this action and determine whether the plans need to be continued or modified.

**Article 514  
Use of Habitat Evaluation Procedures**

Within one year of license issuance, the licensee shall, in consultation with the TRIG, develop and prepare in accordance with Article 501 a monitoring plan to determine the effectiveness of the implementation of Articles 502, 503, 504, 506, 507 and 513. The plan shall require licensee to monitor the effectiveness of the implementation of Articles 502, 503, 504, 506, 507 and 513 through periodic assessments of habitat quantity and quality, using the U. S. Fish and Wildlife Service, Department of Interior, Ecological Service Manuals ESM 101, 102, 103 (Division of Ecological Services, Washington D.C. 1980), Habitat Evaluation Procedures (“HEP”), or another appropriate methodology selected in consultation with the TRIG. Monitoring is intended to assist resource managers in determining the current conditions of the lands acquired and assess management activities over the term of the license. Licensee shall consider the monitoring results in implementing Articles 502, 503, 504, 506, 507 and 513, in consultation with the TRIG.

Within five years of license issuance, licensee shall develop, in consultation with the TRIG, the schedule for specific monitoring actions, the timing of each monitoring period, monitoring criteria, the scope of monitoring given available funding, and the format for monitoring reports in accordance with the consultation requirements of Article 501.

Funding for all aspects of monitoring is not to exceed \$200,000 (if license is 30 years or shorter) or \$300,000 (if license is 40 years or longer)(2006\$). The licensee shall make the funding available in \$100,000 increments according to the following schedule: the first \$100,000 available during the first 10 years of the license term, the second \$100,000 available between years 20 and 30 of the license term (and the third \$100,000 available after year 30 if the license is issued for a term of 40 years or longer). If funds are available forty years following license issuance, and licensee, in consultation with the TRIG, determines further use of the HEP is not feasible for any of the intended purposes of this article, any remaining funds required by this article may be made available to the TERF established pursuant to Article 602.

**Article 515  
Late Seral Forest Growth**

Within two years of license issuance, or December 31, 2008, whichever is earlier, the licensee shall make funds available to the USDA-FS for its actual costs incurred in thinning trees on up to 321 acres of second-growth forest on National Forest System lands in the Baker River watershed. The funds may be used for the purpose of reducing edge effects by enhancing the acceleration of late-seral forest growth, which may increase the nesting success and/or survival of federally listed spotted owls and marbled murrelets. Funds made available to the USDA-FS shall not exceed \$80,250. If the USDA-FS does not incur these costs within two years following license issuance, funds shall be held until requested by the USDA-FS, or converted to use for the TERF described in Article 602, when and if directed by the USDA-FS.



**Article 516  
Mountain Goats**

Within three years following license issuance, licensee shall make funds available to the USDA-FS for its actual costs incurred in making habitat improvements in mountain hemlock forest in occupied mountain goat (*Oreamnos americanus*) summer range on National Forest System lands in or adjacent to the Baker River Watershed. Funding for licensee's contribution to the cost of planning, environmental review and implementation, for up to 194 acres of mountain hemlock forest land is not to exceed \$70,000. The improvements funded with this measure may provide additional summer forage habitat by prescribed burns or other means in high elevation forest areas away from established recreation areas in the Project vicinity.

If the USDA-FS does not incur these costs within one year following license issuance, funds shall be held until requested by the USDA-FS, or converted to use for the TERF described in Article 602, when and if directed by the USDA-FS.

**Article 517  
Grizzly Bear Road Management**

Within six months of license issuance, or within sixty days of request by the USDA-FS, whichever is earlier, licensee shall make funds available to the USDA-FS for its actual costs incurred in planning, environmental review and implementation of a road closure program in the North Cascades Grizzly Bear Recovery Area of the Mt. Baker-Snoqualmie National Forest, to reduce human use disturbance in the area and increase the effectiveness of spring and early summer grizzly bear foraging habitat. Funding for licensee's contribution to the cost of planning, environmental review and implementation for this purpose is not to exceed \$120,000. If the USDA-FS does not incur these costs within the first six months of license issuance, funds shall be held until requested by the USDA-FS, or converted to use for the TERF described in Article 602, when and if directed by the USDA-FS.

**Article 601  
Baker River Coordinating Committee**

*Creation of Baker River Coordinating Committee*

Within six months of license issuance, licensee shall convene an initial meeting of the licensing implementation entity to be referred to as the “Baker River Coordinating Committee” (BRCC). Licensee shall provide each signatory to the “Baker River Hydroelectric Project Relicensing Comprehensive Settlement Agreement” (Settlement) a minimum of 30 days notice and invite each signatory to designate a representative, and an alternate representative. The purpose of the BRCC and Resource Groups is to implement the terms of the Settlement and participate on license implementation committees. In the event that an agency, tribe, non-governmental organization, or individual who was not a party to the Settlement seeks membership on the BRCC, licensee shall allow participation by a non-party only upon the unanimous approval of the BRCC, as defined in this article.

*Meeting Procedures of the BRCC and Resource Groups*

During the term of the license, licensee shall convene meetings of the BRCC, as necessary, to comply with the consultation requirements of the license. Licensee shall convene a meeting of the BRCC at least once annually. Licensee shall provide each representative on the BRCC with at least ten days notice of any meeting of the BRCC, and shall include a proposed agenda for each meeting.

At the first meeting of the BRCC, licensee shall establish individual resource technical groups that are anticipated to be involved in addressing ongoing license implementation issues as licensee carries out the terms and conditions of the license, including, without limitation: the Terrestrial Resources Implementation Group (TRIG); the Recreation Resources Group (RRG); the Aquatics Resources Group (ARG); and the Cultural Resources Advisory Group (CRAG) (Resource Group(s)). Other sub-groups may be established by the BRCC as needed to address license issues that arise during the term of the license. Each party to the Settlement can be a member in a Resource Group or Group(s) and the BRCC, upon notifying the licensee in writing of its designated representative(s). A party may designate its primary representative, and any alternate representatives. Licensee shall establish meeting notice requirements and protocols for meetings of the TRIG, RRG, ARG, and CRAG at the first annual meeting of the BRCC, following consultation with all members of the BRCC. In the event of any conflict between license articles and any meeting protocols established, the terms of the license shall control.

Licensee shall arrange for the services of a neutral, non-BRCC member to record and distribute minutes of BRCC and Resource Group meetings, if agreed to by the BRCC at any time.

*License Implementation Framework*

For the term of the license, licensee shall consult with and schedule regular meetings of all Resource Groups, who will be invited to participate in all licensing implementation decisions pertaining to the resource area assigned to the Resource Group. The focus of license implementation decision-making will be within the Resource Groups. Meetings of the BRCC will be established to address issues affecting overall license implementation issues, annual updating, and other issues identified in this article or by the Resource Groups. The Resource Groups are intended to function as technical groups convened on an ongoing basis to address ongoing implementation issues throughout the term of the license. The BRCC is intended to function as a policy level group for decision-making issues that are not resolved in Resource Groups, as described in this article, and otherwise as a way of communicating with all signatories.

*Licensee Implementation and Decision-Making*

In carrying out licensee's obligations under the license, licensee shall work collaboratively with all members of the BRCC to comply with license articles and make informed decisions related to the operation of the Baker River Hydroelectric Project. Specifically, licensee shall:

- a) document the initial members of the BRCC and Resource Group representatives by compiling a list of all parties who have provided licensee of notice of their BRCC representatives and Resource Group representative(s);
- b) record any votes taken by the BRCC or Resource Groups by giving each BRCC member one vote on all matters to be decided by the BRCC, and each Resource Group member with one vote on all matters to be decided by the Resource Group;
- c) establish, and keep updated, a membership list of the BRCC as a whole and each of the Resource Groups established for the term of the license, including, without limitation, the TRIG, RRG, ARG, and CRAG. Each list shall contain the name of the party to the Settlement, the party's designated representative and alternates, and relevant contact information;
- d) chair the meetings of the BRCC, TRIG, RRG, ARG, and CRAG;
- e) submit decisions to the BRCC as follows:

Licensee shall only offer a vote to be taken on any license implementation issue at a regularly convened meeting of the BRCC, after the licensee has provided a minimum of two weeks written notice including an agenda and any issues on which a decision will be requested, made in accordance with the following decision-making protocol:

Decisions shall be made by consensus, defined as lack of objection. If consensus is not achieved at the Resource Group level, the BRCC may take a vote after

**Settlement Agreement  
Baker River Hydroelectric Project**

licensee has complied with subsection (f) of this article and, for Articles 108, 109, 305, 502-505, 602, and 603 only, after affected resource agencies and tribes take an advisory vote.

For decisions related to implementation of plans for Articles 108, 109, 305, 502-505, 602, and 603 only, the BRCC may approve a proposal on a majority vote of the BRCC. If an advisory vote is not adopted by a majority vote at the BRCC, the meeting notes shall contain an explanation for not adopting the advisory vote.

For any decision related to a plan required by any article, consensus shall be required prior to filing the plan with the Commission, but licensee may timely file the proposed plan if consensus has not been achieved and licensee would risk noncompliance with a timing requirement. Licensee shall include in any plan submitted to FERC for which consensus was not achieved an explanation of any dispute relating to the proposed plan, along with the review and comments received in accordance with individual articles. If, following discussion at a BRCC meeting convened in accordance with the notice requirements of this article, a proposal does not achieve consensus, the proponent may request a vote. Each member of the BRCC will have one vote and only designated representatives will vote. Licensee shall record all votes, and any consensus achieved, in the minutes of the meeting during which a vote is taken.

After one vote, if consensus is not achieved, the proponent(s) may request a second vote. Any member voting against the proposal will explain the basis for the vote that specifically addresses the reason for the opposition and other relevant requirements of the license article(s) prompting the vote.

Licensee shall only offer a vote to be taken on any matter assigned for consultation with the BRCC, at a regularly convened meeting with a quorum present at the meeting. A quorum for a meeting of the BRCC, shall include at least one representative, or proxy, of each of the following to be present: licensee, the federal agencies (USDA-FS, USFWS, NPS, NOAA Fisheries), the state agencies (Ecology, WDFW, DNR), and the tribes (SSIT, SITC, USIT).

f) submit matters to the BRCC if the Resource Groups are unable to reach consensus decisions on a resource issue, or a quorum cannot be established as described in subsection (e) of this article, after complying with the following procedures:

1. Licensee shall provide at least two weeks notice of Resource Group meetings and the notice shall include a draft agenda and any issues on which a decision will be requested;

2. Only a member of the Resource Group may make a proposal for a decision, although this is not intended to preclude the source of the proposal coming from a person or entity other than a member as long as a Resource Group member sponsors the proposal;

*Settlement Agreement  
Baker River Hydroelectric Project*

3. Resource Group decisions shall be made by consensus, defined as the lack of objection by members present at the meeting;

4. If consensus for a particular decision does not exist, the proponent of the proposal may request a vote, with each member having one vote per designated representative;

5. Licensee shall cause meeting minutes for each meeting where a vote is taken to contain a record of the votes and any consensus achieved;

6. After one vote, if consensus is not achieved, any member of the Resource Group may request a second vote; and

7. If consensus is not achieved after the second recorded vote, licensee, at the request of the proponent, shall refer the disputed proposal to the BRCC in accordance with subsection (e) of this article. The proponent may provide notice of the intent to refer at the time of second vote, or subsequently. Licensee shall not be required to include the decision on the agenda for a meeting of the BRCC to consider the proposal until the proponent(s); a) provides actual notice of the dispute at least three weeks prior to the date of the requested BRCC meeting at which the referred proposal is to be heard, and b) provides a written explanation of its vote at least two weeks prior to the requested meeting of the BRCC. Any member voting against the proposal will explain the basis for the vote that specifically addresses the reason for the opposition and other relevant requirements of the license article(s) prompting the vote.

g) for any articles requiring consultation with Resource Groups and/or specific parties, and for the purposes of the implementation of the license and Settlement only, licensee shall be deemed to have complied with the requirement to consult if licensee has communicated in writing with the party the licensee is required to consult with and provided information required by any specific article; and

h) only offer a vote to be taken on any matter assigned for consultation with the Resource Groups, at a regularly convened meeting with a quorum present at the meeting. A quorum for a meeting of the Resource Groups, or any of its resource groups, shall include at least one representative, or proxy, of each of the following to be present: licensee, the federal agencies (USDA-FS, USFWS, NPS, NOAA Fisheries), the state agencies (Ecology, WDFW, DNR), and the tribes (SSIT, SITC, USIT), or as otherwise defined by consensus of the BRCC.

Licensee may not rely on any decisions made by the BRCC, or Resource Groups, for any other purpose than complying with the requirements of the license. Licensee shall obtain any approvals required under applicable law related to any decision made by the BRCC for purposes of enabling licensee to comply with the requirements of the license.

***Settlement Agreement  
Baker River Hydroelectric Project***

*Subject Matters for BRCC, Resource Group Communications and Meetings*

Licensee may convene meetings of the BRCC, TRIG, RRG, ARG, and CRAG, respectively, for the following purposes, or for any other purpose consistent with the license, or at the request of two or more members of the BRCC:

a) TRIG meetings may be convened to address one or more of the following issues or other issues identified by the TRIG: 1) licensee's implementation of Articles 501-517 (the Terrestrial Articles), 2) planning required by the Terrestrial Articles, 3) the scope, design, and conduct of any studies required to implement the Terrestrial Articles, 4) the discussion of study results pertaining to the implementation of the Terrestrial Articles, 5) land acquisition and selection criteria, required by any articles, 6) resource Project funding decisions, as described in Article 602 related to the Terrestrial Articles, 7) any issues identified during any required monitoring related to the Terrestrial Articles, and 8) any required annual reporting for the Terrestrial Articles;

b) RRG meetings may be convened to address one or more of the following issues or other issues identified by the RRG: 1) licensee's implementation of Articles 301-318 (the Recreation Articles), 2) planning required by the Recreation Articles, 3) the scope, design, and conduct of any studies required to implement the Recreation Articles, 4) the discussion of study results pertaining to the implementation of the Recreation Articles, 5) resource Project funding decisions, as described in Article 602 related to the Recreation Articles, 6) any issues identified during any required monitoring related to the Recreation Articles, and 7) any required annual reporting for the Recreation Articles;

c) ARG meetings may be convened to address one or more of the following issues or other issues identified by the ARG: 1) licensee's implementation of Articles 101-111, 401 and 505 (the Aquatics Articles), 2) planning and design review required by the Aquatics Articles, 3) the scope, design, and conduct of any studies required to implement the Aquatics Articles, 4) the discussion of study results pertaining to the implementation of the Aquatics Articles, 5) land acquisition and selection criteria, as described in any article, 6) resource Project funding decisions, as described in Article 602 related to the Aquatics Articles, 7) any issues identified during any required monitoring related to the Aquatics Articles, and 8) any required annual reporting for the Aquatics Articles;

d) CRAG meetings may be convened to address one or more of the following issues or other issues identified by the CRAG: 1) licensee's implementation of Article 201 (the Cultural Article), 2) planning required by the Cultural Article, 3) the scope, design, and conduct of any studies required to implement the Cultural Article or implement the HPMP, 4) the discussion of study results pertaining to the implementation of the Cultural Article, 5) the development of any needed information or reports for the completion of the Section 106 process, 6) any meetings required for pre-construction or land disturbance activities; 7) any issues identified during any required monitoring related to the Cultural Article, and 8) any required annual reporting for the Cultural Article; and

***Settlement Agreement  
Baker River Hydroelectric Project***

e) BRCC meetings may be convened to address one or more of the following issues or other issues identified by the BRCC or Resource Groups: 1) any matter requiring a vote of the BRCC, as submitted by any of the Resource Groups in accordance with the requirements of this article, 2) overall Project implementation status and reporting, and 3) disputes arising from meetings of the Resource Groups not resolved by the Resource Group.

***Dispute Resolution***

In the event licensee is unable to document the consensus of a Resource Group related to the subject matter addressed by a Resource Group and required by a license article, licensee shall notify the BRCC of the nature of the issue, the efforts taken to resolve the issue, and any recommendation or agreed written statement of the issue developed by the Resource Group, as described in this article. In the event the BRCC resolves the issue, licensee shall communicate the results to the Resource Group members. In the event the BRCC does not resolve the issue, licensee shall notify all signatories of the Settlement of the failure of the BRCC to resolve the issue. Licensee shall stay the implementation of any decision reached by majority vote concerning Articles 108, 109, 305, 502-505, 602, and 603 at the request of any member of the minority who provides notice they are invoking the dispute resolution procedures authorized in Section 4 of the Settlement, unless licensee is required to proceed with implementation by the license or other applicable law.

Disputes submitted to the Commission for consideration shall be limited to alleging an inconsistency: 1) between a proposed plan and an article; 2) between a proposed implementation action and an approved plan; or 3) between proposed implementation action and the intent of an article, even if consistent with the approved plan.

***Reporting and Auditing***

Licensee shall provide an annual report generally summarizing the activities of the BRCC, TRIG, RRG, ARG, and CRAG during the preceding year as required by Articles 102, 201, 301, 501, 601, and 602 to each of the members of the BRCC, any of the Resource Group members who request a copy, and to the Commission.

Licensee shall allow a minimum of 30 days for BRCC members to comment and make recommendations before filing the annual report with the Commission no later than 90 days following the anniversary of the effective date of the license. Licensee shall include with the final report documentation of submission to all BRCC members for review and comment and descriptions of how any comments were addressed in the final report, or reasons for not addressing any comments, based on Project-specific information.



**Article 602  
Required Funding**

Within one year of license issuance, licensee shall establish the Baker River Project Funds (the Baker Funds) to support resource protection, mitigation, and enhancement measures identified during the term of the license, consisting of four separate funds: the Terrestrial Enhancement and Research Fund (TERF), the Recreation Adaptive Management Fund (RAM), the Habitat Enhancement, Restoration and Conservation Fund (HERC), and the Cultural Resources Enhancement Fund (CREF). Each of the Baker Funds shall be a tracking account maintained by licensee. The total amount, excluding interest, to be credited to the Baker Funds, shall be the amounts set forth in Table 1, based on the term of the license, stated in 2006 dollars, which amount licensee shall credit to the individual funds as follows during the term of the license:

Table 1.

<b>FUND NAME</b>	<b>YEAR OF FIRST DEPOSIT</b>	<b>ANNUAL DEPOSIT AMOUNT (2006\$)</b>
TERF	2016	\$25,000
RAM	2006	\$50,000
HERC	2015	\$50,000
CREF	2016	\$20,000 through 2020 \$25,000 2021 through 2024 \$30,000 2025 through 2030

For years 30 to 50 of a new license term greater than 30 years, the schedule of payments to the funds listed in Table 1 shall be based on a calculation of the number of years for the new license divided by 30 + a 10% risk uncertainty factor multiplied by the 30th year payment value in the fund. For example, for a 50-year license, the calculation for the 50th year payment in the TERF fund would be  $(50/30) + .1 \times \$25,000 = (1.67 + .1) \times \$25,000 = \$44,167$  (2006\$). For the CREF fund which does not have a payment in the 30th year, the calculation for years 31 and following shall be based on the average of the payments years 10 through 25 (\$25,000).

**Settlement Agreement**  
**Baker River Hydroelectric Project**

License shall make additional funds available according to the schedule set forth on Table 2 for each year of the term of the license in excess of 30 years, stated in 2006\$, and the same formula shall apply for any annual licenses. If the license is not issued in 2006, the years shown in Table 2 shall be adjusted for funding to begin in the first year of license issuance and carry forward through the term of the license.

Table 2.

Year of license		TERF	RAM	HERC	CREF	
30	2035	\$ 25,000	\$ 50,000	\$ 50,000	\$ 25,000	
31	2036	\$ 28,333	\$ 56,667	\$ 56,667	\$ 28,333	
32	2037	\$ 29,167	\$ 58,333	\$ 58,333	\$ 29,167	
33	2038	\$ 30,000	\$ 60,000	\$ 60,000	\$ 30,000	
34	2039	\$ 30,833	\$ 61,667	\$ 61,667	\$ 30,833	
35	2040	\$ 31,667	\$ 63,333	\$ 63,333	\$ 31,667	
36	2041	\$ 32,500	\$ 65,000	\$ 65,000	\$ 32,500	
37	2042	\$ 33,333	\$ 66,667	\$ 66,667	\$ 33,333	
38	2043	\$ 34,167	\$ 68,333	\$ 68,333	\$ 34,167	
39	2044	\$ 35,000	\$ 70,000	\$ 70,000	\$ 35,000	
40	2045	\$ 35,833	\$ 71,667	\$ 71,667	\$ 35,833	
41	2046	\$ 36,667	\$ 73,333	\$ 73,333	\$ 36,667	
42	2047	\$ 37,500	\$ 75,000	\$ 75,000	\$ 37,500	
43	2048	\$ 38,333	\$ 76,667	\$ 76,667	\$ 38,333	
44	2049	\$ 39,167	\$ 78,333	\$ 78,333	\$ 39,167	
45	2050	\$ 40,000	\$ 80,000	\$ 80,000	\$ 40,000	
46	2051	\$ 40,833	\$ 81,667	\$ 81,667	\$ 40,833	
47	2052	\$ 41,667	\$ 83,333	\$ 83,333	\$ 41,667	
48	2053	\$ 42,500	\$ 85,000	\$ 85,000	\$ 42,500	
49	2054	\$ 43,333	\$ 86,667	\$ 86,667	\$ 43,333	
50	2055	\$ 44,167	\$ 88,333	\$ 88,333	\$ 44,167	
30 year total		\$ 500,000	\$ 1,500,000	\$ 1,100,000	\$ 375,000	
50 year total		\$ 1,225,000	\$ 2,950,000	\$ 2,550,000	\$ 1,100,000	Total
30-50 year incremental increase		\$ 725,000	\$ 1,450,000	\$ 1,450,000	\$ 725,000	\$ 4,350,000

***Settlement Agreement  
Baker River Hydroelectric Project***

Unless otherwise indicated, all costs or payment amounts specified in dollars in any article shall be deemed to be stated as of the year 2006, and the licensee shall escalate such sums as of January 1 of each following year (starting in January 2006) according to the following formula:

$$AD = D \times \frac{NGDP}{IGDP}$$

WHERE:

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

D = Dollar amount prior to adjustment

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

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

“GPD-IPD” is the value published for the Gross Domestic Product Price Deflator by the U.S. Department of Commerce, Bureau of Economic Analysis in the publication Survey of Current Business, Table 7.1 (being on the basis of 2000 = 100), in the third month following the end of the applicable quarter. If that index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted by the agreement of the parties. If the base year for GPD-IPD is changed or if publication of the index is discontinued, the licensee shall promptly make adjustments or, if necessary, select an appropriate alternative index acceptable to the parties to achieve the same economic effect.

Each deposit shall be credited to the tracking account on the anniversary of the effective date of the license.

Funds credited to the tracking account but not spent on specific projects shall accrue interest, which shall be credited to the appropriate fund to be used for the purposes described in this article for the fund. Any funds intended to be applied for the purposes of a specific article that remain at the end of any year shall be carried over into succeeding years during the term of the license.

The accrued interest rate on all funds required by the license shall be the 90-day T-Bill rate. An accounting of interest accrued using this rate shall be provided by licensee when the annual report required by this article is provided to the BRCC. If the 90-day T-Bill rate ceases to be published in the Wall Street Journal, the Parties shall meet and agree upon an alternate source for the interest rate. If at the end of the license term, including any annual licenses, contributions and accrued interest remain unallocated or uncommitted to a specific project, they shall be retained by the licensee and licensee’s funding obligation shall cease.

***Settlement Agreement  
Baker River Hydroelectric Project***

Funds may be used for resource projects as described in this article on an annual basis or may accumulate for future use. If a resource project is identified that cannot be accomplished with the balance available in the related fund, licensee shall deposit an advance payment of up to 50% of the amount required for the succeeding year, except that advance funding will be required in no more than three consecutive years and shall not increase the overall total funding required for any article, unless otherwise agreed by licensee for additional years.

Funds may not be used to enforce licensee's compliance with any article, and licensee shall not be required to compensate BRCC members' routine participation expenses through any of the Baker Funds except as otherwise required by a specific license article or as agreed by consensus of BRCC. Licensee shall bear its own costs for all administrative, legal and overhead costs associated with management of the funds, including, without limitation, calculation of interest and reports to the BRCC and the Commission, and shall not assess any costs against the funds required to be made available. In making funds available as required by any license article, licensee may provide funds through grants or other means that are consistent with the purpose of the funds in order to carry out the stated purpose(s) of the article.

***TERF FUND – Terrestrial Enhancement Resource Fund***

The TERF Fund may be used for actions to enhance, conserve, acquire and/or restore habitat for terrestrial species. Actions funded by the TERF will be reviewed and approved by the TRIG subject to the decision making and dispute resolution procedures described in Article 601. Projects may be considered based upon any written requests to the TRIG sponsored by any member of the BRCC and following review and comment by all members of the TRIG. Projects funded will be located in the Skagit River basin, including, and with emphasis on, the Baker River basin. TERF Funds may be used for necessary studies designed to evaluate and monitor the potential benefits or environmental effects of any requested project.

***RAM FUND – Recreation Adaptive Management Fund***

The RAM fund may be used for actions to address recreation management resource needs in the Baker Basin and immediately within the hydraulic influence of the Baker Basin that are not otherwise identified and addressed at the time of license issuance. Actions funded by the RAM Fund will be reviewed and approved by the RRG subject to the decision making and dispute resolution procedures described in Article 601. Projects may be considered based upon any written requests to the RRG sponsored by any member of the BRCC and following review and comment by all members of the RRG. Some possible uses of RAM funds may include, without limitation, reservoir hazard management needs in excess of the funding limitation of Article 304, additional measures to limit the impacts of dispersed recreation at Upper Baker not addressed by the funding limitation of Article 308, aesthetic enhancements to non-Project facilities not addressed by the funding limitation of Article 302, unusual trail and trailhead maintenance costs associated with natural events not under the control of licensee and not addressed under the routine maintenance

*Settlement Agreement  
Baker River Hydroelectric Project*

requirements of Articles 314, and increased development of the Bayview Campground, the redeveloped Baker Lake Resort, other USDA-FS developed campgrounds, and to monitor dispersed recreation use adjacent to Lake Shannon for desired improvements in excess of improvements that can be made within funding limitations of Articles 303, 305, 308, and 309. RAM Funds may be used for necessary studies designed to evaluate and monitor the potential benefits or environmental effects of any requested project.

*HERC FUND – Habitat Enhancement, Restoration, and Conservation Fund*

The HERC fund may be used for actions to enhance, conserve and/or restore aquatic species. Actions funded by the HERC Fund will be reviewed and approved by the ARG subject to the decision making and dispute resolution procedures described in Article 601. Projects may be considered based upon any written requests to the ARG sponsored by any member of the BRCC and following review and comment by all members of the ARG. Eight years after license issuance the licensee, in consultation with the ARG, will develop: 1) a protocol for proposing projects to be considered for the use of these funds, including a timetable for presenting the proposal to the ARG and final selection of projects on an annual basis; 2) criteria for selecting projects; 3) a process for evaluating implemented project benefits to aquatic species; and 4) reporting and audit requirements. The following geographic priority will be considered in this selection process in addition to other criteria developed by the ARG for the HERC Fund: a) within the Baker River basin; b) within the Middle Skagit River immediately downstream of the Baker River; c) in the lower Skagit River/estuary; and d) elsewhere in the Skagit River basin. Possible uses of the HERC funds may include, without limitation, resident salmonid programs, native species initiative, recreational fishing opportunities, non-native or invasive aquatic animal species, water quality enhancement, riparian enhancement, channel modification, noxious weed control, modifications to fish passage facilities and supplementation programs in the basin not required by other articles, LWD placement projects independent of Article 109, and aquatic habitat restoration and conservation measures.

In license year ten, \$50,000 shall be made available from the HERC Fund for a study or protection, mitigation and enhancement measures to benefit native, non-salmonid species that may be isolated between Lake Shannon and Baker Lake. If the ARG does not approve a study or measures for year 2016 HERC funding in year 2015, the allocation of \$50,000 will be available in subsequent years and 2016 funding can be applied to other approved projects. The determination of HERC Fund use for this purpose in a given funding year shall be made prior to the year in which the fund would be expended.

*CREF – Cultural Resources Enhancement Fund*

The CREF Fund may be used for actions for the enhancement, conservation, and/or restoration of cultural resources. Actions funded by the CREF Fund will be reviewed and approved by the CRAG subject to the decision making and dispute resolution procedures described in Article 601. Projects may be considered based upon any written requests to the CRAG sponsored by any member of the BRCC and following review and comment by

*Settlement Agreement  
Baker River Hydroelectric Project*

all members of the CRAG. CREF Funds may not be used for purposes of funding costs required by the HPMP.

*Evaluation Process for Use of Baker Funds*

Proposed projects must be consistent with applicable laws and, to the extent feasible, will be consistent with policies and comprehensive plans in effect at the time the project is proposed. Within two years following license issuance, licensee shall, in consultation with the BRCC, develop a system to evaluate potential resource projects that is to be approved by each of the ARG, TRIG, RRG, and CRAG (Project Evaluation System). The Project Evaluation System shall include criteria and procedures for fund expenditures required by this article.

For each project proposed, licensee shall apply the factors and criteria established in the Project Evaluation System and submit a written recommendation to the Resource Group(s) charged with funding review, and request a meeting of the Resource Group(s) to discuss the proposed project. Decisions and/or disputes of each Resource Group related to a proposed project shall be documented. The development of criteria for evaluating projects in the Project Evaluation System may include, without limitation, the following considerations:

- a) timeframe for project implementation and permitting requirements and cost;
- b) horizon and scope for benefits (long-term multiple benefits best);
- c) whether the project could be cost shared with other funding sources;
- d) probability of success based on prior implementation; and
- e) cost-effectiveness.

*Fund Commitment*

Once a project is approved, licensee shall authorize and commit the expenditure of funds for the approved project.

*Fund Disbursement*

Funds shall be disbursed by licensee for approved resource projects at the time of receipt of invoices for actual expenditures incurred in conformance with the approved project and implementation schedule, unless otherwise provided by licensee.

*Land Ownership and Transfer*

All lands within the Project boundary shall be owned by licensee, or licensee shall have sufficient interests in any such land to carry out the License, unless otherwise approved by

*Settlement Agreement  
Baker River Hydroelectric Project*

the Commission. Lands within the project boundary may not be transferred to a third party without the Commission's approval. At the time of submitting a proposed transfer to the Commission, licensee shall include: all comments received from BRCC representatives; a description of all proposed interests in lands; proposed assurances that the land will be managed consistent with the requirements of the license; and all other information considered by the BRCC or appropriate Resource Group(s) in evaluating the proposed transfer.

*Lands Outside of Project Boundary Related to License*

The licensee may purchase land outside of the Project boundary, and it may provide for transfer of such land to a third party, pursuant to this or other articles. Any purchase or transfer pursuant to another article shall be consistent with the requirements of that article, including any approved plan. Any purchase or transfer through a Fund in this article shall be consistent with the selection criteria and other requirements of this article.

*Assurances by Third Party*

Regardless of whether land related to the license is located within or outside of the Project boundary, licensee may transfer land to a third party only if the third party provides appropriate assurances, developed by licensee in consultation with, and following approval by, the BRCC or appropriate Resource Groups, that the land will be owned and maintained consistent with the requirements of the applicable article, at least for the term of the license. Appropriate constraints may include, without limitation, restrictive covenants, conservation easements, or conveyances that provide for licensee's continuing right of use or right to recapture the land if not maintained as required by the relevant article.

**Article 603  
Adaptive Management**

In the development of land management objectives, land acquisition selection criteria, and utilization of funds available for the enhancement of various resources, licensee shall consider alternative strategies for meeting measurable goals and objectives. If changed environmental or regulatory conditions require different means and methods for adequate resource enhancement and management, then acquisition, enhancement, and management actions developed in various plans shall be adjusted according to the changed conditions through a plan amendment process for each article requiring planning, provided that licensee shall not be required to make additional funds available for these purposes unless specifically required in an article. Alternative strategies that require additional funding may occur only if funding is available and approved for use from one of the research and enhancement funds identified in Article 602.



**Appendix A-1 to Articles.**

**Noxious Weed Management Guidelines and Treatment Options**

Specific guidelines for actions in the Noxious Weed Management Plan

<b>Species Or Class</b>	<b>Management Action Within The Plan Area</b>	
	<b>Federal Lands</b>	<b>Non-federal Lands</b>
Class A	Eradicate	Eradicate
Class B Designate	Eradicate	Control
Class B	Contain (unless county raises priority, or as noted below for English ivy and reed canarygrass)	Contain (unless county lists species for control, or as noted below for English ivy and reed canarygrass)
Class C	Contain (unless county raises priority, or as noted below for English ivy and reed canarygrass)	Contain (unless county lists species for control, or as noted below for English ivy and reed canarygrass)
English ivy	Eradicate	Eradicate
Reed canarygrass	<ul style="list-style-type: none"> <li>• Contain, except as specified below for the seven wetlands.</li> <li>• <i>Carex flava</i> site: manage and fund as per Article 510</li> </ul>	Contain

Treatment methods available under the Noxious Weed Management Plan.

<b>Species</b>	<b>Common Name</b>	<b>Potential Treatment Methods<sup>a</sup></b>
<i>Cirsium arvense</i> <sup>b</sup>	Canada thistle	Manual control: hand pulling, mowing Biological control Herbicide application: Aquatic formulation of Glyphosate Shade planting
<i>Cirsium vulgare</i> <sup>b</sup>	Bull thistle	Manual control: hand pulling, mowing Biological control

**Settlement Agreement**  
**Baker River Hydroelectric Project**

<b>Species</b>	<b>Common Name</b>	<b>Potential Treatment Methods<sup>a</sup></b>
		Herbicide application: Aquatic formulation of Glyphosate Shade planting
<i>Cytisus scoparius</i> <sup>b</sup>	Scotch broom	Manual control: hand pulling, cutting, mowing Biological control Herbicide application: Aquatic formulation of Glyphosate Shade plantings in conjunction with other treatments
<i>Geranium robertianum</i> <sup>b</sup>	Herb Robert	Manual control: hand pulling, mowing Herbicide application: Aquatic formulation of Glyphosate
<i>Hedera helix</i> <sup>b</sup>	English Ivy	Manual control: cutting, hand pulling and grubbing Herbicide application with surfactants
<i>Phalaris arundinacea</i> <sup>b</sup>	Reed canarygrass	Manual control: hand pulling, mowing, mulch Herbicide application: Aquatic formulation of Glyphosate Steam treatment Shade Plantings
<i>Senecio jacobaea</i> <sup>b</sup>	Tansy ragwort	Manual control: hand pulling Biological control Herbicide application: Aquatic formulation of Glyphosate Shade plantings and healthy plant communities
<i>Polygonum cuspidatum</i> <sup>c</sup>	Japanese knotweed	Manual control: cutting/bending stems, mowing Herbicide application: Aquatic formulation of Glyphosate Shading

<sup>a</sup> If new, high priority (e.g., Class A or B designate) noxious weeds are discovered within the Project area, they will be treated in the most effective manner possible, within the guidelines and recommendations of the Region 6 EIS for Preventing and Managing Invasive Plants.

<sup>b</sup> Species identified in the T-6 Noxious Weed Study.

<sup>c</sup> Species not identified in the T-6 Noxious Weed Study.

*Settlement Agreement  
Baker River Hydroelectric Project*

In addition, the TRIG shall evaluate other invasive species management in the plan area periodically to determine if changes are warranted due to factors such as additions to the noxious weed lists; changes in federal, state or county regulations; or the discovery of new treatment methods. Licensee shall monitor changes to the Skagit County and Whatcom County noxious weed lists through annual acquisition of the updated noxious weed lists, typically available during the first quarter of the year from each county's Noxious Weed Control Board.

The Noxious Weed Management Plan shall be designed to manage specified invasive non-native plants and noxious weeds within the plan area on a 5-year cycle of treatment and monitoring, and reduce the potential for new introductions or reintroductions for the remainder of the license term. During these periods, designated portions of the plan area shall be resurveyed, and treatment methods re-evaluated. Options for management of existing weeds shall be evaluated and implemented during each 5-year cycle. Current county, state and federal weed control regulations and policies, as well as noxious weed lists, shall be used as guidelines for weed management, and shall be updated for each 5-year cycle.

Prevention on National Forest System lands in the plan area shall be accomplished by implementing the specific measures listed in the USDA-FS Forest Plan Amendment #14: Best Management Practices for Prevention of Noxious Weeds (Appendix C in: Potash, L. 1999. Forest-Wide Environmental Assessment for Noxious Weed Management on the Mt. Baker-Snoqualmie National Forest. USDA-FS, Mountlake Terrace, WA). Any updates to BMPs on National Forest System lands shall be implemented by licensee within six months of receipt from the USDA-FS.

Active restoration measures shall be implemented to decrease "weed-friendly" habitat associated with licensee ground-disturbing activities. All revegetation on USDA-FS lands shall follow USDA-FS Pacific Northwest regional policy regarding native plant movement guidelines. Use of desirable non-native species shall follow the recommendations in the Mt. Baker-Snoqualmie National Forest Native Plant Notebook, Second Edition (Potash and Aubry, 1997), or as superseded by Region 6 guidance.

**Settlement Agreement  
Baker River Hydroelectric Project**

**Appendix A-2 to Articles.**

Species and locations requiring site-specific management plans in the Baker River Project Plan for the Management of Plants of Special Status.

<b>Species</b>	<b>Location</b>	<b>Identification Number</b>
<i>Carex flava</i>	North end of Baker Lake, near mouth of Baker River	WNHP Element Occurrence # 37
<i>Schistostega pennata</i>	Wetland WB-22, near mouth of Little Sandy Creek	ISMS Location ID # 1704960
<i>Tetraphis geniculata</i>	Wetland WB-22, near mouth of Little Sandy Creek	ISMS Location ID # 1704910
<i>Schistostega pennata</i>	Wetland WB-24, near mouth of Little Sandy Creek	ISMS Location ID # 1704970
<i>Schistostega pennata</i>	Sites BN17-1 and BN17-2, along Swift Creek	ISMS Location ID # 1704990
<i>Schistostega pennata</i>	Wetland WB-18, ~ ½ mile south of the mouth of Boulder Creek	ISMS Location ID # 1705010
<i>Schistostega pennata</i>	Wetland WB-2, along West Pass Dike	ISMS Location ID # 1704980
<i>Schistostega pennata</i>	Wetland WB-11	ISMS Location ID # not yet assigned
<i>Platanthera sparsiflora</i>	Baker Lake Trail near Noisy Creek	WNHP Element Occurrence # 3
<i>Schistostega pennata</i>	Panorama Point	ISMS Location ID # 1563670

**Appendix A-3 to Articles.**

Additional Guidelines for Plan for Plants of Special Status.

The plan shall require the licensee to:

- (a) Survey all areas of proposed new Project activity or existing and future disturbance where there is the potential to impact plant species of special status. Determinations of the potential to impact plant species on federal lands shall be made by the USDA-FS using their pre-field review process. Determinations of the potential to impact plant species on non-federal lands shall be made by licensee, in consultation with the TRIG. Surveys shall be conducted and documented according to the methods used for pre-licensing rare plant surveys and described in the final rare plant survey report.
- (b) Implement individual site-specific management plans and associated actions for the species and locations identified in table below. For *Carex flava*, specifications are addressed in Article 510.
- (c) Describe the steps that will be taken if additional populations of plants of special status are discovered during the term of the license and the USDA-FS (for federal lands) or licensee and the TRIG (for non-federal lands) determine there is the potential for Project-related activities to impact the plants. The area covered by this item shall not exceed the area within the Project boundary plus areas outside the Project boundary surveyed during pre-licensing rare plant surveys or surveys conducted in accordance with subsection (a) of this Article.
- (d) Implement a monitoring and evaluation program for plant species of special status within the area affected by the Project, which shall be defined as the area encompassed by surveys conducted to satisfy the other requirements of this action. The plan shall identify the frequency of monitoring and specify measures that will be taken if monitoring indicates the population of a plant of special status is declining within the area affected by the Project.
- (e) Update the plan within one year of the addition of a species to any of the categories of special status listed above, if that species is known to occur or has the potential to occur within the area affected by the Project. Changes to the plan made to satisfy this item shall be limited to measures needed to address the newly added species. If a species is de-listed, the TRIG will determine what measures will continue for this species.

**Appendix A-4 to articles.**

*Carex flava* Guidelines.

The plan shall require licensee to:

1. Inventory and map all areas of known *Carex flava* populations and the distribution of reed canarygrass within 200 feet of those populations around Upper Baker Lake. Inventories shall be conducted and documented in sufficient detail, as determined through consultation with botanists with expertise on the species, to assess the baseline population status of *Carex flava* over time and to determine the effectiveness of management actions.
2. Develop and implement control strategies for reed canarygrass in and around the *Carex flava* populations. These control strategies shall be developed in consultation with botanists with expertise on *Carex flava* and reed canarygrass, and shall be designed to eliminate all direct competition between the two species, at a minimum.
3. Develop and implement a monitoring and evaluation program for the entire license term that answers the following questions:
  - a. Is the *Carex flava* population increasing, decreasing, or remaining stable?
  - b. How effective are the control measures for reed canarygrass?
  - c. Do the control measures for reed canarygrass result in beneficial or adverse effects to *Carex flava*?
  - d. What are “suitable sites” for the establishment of *Carex flava* (microsite characteristics, etc.)?
  - e. Is treatment effectiveness influenced by hydroperiod (frequency, duration, timing, depth of flooding/saturation) associated with fluctuations in reservoir levels?
  - f. Are the reed canarygrass control measures necessary for the protection of *Carex flava*? If the answer to this is no, the control measures may be discontinued.
  - g. Are there other factors affecting the health of the *Carex flava* population?
  - h. What should replace reed canarygrass in areas where it has been eliminated?
4. If there is greater than a 20 percent reduction in the *Carex flava* population from the original baseline, licensee shall implement a seed and/or plant collection program to raise plants off-site, and establish and/or re-establish *Carex flava* populations at suitable “planting

***Settlement Agreement  
Baker River Hydroelectric Project***

sites” around upper Baker Lake. Since it is unclear how to distinguish an “individual” of this species, guidance on how to determine what constitutes 20 percent shall be in the management plan.

5. If the reed canarygrass control is not effective, or is determined through monitoring not to be needed, and the planting program described in Item 4 is not successful in maintaining or expanding the *Carex flava* population, licensee shall develop and implement additional management measures for the species. Additional management measures shall be funded from the Terrestrial Enhancement and Research Fund (TERF).

**Appendix A-5. Recreation Implementation of Schedule.**

Fifty-year implementation schedule for recreation articles specifying cost allocation for the Baker River Project License.

Year of License	Year	302 Aesthetics management	303* Baker Lake Resort Re-development	304 Baker Reservoir Waters Safety Plan	305 Lower Baker Developed Recreation	306* Upper Baker Visitor Information Funding	307 Upper Baker Visitor Interpretive Services Funding	308 Dispersed Recreation Management Funding	309* Bayview Campground Rehabilitation Funding	310 Upper Baker Trail and Trailhead Construction Funding	311 Lower Baker Trail Construction Funding	312 Developed Recreation Monitoring and Funding	313* Upper Baker Developed Recreation Maintenance Funding	314 Upper Baker Trail and Trailhead Maintenance Funding	315 Lower Baker Trail Maintenance	316 Forest Road Maintenance	318 Law enforcement
1	2006	6437		50453		2500	52138	47621					30000	70808		17500	135000
2	2007	24000		128000	250000	2500	27200	81000	114710				51874	70808		17500	95000
3	2008	30500	91526	4000		2500	27200	81400	940000				146000	70808		17500	124383
4	2009	24000	680000	4000		2500	27200	27400		47134			82000	70808		17500	95000
5	2010	24000		4000		2500	27200	27400		347140			148000	70808		17500	95000
6	2011	106000		4000		323190	27200	27400		300000			120300	70808		284417	95000
7	2012	4000		8000		11680	27200	27400					35000	81420		17500	98000
8	2013	4000		4000	851084	11680	27200	27400				29000	35000	81420		17500	95000
9	2014	4000		4000	20000	11680	27200	27400				200000	35000	81420		17500	95000
10	2015	10500		4000	20500	11680	33200	27400					35000	81420		17500	95000
11	2016	4000		4000	20000	11680	27200	27400					35000	81420		17500	95000
12	2017	4000		4000	20000	11680	27200	59400			200000		35000	81420		17500	98000
13	2018	4000		55000	20500	24680	27200	59400					35000	80800	620	167500	95000
14	2019	4000		4000	20000	11680	27200	27400	30000				35000	80800	620	17500	95000
15	2020	4000		4000	20000	11680	27200	27400					35000	80800	620	17500	95000
16	2021	4000		4000	40500	11680	27200	27400					35000	80800	620	17500	95000
17	2022	10500		4000	20000	11680	27200	27400				44488	35000	80800	620	17500	98000
18	2023	4000		4000	25000	11680	27200	27400				400000	35000	80800	620	17500	95000
19	2024	4000		8000	20500	11680	27200	27400	130000				35000	80800	620	17500	95000
20	2025	4000		46000	20000	11680	33200	27400					40000	80800	620	17500	95000
21	2026	4000		4000	20000	11680	27200	27400					40000	80800	620	167500	95000
22	2027	4000		4000	20500	11680	27200	27400					40000	80800	620	17500	98000
23	2028	4000		51000	20000	124680	27200	59400					43000	80800	620	17500	95000
24	2029	10500		4000	20000	11680	27200	59400					50000	80800	620	17500	95000
25	2030	4000		8000	20500	11680	27200	27400					55000	80800	620	17500	95000
26	2031	4000		4000	45000	11680	27200	27400	130000				40000	80800	620	17500	95000
27	2032	4000		4000	20000	11680	27200	27400					40000	80800	620	17500	98000
28	2033	4000		4000	20500	12549	27200	27400					40000	80800	620	17500	95000
29	2034	4000		4000	20000	11680	27200	27400					40000	80800	620	167500	95000
30	2035	4000		4000	20000	11680	33200	27400					40000	80800	620	17500	95000



**Settlement Agreement  
Baker River Hydroelectric Project**

Year of License	Year	302 Aesthetics management	303* Baker Lake Resort Re-development	304 Baker Reservoir Reservoir Safety Plan	305 Lower Baker Developed Recreation	306* Upper Baker Visitor Information Services Funding	307 Upper Baker Visitor Interpretive Services Funding	308 Dispensed Recreation Management Funding	309* Bayview Campground Rehabilitation Funding	310 Upper Baker Trail and Trailhead Construction Funding	311 Lower Baker Trail Construction Funding	312 Developed Recreation Monitoring and Funding	313* Upper Baker Developed Recreation Maintenance Funding	314 Upper Baker Trail and Trailhead Maintenance Funding	315 Lower Baker Trail Maintenance	316 Forest Road Maintenance	318 Law enforcement
31	2036	10500		4000	20000	11680	27200	27400					35000	80800	620	17500	95000
32	2037	4000		4000	20000	11680	27200	59400					35000	80800	620	17500	98000
33	2038	4000		55000	20500	24680	27200	59400					35000	80800	620	17500	95000
34	2039	4000		4000	20000	11680	27200	27400					35000	80800	620	17500	95000
35	2040	4000		4000	20000	11680	27200	27400	130000				35000	80800	620	17500	95000
36	2041	4000		4000	40500	11680	27200	27400					35000	80800	620	17500	95000
37	2042	4000		4000	20000	11680	27200	27400					35000	80800	620	167500	98000
38	2043	10500		4000	25000	11680	27200	27400					35000	80800	620	17500	95000
39	2044	4000		8000	20500	11680	27200	27400					35000	80800	620	17500	95000
40	2045	4000		46000	20000	11680	33200	27400					40000	80800	620	17500	95000
41	2046	24000		4000	20000	11680	27200	27400					40000	80800	620	17500	95000
42	2047	24000		4000	20500	11680	27200	27400					40000	80800	620	17500	98000
43	2048	4000		51000	20000	124680	27200	59400	130000				43000	80800	620	17500	95000
44	2049	4000		4000	20000	11680	27200	59400					50000	80800	620	17500	95000
45	2050	10500		8000	20500	11680	27200	27400					55000	80800	620	167500	95000
46	2051	4000		4000	45000	11680	27200	27400					40000	80800	620	17500	95000
47	2052	4000		4000	20000	11680	27200	27400					40000	80800	620	17500	98000
48	2053	4000		4000	20500	12549	27200	27400					40000	80800	620	17500	95000
49	2054	4000		4000	20000	11680	27200	27400					40000	80800	620	17500	95000
50	2055	4000		4000	20000	11680	33200	27400					40000	80800	620	17500	95000
	Sum	527,857	771,526	670,453	2,047,584	1,103,348	1,414,938	1,753,821	1,604,710	694,274	200000	673,488	2,284,174	3,983,768	23,560	1,891,917	4,846,383

\* After Year 30 of the new license PSE and the USFS will review specified campground and visitor information sites for appropriate rehabilitation and refurbishment as necessary to restore to agreed standards identified in Articles 303, 306, 309 and 313. In years 30-36 the additional costs for such purposes are estimated at \$2,464,600, and in years 36-50 \$2,143,009.

**Appendix A-6.**

**Baker River Relicense Recreation  
Studies  
Study R12 Dispersed Site  
Inventory  
Location Terminology**

<b>Location Code</b>	<b>Old Name/Location Description</b>	<b>Revised Name</b>
BN1	Baker River Trailhead	Baker River Trailhead North
BN2	Right side of parking lot	Baker River Trailhead South
BN3	Spur road	Baker River Trailhead West
BN4	Berms	Rd 11/1168 Barrier
BN5	Road to lake bed	Channel Creek
BN6	Drain Pipe	Elbow Ck. Culvert
BN7	Aerial marker	Rd 11 Mile 23.7
BN8	Mossy -boat/ land	Shannon Creek Fan
BN9	#1152 - gravel pit	Rd 1152 Rock Pit
BN10	Bump out straight down	Rd 11 Mile 22.5
BN11	North of Blue tarp	Blue Tarp NE
BN12	Fish planting road - blue tarp	Blue Tarp
BN13	Bump out - motorcycle	Section 34 SW
BN14	Lakeside	Lakeside
BN15	Scott Camp	Scott Camp
BN16	#1146	Rd 1146
BN17	Swift Creek	Swift Creek
BW1	Park Creek	Park Creek Dispersed
BW2	Nowhere Circle	Nowhere Circle
BW3	Fish Ladder	Fish Ladder
BW4	#1136	Boulder North
BW5	#1136 at barrier	Rd 1136 Barrier
BW6	#0112 at # 1136	1136 Spur 012 End
BW7	entrance to # 0112	1136 Spur 012 Junction
BW8	Across from # 1130 - Mossy	Rd 1130 Junction
BW9	Boulder Creek Bridge	Boulder Creek Bridge Boulder Creek CG South (Rd 1128)
BW10	Rd. before boulder c.g. spur	
BW11	Upper Sandy	Upper Sandy
BW12	Lower Sandy	Lower Sandy
BW13	Spur off # 1122	Rd 1122 Spur
BW14	Road #1120	Rd 1120 Junction
BW15	off #1118 - Dopers Road	Rd 1118 Spur 014
BW16.5 - OMIT	#1118. 011 - Bayview	Bayview Dispersed - OMIT
BW16	Depression	Depression Lake
BW17 - OMIT	Chris and Andy site	Sno Park West - OMIT
BW18	Trailhead Parking	Baker Lake Trailhead South
BW19.5	So of Trailhead Parking	BL Trailhead Annex
BW19	East side of Dam along #1107	Forebay Peninsula
BW20	East of Dam-parking lot	UB Left Abutment

**Appendix A-6.**

**Baker River Relicense Recreation  
Studies  
Study R12 Dispersed Site  
Inventory  
Location Terminology**

<b>Location Code</b>	<b>Old Name/Location Description</b>	<b>Revised Name</b>
BE1	Noisy Creek	Noisy Creek
BE2	So. Noisy Creek	Noisy Creek West
BE3	Silver Creek (bridge)	Silver Creek
BE4	Ermine Creek	Ermine Creek
BE5	Across from old Resort	Underwater Bridge
BE6.5	Triangle Marker	White Rocks East
BE6 - OMIT	Maple Grove	Maple Grove - OMIT
BE7	Anderson Cove	Anderson Cove
BE8	Anderson Point	Anderson Point
BE9	North of Welker Creek	Welker North
BE10	Welker Creek	Welker Creek
BE11	South of Boulder Creek	Boulder South Boat-in
BE12	Lone Pine Island	Lone Pine Island
BE13	Gilligan Island	Baker River Delta
BE14	On lake next to Baker River	Hollow Trunk
BE15	North of Noisy	Noisy East
SR1 - OMIT	Shot Gun	Point 691 - OMIT
SR2 - OMIT	Everett Lake	Everett Lake - OMIT
SR3	Lake Shannon Bank Fishing	LB Bank Fishing
SB1	Thunder Creek	Thunder Creek
SB2	Nice Spot	West Bank Mile 7.25
SB3	Slide	Miner's Creek Slide

**Baker River Hydroelectric Project Relicensing  
FERC Project No. 2150  
Appendix B**

**Agreement  
Between  
Skagit County and Puget Sound Energy, Inc.**

**November 30, 2004**

**WHEREAS**, Skagit County (the "County") is engaged in ongoing efforts to identify flood control opportunities for the benefit and protection of the citizens of Skagit County;

**WHEREAS**, Puget Sound Energy, Inc. ("PSE") has, for approximately eighty-one years, maintained the Baker River Hydroelectric Project, FERC No. 2150 ("Project"), consisting of two dams, one impounding the Upper Baker Reservoir and the other impounding the Lower Baker Reservoir, which generate electricity needed by PSE to meet the needs of its 1.4 million commercial and residential customers living and working in the State of Washington;

**WHEREAS**, PSE is seeking a new license from the Federal Energy Regulatory Commission ("FERC") for the Project;

**WHEREAS**, the County desires to secure additional flood control storage from the Project;

**WHEREAS**, PSE and the County intend to work collaboratively to implement Proposed Article 107 (relating to flood control) contained in the relicensing settlement agreement to which this agreement is attached;

**NOW THEREFORE**, in consideration of the foregoing, Skagit County and PSE agree as follows:

1. This agreement shall commence as of the Effective Date of the settlement agreement to which this agreement is attached, November 30, 2004, and shall remain in effect for the term of any new FERC license accepted by PSE and any subsequent annual licenses.
2. The County shall support PSE's efforts to obtain suitable arrangements for compensation for flood storage at Upper Baker Reservoir and Lower Baker Reservoir, as provided in Proposed Article 107. In doing so, the County shall support PSE's position that such compensation includes lost generation, dependable capacity, capital expenditures, and related operation and maintenance costs. PSE and the County shall cooperate to secure Corps of Engineers approval of Proposed Article 107, and to obtain any appropriations required to secure the benefits to be provided by Proposed Article 107.

*Settlement Agreement  
Baker River Hydroelectric Project*

3. PSE and the County shall work cooperatively to seek funding from federal and state sources for the capital costs of spillway modifications at Lower Baker Reservoir necessary for the provision of 29,000 acre-feet of storage in the Lower Baker Reservoir, as described in Proposed Article 107. As part of this effort, PSE, in response to a request from the County, shall upon reasonable notice communicate its support for such funding in oral communications, letters, testimony and other available means to appropriate federal and state government officials, federal and state legislators and to the media. Upon reasonable notice, in response to a request from the County, PSE shall send a representative to accompany the County in meetings with federal and state government officials and federal and state legislators to express PSE's support for funding of the capital costs of spillway modifications at Lower Baker Reservoir.

15, 2004. THIS AGREEMENT is made by and between the undersigned parties as of November

**BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON**


**PUGET SOUND ENERGY, INC.**



Ted W. Anderson, Chairman



Don Munks, Commissioner

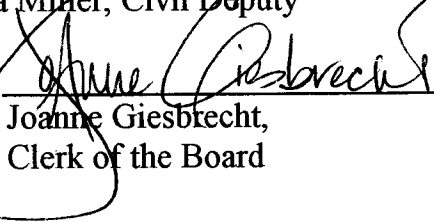


Kenneth A. Dahlstedt, Commissioner



Melinda Miller, Civil Deputy

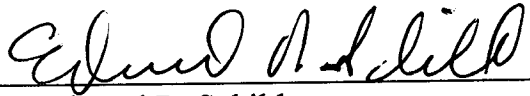
Attest:

  
Joanne Giesbrecht,  
Clerk of the Board



By: Eric Markell

Its: Senior Vice President, Energy  
Resources

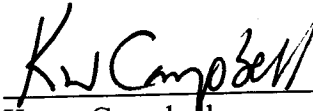


By: Edward R. Schild

Its: Director, Energy Production & Storage

CERTIFICATE OF SERVICE

I hereby certify that I have this 30th day of November, 2004, served the foregoing documents upon each person designated on the official service list compiled by the Secretary in this proceeding.



---

Karen Campbell  
Perkins Coie LLP  
10885 N.E. 4<sup>th</sup> Street, Suite 700  
Bellevue, WA 98004  
(425) 635-1606