

## **Amended Settlement Agreement**

### **Box Canyon Hydroelectric Project FERC No. 2042**

#### **RECITALS**

1. This “Amended Settlement Agreement” revises the “Settlement Agreement” entered into by Public Utility District No. 1 of Pend Oreille County, Washington (“PUD”), the United States Department of the Interior (“Interior”), the United States Forest Service (“Forest Service”), the Kalispel Tribe of Indians (“Tribe”), and the Ponderay Newsprint Company (“PNC”) (collectively, the “Parties”) on January 28, 2009 (the “Settlement Agreement”), in connection with the operation of the Box Canyon Hydroelectric Project (“Project”), which was submitted to the Federal Energy Regulatory Commission (“FERC”) on March 24, 2009. FERC amended the License consistent with the terms of the Settlement Agreement on February 19, 2010 (130 FERC ¶ 62,148).

2. Only *Appendix A, U.S. Department of the Interior (DOI) Conditions for Habitat Restoration Pursuant to Section 4(e) of the Federal Power Act*, and *Appendix C, U.S. Department of the Interior (DOI) Prescriptions for Fishways Pursuant to Section 18 of the Federal Power Act* to the Settlement Agreement are revised by this Amended Settlement Agreement. The revisions to those appendices affect only Condition 6 of Appendix A to the License and sections 1.3 through 1.6 of Appendix C to the License (as defined below). All other sections of the Settlement Agreement remain unchanged, and all unchanged terms of the Settlement Agreement remain in full force and effect and are incorporated by reference in this Amended Settlement Agreement.

3. The Tribe and the PUD have agreed to the terms of an Off License Settlement Agreement (“OLSA”). Although the OLSA is not a component of this Amended Settlement Agreement, the OLSA must be executed prior to the Parties filing this Amended Settlement Agreement (including revised appendices) with FERC. The terms and conditions of this Amended Settlement Agreement are not effective and revisions to the relevant appendices shall not be filed with FERC until the PUD and the Tribe have executed their OLSA.

4. For informational purposes only, the Tribe and PUD have agreed to submit to FERC a copy of the OLSA.

5. The Parties have negotiated this Amended Settlement Agreement in good faith and have agreed to the Terms and Conditions set forth below.

## TERMS AND CONDITIONS

It is hereby agreed:

### **1. Definitions**

The Amended Settlement Agreement incorporates the definitions contained in the 2009 Settlement Agreement except that “License” is revised to mean the new operating license issued by FERC to the PUD on July 11, 2005, 112 FERC ¶ 61,055, as amended by FERC on February 29, 2010 to incorporate the appendices to the 2009 Settlement Agreement, 130 FERC ¶ 62,148, and most recently amended on March 24, 2016, 154 FERC ¶ 62,190. Additional defined terms are as follows:

“Amended Settlement Agreement” means this agreement among the PUD, the Tribe, PNC, Interior, and the Forest Service entered into as of the date last signed below to amend the terms of the Settlement Agreement, including the Revised Appendices.

“Effective Date” means the first business day following the date on which FERC issues an order amending the License to incorporate the Revised Appendices without material modification.

“Off License Settlement Agreement” or “OLSA” means the agreement executed on or around [DATE] by the PUD and Tribe in connection with some of the PUD’s environmental obligations related to operation of the Project.

“Revised Appendices” means the appendices attached to this Amended Settlement Agreement that will replace appendices A and C to the January 28, 2009 Settlement Agreement. These are: *Appendix A, U.S. Department of the Interior (DOI) Conditions for Habitat Restoration Pursuant to Section 4(e) of the Federal Power Act*; and *Appendix C, U.S. Department of the Interior (DOI) Prescriptions for Fishways Pursuant to Section 18 of the Federal Power Act*.

### **2. Purpose and Effect of this Amended Settlement Agreement**

a. The Parties have entered into this Amended Settlement Agreement to address new information collected and developed since the Settlement Agreement was first implemented in 2010. The Parties anticipate that these revisions will improve the processes and outcomes identified in the Settlement Agreement and will be more effective at addressing Project effects on resources subject to Interior oversight and jurisdiction.

b. As set forth below, the Parties shall submit the Revised Appendices to FERC. The Parties intend that the Revised Appendices shall fully replace the relevant sections of the existing License appendices. For clarity, all of Appendix A to the Settlement Agreement (and all of Condition 6 to Appendix A to the License) will be replaced with “*Appendix A: U.S. Department of the Interior (DOI) Conditions for*

*Habitat Restoration Pursuant to Section 4(e) of the Federal Power Act*” attached hereto. However, only sections 1.3, 1.4, 1.5, and 1.6 of Appendix C (to both the Settlement Agreement and License) will be replaced. These sections address downstream fish passage facilities at Box Canyon Dam and upstream and downstream fish passage facilities at the Calispell Creek Pumping Plant. Sections 1.0, 1.1, 1.2, and 1.7 of Appendix C shall remain in their entirety.

c. Except as expressly provided, or necessarily implied, herein, this Amended Settlement Agreement shall not affect, or be deemed to be an amendment of, the License.

### **3. Revised Appendices Submitted to FERC**

a. Within 30 days of the date on which the last of the Parties executes this Amended Settlement Agreement, Interior shall submit to FERC the Revised Appendices, which are attached to this Amended Settlement Agreement. These Revised Appendices shall replace Appendix A and the corresponding sections of Appendix C to the Settlement Agreement, as incorporated into the License in the February 19, 2010 FERC order as Condition 6 to License Appendix A and sections 1.3, 1.4, 1.5, and 1.6 of License Appendix C.

b. Within 45 days of the date on which the last of the Parties executes this Amended Settlement Agreement, the PUD shall request FERC to amend the License to substitute the Revised Appendices submitted by Interior pursuant to subparagraph a.

c. The Parties shall ask FERC to amend License articles 401 and 402 to be consistent with the terms of the Revised Appendices.

d. The Parties agree to work together in good faith to speed FERC’s inclusion of the Revised Appendices in the License. The Parties agree to provide promptly any necessary information to FERC, including but not limited to any information FERC needs to fulfill its obligations under the Endangered Species Act or the National Environmental Policy Act. The Parties further agree to ask FERC to expedite inclusion of the Revised Appendices into the License.

### **4. Amended Settlement Agreement is Contingent on FERC Adoption of Revised Appendices**

a. This Amended Settlement Agreement is contingent on FERC’s adoption of the Revised Appendices without any modification that any Party reasonably considers to be material. If a Party considers a modification to be material, the Party must provide written notice to all other Parties within 20 days of FERC’s adoption. If no Party provides timely written notice of a modification that the Party believes to be material, this contingency is deemed satisfied.

b. The Parties shall each have 20 days from the date of a written notification that a Party considers a modification to be material either to agree that the modification is material or to object that the modification is not material. A failure to object shall be considered agreement that the modification is material. If all of the Parties agree that a modification is material, then subparagraph c. shall apply. If one or more Parties believe that the modification is not material, then the Parties shall engage in informal dispute resolution and, if a dispute remains, may elect to pursue non-binding mediation of the issue of materiality, not to last more than 30 days. During the mediation process, the Parties may exercise their rights to file a timely request for rehearing with FERC seeking removal or amendment of the modification. Each party to the dispute shall equally share the expense of the mediator. If mediation is unsuccessful, the Parties reserve their rights to contest the modification before FERC and/or any other appropriate forum or tribunal.

c. If FERC modifies, limits, or otherwise alters the Revised Appendices in a way that is determined to be material after following the procedures outlined in subparagraphs a. and b., including review in any other appropriate forum or tribunal, the Parties shall confer within 20 days after the date that a modification is deemed material pursuant to the procedures set forth in subparagraph b. above. Unless all of the Parties agree to accept FERC's modification or all of the Parties agree to modify the Amended Settlement Agreement, the Amended Settlement Agreement shall be rendered void and unenforceable and the Parties shall retain all rights and obligations as if this Amended Settlement Agreement had never been executed, including the right to return to the conditions and prescriptions contained in Appendices A and C of the 2009 Settlement Agreement, as implemented by the Technical Committee, and to submit those 2009 appendices to FERC for inclusion in the License. The Parties agree that Interior may submit the 2009 appendices to FERC at any time after the 20-day period required above; however, Interior agrees to consult with the Technical Committee to develop updated timelines and standards for implementation, based on the best available science, and submit any revised standards and timelines to FERC within 9 months of submitting the 2009 appendices. The new timelines and standards for implementation shall not, without the PUD's consent, allow less time for each task or milestone than was allowed under the appendices to the 2009 Settlement Agreement as incorporated into the License. Each Party that is a member of the Technical Committee shall retain its full rights to participate as a member of the Technical Committee in developing the new timelines and standards for implementation, including any Technical Committee dispute resolution process to the License.

d. Provided the conditions in subsection (c) are met, the Parties agree that they will not challenge Interior's submission of the 2009 appendices or a license amendment that incorporates them.

## **5. Incorporation of Revised Appendices**

This Amended Settlement Agreement incorporates the Revised Appendices (attached as Appendices A and C) as if fully set forth herein. Accordingly, a violation of

a provision of the Revised Appendices will constitute a breach of this Amended Settlement Agreement.

## **6. Parties Bound**

This Amended Settlement Agreement is binding upon each of the Parties and their successors and assigns. In the event of a change in ownership of the Project and transfer of the License to the new owner, the PUD shall have no further obligation under the License or this Amended Settlement Agreement. In the event of a voluntary change of ownership, the PUD agrees that the acceptance of an assignment of this Amended Settlement Agreement by the new owner shall be a condition of the transaction. In the event of an involuntary change of ownership, the PUD shall offer to assign this Amended Settlement Agreement to the new owner.

## **7. Covenant Not to Sue or Challenge by the Parties**

a. The PUD and PNC covenant neither to sue nor to bring any other claims or causes of action that challenge the Revised Appendices.

b. The PUD and PNC covenant neither to sue nor to bring any other claims or causes of action that challenge FERC's inclusion of the Revised Appendices in the License.

c. The Tribe covenants neither to sue nor to bring any other claims or causes of action that seek to challenge, modify or add to the Revised Appendices. The Tribe retains the right to initiate or participate in any proceedings where a federal agency exercises its authority to require changes to the license conditions.

d. The remedies of the PUD, PNC and the Tribe in the event of a dispute regarding the implementation of this Amended Settlement Agreement shall be limited to an action to enforce the terms of this Amended Settlement Agreement, including an action before FERC to enforce the License's Revised Appendices. The Tribe expressly waives any claim or assertion of sovereign immunity from an action to interpret or enforce any provision or rights granted in this Amended Settlement Agreement.

## **8. No Third Party Rights**

Nothing in this Amended Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person or entity not a Party to this Amended Settlement Agreement.

## **9. Reservation of Authority**

a. Notwithstanding any other provision of this Amended Settlement Agreement, the United States, Interior, and the Forest Service retain all authority and reserve all rights to take any and all actions authorized by law, including all

relevant authorities pursuant to the Federal Power Act (FPA). In the event the United States, Interior, or the Forest Service exercise a reservation of authority, the Tribe, PUD, and PNC reserve all rights as they may have at the time of the exercise of such reservation.

- b. In agreeing to the terms of this Amended Settlement Agreement, Interior is relying upon the PUD and Tribe entering into, and fully complying with, a separate “off-license” agreement (OLSA). If that OLSA terminates due to material breach by the PUD, Interior reserves the right to withdraw from this Amended Settlement Agreement and petition FERC to return to the conditions and prescriptions contained in Appendices A and C of the 2009 Settlement Agreement and submits those 2009 appendices to FERC for inclusion in the License. Interior shall update the conditions and prescriptions with reasonable new timelines and standards for implementation, which shall not, without the PUD’s consent, allow less time for each task or milestone than was allowed under the appendices to the 2009 Settlement Agreement as incorporated into the License. Such timelines and standards shall be based on the best available science and shall be developed in consultation with the Technical Committee. Provided the conditions above are met, the Parties agree that they will not challenge Interior’s submission of the 2009 appendices or a license amendment that incorporates them. Each Party that is a member of the Technical Committee shall retain its full rights to participate as a member of the Technical Committee in developing the new timelines and standards for implementation, including any Technical Committee dispute resolution process pursuant to the License.
- c. If the OLSA terminates due to material breach by the Tribe, the Parties agree that the obligations contained in sections 5.3-5.7 and sections 6.3-6.6 of the OLSA shall continue. In the event of such termination, the PUD agrees to satisfy the obligations contained in sections 5.3, 5.4 and 6.4 of the OLSA by depositing the payments required by these sections into an escrow account that can be accessed and utilized by the Technical Committee. However, in no event shall the PUD be obligated to provide funding or resources in excess of the amounts that would have been provided to the Tribe under sections 5.3, 5.4 and 6.4 of the OLSA. The PUD will also assume responsibility for the reporting requirements described in sections 5.7 and 6.6 in conjunction with the existing reporting requirements set forth in Appendices A and C.

Under these circumstances, the Technical Committee shall assume responsibility for implementing sections 5.5, 5.6, 5.7, 6.3, 6.4, 6.5 and 6.6 of the OLSA. Interior shall assume responsibility for ensuring that conditions 1 through 4 in paragraph (a) of OLSA subsection 5.3 have been satisfied; if satisfied, Interior shall provide written confirmation that conditions 1 through 4 are satisfied to the Technical Committee for implementation of section 5.3.

If the OLSA terminates due to material breach by the Tribe, Interior reserves the right to submit to FERC revised conditions that would capture the commitments described above. If Interior submits to FERC a new appendix that is materially consistent with this subsection, the Parties agree that they will not challenge Interior’s submission or a license amendment that incorporates it.

**10. Parties to Bear Own Costs and Fees**

Each Party shall bear its own costs and fees (including attorneys’ fees and expert fees) relating to pursuing, litigating, and settling the administrative and judicial proceedings relating to the Project, including any litigation expenses that post-date the signing of this Amended Settlement Agreement.

**11. Integration**

a. This Amended Settlement Agreement constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the Revised Appendices attached to this Amended Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the Revised Appendices other than those expressly contained in this Amended Settlement Agreement. This Amended Settlement Agreement supersedes any prior written or oral agreement pertaining to the Revised Appendices.

b. This Amended Settlement Agreement may be modified only in a writing signed by the Parties.

**12. Means of Notification**

Any notice, demand, or request related to this Amended Settlement Agreement shall be in writing and shall be deemed properly served, given, or made if delivered in person or sent by electronic mail or by acknowledged delivery, or sent by registered or certified mail, postage prepaid to the person specified below:

<p><b>To the Tribe:</b></p> <p>Kalispel Tribe of Indians P.O. Box 39 Usk, WA 99180</p> <p>Attention: Executive Director of Natural Resources</p> <p>Phone: (509) 445-1147 Fax: (509) 445-1705</p>	<p><b>To the PUD:</b></p> <p>Public Utility District No. 1 of Pend Oreille County P.O. Box 190 Newport, WA 99156-0190</p> <p>Attention: General Manager</p> <p>Phone: (509) 447-3137 Fax: (509) 447-5824</p>
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<p><b>To Interior:</b></p> <p>U.S. Fish and Wildlife Service 11103 E. Montgomery Drive Spokane Valley, WA 99206</p> <p>Attention: State Supervisor</p> <p>Phone: (509) 893-8001</p> <p>Bureau of Indian Affairs 911 N.E. 11<sup>th</sup> Avenue Portland, OR 97232 Attention: Regional Director and FERC Coordinator</p> <p>Phone: (503) 231-6883</p>	<p><b>To the Forest Service:</b></p> <p>U.S. Forest Service Colville National Forest 765 South Main Street Colville, WA 99114</p> <p>Attention: Forest Supervisor</p> <p>Phone: (509) 684-7230</p>
<p><b>To PNC:</b></p> <p>Ponderay Newsprint Company 422767 SR 20 Usk, WA 99180 Attention: General Manager</p> <p>Phone: (509) 445-1511</p>	

**13. Authority to Bind Parties**

The undersigned representatives of the Parties to this Amended Settlement Agreement certify that they are authorized to enter into the terms and conditions of this Amended Settlement Agreement and to execute and bind legally each Party to this document. This Amended Settlement Agreement shall become effective when executed by the Parties or their respective counsel.

This Amended Settlement Agreement may be signed in counterparts.

[Signature Pages Follow]



IN WITNESS WHEREOF the Parties have executed this Amended Settlement Agreement as of the date last signed below.

PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Daniel Peterson, Commissioner

\_\_\_\_\_  
Curtis Knapp, Commissioner

\_\_\_\_\_  
Rick Larson, Commissioner

KALISPEL TRIBE OF INDIANS

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Glen Nenema, Chairman

UNITED STATES DEPARTMENT OF THE INTERIOR  
U.S. FISH AND WILDLIFE SERVICE

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Robyn Thorson, Regional Director, Pacific Region

UNITED STATES DEPARTMENT OF AGRICULTURE  
U.S. FOREST SERVICE

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Glenn Casamassa, Regional Forester, Pacific Northwest Region

PONDERAY NEWSPRINT COMPANY

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Myron Johnson

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Regional Director, Northwest Region

DRAFT

**REVISED APPENDIX A:  
U.S. Department of the Interior (DOI)  
Conditions for Habitat Restoration Pursuant to Section 4(e)  
of the Federal Power Act**

**Revised 4(e) Condition 6 – Trout Habitat Restoration Program**

**1. Overview.** This section shall replace Department of the Interior (DOI) 4(e) Condition 6 (as amended in 2010, 130 FERC ¶ 62,148) in its entirety.

The Trout Habitat Restoration Program (Program) requires the Licensee to restore 164 stream miles of habitat pursuant to the terms of this condition. The Secretary of the Department of the Interior (Secretary, or his/her designee) shall be the final decision maker with respect to implementation of the Program, although approval by the Secretary for specific implementation actions is not required as long as there are no disputes among the members of the Technical Committee. The Secretary may require modification to any implementation action at his or her discretion, which is necessary to achieve the objective of the Program. All Restoration Projects implemented pursuant to this condition on National Forest System (NFS) lands shall also require approval of the Secretary of Agriculture (or his or her designee).

**2. Objective:** The Licensee shall restore 164 miles of tributary habitat pursuant to the terms identified in this Program by February 19, 2035 (25 years after FERC’s February 19, 2010 Order on Settlement Agreement and Amending License). These restoration efforts shall be prioritized in the Calispell, Cee Cee Ah, Cedar, LeClerc, Indian, Mill, Ruby, and Tacoma Creek watersheds (“target watersheds”). Final prioritization of all Restoration Projects shall be determined by the Technical Committee pursuant to section 3. If 164 miles of appropriate tributary habitat cannot be restored in these target watersheds, restoration efforts may occur in other watersheds in the Project area, with priority given to suitable streams within Pend Oreille County.

To ensure steady progress towards achieving this goal, the Licensee shall restore 66 miles of habitat by February 19, 2020, shall restore an additional 66 miles of habitat by February 19, 2030, and shall restore the remaining 32 miles of habitat by February 19, 2035. The Secretary may require additional Restoration Projects to achieve 164 miles of restoration within 25 years if the PUD does not achieve one or more of these interim goals. The Secretary retains authority to continue requiring additional Restoration Projects by the Licensee, if at the end of the 25-year implementation period 164 miles of restoration has not been achieved, until the Licensee achieves 164 miles of restoration.

**3. Technical Committee:** Consistent with Interior’s section 4(e) condition 2, the Technical Committee shall be the body responsible for directing and approving the Licensee’s tributary restoration efforts under this Program and shall be responsible for making determinations as to whether the Licensee’s Restoration Projects meet success criteria. The Technical Committee includes the Licensee, DOI (Bureau of Indian Affairs (BIA) and U.S. Fish and Wildlife Service (FWS)), U.S. Forest Service (USFS),

Washington Department of Fish and Wildlife (WDFW) and the Kalispel Tribe (Tribe). If one or more members of the Technical Committee elect to disengage, the remaining members shall perform all functions of the Technical Committee as necessary to ensure implementation of this condition. The Licensee shall cooperate, coordinate, and consult with the Technical Committee on all aspects of the Program. If requested by the Technical Committee, the Licensee shall acquire appropriate facilitation services from a qualified facilitator agreeable to the Technical Committee. The Secretary shall not be required to approve specific actions under the Program as long as there are no disputes within the Technical Committee. If a dispute occurs, the dispute resolution procedures set forth in section 12 shall apply.

**4. Restoration Projects:** The Licensee shall restore and maintain the physical parameters of 164 miles of stream habitat by implementing projects (“Restoration Projects”) approved by the Technical Committee.

**4.1. Measures:** Restoration Projects shall include a combination (some or all) of the following measures as determined necessary by the Technical Committee:

- Channel improvements (limited to geomorphologic improvements and barrier removal);
- Floodplain restoration;
- Riparian corridor restoration;
- Fencing;
- Conservation easements and/or purchases;
- Non-native fish removal (see subsection 4.2);
- Reintroduction or supplementation of bull trout, westslope cutthroat trout, and mountain whitefish (“Target Fish Species”; see subsection 4.3).

**4.2. Non-Native Fish Removal:** If non-native fish removal is considered necessary by the Technical Committee in any stream reach, the Licensee shall implement this measure pursuant to the best available methods at the time of implementation. Non-native fish removal may require more than one treatment (i.e., several treatments over a specified period of time) and may require construction of fish management structures (e.g., barriers) to prevent re-colonization. In addition, if fish salvage is a component of any particular removal effort, as identified and approved by the Technical Committee, the Licensee shall hold any salvaged fish in the appropriate environment and maintain those fish in a healthy state until they can be reintroduced into their natal habitats. The Licensee shall only be required to implement this measure one time in any stream reach.

**4.3. Reintroduction or Supplementation of Target Fish Species:** If reintroduction or supplementation of a Target Fish Species is considered necessary by the Technical Committee, the Licensee shall make available the fish to be reintroduced as determined necessary and on a timeline approved by the Technical Committee. The details of these efforts, including species-specific genetic background, life history type, life stages, and quantities of fish, shall be developed by the Licensee in close coordination with and subject to the approval of the Technical Committee. The Licensee shall only be required to implement this measure one time in any stream reach, though implementation may

require more than one treatment (i.e., several treatments over a specified period of time).

The Licensee shall be responsible for obtaining approvals from Federal, State, and Tribal agencies as necessary for any reintroduction and supplementation measures (e.g., reintroduction or supplementation of bull trout shall be consistent with current bull trout recovery plans and fully coordinated and approved by the FWS). However, if reintroduction or supplementation measures are not approved by all required Federal, State, and Tribal agencies in a stream reach, then reintroduction or supplementation in such reach shall not be required of the Licensee.

**5. General Assessments:** The Licensee shall assess the target watersheds as necessary to determine needed restoration. These general assessments are in addition to any specific surveys that may be necessary for developing, monitoring, and demonstrating the success of specific Restoration Projects. General assessments shall be developed by the Licensee in close coordination with and subject to the approval of the Technical Committee. Data may exist that proves useful or sufficient for these efforts; however, where existing data is unavailable, insufficient, or dated (at least 8 years old or as determined dated by the Technical Committee), the Licensee shall conduct new surveys.

**6. Planning:** In general, for each potential Restoration Project, the Licensee shall develop or solicit from any member of the Technical Committee a Project Proposal that identifies the specific measures among those identified in subsection 4.1 that shall be implemented in target watersheds as necessary for that particular Restoration Project. The Technical Committee shall review, comment on, and approve the Project Proposal. Once approved, the Project Proposal (with any modifications approved by the Technical Committee; *see* subsection 7.2) shall become the Approved Project Plan. The Approved Project Plan shall be the basis for applicable regulatory review and permitting (*see* subsection 7.3), and the Licensee shall implement the Approved Project Plan once all necessary permits have been obtained (*see* section 8).

**6.1. Comprehensive Planning:** The Licensee shall facilitate, in coordination with the Technical Committee, the development of a Comprehensive Plan for its stream restoration projects in Pend Oreille County. The plan will describe the comprehensive goals for restoration of 164 miles of tributary habitat to aid in the recovery and conservation of Target Species, prioritize restoration areas, articulate how the goals will be achieved, and include a monitoring program to ensure that goals are being met. The Comprehensive Plan will incorporate all completed and currently approved stream restoration projects, developed through the existing Trout Habitat Restoration Program, without modifying approved mileage credit or project effectiveness monitoring criteria. To avoid a delay in restoring the 164 miles of stream habitat, the Comprehensive Plan development will not prevent the Licensee from implementing stream restoration projects currently scheduled to start prior to the completion of the Comprehensive Plan. The Comprehensive Plan should be well coordinated with other restoration efforts underway and should incorporate all other appropriate plans developed for the Project area, including but not limited to those developed by the State, Tribe, USFS and FWS. The

Comprehensive Plan will facilitate future planning and project proposal development and may facilitate various regulatory approval processes by allowing programmatic review and approval of restoration efforts. Completion of the Comprehensive Plan is the responsibility of the Licensee, in conjunction with the Technical Committee. The plan will be filed with FERC within two years of approval of the Amended Settlement Agreement. Annually the Licensee will provide Interior with a summary of activities funded or completed by the Licensee that meet goals and objectives described in the Comprehensive Plan.

**7. Project Proposal Development:** The Licensee shall be responsible for creating and/or soliciting proposals for specific Restoration Projects that meet specified goals defined in the Comprehensive Plan, in consultation with the Technical Committee, by January of each year or on a schedule approved by the Technical Committee that reflects longer term comprehensive planning. Any member of the Technical Committee may also propose specific Restoration Projects or the Technical Committee may solicit recommendations for specific Project Proposals from outside sources as it determines appropriate. The Technical Committee shall review and comment on Project Proposals and ultimately determine which should be implemented by the Licensee to meet the goals defined in the Comprehensive Plan.

**7.1. Project Proposals:** All Project Proposals shall state which measures identified in subsection 4.1 are required and shall identify the design life of all structures to be built. Any bridges, culverts, or similar structures shall be designed to withstand a minimum 100 year flood event. If a Project Proposal includes actions by other cooperating entities, the Licensee's contribution and expected proportional benefits (including credit for stream miles) shall be specifically identified. Any monitoring required of the Licensee shall be limited to that necessary for determining the success of a Restoration Project and for ensuring that success criteria are maintained over the license term. The information acquired through such monitoring shall be used by the Licensee to determine the efficacy of each Restoration Project. In addition, all Project Proposals shall include:

- Specific goals (e.g., total stream miles to be restored for each Restoration Project);
- Specific objectives (including specific, measurable success criteria);
- Schedules for completion (including pertinent milestones);
- Cost-benefit analysis;
- Anticipated restoration techniques;
- Monitoring plans and methods; and
- Maintenance requirements.

**7.2. Technical Committee Review:** Within 90 days after receiving each Project Proposal, the Technical Committee shall: 1) approve the Project Proposal as submitted; 2) require or provide modifications to the Project Proposal; 3) table the Project Proposal for a subsequent year; or 4) deny the Project Proposal. If the Technical Committee requires modifications to a Project Proposal, the PUD shall be allowed a reasonable amount of time to address the modifications. If no decision by the Technical Committee

is made within 90 days, the Project Proposal shall be considered tabled until resolved through dispute resolution or required by the Secretary.

**7.3. Approved Project Plan:** Each Approved Project Plan shall identify each measure, among those provided in subsection 4.1 that is required to restore and secure credit toward the 164-mile goal for the stream miles identified by that Approved Project Plan. The Licensee shall use the Approved Project Plan for any necessary regulatory review and permitting requirements. The Licensee shall be responsible for complying with all Federal, State, and Tribal environmental laws and regulations applicable to an Approved Project Plan. FERC shall act as the lead federal agency for purposes of complying with section 7 of the Endangered Species Act unless another Federal entity is willing to take a lead role for that purpose. The Licensee shall implement the Approved Project Plan once all necessary permits have been obtained.

**8. Implementing Approved Project Plans:** The Licensee shall implement each Approved Project Plan pursuant to its included schedule. Selection and approval of contractors for all Approved Project Plans shall be in accordance with Appendix A, Condition 2(D) of the 2005 License. However, the Kalispel Tribe shall be considered for all appropriate contracts given that it is uniquely suited to perform restoration work in the tributaries as a result of its previous experience, available resources, and ability to bring matching funds to the restoration efforts.

**9. Awarding Stream Miles:** All stream miles identified in an Approved Project Plan shall be awarded to the Licensee at the time the Project Proposal is approved by the Technical Committee or the Secretary (i.e., at the time the Project Proposal becomes the Approved Project Plan). These stream miles, plus any previously awarded and retained stream miles, shall represent the Licensee's progress towards satisfying its requirement to restore 164 miles of tributary habitat. The Licensee shall retain all awarded stream miles for each Restoration Project as long as:

- The applicable Approved Project Plan is being implemented pursuant to its schedule, or pursuant to any Technical Committee- or Secretary-approved modifications to that schedule; and
- All success criteria identified in the Approved Project Plan are being achieved or any Remediation Plan for that Restoration Project is being implemented.

Once the Licensee has been awarded 164 miles of restoration, the Licensee shall not be required to develop additional Project Proposals, implement additional Restoration Projects, or incur further implementation expenses beyond those required to complete and maintain the Approved Project Plans or Remediation Plans applicable to the 164 stream miles. The Secretary retains authority to require additional restoration measures by the Licensee beyond the end of the 25-year implementation period until 164 miles of restoration have been awarded.

**10. Monitoring Success:** The Licensee is responsible for ensuring that all Restoration Projects under this Program achieve success as determined by each respective Approved Project Plan and address goals of the Comprehensive Plan for the

license term. The success criteria identified in each Approved Project Plan shall be evaluated by the Licensee as described in that plan. In addition, the Licensee shall reassess all Restoration Projects completed under this Program at least every 10 years to assure that the specific success criteria for each Approved Project Plan continue to be met over the license term.

**11. Remediation:** If a Restoration Project fails to meet the success criteria identified in the applicable Approved Project Plan or is damaged by floods at or below the 100-year event, the Licensee shall immediately develop a Remediation Plan to correct the deficiencies, for approval by the Technical Committee. The Remediation Plan shall include a description of the repairs, an implementation timeline, and a monitoring plan and schedule. The Licensee shall begin implementing the Remediation Plan within 30 days of approval or as determined appropriate by the Technical Committee. Subsequent monitoring shall occur in accordance with the approved Remediation Plan. If the Technical Committee determines that a Restoration Project cannot be remediated, the Licensee shall replace the associated stream miles through implementation of another Restoration Project developed and approved pursuant to the terms of this Program. The PUD shall not be required to remediate Restoration Projects or replace stream miles for damage that occurs as a result of a greater than 100-year flood event.

**12. Dispute Resolution:** If the members of the Technical Committee cannot agree on which stream segments should be restored, restoration measures, success criteria, whether restoration work is adequate or not, whether steady progress is being made, or whether additional measures after the first 25 years are needed, any member of the Technical Committee may request dispute resolution pursuant to the following procedures. For the purpose of resolving issues related to these specific topics, the procedures set forth below shall supersede the dispute resolution procedures set forth in Appendix A, Condition 2(I) of the 2005 License. These procedures include: (1) an opportunity for informal dispute resolution; (2) mediation; and (3) policy-level review and resolution. The Secretary shall be the final decision maker for all disputes related to the implementation of this Program.

**12.1. Informal Dispute Resolution:** The Technical Committee shall strive to achieve consensus among its members. If consensus on an issue cannot be achieved, any member of the Technical Committee may, in writing, request dispute resolution among the members of the Technical Committee. Upon receipt of a written request, the Licensee shall initiate good faith discussions among the members of the Technical Committee for a period not to exceed 30 days.

**12.2. Mediation:** If the dispute is not resolved within 30 days after the receipt of a written request for dispute resolution, the disputing members of the Technical Committee may request the services of a neutral mediator. The Licensee shall arrange for the services of such mediator, either by employing a neutral third party or requesting the assistance of an ADR expert from one of the Federal agencies or FERC. The selected mediator must be agreed upon by the disputing members of the Technical Committee and must be available within a reasonable period of time. The dispute shall be mediated for a period not to exceed 45 days from the date that the mediator's services were requested.



In facilitating resolution of the dispute, the mediator may convene meetings or conference calls among the members of the Technical Committee and/or their immediate supervisors.

**12.3. Policy Level Review and Resolution:** If the dispute is not resolved within 45 days after the request for mediation services, the Licensee shall convene a meeting of policy-level officials representing the FWS, BIA, Licensee and, if applicable, the entity raising the dispute. Other members of the Technical Committee with a strong interest in the outcome of the dispute may also send a policy-level official to this meeting. Such meeting shall occur within 60 days after the request for mediation services. The FWS and the BIA shall each determine the appropriate regional-level officials to represent their respective bureaus at the meeting. At the meeting, all participants shall have an opportunity to discuss their views regarding the dispute and provide documentation in support of those views. Within 15 days of the meeting, the regional-level officials representing the FWS and BIA shall confer to consider the issue and recommend resolution to their Regional Directors. The Secretary, through the Regional Directors of the FWS and BIA, shall make a final determination as to the outcome of the dispute and shall notify the appropriate entities within 30 days of the meeting of policy-level officials. The Secretary's final determination shall be informed by the results of the dispute resolution process.

**12.4. Habitat Restoration Measures on USFS Lands:** A final determination as to the outcome of any disputes regarding implementation of habitat restoration measures on NFS lands shall also require the approval of the Secretary of Agriculture. For such disputes, the meeting required by section 12.3 shall also include a policy-level official representing the USFS. In addition, any final determination regarding implementation of habitat restoration measures on NFS lands made by the Secretary of the Interior through the Regional Directors of the FWS and BIA shall require the concurrence of the Secretary of Agriculture or his/her designee.

**13. Reporting:** The Licensee shall provide the Technical Committee annual status reports consistent with Appendix A, Condition 1 of the 2005 License. Information shall be provided in tabular form and shall identify: 1) Restoration Projects proposed, underway, and completed; 2) location of Restoration Projects, denoting whether the project is or will be situated on NFS lands; 3) the associated stream miles, anticipated completion dates, and anticipated monitoring dates; 4) determination of success; and 5) associated costs for each restoration project identified. A concise written summary may also be included if necessary to identify substantive ongoing issues, recommended changes to the Program, or other pertinent information.

**APPENDIX C**  
**U. S Department of the Interior (DOI)**  
**Prescriptions for Fishways Pursuant to Section 18**  
**of the Federal Power Act**

**Revisions to Section 1.3 and Deletion of Sections 1.4, 1.5, and 1.6**

**1.3 Specific Measures Prescribed for Downstream Fish Passage Facilities at BCD**

The following specific measures are prescribed to evaluate, refine, and plan for the construction, operation, and maintenance of downstream fish passage facilities at Box Canyon Dam (“BCD”) as necessary to provide effective (safe and timely) passage of juvenile, sub-adult, and adult bull trout, westslope cutthroat trout, and mountain whitefish (“Target Fish Species”) in the Pend Oreille River. The intent of these measures is to determine whether the impacts of Project operations on downstream passage of Target Fish Species have sufficient negative effects on population levels to warrant downstream fish passage at BCD, and if so, to coordinate the scope of downstream fish passage measures with the level of Project effects on the Target Fish Species that cannot be offset through other appropriate means. Specific goals of the potential facilities shall be developed over the current license term in consultation with the Technical Committee and shall reflect a basin-wide strategy to strengthen population levels of the Target Fish Species to sustainable, harvestable levels. The construction of permanent downstream fish passage facilities shall be at the discretion of the Licensee through the expiration of the License and any subsequent annual license(s). The Secretary of the Department of the Interior (Secretary, or his/her designee) shall be the final decision maker with respect to implementation of any element defined in 1.3.1 to 1.3.3, although approval by the Secretary for specific implementation actions is not required as long as there are no disputes among the members of the Technical Committee.

**1.3.1 BCD Downstream Fishway – Investigations and Monitoring Program**

A. Baseline Condition Report: Within 18 months of FERC approval of the Amended Settlement Agreement, the Licensee shall provide to the Secretary, after consultation with the Technical Committee, a Baseline Condition Report summarizing data on the current population status and condition of Target Fish Species in target watersheds of the Box Canyon (as defined in Appendix A) and Boundary (defined in coordination with the Technical Committee) Hydroelectric Project reservoirs. Population data for the Baseline Condition Report may be obtained from existing monitoring efforts, State and Federal agencies and Tribes, and data summaries in recent documents. Preparation of the Baseline Condition Report shall not require additional fieldwork not already required of the Licensee under other agreements or License/permit conditions, unless no information exists for target tributaries.

B. Monitoring Program: The Licensee shall develop a Monitoring Program in consultation with the Technical Committee for approval by the Secretary. The Monitoring Program shall be developed based on the best available and scientifically defensible information and techniques and shall assess population status and trends of the Target Fish Species for the remainder of the license term. The Monitoring Program shall

include provisions for adaptive management based upon best available science and in consultation with the Technical Committee.

As approved by the Technical Committee, the Monitoring Program will identify priority populations of the Target Species within the target watersheds, techniques used to collect population data and methods for analysis and be consistent with goals defined in the Comprehensive Plan (Appendix A). The Monitoring Program shall also include movement data of adfluvial populations of the Target Fish Species handled and tagged in the upstream fish passage facility at BCD and at other locations as appropriate. Tagged fish shall be tracked and monitored in the Box Canyon and Boundary reservoirs as appropriate. Movement data from Albeni Falls reservoir, lower Pend Oreille River tributaries, and through Lake Pend Oreille and the lower Clark Fork River will be reported if information is available through unrelated ongoing studies. However, the Monitoring Program shall not require the Licensee to perform fieldwork outside the Project Boundary, but may require obtaining data from other entities conducting monitoring in Boundary Reservoir or upstream of Albeni Falls Dam.

In addition, the Licensee shall compare calculated and observed survival outcomes downstream through BCD (e.g., direct, indirect and long-term survival) with direct levels of survival estimated in Normandeau Associates, Inc., 2012. To the extent practicable, the Licensee shall synchronize its monitoring efforts under this paragraph with those performed in the Trout Habitat Restoration Program (Appendix A Condition 6) and other efforts in the basin (e.g. implementation of Seattle City Light's FERC license for the Boundary Hydroelectric Project, No. 2144).

C. Monitoring Program Status Reports: No less than every five years after completion of the Baseline Condition Report, the Licensee shall provide to the Secretary, after consultation with the Technical Committee, Monitoring Program Status Reports based on the Monitoring Program under subsection B of this section. The Monitoring Program Status Reports shall be scientifically defensible and shall include current population trends of the Target Fish Species. In addition, the reports will include comparative summaries of survival rates through Box Canyon Dam, methods and monitoring techniques used over the time period, deviations from the methodology in the Monitoring Program during the time period and the effects of any methodological deviations on data collection, and recommendations for next monitoring period.

D. Findings: No sooner than 2045, if at least one population of bull trout (defined for purposes of this agreement as 100 breeding adults or greater), has established within a target watershed (defined in 1.3.1(A) above), and at any time thereafter during this License period, the Secretary may decide, based on the best available science, whether the population status and trends of Target Fish Species warrants development of downstream fish passage facilities at BCD. If the Secretary, based on the best available science, determines that downstream fish passage survival at the BCD is a significant causative factor in the continued depression of Target Fish Species populations (i.e. bull trout) in the lower Pend Oreille River, then the Secretary may, at his or her discretion, require the Licensee to reinitiate fishway design development consistent with the processes and requirements of subsection 1.3.2 of this Appendix C. A significant

causative factor is defined as combined average injury and mortality rates for Target Fish Species through downstream passage routes (turbine and/or spillway) of greater than 15%, as documented in the most recent monitoring report completed prior to the Secretarial determination under this subsection. This reinitiation of the fishway design process through the interim design stage pursuant to subsection 1.3.2 shall not constitute a new exercise of authority, shall not require the exercise of a reservation of authority under section 18 of the Federal Power Act (FPA), and shall not trigger the opportunity for the Licensee or any other party to pursue a trial-type hearing or to submit alternative prescriptions under section 241 of the Energy Policy Act of 2005, 16 U.S.C. § 811 and/or to pursue an appeal to an otherwise appropriate court.

### **1.3.2 BCD Downstream Fishway – Interim Design Plans**

Within twenty-four (24) months after notification by the Secretary pursuant to subsection 1.3.1.D that downstream fish passage survival at the BCD is the significant causative factor in the continued depression of Target Fish Species populations in the lower Pend Oreille River, and that interim design for downstream fish passage at BCD is therefore appropriate, the Licensee shall submit for review and approval by the Secretary interim design plans for downstream fish passage facilities and measures. The interim design plans will be developed as part of the pre-application consultation process for any future FERC license (other than an annual license) after expiration of the License. This phase shall be inclusive of both the project definition and conceptual design phases and represent sufficient detail to show how the functional and technical requirements will be met, indicate the designer's approach to the solution of technical problems, show compliance with design criteria or provide justification for noncompliance, and provide a detailed estimate of cost. Specifically, the interim design plans shall include:

- A Design Documentation Report (DDR) which includes a 60% design drawing and specifications, including those addressing construction phasing;
- Detailed cost estimate developed to approximately 60% completion, including bid options where applicable;
- Specifications with review comments;
- A provision to direct target fish species through BCD via a non-turbine route that employs methods such as partial screening, louvers, modified trash-racks, bypass conduit(s), or other devices;
- The design range for the Pend Oreille River such that the downstream fish passage facilities and measures are operational during the full range of flows and water surface elevations during which the Licensee maintains operational control at BCD. The design and operation for periods when the Pend Oreille River exceeds water quality criteria for temperature and TDG shall be consistent with any applicable water quality regulations;
- Plans for structures, devices, and measures to allow adjustment of water flow, water velocity, and water surface elevations within the downstream fish passage facilities as needed to effectively convey the target fish through BCD; and
- Provisions for counting and evaluating target fish passing through the downstream fish passage facilities.

The DDR and drawings will include design criteria for electrical, mechanical and structural design details, and an operational and maintenance schedule capable of providing safe and timely downstream movement of target fish species  $\geq 10.0$  inches (250mm) from the forebay to the tailrace at a 95% Fish Passage Efficiency.

### **1.3.3 BCD Downstream Fishway – Final Design, Installation, and Operation**

The development of designs beyond the requirements of subsection 1.3.2., and the construction or operation of permanent downstream fish passage facilities at BCD, shall be at the discretion of the Licensee through expiration of the License and any subsequent annual licenses.

**1.4 This section has been removed from the Prescription.**

**1.5 This section has been removed from the Prescription.**

**1.6 This section has been removed from the Prescription.**