

SETTLEMENT AGREEMENT

CONCERNING THE RELICENSING OF THE
PELTON ROUND BUTTE HYDROELECTRIC PROJECT
FERC PROJECT NO. 2030

AMONG

PORTLAND GENERAL ELECTRIC COMPANY
CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

US DOI BUREAU OF INDIAN AFFAIRS
US DOI BUREAU OF LAND MANAGEMENT
US DOI FISH & WILDLIFE SERVICE
NATIONAL MARINE FISHERIES SERVICE
USDA FOREST SERVICE

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
OREGON DEPARTMENT OF FISH AND WILDLIFE
OREGON WATER RESOURCES DEPARTMENT
OREGON PARKS AND RECREATION DEPARTMENT

DESCHUTES COUNTY, OREGON
JEFFERSON COUNTY, OREGON
CITY OF BEND, OREGON
CITY OF MADRAS, OREGON
CITY OF REDMOND, OREGON

AVION WATER COMPANY

AMERICAN RIVERS
THE NATIVE FISH SOCIETY
OREGON TROUT
TROUT UNLIMITED
and
WATERWATCH OF OREGON

July 13, 2004

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PELTON ROUND BUTTE HYDROELECTRIC PROJECT RELICENSING SETTLEMENT AGREEMENT

This Settlement Agreement (with attached Exhibits, referred to collectively as the “Agreement”) is made as of July 13, 2004 (the “Effective Date”), by and among Portland General Electric Company, an Oregon corporation (“PGE”); the Confederated Tribes of the Warm Springs Reservation of Oregon (the “Tribes”); the U.S. Department of the Interior (“DOI”), through the Bureau of Indian Affairs (“BIA”), the Bureau of Land Management (“BLM”), and the United States Fish and Wildlife Service (“USFWS”); National Marine Fisheries Service (“NOAA Fisheries”); United States Forest Service (“USFS”); Oregon Department of Environmental Quality (“ODEQ”); Oregon Department of Fish and Wildlife (“ODFW”); Oregon Water Resources Department (“OWRD”); Oregon Parks and Recreation Department (“OPRD”); Deschutes County, Oregon; Jefferson County, Oregon; City of Bend, Oregon; City of Madras, Oregon; City of Redmond, Oregon; Avion Water Company; American Rivers; Oregon Trout; The Native Fish Society; Trout Unlimited; and WaterWatch of Oregon; each referred to individually as a “Party” and collectively as the “Parties.” PGE and the Tribes, acting through Warm Springs Power Enterprises (“WSPE”), may be referred to collectively as the “Licensees.” The Tribes in their governmental capacity, the Warm Springs Branch of Natural Resources (“BNR”), and the Warm Springs Water Control Board (“WCB”), but excluding WSPE may be referred to collectively as the “CTWS.” BIA, BLM, NOAA Fisheries, USFWS, USFS, ODEQ, ODFW, OPRD, and OWRD may be referred to collectively as the “Governmental Parties.” BIA, BLM, NOAA Fisheries, USFWS, and USFS may be referred to collectively as the “Federal Governmental Parties.” ODEQ, ODFW, OPRD, and OWRD may be referred to collectively as the “State Governmental Parties.” NOAA Fisheries, USFWS, ODFW, and BNR may be referred to individually as a “Fish Agency” and collectively as the “Fish Agencies.” American Rivers, Oregon Trout, Native Fish Society, Trout Unlimited, and WaterWatch of Oregon, may be referred to collectively as the “NGO Parties.” Deschutes County, Jefferson County, City of Bend, City of Madras, City of Redmond, and Avion Water Company may be referred to collectively as the “Local Parties.”

RECITALS

A. The Pelton Round Butte Hydroelectric Project, FERC Project No. 2030, (the “Project”), is owned and operated by PGE and the Tribes acting through WSPE. PGE is an electric utility organized under the laws of the State of Oregon. The Tribes are a federally recognized Indian Tribe. The Tribes enter into this Agreement both as a Licensee and as a sovereign tribal government. In these dual capacities, the Tribes perform their obligations under the Agreement through its Tribal Council and a number of subordinate executive departments, offices, boards, and enterprises, including, but not limited to, the BNR, the WCB, and WSPE.

B. The Project is located between River Miles 100 and 120 on the Deschutes River, near Madras, in Jefferson County in central Oregon. The Project consists of three developments. The Round Butte Development consists of a 440-foot high rock-filled dam, a

powerhouse containing three generating units with a total capacity of 338 MW, and appurtenant facilities. Round Butte Dam forms Lake Billy Chinook, which has a surface area of approximately 4,000 acres at full-pond elevation of 1945 feet (MSL), and which impounds approximately 9 miles of the Deschutes River, 7 miles of the Crooked River, and 13 miles of the Metolius River. The Pelton Development consists of a 204-foot high concrete arch dam, a powerhouse containing three generating units with a total capacity of 110 MW, and appurtenant facilities. Pelton Dam forms Lake Simtustus, a 7-mile reservoir with a surface area of approximately 540 acres at full pond elevation of 1,580 feet. The Reregulating Development consists of 88-foot high, concrete and rockfill dam, a powerhouse containing a 19.5 MW generating unit, and appurtenant facilities. The Reregulating Dam forms the Reregulating Reservoir, a 2.5-mile long impoundment with a maximum surface area of approximately 190 acres at full-pond elevation of 1,435 feet. The Project also includes a 2.9-mile long fish ladder from Lake Simtustus to the Deschutes River below the Reregulating Dam.

C. The Project occupies a total of approximately 8,300 acres, including approximately 2,480 acres located on private lands owned by the Licensees and other non-governmental entities, approximately 5,665 acres located on lands owned by the Tribes, USFS, and BLM, and 138 acres on lands owned by the State of Oregon. The Project inundates approximately 41 miles of the Deschutes, Crooked, and Metolius Rivers. Portions of the Deschutes, Crooked, and Metolius Rivers above the Project, and the Deschutes River below the Project, have been designated as Wild and Scenic Rivers pursuant to the Oregon Omnibus Wild and Scenic Rivers Act of 1968.

D. The Deschutes River and its tributaries are used by fall chinook, spring chinook, steelhead, kokanee, bull trout, Pacific lamprey, redband trout, and other fish species. The steelhead, bull trout, and chinook that use the Deschutes River and its tributaries have been listed as threatened species pursuant to the federal Endangered Species Act (“ESA”). Continued operation of the Project under a new license could adversely affect these fish species.

E. The Pelton Round Butte Project currently operates pursuant to two water rights, HE 217 and HE 222. Under HE 217, up to 11,700 cubic feet per second (“cfs”) of the waters of the Deschutes River may be used for the development of hydroelectric power at the Round Butte site; 500,000 acre-feet may be stored in the Round Butte Reservoir, of which 250,000 acre-feet are useable, and impounded water may be used as needed for the operation of the Project. HE 222 grants the right to use 11,700 cfs of waters of the Deschutes River for the development of hydroelectric power at the Pelton Project, and to use said waters and the impounded water for the operation of the Project. HE 222 was amended in 1980 to allow the Tribes to use 6,000 cfs for the development of power at the Regulating Dam. The date of priority of appropriation of water under HE 217 is November 26, 1958, and under HE 222 is July 26, 1961.

F. As originally licensed to PGE by the Federal Power Commission (“FPC”) on December 21, 1951, 10 F.P.C. 445 (1951), the Project consisted of the Pelton and Reregulating Developments, which were completed by 1958. In 1960, the FPC amended the Project license to authorize the construction by PGE of the Round Butte Development, 24 F.P.C. 408 (1960), which was completed by 1964. In 1980, 10 FERC ¶62,142, the Federal Energy Regulatory Commission (“FERC” or “Commission”), the successor to the FPC, amended the Project

License to authorize the Tribes to construct the Reregulating Powerhouse, which was completed in 1982. At that time, the Tribes and PGE were co-licensees “to the extent of their interests,” with the Tribes being licensee for the Reregulating Powerhouse, and PGE being licensee for all other Project works. The initial license for the Project expired on December 31, 2001. The Project is currently operating on annual licenses.

G. In December 1999, PGE and the Tribes filed competing applications for a new license for the Project. Each application was prepared after extensive consultation with State and Federal agencies, local governments, and NGOs. After filing, PGE and the Tribes determined that it would be in their mutual interest, and in the interest of the public generally, that they enter into a long-term comprehensive agreement in order to settle all existing disputes, controversies and claims between them. On April 12, 2000, PGE, the Tribes, and the DOI entered into a Long-Term Global Settlement Agreement, which provided that PGE and the Tribes would become co-licensees for the Project and file a joint application for a new license. The Long-Term Global Settlement Agreement was approved by FERC on November 21, 2000, 93 FERC ¶61,183. On June 29, 2001, PGE and the Tribes filed a Final Joint Application Amendment and jointly applied for a new license for the Project.

H. ODEQ is the entity for the State of Oregon authorized to issue Section 401 Certifications pursuant to the Clean Water Act (“CWA”) and state water quality laws. WCB is the CTWS entity authorized to issue Section 401 Certifications pursuant to the CWA and Tribal water quality laws. On June 25, 2001, the Licensees filed applications for water quality certifications for the Project pursuant to Section 401 of the CWA with the WCB and with ODEQ. On June 24, 2002, and June 25, 2002, the ODEQ and WCB, respectively, issued a water quality certification.

I. On July 11, 2001, the Commission published a “Notice Soliciting Additional Study Requests and Establishing Procedures for Relicensing” for the Project. On July 26, 2002, PGE and the WSPE, as “Joint Applicants,” filed the additional information requested by the Commission, and on August 12, 2002, FERC issued a “Notice of Application Ready for Environmental Analysis, and Soliciting Comments, and Final Recommendations, Terms and Conditions, and Prescriptions,” pursuant to which preliminary conditions, recommendations and comments were filed by DOI through the BIA, BLM, and USFWS; by USFS and NOAA Fisheries; by CTWS; by ODFW; by American Rivers, on behalf of itself and Trout Unlimited, The Native Fish Society and Oregon Trout; and by WaterWatch of Oregon. The State of Oregon and the Licensees filed responses to these preliminary conditions, recommendations and comments on February 10, 2003.

J. On January 31, 2003, PGE and the Tribes initiated settlement discussions with a group of stakeholders including the Parties. A facilitated Settlement Working Group (“SWG”) was formed and began meeting to negotiate a settlement agreement that would enable the Parties to resolve all outstanding issues associated with the relicensing of the Project. The SWG met for a period of 17 months, until June 2004. The SWG included all interveners in the FERC relicensing proceeding for the Project.

K. On August 29, 2003, the Commission issued a Draft Environmental Impact Statement (“DEIS”) evaluating the Final Joint Application Amendment in this proceeding.

Comments on the DEIS were filed by the Licensees; DOI, through the USFWS, BIA, and BLM; USFS; NOAA Fisheries; the Oregon Hydroelectric Application Review Team on behalf of ODEQ, ODFW, OWRD, and OPRD; CTWS; Jefferson County; American Rivers, on behalf of itself and Trout Unlimited, The Native Fish Society, and Oregon Trout; and WaterWatch of Oregon. ODFW also filed modified recommended terms and conditions under Section 10(j) of the Federal Power Act (“FPA”). Reply comments were filed by the Licensees and by CTWS.

L. On April 14, 2004, FERC issued a procedural schedule for the execution and filing of this Agreement and related documents. Pursuant to that schedule, on April 27, 2004, the Licensees filed an “Updated Description of Proposed Preferred Alternative” and a revised Biological Evaluation. Also pursuant to that schedule, on June 7, 2004, FERC issued a Final Environmental Impact Statement in this proceeding. Finally, as contemplated by the FERC schedule, the Parties completed this Agreement, and will file it with FERC by August 2, 2004.

NOW, THEREFORE, in consideration of their mutual covenants in this Agreement, the Parties agree as follows:

SECTION 1. PURPOSE AND EFFECT OF THIS AGREEMENT

1.1 Purpose of Agreement.

The Parties have entered into this Agreement for the purpose of resolving all issues that have or could have been raised by the Parties in connection with issuance of a FERC order issuing a new license (the “New License”) for the Project. Pursuant to the Parties’ various authorities under Sections 4(e), 10(a), 10(j), and 18 of the FPA, as well as other statutory and regulatory authorities, including the federal government’s tribal trust responsibilities, this Agreement establishes the Licensees’ obligations for the protection, mitigation and enhancement of resources affected by the Project under the New License. It also specifies procedures to be used among the Parties to ensure the implementation of the New License consistent with this Agreement, and with other legal and regulatory mandates. For these purposes, the Parties agree that this Agreement is fair and reasonable and in the public interest. Except as specifically provided below, each of the Governmental Parties agrees that the Licensees’ performance of their obligations under this Agreement will be consistent with and is intended to fulfill the Licensees’ existing statutory and regulatory obligations as to each Governmental Party relating to the relicensing of the Project.

1.2 Limitations.

This Agreement establishes no principle or precedent with regard to any issue addressed in this Agreement or with regard to any Party’s participation in any other pending or future licensing proceeding. Further, no Party to this Agreement shall be deemed to have approved, accepted, agreed to, or otherwise consented to any operation, management, valuation, or other principle underlying any of the matters covered by this Agreement, except as expressly provided in this Agreement. By entering into this Agreement, no Party shall 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 the New License. This Agreement shall not be offered in evidence or cited as precedent by any Party to this Agreement in any judicial

litigation, arbitration, or other adjudicative proceeding, except in a proceeding to establish the existence of or to enforce or implement this Agreement. This Section 1.2 shall survive any termination of this Agreement.

1.3 Representations Regarding Consistency and Compliance with Statutory Obligations.

Except as specifically provided below, by entering into this Agreement, the Governmental Parties and the CTWS represent that they believe (i) the Proposed License Articles set forth in Exhibit A and the conditions set forth in Appendix A satisfy the Federal and State requirements of the Parties within the jurisdiction of FERC for the relicensing and continued operation of the Project with respect to the protection, mitigation, and enhancement of natural resources, water quality, recreation, and cultural and historic resources affected by the Project, and (ii) their statutory and other legal obligations are, or can be, met through implementation of this Agreement and development of any recommendations, conditions and prescriptions consistent with this Agreement that are submitted to FERC for inclusion in the New License. Nothing in this Agreement is intended or shall be construed to affect or limit any Governmental Party or CTWS from complying with its obligations under applicable laws and regulations or from considering and responding to comments received in any environmental review or regulatory process related to the Project in accordance with this Agreement. This Agreement shall not predetermine the outcome of any environmental or administrative review or appeal process.

1.4 Federal Water Rights.

Nothing in this Agreement creates, expands, diminishes, impairs, predetermines, or otherwise affects any federal reserved or state-law-based water right that the United States may have in the Deschutes River or its tributaries.

1.5 Reserved Tribal Rights.

Nothing in this Agreement creates, expands, diminishes, impairs, predetermines, or otherwise affects any right of the CTWS reserved or established by or in any treaty, executive order, or statute. Further, nothing in this Agreement is intended to nor shall it create, expand, abrogate, diminish, or otherwise alter the responsibilities and obligations of the United States toward the CTWS under any federal treaty, executive order or statute.

1.6 Extent of Agency Authority.

Nothing in this Agreement expands or diminishes any existing authority or confers approval authority or regulatory jurisdiction that does not already exist under applicable federal, state, or Tribal law. The Parties recognize that each Fish Agency has separate and distinct statutory authorities and that no agency is deemed, by virtue of concurrent approvals, to be sharing its statutory authority with any other agency or to be conceding that the approval of any other agency is required for exercise of that agency's authority.

SECTION 2. ACTIONS UPON EXECUTION OF THIS AGREEMENT

2.1 FERC Filings by Licensees.

Within 30 days after the Effective Date, the Licensees 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 Agreement, including all Exhibits and Appendices to the Agreement, and a Joint Explanatory Statement pursuant to Rule 602, (the “FERC Filing”). The Licensees shall request that FERC incorporate the Proposed License Articles contained in Exhibit A to this Agreement (“Proposed License Articles”) as conditions of the New License. The Licensees shall use reasonable efforts to obtain a FERC order approving this Agreement and issuing the New License in a timely manner.

2.2 FERC and Other Filings by Governmental Parties.

The Governmental Parties concur with the Joint Explanatory Statement filed with FERC in support of this Agreement. Except as to the receipt of new information not actually known to them on the Effective Date, the Governmental Parties agree: (a) that an individual agency’s recommendations, conditions, and/or prescriptions that may be filed with FERC pursuant to Sections 4(e), 10(a), 10(j), and 18 of the FPA, shall be consistent with Exhibit A to this Agreement; (b) that any comments submitted by them to FERC related to the ESA Section 7 consultation process will be consistent with this Agreement; (c) that any supplemental information, comments or responses to comments filed by them with FERC in the context of this relicensing process will be consistent with this Agreement; (d) to use reasonable efforts to obtain a FERC order approving this Agreement and issuing the New License consistent with this Agreement in a timely manner; and (e) to support, in all relevant regulatory proceedings in which they participate, regulatory actions consistent with this Agreement.

2.3 FERC and Other Filings by the CTWS.

The CTWS concur with the Joint Explanatory Statement filed with FERC in support of this Agreement. Except as to the receipt of new information not actually known to them on the Effective Date, the CTWS agree: (a) that the CTWS’ recommendations that may be filed with FERC pursuant to Section 10(a) of the FPA shall be consistent with Exhibit A to this Agreement; (b) that any comments submitted by them to FERC related to the ESA Section 7 consultation process will be consistent with this Agreement; (c) that any supplemental information, comments or responses to comments filed by them with FERC in the context of this relicensing process will be consistent with this Agreement; (d) to use reasonable efforts to obtain a FERC order approving this Agreement and issuing the New License consistent with this Agreement in a timely manner; and (e) to support, in all relevant regulatory proceedings in which they participate, regulatory actions consistent with this Agreement.

2.4 FERC and Other Filings by NGOs and Local Parties.

The NGO Parties and Local Parties concur with the Joint Explanatory Statement filed with FERC in support of this Agreement. Except as to the receipt of new information not actually known to them on the Effective Date, the NGO and Local Parties agree: (a) that any comments submitted by them to FERC related to the ESA Section 7 consultation process will be consistent

with this Agreement; (b) that any supplemental information, comments or responses to comments filed by them with FERC in the context of this relicensing process will be consistent with this Agreement; and (c) to support, in all regulatory proceedings associated with the relicensing of the Project in which they participate, regulatory actions consistent with this Agreement.

2.5 Permits.

Subject to Section 7.3.1 of this Agreement, upon issuance of the New License, the Licensees shall apply for and use reasonable efforts to obtain in a timely manner and in final form all applicable federal, state, regional, and local permits, licenses, authorizations, certifications, determinations, and other governmental approvals for purposes of implementing this Agreement and the New License (“Permits”). The applications for such Permits shall be consistent with the terms of this Agreement. Subject to Section 1.3 and Section 2 of this Agreement, each Party, upon the Licensees’ request, shall use reasonable efforts to support the Licensees’ applications for Permits, and shall not file comments or recommend Permit conditions that are inconsistent with this Agreement, provided that this sentence shall not apply to a Party that is the agency issuing the requested Permit. The Licensees shall pay all fees required by law related to such Permits. The Parties shall work together as appropriate during the permitting, environmental review, and implementation of this Agreement. Except as expressly provided in this Agreement, the Licensees shall not be required by this Agreement to implement an action required under this Agreement or the New License until all applicable Permits required for that action are obtained. If a proceeding challenging any Permit required for the action (“Proceeding”) has been commenced, the Licensees shall be under no obligation to implement the action or any related action under this Agreement until any such Proceeding is terminated. In the event any Proceeding is commenced, the Parties shall confer to evaluate the effect of such Proceeding on implementation of this Agreement. Nothing contained in this Section shall be construed to limit the Licensees’ right to apply for a Permit before issuance of the New License, provided that any such applications shall be consistent with this Agreement.

2.6 Communications with FERC and Other Governmental Agencies.

Subject to Sections 2.1 to 2.5, as applicable, and to Section 7.2.2, the Parties may make such comments and responses to comments as the Parties deem necessary to be filed with FERC, ODEQ, OWRD, any other agency, or the CTWS in the context of the relicensing or Permit processes.

SECTION 3. IMPLEMENTATION OF PROTECTION, MITIGATION, AND ENHANCEMENT MEASURES

3.1 Duration of Agreement.

This Agreement shall take effect on the Effective Date and shall remain in effect for the term of the New License and for any annual licenses issued subsequent thereto, unless this Agreement is sooner terminated as provided in Section 7. Sections 2 and 7.2.2 of this Agreement shall not apply to filings and communications pertaining to any proceeding to issue a license for the Project subsequent to the New License.

3.2 Proposed License Articles.

The Parties agree that the obligations set forth in this Agreement that are enforceable by FERC are set forth as Proposed License Articles in Exhibit A, incorporating the protection, mitigation, and enhancement (“PME”) measures of Exhibits C through K, all of which exhibits are attached to and made a part of this Agreement, and in the Water Quality Certifications in Appendix A to this Agreement. In the event of a material inconsistency between Exhibit A and Exhibits B through K, the terms of Exhibit A shall control. If issuance of the New License or a Permit necessary to carry out the requirements of the New License is delayed, it is the expectation of the Parties that activities described in the Proposed License Articles will be delayed accordingly.

3.3 Interim Measures.

Exhibit B, which is attached and made a part of this Agreement, lists certain measures that the Licensees shall implement prior to issuance of the New License (“Interim Measures”). In anticipation of and consistent with the issuance of a New License consistent with Exhibit A, the Licensees agree to undertake and, at their own expense, carry out the Interim Measures promptly upon the Effective Date of this Agreement and to continue to implement them regardless of any delay in issuance of the New License.

3.4 Other PME Measures.

The Licensees shall, at their own expense, carry out, in addition to the Interim Measures and the Proposed License Articles, the measures described in Appendices B through F to this Agreement. If issuance of the New License or a Permit necessary to carry out the requirements of the New License is delayed, it is the expectation of the Parties that activities described in this Section 3.4 will be delayed accordingly.

3.5 License Term.

The Parties recommend to FERC that the term of the New License be 50 years.

SECTION 4. COORDINATION AND DECISION MAKING

4.1 Purpose and Function.

The Parties agree to cooperate in implementing this Agreement. The Licensees shall provide periodic updates to the Parties regarding the status of their implementation of their obligations under this Agreement in accordance with Section 4.2.5 of this Agreement and any reporting obligations included in or imposed by the FERC in the New License.

4.2 Coordinating Committee.

Within 60 days of the issuance of the New License, the Licensees shall convene a committee (the “Coordinating Committee”) that will address issues related to the implementation of this Agreement, including but not limited to dispute resolution pursuant to Section 7.5 of this Agreement. Each Party may designate a representative to the Coordinating Committee.

4.2.1 Decision-Making Process.

The Coordinating Committee shall strive to conduct its business by consensus, which for purposes of this Agreement shall mean that any decision must be acceptable to all representatives of the Parties participating in the Coordinating Committee. At the request of the Coordinating Committee, the Licensees shall fund and make available a mutually agreed-upon third party expert to assist the Coordinating Committee in reaching its decisions. Decisions of the Coordinating Committee shall not abrogate or limit the approval authority of individual Parties or of agencies specifically identified in this Agreement or the New License as having approval authority regarding specific measures required by this Agreement, including Exhibits and Appendices, the New License, or Permits.

4.2.2 Notice.

Unless otherwise specified in this Agreement, the Licensees shall provide members of the Coordinating Committee a minimum of 30 days notice prior to any meeting, provided that meetings may be called on shorter notice if the circumstances require.

4.2.3 Licensing Compliance Coordinator.

The Licensees shall designate their representative on the Coordinating Committee as the Licensing Compliance Coordinator to oversee the implementation of the New License and this Agreement. The Licensees will provide reasonable administrative and clerical support for the Coordinating Committee.

4.2.4 Meetings.

The Licensing Compliance Coordinator shall arrange an annual meeting of the Coordinating Committee, as well as any additional meetings deemed necessary by the Parties to coordinate activities and inform the Parties concerning the status or implementation of this Agreement and the New License.

4.2.5 Reports.

The Licensees shall prepare and file with FERC and the Coordinating Committee a detailed annual report on the implementation of this Agreement during the previous year. The Licensees' obligation to file such reports shall commence upon the first anniversary of the issuance of the New License and continue annually each year thereafter during the term of this Agreement. The Licensing Compliance Coordinator will prepare annual reports in consultation with the members of the Coordinating Committee and will provide such members with at least 30 days to comment on a draft report prior to filing a final version with FERC. Unless otherwise provided in the New License, the Licensees shall file the annual report by March 31 of the year following the calendar year which is the subject of the report. The Licensees shall prepare and distribute such other reports as provided in the New License.

4.3 Implementation Committees.

Within 60 days of the issuance of the New License, the Licensees shall convene the initial meeting of the following committees (each an “Implementation Committee”): the Fish Committee, the Terrestrial Resources Working Group, the Recreation Resources Working Group, the Pelton Round Butte Fund Governing Board, and the Shoreline Management Working Group. The Licensees shall work with each Implementation Committee during the term of the New License to ensure that the requirements of this Agreement, and all Exhibits and Appendices thereto, are incorporated into the Licensees’ implementation of the New License. The Licensees’ development and implementation of study plans, reports, facility designs, and operating and implementation plans pursuant to the terms of the New License shall comply with the requirements of this Agreement and any applicable License Implementation Plan.

4.3.1 Implementation Committee Decision-Making Process.

The composition of each Implementation Committee is specified in Exhibit K. Each Party shall designate a representative to each Implementation Committee on which it is represented. Thereafter, each Implementation Committee will operate as described in the relevant exhibits or appendices to this Agreement. Each Implementation Committee shall strive to conduct its business by consensus as defined in Section 4.2.1. Decisions of an Implementation Committee shall not limit or abrogate the approval authority of individual Parties or of agencies specifically identified in this Agreement or in the New License as having approval authority regarding specific measures required by this Agreement, including Exhibits and Appendices, the New License, or Permits. The decisions and operation of the Implementation Committees shall be subject to the dispute resolution provisions of Section 7.5 of this Agreement.

4.3.2 Consultation Process.

Unless a different time period is specifically established pursuant to another provision of the New License or the applicable License Implementation Plan, the Licensee shall, where consultation with an Implementation Committee is required, allow a minimum of 30 days for the Implementation Committee members to comment and to make recommendations before filing any study, operating, or implementation plan, report, or facility design with the Commission. If after consideration by the Implementation Committee of all comments or recommendations consensus is not achieved regarding the study, operating, or implementation plan, report, or facility design, and any party invokes dispute resolution pursuant to Section 7.5, the Licensees shall not file any study, operating, or implementation plan, report, or facility design with FERC until the dispute resolution process specified in Section 7.5 has been completed.

4.3.3 Agency Approval Process.

Where consultation with an Implementation Committee and approval by one or more Governmental Parties or CTWS is required by the New License, the Licensees’ submission of a study, operating or implementation plan, report, or facility design to the Implementation Committee shall also constitute submission to the appropriate Governmental Party or CTWS for approval prior to filing with the FERC. If consensus is achieved by the Implementation Committee, or by the Coordinating Committee after completion of dispute resolution, such

approval shall be deemed to have been obtained and each Governmental Party or CTWS with approval authority shall document its approval in writing to the Licensees, and the Licensees shall include such approval or approvals in any filing with FERC. If a Fish Agency disapproves a study, operating or implementation plan, report, or facility design, the Licensees shall not file the disapproved study, operating or implementation plan, report, or facility design with FERC until the dispute resolution process specified in Section 7.5 has been completed, unless the matter in dispute was addressed pursuant to Section 4.3.2, in which case no further dispute resolution shall be required before such study, operating or implementation plan, report, or facility design is filed with FERC.

4.4 Inspection and Notice.

The Licensees shall permit the Parties, at any reasonable time, access to, through, and across Project lands and works for the purpose of inspecting Project facilities and Project records pertaining to the operation of the Project and implementation of this Agreement and the New License. The Licensees shall allow such inspections only after the Party requesting the inspection provides the Licensees reasonable notice of such inspections and agrees to follow the Licensees' standard safety and security procedures when engaged in such inspections.

SECTION 5. COVENANTS

5.1 Public Benefit from Relicensing of the Project.

As further described in the Joint Explanatory Statement, the Parties agree that relicensing of the Project in accordance with this Agreement serves the public interest and achieves a reasonable resolution of issues posed by relicensing the Project. The Parties also agree that the schedule set forth in the Proposed License Articles contained in Exhibit A, as implemented by this Agreement, is a reasonable time necessary to serve the public interest in a safe, appropriate, and effective manner. The Parties further agree that relicensing the Project in accordance with the terms of this Agreement is an effective and expedient means of protection, mitigation, and enhancement of resources affected by the Project.

5.2 Coordination of Information.

The Parties agree to use reasonable efforts to coordinate information provided to public agencies and to the public regarding this Agreement, the FERC Filing, the New License, and the Permits.

5.3 Oregon Public Utility Commission Proceedings.

The Parties agree to support any reasonable cost recovery application associated with relicensing the Project consistent with this Agreement that PGE may file with the Oregon Public Utilities Commission, by making, upon request of PGE, a reasonable effort to submit an appropriate general letter of support for resource measures in this Agreement within the Party's areas of expertise.

5.4 Mandatory Conditions Review Process.

The Parties agree that this Agreement resolves all outstanding issues or comments filed pursuant to the DOI and NOAA Fisheries Mandatory Conditions Review Processes.

5.5 Settlement Negotiations Confidential.

The Parties entered into the negotiations and discussions leading to this Agreement with the understanding that, to the extent allowed by law, all discussions relating to the development of this Agreement were and would continue to be confidential. Positions advanced or discussed by the Parties during negotiation of this Agreement shall not be used by any Party in any manner, including admission into evidence, in connection with this Agreement, or in any other proceedings related to the subject matter of this Agreement, except to the extent disclosure may be required by law. This Section 5.5 shall survive any termination of this Agreement and shall apply to any Party that withdraws from this Agreement.

SECTION 6. COMMITMENTS OF GOVERNMENTAL PARTIES UNDER RELATED STATUTORY AUTHORITIES

6.1 General Provisions.

6.1.1 Authority under the Federal Power Act.

Except as to the receipt of new information not known to them on the Effective Date, the Governmental Parties intend that any conditions, prescriptions, and recommendations submitted to FERC in connection with the issuance of the New License will be consistent with this Agreement and that any material inconsistency shall be resolved in accordance with Section 7 of this Agreement. In addition, each Governmental Party reserves its authority pursuant to the FPA in the event this Agreement is not filed with FERC, the Governmental Party withdraws from this Agreement, the Licensees fail to implement any material provision of this Agreement, or this Agreement is terminated for any reason whatsoever, provided in each instance that the Licensees' rights shall be governed by the applicable provision of Section 7 of this Agreement.

6.1.2 Other Statutory Authorities.

If the Licensees are required to obtain, from a Governmental Party, a Permit that is not specifically described in this Section 6, such Governmental Party shall, subject to Section 1.4 of this Agreement, use reasonable efforts to exercise its authority in a manner consistent with the intent and purpose of this Agreement. This Agreement shall not limit the ability of any Governmental Party to assert its authority under any statute other than the FPA in the event that this Agreement is not filed with FERC, the Governmental Party withdraws from this Agreement, the Licensees fail to implement any provision of this Agreement, or this Agreement is terminated for any reason whatsoever, provided in each instance that the Licensees' rights shall be governed by the applicable provision of Section 7 of this Agreement.

6.1.3 Reservation of Authority.

Each Governmental Party reserves its authority pursuant to the FPA. In the event that any Governmental Party includes a reservation of authority under any statute in the modified or final conditions, recommendations or prescriptions that it submits to FERC, 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 materially inconsistent with this Agreement, 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.

6.2 Endangered Species Act.

6.2.1 Applicable Procedures.

As required by Section 7 of the ESA, FERC may not issue the New License until it has completed consultation with NOAA Fisheries and USFWS with respect to threatened and endangered species affected by the Project. If FERC adopts the provisions of this Agreement, as described in the biological evaluation filed with FERC on April 27, 2004 (the “Biological Evaluation”), as the proposed action, such proposed federal action shall be the basis for a Section 7 consultation between FERC and NOAA Fisheries, and FERC and USFWS, and any biological opinion relating to relicensing the Project (the “Biological Opinion”) shall address and evaluate such provisions. The Licensees have been designated as FERC’s nonfederal representative for the purpose of preparing the Biological Evaluation, which will serve as FERC’s draft biological assessment. As of the date of this Agreement, ESA Section 7 consultation has not been completed.

6.2.2 Consultation.

The Biological Evaluation has been developed during the negotiations of the SWG and in informal consultation with NOAA Fisheries and USFWS. The Licensees and NOAA Fisheries and USFWS have worked collaboratively to develop measures in this Agreement, including the Exhibits and Appendices attached to it, to address specifically the needs of ESA listed species. By signing this Agreement, NOAA Fisheries and USFWS do not formally bind themselves to make any specific recommendations or take any particular action with respect to ESA compliance. NOAA Fisheries and USFWS acknowledge that the information contained in the Biological Evaluation is sufficient for FERC to begin formal consultation under Section 7 of the ESA. If FERC issues a Biological Assessment that is not materially different than the Biological Evaluation, and if no new information that is materially different than the Biological Evaluation becomes available during the consultation process, NOAA Fisheries and USFWS anticipate that the measures contained in this Agreement, as well as best management practices consistent with those listed in Appendix F to this Agreement, will be adequate to avoid a jeopardy finding and minimize any incidental take occurring as a result of implementation of this Agreement for species presently listed as threatened or endangered. NOAA Fisheries and USFWS expressly reserve the right, consistent with federal law, to take such future actions as they may deem necessary to meet their obligations under the ESA. If during consultation with FERC pursuant to Section 7 of the ESA, NOAA Fisheries or USFWS requests any conservation measures that are materially inconsistent with the terms of this Agreement, the provisions of Section 7.2.2 of this

Agreement will apply. Nothing in this Agreement shall limit or waive the authority of NOAA Fisheries or USFWS to take whatever action each agency may deem necessary if the New License fails to satisfy fully the requirements of ESA Section 7, including failing to adopt as license conditions the terms and conditions contained in the Biological Opinions issued by NOAA Fisheries and USFWS, provided that if such NOAA Fisheries or USFWS action is materially inconsistent with this Agreement, the Parties shall address any such inconsistency in accordance with Sections 7.2.2 or 7.5 of this Agreement, as applicable.

6.2.3 Subsequent Permit Applications.

NOAA Fisheries and USFWS will consider the effects of dredge and fill activities during their consultation with FERC to the extent these activities are included in the proposed action pursuant to Section 7 of the ESA regarding the issuance of the New License. If consultation is required with the U.S. Army Corps of Engineers (“Corps”) regarding issuance of any permit under Section 404 of the CWA (“Section 404 Permit”), NOAA Fisheries and USFWS anticipate that the analysis of the impacts of the permit issuance will not differ from the analysis of the FERC action, unless the Corps proposes to issue a Section 404 Permit that is materially different than the FERC action or NOAA Fisheries or USFWS becomes aware of new information that is materially different than the information contained in the Biological Opinion provided to FERC. In the event that the State of Oregon assumes the Corps’ Section 404 responsibilities, the need for additional Section 7 consultation will be determined pursuant to the terms of the U.S. Environmental Protection Agency’s delegation of Section 404 responsibilities to the State of Oregon.

6.3 Clean Water Act.

6.3.1 Section 401 Certification of Application for New License.

Under Section 401 of the CWA, FERC may not issue a new license for the Project unless and until a certification of compliance with water quality standards (“Section 401 Certification”) has been made by the state or tribal agency responsible for certification, or the certification requirement is deemed waived. ODEQ and the WCB each issued a Section 401 Certification for the Project (each a “2002 Certification”), on June 24, 2002, and June 25, 2002, respectively, which certifications are attached to this Agreement as Appendices A-1 and A-2, respectively.

6.3.2 Section 401 Certification for Other Federal Permits.

Upon applying for a federal permit or permits, other than the relicensing by FERC, for activities required by this Agreement or the New License that might result in a discharge to navigable waters, including a Section 404 Permit from the Corps, the Licensees shall provide ODEQ and WCB written notice of such application and of any proposed changes in activities since the date of issuance of the 2002 Certifications. Within 60 days of ODEQ’s or WCB’s receipt of notice from the Corps or other federal permitting agency that it is processing the Licensees’ application, ODEQ or WCB, consistent with 33 U.S.C. § 1341(a)(3), shall notify the federal agency and the Licensees either (i) that its 2002 Certification is sufficient for purposes of the federal permit and permit conditions, or (ii) that, in light of new information related to the water quality impacts of activities since issuance of its 2002 Certification, or for activities not evaluated in its 2002

Certification, there is no longer reasonable assurance of compliance with applicable water quality standards. In the latter event, ODEQ or WCB shall consider the new information, solicit and consider public and agency comment as required by law, and issue Section 401 Certification determinations for purposes of the federal permit activities. If, as a result of consideration of public comment and any new information, ODEQ or WCB issues a Section 401 Certification that requires measures that are materially inconsistent with this Agreement, the Parties shall address any such inconsistency in accordance with Section 7.2.2 or 7.5 of this Agreement, as applicable.

6.3.3 Application for Delegated State Section 404 Permit for Project Activities.

In the event the State of Oregon assumes authority to administer a dredge and fill permit program under CWA Section 404 by the time a Section 404 Permit is required for Project activities, the Licensees shall apply for such Section 404 Permit from the Oregon Department of State Lands (“ODSL”) or other applicable state agency. ODEQ, ODFW, OWRD, and OPRD shall provide comments to ODSL, or other applicable state agency, in accordance with ORS 196.825 or successor statutes in effect at that time. Subject to consideration of any new information at the time of the application for the Section 404 Permit and consideration of any public comment as may be required by law, ODEQ, ODFW, OWRD, and OPRD shall provide ODSL, or other applicable state agency, with comments or proposed conditions that are consistent with this Agreement. If ODEQ, ODFW, OWRD, or OPRD provide comments or proposed conditions that would require the Licensees to undertake measures that are materially inconsistent with this Agreement, the Parties shall address any such inconsistency in accordance with Section 7.2.2 or 7.5 of this Agreement, as applicable.

6.4 Magnuson-Stevens Fishery Conservation and Management Act.

6.4.1 Applicable Procedures.

As required by Section 305 of the Magnuson-Stevens Fishery Conservation and Management Act (“Magnuson-Stevens Act”), FERC must consult with NOAA Fisheries if its action may affect essential fish habitat (“EFH”). The measures in this Agreement, including the Exhibits and Appendices thereto, will form the proposed action. FERC must provide an EFH Assessment to NOAA Fisheries to begin EFH consultation. The Licensees have been designated as FERC’s non-Federal representative for purposes of preparing an EFH Assessment. NOAA Fisheries will provide FERC with recommended EFH conservation measures to conserve and enhance EFH. FERC must then respond within 30 days, including a description of the measures the agency will take to avoid or mitigate the effects of the action on EFH. If FERC does not adopt the recommendations, it must provide a detailed explanation for this decision. NOAA Fisheries will conduct the EFH consultation along with the ESA consultation in the interest of streamlining the consultation.

6.4.2 Consultation.

The Biological Evaluation has been developed in informal consultation with NOAA Fisheries. The Licensees and NOAA Fisheries have worked collaboratively to develop measures described

in the Biological Evaluation, to be implemented as required in the Proposed License Articles to identify measures to conserve EFH. By signing this Agreement, NOAA Fisheries does not formally bind itself to make any specific recommendations or take any particular action with respect to Magnuson-Stevens Act EFH consultation. NOAA Fisheries acknowledges that the information contained in the Biological Evaluation is sufficient for an EFH assessment for FERC to use to begin consultation under Section 305 of the Magnuson-Stevens Act. NOAA Fisheries anticipates that the measures contained in this Agreement will be adequate to conserve EFH as a result of implementation of this Agreement. NOAA Fisheries expressly reserves the right, consistent with federal law, to take such future actions as it may deem necessary to meet its obligations under the Magnuson-Stevens Act. If during consultation with FERC pursuant to Section 305 of the Magnuson-Stevens Act, NOAA Fisheries recommends any EFH conservation measures that are materially inconsistent with the terms of this Agreement, the provisions of Section 7.2.2 of this Agreement will apply. Nothing in this Agreement shall limit or waive the authority of NOAA Fisheries to take whatever action it may deem necessary if FERC fails to adopt as new license conditions the EFH recommendations attached to the biological opinion issued by NOAA Fisheries; provided that, if such NOAA Fisheries action is materially inconsistent with this Agreement, the Parties shall address any such inconsistency in accordance with Sections 7.2.2 or 7.5 of this Agreement, as applicable.

6.5 State Fish Passage Law.

The measures required by this Agreement include fish passage within the meaning of ORS 509.585 approved by ODFW pursuant to Oregon Administrative Rules Chapter 635 Division 412.

6.6 State Water Rights Reauthorization and Enforcement.

6.6.1 OWRD Process.

Within 60 days of the Effective Date, the Licensees shall revise their application for reauthorization of state water rights for the Project to be consistent with this Agreement. This revision of the application for reauthorization of the state water rights for the Project shall include a request that the subordination provisions of the existing water rights be included in any reauthorized water right. OWRD anticipates that reauthorization of water rights for the Project consistent with this Agreement, including but not limited to Section 6.6.3, will not impair or be detrimental to the public interest under the standards set forth in ORS 543A.025. However, OWRD does not intend to predetermine the outcome of the state water right reauthorization process, and reserves its right to take all actions necessary to comply with ORS 543A.120 *et seq.* and applicable state law. Upon receipt of the revised application for reauthorization, OWRD shall issue a Proposed Final Order (“PFO”) consistent with this Agreement, in accordance with ORS 543A.120. If, however, OWRD issues a PFO that is materially inconsistent with this Agreement, or if, after any protest or otherwise, OWRD issues a Final Order that is materially inconsistent with this Agreement, the Parties shall address any such inconsistency in accordance with Section 7.2.2 of this Agreement.

6.6.2 Related Filings.

To the extent any Party other than OWRD participates in the state water right reauthorization process for this Project, such Party shall not take any positions that are materially inconsistent with the terms of this Agreement, including but not limited to positions regarding requests made by the Licensees in the revised application required by 6.6.1.

6.6.3 Enforcement.

OWRD has found that the existence of the Project's water rights as reauthorized by OWRD does not make a call for regulation of the Lower Deschutes River instream water rights futile. If OWRD finds or is notified that the Deschutes River instream water rights (certificate numbers 73188 and 73237) are not being met, OWRD will regulate off upper basin water right holders that are junior to the Deschutes River instream water rights, in accordance with applicable statutes, rules, and OWRD's Field Enforcement Manual.

SECTION 7. DISPUTE RESOLUTION

7.1 Commitment to Dispute Resolution.

Any Party intending to withdraw from this Agreement as allowed by this Section must first provide 60 days advance written notice of its intent to withdraw and, within such notice period, must initiate dispute resolution under Section 7.5 of this Agreement toward eliminating the reason for such withdrawal. Except as provided in Section 7.2.1 of this Agreement, the withdrawal of a Party does not terminate this Agreement for remaining Parties. If a Party withdraws as allowed by this Agreement, that Party shall not be bound by this Agreement, other than Sections 1.2 and 5.5 thereof, following such withdrawal except as might be established through an action for specific performance.

7.2 Resolution of Disputes Before Issuance of New License.

The following events may occur before FERC issues the New License, and the Parties shall seek to resolve any disputes regarding such events as provided in this Section.

7.2.1 Actions Before Filing of FERC Filing.

If any Party takes an action materially inconsistent with this Agreement before the Licensees file the FERC Filing, any other Party may, after undertaking dispute resolution as provided in Section 7.1, withdraw from this Agreement, and the Licensees may, in their sole discretion after such dispute resolution, determine not to file the FERC Filing, in which case this Agreement terminates.

7.2.2 Actions After Filing of FERC Filing.

a. If any of the events listed below occurs after the FERC Filing is filed, but prior to FERC issuing the New License, then the Parties, and, in the case of Section 7.2.2(a)(3), the remaining

Parties, first shall undertake dispute resolution under Section 7.5 of this Agreement toward conforming this Agreement to the action or otherwise keeping this Agreement in effect.

1. 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 materially inconsistent with this Agreement;

2. Any Party takes an action that is materially inconsistent with this Agreement, including submitting recommendations, conditions and prescriptions to the New License or Permits that are materially inconsistent with this Agreement, or fails to timely implement any provision of this Agreement; or

3. Any Party withdraws from this Agreement, after complying with the requirements of Section 7.1

b. If dispute resolution does not resolve a materially inconsistent action or Party withdrawal to the satisfaction of remaining Parties:

1. Any Party may petition FERC to adopt and enforce the provisions of this Agreement; or

2. Any Party may withdraw from this Agreement and, upon withdrawal, exercise any right or authority or seek any remedy available under applicable law; and

3. The Licensees may withdraw the FERC Filing, or oppose any new or amended term, condition, or recommendation submitted to FERC by a withdrawing Party.

7.2.3 Licensees Fail To Perform Interim Measures.

If, after the FERC Filing is filed but prior to FERC issuing the New License, the Licensees fail to perform an Interim Measure and such failure is not a delay excused under Section 2.5 of this Agreement or force majeure excused under Section 8.6 of this Agreement, any Party may provide notice to the Licensees of such failure. If the Licensees' failure to perform an Interim Measure is: (i) not capable of cure; (ii) is capable of cure, but not cured within three days of the Licensees' receipt of notice of failure to perform from a Party or within three days from the time that Licensees otherwise would reasonably be expected to have knowledge of the failure; or, (iii) is not curable within three days of Party notice or Licensee knowledge, and the Licensees have not commenced a cure within that period and diligently proceeded with such cure, any non-Licensee Party may:

1. Petition FERC to adopt and enforce this Agreement;

2. Seek specific performance or other remedies available under applicable law, without resorting to dispute resolution under Section 7.5 of this Agreement; or

3. Withdraw in accordance with Section 7.1, and, upon withdrawal, to the extent allowed by law, submit new or amended conditions, prescriptions, or recommendations to FERC in connection with issuance of the New License.

7.3 Resolution of Disputes About New License.

7.3.1 Adoption by FERC without Modification.

The Parties agree that, if FERC approves this Agreement and incorporates the provisions of this Agreement and the Proposed License Articles into the New License without material modification, they will not seek rehearing of the FERC order issuing the New License except as provided in Sections 7.3.2 and 7.3.3, or support in any way any request for rehearing by any non-Party to this Agreement; provided, that this obligation applies only if FERC (i) incorporates into the New License all conditions contained in the Section 401 Certifications issued by ODEQ and CTWS, and (ii) issues the New License after issuance of the Biological Opinion and completion of EFH consultation; and, provided further, that any request for rehearing as provided in (i) and (ii) shall be limited to a challenge to FERC's (a) failure to incorporate into the New License all conditions contained in the Section 401 Certifications issued by ODEQ and CTWS, or (b) issuance of the New License before issuance of the Biological Opinion and completion of EFH consultation, as applicable.

7.3.2 Conditions of New License Inconsistent with This Agreement.

If the New License is inconsistent with this Agreement, this Agreement 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 within 30 days after the date of the FERC Order. If the disputing Party or Parties seek administrative rehearing or judicial review of the FERC order, such Party's request for rehearing or review shall constitute notice to the other Parties of the dispute. Any Party may, without resort to the dispute resolution procedures of Section 7.5 of this Agreement, seek administrative rehearing or judicial review of the New License or any other FERC order related to Project relicensing, as provided by the Federal Power Act. If any Party seeks rehearing or judicial review, the Licensees may seek a stay of the New License or other order. The Parties shall follow the dispute resolution procedures set forth in Section 7.5 to the extent reasonably practicable while any such rehearing or appeal is pursued. If a Party has filed for administrative rehearing or judicial review and the Parties subsequently agree to modify this Agreement to conform to the inconsistent action, the filing Party or Parties shall withdraw the appeal, or recommend such withdrawal, as appropriate. If, after rehearing or judicial review, as the case may be, the New License or other order is still inconsistent with this Agreement, any Party may, within 60 days after completing the dispute resolution procedures in Section 7.5 of this Agreement, withdraw from this Agreement and exercise any remedy available under applicable law. If any Governmental Party withdraws from this Agreement as provided in this Section, the Licensees shall, within 30 days of such withdrawal, have the option to withdraw from the Agreement, or take any other action to oppose any action by the withdrawing Party.

7.3.3 Provisions Omitted from New License

If the New License does not contain all of the provisions of this Agreement because FERC expressly determines that it does not have jurisdiction to adopt or enforce the omitted provisions, a Party may seek rehearing and ultimately withdraw from this Agreement as provided in Section 7.3.2 if its interests are affected by the FERC determination. If a Governmental Party or the CTWS have not withdrawn as provided in this Section, the remaining Parties agree that they shall be bound by the entire Agreement, including those provisions omitted by FERC. If a Governmental Party or the CTWS withdraws from this Agreement as provided in this Section, the remaining Parties may withdraw or take such other actions as provided in Section 7.4.2.

7.4 Resolution of Disputes After Issuance of New License.

7.4.1 Licensees Fail To Comply with New License.

If the Licensees fail to perform any of the provisions of this Agreement included in the New License and such failure is not a delay excused under Section 2.5 of this Agreement or force majeure excused under Section 8.6 of this Agreement, any Party may, without resort to the dispute resolution procedures under Section 7.5 of this Agreement, petition FERC to enforce the New License. If FERC fails to enforce the New License, any Party other than the Licensees may withdraw from this Agreement, seek specific performance or any other remedy, or exercise any authority available under applicable law.

7.4.2 Licensees Fail To Perform Covenants of This Agreement Not Included in the New License.

If the Licensees fail to perform any of their obligations under this Agreement that are not included as terms in the New License, any Party may give the Licensees notice of the failure and, without resort to the dispute resolution procedures under Section 7.5 of this Agreement, withdraw from the Agreement, seek specific performance or any other remedy, or exercise any authority available under applicable law.

7.4.3 Action by Third Party.

If, during the term of the New License, a third party not a Party to this Agreement successfully petitions FERC or obtains a court order modifying the operation of the Project in a manner that is inconsistent with this Agreement, then any Party may give notice to the other Parties and commence dispute resolution procedures pursuant to Section 7.5 of this Agreement to determine whether this Agreement should be amended or otherwise reconciled with such inconsistency. In addition, the aggrieved Party or Parties may seek administrative rehearing or judicial review of such order. If, after completion of the dispute resolution procedures or other proceedings, the order complained of remains in effect, or as modified is still inconsistent with this Agreement, any Party may withdraw from this Agreement, seek specific performance or any other remedy, or exercise any authority available under applicable law.

7.4.4 Review of Other Agency Actions.

To the extent provided by applicable law, any Party may seek administrative rehearing and judicial review of any action by a Governmental Party inconsistent with this Agreement. The dispute resolution procedures of Section 7.5 of this Agreement do not preclude any Party from timely filing and pursuing an appeal under the respective Governmental Party's applicable rules, or judicial review, of any such action that is inconsistent with this Agreement or of any action that relates to subjects not resolved by this Agreement. 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. If a Party has filed for administrative rehearing or judicial review and the Parties subsequently agree to modify this Agreement to conform to the action, the filing Party or Parties shall withdraw the appeal, or recommend such withdrawal, as appropriate.

7.4.5 Actions After Issuance of New License.

If, after FERC issues the New License, any Party takes action materially inconsistent with this Agreement in any proceeding associated with the relicensing of the Project, or any Party withdraws from this Agreement, the remaining Parties first shall undertake dispute resolution under Section 7.5 of this Agreement toward conforming this Agreement to the action or otherwise keeping this Agreement in effect. If dispute resolution does not resolve a materially inconsistent action or Party withdrawal to the satisfaction of remaining Parties, any Party may petition FERC to enforce the provisions of this Agreement, withdraw from this Agreement, seek specific performance or any other remedy, or exercise any authority available under applicable law.

7.4.6 Effect of Withdrawal of a Party Other than the Licensees.

If a Party other than the Licensees withdraws from this Agreement pursuant to this Section 7.4, any of the remaining Parties may oppose any condition, prescription or recommendation that is materially inconsistent with this Agreement submitted to FERC by a withdrawing Party, or oppose the assertion of such other remedy or authority as that or any other Party seeks to assert under any applicable law. In addition, if a Party withdraws from this Agreement pursuant to any provision of this Section 7.4 other than Sections 7.4.1 or 7.4.2, and the Licensees withdraw from the Agreement in accordance with Section 7.1 of this Agreement, the Licensees may notify FERC that the Licensees have withdrawn from this Agreement and seek such further FERC action as the Licensees deem appropriate.

7.5 Dispute Resolution.

All disputes among the Parties regarding the obligations of the Parties under this Agreement shall, at the request of any Party, be subject to dispute resolution pursuant to this Section 7.5, except where dispute resolution is expressly not required by another provision of this Agreement. The Parties agree to devote such time, resources, and attention to dispute resolution as are needed and as can be reasonably provided to attempt to resolve the dispute at the earliest time possible; and each Party shall cooperate in good faith to promptly schedule, attend, and

participate in the dispute resolution. Each Party shall promptly implement all final agreements reached, consistent with its applicable statutory and regulatory responsibilities.

7.5.1 General Procedures.

Any dispute among the Parties shall first be addressed at the level of the applicable Implementation Committee, and then, if necessary, be referred to the Coordinating Committee. Where an Implementation Committee does not exist for the subject matter in dispute, the procedures in this section apply to the Coordinating Committee as the first level of dispute resolution. An Implementation Committee member, or Party, if no Implementation Committee exists, claiming a dispute shall give notice of the dispute within 20 days of such member's or Party's actual knowledge of the act, event, or omission that gives rise to the dispute, unless this Agreement provides otherwise. The Licensees shall convene at least one meeting of the Implementation Committee, within 20 days after such notice, to attempt to resolve the dispute. If the dispute is not resolved within 15 days of the meeting, the Implementation Committee shall refer the dispute to the Coordinating Committee acting as a dispute resolution body. The Licensing Compliance Coordinator shall schedule a meeting or conference call of the Coordinating Committee to be held within 20 days of the referral from the Implementation Committee. If the Coordinating Committee is unable to resolve the dispute, the Coordinating Committee may, by unanimous agreement, attempt to resolve the dispute using a neutral mediator unanimously selected by the disputing Parties. The mediator shall mediate the dispute in accordance with the instructions and schedule provided to it by the Coordinating Committee. 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. Unless otherwise agreed among the Parties, each Party shall bear its costs for its own participation in the dispute resolution. If the Parties are unable to resolve a dispute as provided in this Section, the matter in dispute may be filed with FERC.

7.5.2 FERC Filings After Disputes.

If consensus is not achieved by the Implementation Committee, or by the Coordinating Committee after completion of dispute resolution, and if the Licensees do not adopt a recommendation or receive a required approval, the Licensees' filing with the FERC shall include the Licensees' reasons, based on project-specific information, for not adopting such recommendation or for seeking FERC approval without such agency approval. Any non-Licensee Party may, without further notice to the other parties, make such filing with and seek such relief from FERC as it, in its sole discretion, deems appropriate under the circumstances, and may seek a modification of any schedule affected by the matter in dispute. Any Party aggrieved by FERC's action may seek rehearing as provided in Section 7.3.2, withdraw from this Agreement, seek specific performance or any other remedy, or exercise any authority available under applicable law.

SECTION 8. GENERAL PROVISIONS

8.1 Entire Agreement.

This Agreement, together with the Exhibits attached to and made a part of this Agreement, sets forth the entire agreement of the Parties with regard to relicensing the Project. This Agreement is made on the understanding that each term is in consideration and support of every other term, and that each term is a necessary part of the entire Agreement. The Appendices to this Agreement reflect obligations imposed on the Licensees by Governmental Parties or to be assumed by the Licensees pursuant to agreements that will not be entered into by all Parties, and do not constitute agreements reached among all Parties. Any incorporation of such Appendices in the Proposed License Articles contained in Exhibit A to this Agreement does not reflect agreement of all Parties as to the content of such Appendices. The Parties agree that the Licensees' entry into such agreements is consistent with this Agreement, but reserve the right, unless agreed otherwise, to take such future actions regarding the implementation of such agreements as they may deem necessary.

8.2 Modifications.

This Agreement may be amended by unanimous written consent of the Parties. Any Party may request all other Parties to commence negotiations for a period of up to 90 days to amend the terms and conditions of this Agreement in whole or in part. Any such amendment that renders the Agreement inconsistent with terms and conditions of the New License or other regulatory approvals then in effect shall be subject to approval by FERC or other permitting agency, except that the Parties may agree to implement on an interim basis, pending approval, any amendment not requiring prior regulatory approval. As appropriate, the Parties will submit a statement to FERC in support of any amendment.

8.3 Signatory Authority.

Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement 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.

8.4 No Third-Party Beneficiaries.

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

8.5 Successors, Transferees and Assigns.

This Agreement shall apply to and be binding on the Parties and their successors and assigns. Upon completion of a succession, transfer, or assignment, the initial Party shall no longer be a Party to this Agreement. No change in ownership of the Project or transfer of the New License

by the Licensees shall in any way modify or otherwise affect any other Party's interests, rights, responsibilities, or obligations under this Agreement.

8.6 Failure To Perform Due to Force Majeure.

8.6.1 Declaration of Force Majeure.

No Party shall be liable to any other Party for breach of this Agreement as a result of a failure to perform or for delay in performance of any provision of this Agreement if such performance is delayed or prevented by force majeure. The term "force majeure" means any cause reasonably beyond the performing Party's control; which could not be avoided with the exercise of due care, whether unforeseen, foreseen, foreseeable, or unforeseeable; and which occurs without the fault or negligence of the Party whose performance is affected by force majeure. Force majeure may include, but is not limited to, natural events, labor or civil disruption, breakdown or failure of Project works, or orders of any court or agency having jurisdiction over the performing Party's actions. Increased cost for the performance of any action required by this Agreement shall not be deemed to constitute force majeure. 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 Agreement and, when able, to resume performance of its obligations and give the other Parties written notice to that effect.

8.6.2 Consultation with NOAA Fisheries and USFWS.

If the Licensees are unable to perform any obligation pursuant to any provision of this Agreement as a result of force majeure, they shall, within three days after notifying the other Parties of the existence of an event constituting force majeure, initiate consultation with NOAA Fisheries and USFWS to minimize any take of species listed as endangered or threatened.

8.6.3 Duration of Force Majeure.

If the Licensees' inability to perform any obligation pursuant to any provision of this Agreement continues or is reasonably anticipated to continue for more than 180 days due to force majeure, any Party other than the Licensees may seek specific performance, withdraw from this Agreement, or pursue any other right or authority or seek any remedy available under applicable law. If any Party withdraws from this Agreement pursuant to this Section 8.6.3, the Licensees may oppose the assertion of such other right, authority or remedy that Party seeks to assert under any applicable law or notify FERC that the Licensees have withdrawn from this Agreement and seek such further FERC action as the Licensees deem appropriate.

8.7 Indemnification and Hold Harmless.

The Licensees shall indemnify and hold harmless each of the non-Licensee Parties to this Agreement and their respective boards, commissions, councils officers, employees, and agents

for any and all claims or liabilities of any type, including frivolous claims, arising from acts or omissions of the Licensees or their employees, agents, contractors, or successors under this Agreement or the New License, unless the claim or liability arises from the act or omission of a non-Licensee Party in its capacity as an agent or contractor of the Licensees, which capacity arises out of circumstances other than the execution of this Agreement.

8.8 No Consent to Jurisdiction.

By executing this Agreement, no Party is consenting to the jurisdiction of any state, federal, or Tribal court.

8.9 Elected Officials Not To Benefit.

No member of or delegate to Congress shall be entitled to any share or part of this Agreement or to any benefit that may arise from it.

8.10 No Partnership.

Nothing in this Agreement shall be construed to constitute the Parties as principal and agent, employer and employee, partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking. No Party shall have the right or authority to assume or create any obligation or responsibility for or on behalf of another Party except as specifically provided in this Agreement.

8.11 Reference to Statutes or Regulations.

Any reference in this Agreement to any federal, state or Tribal statute or regulation shall be deemed to be a reference to such statute or regulation or any successor statute or regulation in existence as of the date of action taken pursuant to this Agreement.

8.12 Notice.

Except as otherwise provided in this Section, any notice required by this Agreement shall be written and shall be sent by first-class mail or comparable method of distribution to all Parties still in existence or their successors and shall be filed with FERC. For the purpose of this Agreement, a notice shall be effective seven days after the date on which it is mailed or otherwise distributed. When this Agreement requires notice in less than seven days, notice shall be provided by telephone, facsimile, or electronic mail and shall be effective when provided. For the purpose of notice, the list of authorized representatives of the Parties as of the Effective Date is attached as Exhibit L. The Parties shall provide notice as provided in this Section 8.2 of any change in the authorized representatives designated in Exhibit L, and the Licensees' License Compliance Coordinator shall maintain the current distribution list of such representatives.

8.13 Section Titles for Convenience Only.

The titles for the paragraphs of this Agreement are used only for convenience of reference and organization, and shall not be used to modify, explain, or interpret any of the provisions of this Agreement or the intentions of the Parties.

8.14 Signing in Counterparts.

This Agreement 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 this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures, and may be attached to another counterpart of this Agreement identical in form having attached to it one or more signature pages.

8.15 Waiver.

Waiver by any Party of the strict performance of any term or covenant of this Agreement, or of any right under this Agreement, shall not be a continuing waiver, and must be in writing.

8.16 Responsibility for Costs.

The Licensees shall be solely responsible for payment of costs of actions required of the Licensees by this Agreement. The Licensees shall have no obligation to reimburse or otherwise pay any other Party for its assistance, participation, or cooperation in any activities pursuant to this Agreement, the New License, or the Permits, except as specified in this Agreement, in cost reimbursement agreements among the Licensees and Governmental Parties, or as otherwise required by law.

8.17 Availability of Funds.

Implementation of this Agreement for a Federal Governmental Party is subject to the requirements of the Anti-Deficiency Act, 31 USC §§ 1341-1519, and the availability of appropriated funds. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the Federal Governmental Parties shall not be required under this Agreement 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. Any obligation of any State Governmental Party to make any payment or expend any funds under this Agreement attributable to obligations performed under this Agreement after the last day of the current biennium is contingent upon the State Governmental Parties receiving from the Oregon Legislative Assembly (including but not limited to its Emergency Board) appropriations, limitations, or other expenditure authority sufficient to allow the State Governmental Parties, in the exercise of their reasonable administrative discretion, to continue the obligations contemplated by this Agreement. This Agreement is also expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore.

IN WITNESS WHEREOF the Parties have entered into this Agreement as of the date first above written.

AMERICAN RIVERS

By: _____
Rebecca R. Wodder
President

AVION WATER COMPANY

By: _____
Robert Lovlien
As Attorney

BUREAU OF INDIAN AFFAIRS

By: _____
David W. Anderson
Assistant Secretary – Indian Affairs

BUREAU OF LAND MANAGEMENT

By: _____
Elaine Marquis-Brong
State Director

CITY OF BEND, OREGON

By: _____
Oran Teater
Mayor

CITY OF MADRAS, OREGON

By: _____
Rick Allen
Mayor

CITY OF REDMOND, OREGON

By: _____
Allen Unger
Mayor

**CONFEDERATED TRIBES OF THE
WARM SPRINGS RESERVATION OF
OREGON**

By: _____
Ron Suppah, Sr.
Tribal Council Chairman

DESCHUTES COUNTY

By: _____
Michael M. Daly
Chair, Deschutes County
Board of County Commissioners

JEFFERSON COUNTY

By: _____
Bill Bellamy
Chair, Jefferson County Board of
Supervisors

**NATIONAL MARINE FISHERIES
SERVICE**

By: _____
D. Robert Lohn
Regional Administrator

THE NATIVE FISH SOCIETY

By: _____
Bill M. Bakke
Executive Director

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

By: _____
Paul Slyman
Deputy Director

OREGON DEPARTMENT OF FISH AND WILDLIFE

By: _____
Lindsay A. Ball
Director

OREGON PARKS AND RECREATION DEPARTMENT

By: _____
Michael Carrier
Director

OREGON TROUT

By: _____
Joe Whitworth
Executive Director

OREGON WATER RESOURCES DEPARTMENT

By: _____
Richard Bailey
Administrator, Water Rights and Adjudication Division

PORTLAND GENERAL ELECTRIC COMPANY

By: _____
Peggy Y. Fowler
Chief Executive Officer and President

TROUT UNLIMITED

By: _____
Jeffrey Curtis
Western Conservation Director

US FISH & WILDLIFE SERVICE

By: _____
David B. Allen
Regional Director, Region 1

US FOREST SERVICE

By: _____
Linda D. Goodman
Regional Forester

WATERWATCH OF OREGON

By: _____
John DeVoe
Executive Director