

OFF-LICENSE SETTLEMENT AGREEMENT

Resident Fish Stocking and Wells Wildlife Area Funding

**An Agreement Between the Washington State Department of Fish and
Wildlife and the Public Utility District No. 1 of Douglas County**

**Wells Hydroelectric Project
FERC Project No. 2149**

December 10, 2007

WDFW 12/11/07
signed

OFF-LICENSE SETTLEMENT AGREEMENT Resident Fish Stocking and Wells Wildlife Area Funding

This AGREEMENT is entered into between the Public Utility District No. 1 of Douglas County, Washington (Douglas), a municipal corporation, and the State of Washington, Department of Fish and Wildlife (WDFW). Douglas and WDFW may be referred to herein collectively as the "Parties" and individually as "Party."

RECITALS

1. Douglas is the initial licensee and current operator of the Wells Hydroelectric Project (FERC Project No. 2149). The original FERC license for the Wells Project expires on May 31, 2012. Douglas has commenced the process to apply for a new FERC license.
2. WDFW (at the time Washington Department of Game and Washington Department of Fisheries) participated in the initial licensing proceeding for the Wells Project. WDFW was involved in the assessment of project impacts to recreational fisheries and to wildlife habitat.
3. On July 15, 1974, WDFW and Douglas entered into a wildlife mitigation agreement (1974 Agreement) as a result of a FERC hearing involving wildlife mitigation for the Wells Hydroelectric Project. The 1974 Agreement required Douglas to transfer, in fee title, 5,715.8 acres of land to WDFW and to provide a lump sum payment of \$1,250,000 to establish the Wells Wildlife Area. The money was deposited by WDFW into a Special Wildlife Fund. The fund has paid for the operation of Wells Wildlife Area since that time. On July 19, 1994, WDFW determined that the fund did not contain adequate monies to ensure the continued operation of the Wells Wildlife Area through the term of the Wells Project license. To ensure continued operation of the Wells Wildlife Area, Douglas and WDFW entered into a Memorandum of Agreement in which Douglas provided "Supplemental" funding to WDFW to augment the income from the Special Wildlife Fund.
4. The Wells Wildlife Area is located in Douglas and Okanogan counties of Washington State and consists of six units -- three shoreline/riparian units and three upland units. Bridgeport Bar (502 acres), Okanogan (100 acres) and Washburn Island (261 acres) are located along the shoreline of the Wells Reservoir and a portion of each unit lies within the Project Boundary. West Foster Creek (1,025 acres), Central Ferry (1,602 acres) and Indian Dan Canyon (4,716 acres) are upland units and are entirely outside the Wells Project Boundary. WDFW leases 1,550 acres of land from the Washington Department of Natural Resources. Management of the DNR land and 180 acres of Bureau of Land Management land located within the Indian Dan Unit boundary will be funded through this Agreement.

5. The Cassimer Bar Wildlife Area is owned by Douglas but jointly managed by the Confederated Tribes of the Colville Reservation and Douglas for the benefit of wildlife at the confluence of the Okanogan and Columbia rivers and is excluded from this agreement.
6. The original management goal for the Wells Wildlife Area was to enhance and manage upland game habitat and release upland birds for public hunting. The goal of the program was broadened, after the pheasant release program ended, to include the development of winter and migratory waterfowl food plots and to further enhance upland bird habitat. The goal of the program was also expanded to include the enhancement of native riparian, wetland and shrub steppe habitat to support native wildlife species diversity on Wells Wildlife Area lands both within and adjacent to the Wells Project. WDFW and Douglas agree that the habitat enhancement on the Wells Wildlife Area has successfully achieved the mitigation goals of the 1974 Agreement.
7. Douglas has provided WDFW the opportunity to raise 20,000 pounds of rainbow trout and up to 75,000 summer/fall Chinook fry at the Wells Hatchery. The rainbow trout have been planted in lakes in Douglas and Okanogan counties to provide recreational fishing opportunities in the Project area. The Chinook fry have been planted in a tributary to Lake Chelan to also provide recreational fishing opportunities.
8. In 2006, FERC issued a Policy Statement on Hydropower Relicensing Settlements that limits the ability of licensees to include certain ongoing measures outside of their respective project boundaries as conditions of a new operating license enforceable by FERC. The rainbow trout program, Chinook fry stocking and Wells Wildlife Area all have components of their respective programs that support activities that occur outside of the Wells Project Boundary. WDFW contends that the rainbow trout program and Wells Wildlife Area Funding programs are necessary to mitigate for ongoing impacts of the Wells Project during the term of the new operating license. Douglas contends that there are no ongoing impacts on Resident Fish, Wildlife Resources and their associated habitats related to the Project. Although Douglas and WDFW disagree regarding ongoing impacts to Resident Fish and Wildlife Resources and their associated habitats related to the Project, Douglas and WDFW would like to continue these programs during the term of the New Operating License. To ensure the continuation of these two programs, Douglas and WDFW have entered into this Agreement for the Wells Project outside of the FERC relicensing process. WDFW and Douglas will not seek FERC approval to continue these two programs. References to these programs will be included in the Final License Application that Douglas intends to file with FERC. FERC may or may not include these programs as conditions of the New Operating License. Douglas and WDFW intend that these programs be implemented pursuant to this Agreement to settle WDFW's contention with respect to ongoing impacts to Resident Fish,

Wildlife Resources and their associated habitats and to provide enhancements to Wildlife Resources, Resident Fish resources and their associated habitats through mutually agreed upon measures.

9. Although one of the purposes of this Agreement is to resolve any and all claims or assertions by WDFW relating to ongoing Project impacts on Wildlife Resources, Resident Fish and their associated habitats, by agreeing to fund the activities outlined in this Agreement, Douglas is not admitting that there are any ongoing impacts associated with the Wells Project.
10. At the time of execution of this Agreement, Douglas and WDFW recognize and appreciate the quality of wildlife habitat on Wells Wildlife Area lands as managed under the ongoing Wells Wildlife Area Funding Program. It is the intent of both Parties to continue to manage Wells Wildlife Area lands during the term of the New Operating License to maintain a comparable level of habitat function and quality on these lands. Therefore, both Parties agree it is their intent to continue to maintain a working relationship based on reliability and reasonableness in the pursuit of maintaining the level of habitat function and condition currently achieved on Wells Wildlife Area lands.

Now therefore, for and in consideration of the mutual covenants and agreements herein contained, it is agreed by and between the Parties hereto as follows:

1.0 DEFINITIONS

- 1.1 “CWA” refers to the Clean Water Act.
- 1.2 “FPA” refers to the Federal Power Act.
- 1.3 “HCP Plan Species” refers to those anadromous fish species covered by the HCP, including spring, summer/fall Chinook, steelhead, sockeye and coho.
- 1.4 “HCP” refers to the Wells Anadromous Fish Agreement and Habitat Conservation Plan.
- 1.5 “New Operating License” means the first long-term operating licenses for Project No. 2149 to be issued by the FERC to Douglas and any subsequent annual licenses that take effect after the expiration of the New Operating License.
- 1.6 “Original Operating License” means the original fifty (50) year operating license, as amended, for Project No. 2149 issued by the FERC with an expiration date of May 31, 2012 and any subsequent annual licenses that take effect after the expiration of the Original Operating License.

- 1.7 “RTE” means rare, threatened and endangered species, including aquatic, terrestrial or botanical species, listed as endangered, threatened and candidate species by the federal Endangered Species Act. RTE also includes species listed as endangered, threatened and sensitive by the Washington State Department of Fish and Wildlife and further includes threatened or endangered botanical species as defined by the Washington State Natural Heritage Program.
- 1.8 “Resident Fish” means all fish species residing within the Wells Reservoir except for those fish species covered by the Aquatic Settlement Management Plans (including the Bull Trout, Sturgeon and Pacific Lamprey plans), and the five species of anadromous salmonids covered by the HCP.
- 1.9 “Wildlife Resources” means all wildlife, wildlife habitat and botanical resources found within or affected by the Wells Project.

2.0 DURATION OF AGREEMENT

This Agreement shall become effective upon execution by both Parties, provided that Douglas’s obligations in Section 5.1 shall commence June 1, 2012. This Agreement shall expire upon the expiration of the New Operating License.

This Agreement shall terminate (1) in the event that FERC does not issue a New Operating License to Douglas for the Wells Project or (2) on the expiration date of any New Operating License or (3) in the event that FERC issues a New Operating License to Douglas that is not accepted by Douglas or (4) in the event that the New Operating License is revoked or (5) in the event that WDFW and/or Douglas does not adhere to the provisions described in Section 5 (Obligations) following application of the Dispute Resolution process described in Section 6 (Dispute Resolution).

3.0 MODIFICATION OF AGREEMENT

This Agreement may be amended or modified only by written consent of both Parties.

4.0 SCOPE OF PROGRAMS

4.1 Trout Program

The goal of the Trout Program is to address WDFW's contentions with respect to ongoing Project impacts on Resident Fish, Resident Fish habitat and lost Resident Fish harvest during the term of the New Operating License (not including HCP Plan Species, white sturgeon, bull trout and Pacific lamprey), by enhancing Resident Fish resources within Okanogan and Douglas counties. The program will provide 20,000 pounds of rainbow trout equivalents to be stocked annually in Okanogan and Douglas Counties for the enhancement of recreational fishing harvest opportunities. The fish for this program will be raised at the Wells Fish Hatchery, provided sufficient hatchery capacity exists after HCP Plan Species hatchery needs are met, unless otherwise agreed. If the fish are raised somewhere other than at the Wells Fish Hatchery, both Parties must agree that fish quality and fish health status are equal to or better than fish raised at the Wells Fish Hatchery.

The Trout Program, to be implemented through this Agreement, shall be composed of similar numbers of fish at the various life-stages as the Rainbow Trout Program approved for implementation in 2007.

In 2007, the Wells Fish Hatchery was authorized to raise and release 125,000 fingerlings at 75 fpp (1,667 pounds), 35,000 catchable trout at 2 fpp (17,500 pounds) and 500 trout at 0.6 fpp (833 pounds). Modifications to the Trout Program, described above, can only be made following the annual coordination meetings between the Parties and only following mutual consent of both Parties to this Agreement.

Various life stages of trout can be raised and released provided that the aggregate weight does not exceed 20,000 pounds of rainbow trout equivalents and does not negatively impact production of HCP Plan Species. The following tasks will be implemented toward the fulfillment of the goals of the Trout Program:

- 4.1.1 Acquire sufficient eyed trout eggs from either a state, federal or private hatchery program (e.g., Ford Fish Hatchery, Columbia Basin Hatchery, Omak Hatchery, Trout Lodge, Columbia Fish Farms) to be reared toward fulfillment of the goals of this program;
- 4.1.2 The transportation and planting of these fish will be conducted by Wells Fish Hatchery staff including the use of planting trucks assigned to the Wells Hatchery and other adjacent hatcheries, when needed;
- 4.1.3 Notice of joint cooperation by WDFW and Douglas shall be posted at the lakes enhanced by this program. Douglas shall provide the materials and labor associated with posting this information.

4.2 Additional WDFW Trout

WDFW has requested access to the Wells Fish Hatchery to raise fish for the agency's own purposes beyond those required under this Agreement. These "Additional Fish" are not part of this Agreement and the funding and facilities required to raise these fish are not Douglas's responsibility. However, through this Agreement, Douglas agrees to consider WDFW's future request(s) to raise Additional Fish at the Wells Fish Hatchery during the annual Trout Program coordination meeting, on a year to year basis, provided that the following conditions are met prior to the initiation of each year's program:

- 4.2.1 Douglas has secured sufficient water rights for the Wells Fish Hatchery and for rearing WDFW's Additional Fish;
- 4.2.2 WDFW's Additional Fish will not change or in any way negatively affect the rearing of fish to meet Douglas's obligations at the Wells Fish Hatchery;
- 4.2.3 Douglas retains full ownership over any new permanent infrastructure sited, developed or installed within the boundary of the Wells Project, including the Wells Fish Hatchery;
- 4.2.4 WDFW's Additional Fish program will not impede Douglas from implementing various hatchery sharing and species trade agreements with other agencies;
- 4.2.5 WDFW has secured the applicable permits for the proposed program;
- 4.2.6 WDFW reimburses Douglas for all costs required to produce and transport WDFW's Additional Fish; and
- 4.2.7 WDFW will not hold Douglas responsible for any unforeseen circumstances that may result in the death of WDFW's Additional Fish prior to their release into state waters.

4.3 Wells Wildlife Area Program

The Wells Wildlife Area Program addresses WDFW's contentions regarding ongoing project impacts to Wildlife Resources by providing mitigation lands and funding to create, protect, maintain and enhance Wildlife Resources. The goal of the program is to create, protect and maintain wildlife habitat on the Wells Wildlife Area including habitat that WDFW and Douglas PUD developed during the implementation of the 1974 Agreement. For the duration of this Agreement, unless changes are approved in advance by both Parties, WDFW will implement the Wells Wildlife Area Program, including the following tasks:

- 4.3.1 Grow annual food crops on Bridgeport Bar and Washburn Island Units to benefit waterfowl and other wildlife;
- 4.3.2 Grow annual food crops and maintain feeders and water catchments on all units for upland game birds and other wildlife species;
- 4.3.3 Protect and maintain the riparian vegetation on all units to benefit riparian obligate species and maintain nesting habitat and cover for upland game birds, raptors and passerines;
- 4.3.4 Protect and maintain the ponds and wetland habitats on all units as habitat for amphibians and other wetland obligate species;
- 4.3.5 Protect and maintain riparian habitat on Indian Dan Canyon Unit used by Bald eagles (*Haliaeetus leucocephalus*) as a night roost to benefit wintering bald eagles;
- 4.3.6 Protect and maintain shrub steppe habitat on all units for upland game species, shrub steppe obligate species including sharp-tailed grouse (*Tympanuchus phasianellus*), greater sage grouse (*Centrocercus urophasianus*) and mule deer (*Odocoileus hemionus*);
- 4.3.7 Provide wildlife related recreation opportunities including hunting and wildlife observation on the wildlife area;
- 4.3.8 Control invasive weeds to protect and maintain habitat;
- 4.3.9 Maintain all boundary fencing to prevent livestock trespass. Build and replace boundary fences as needed;
- 4.3.10 WDFW will not lease any unit for livestock grazing or allow camping outside of parking areas on the wildlife area, in order to protect wildlife habitat;
- 4.3.11 Promote native vegetation where it is consistent with the goals of the program.

The Parties will annually review the program, and by mutual agreement may modify and expand any of the above tasks.

5.0 OBLIGATIONS

5.1 Douglas's Responsibilities

5.1.1 Trout Program

Douglas will provide funds necessary to produce and transport the fish described in Section 4.1 (Trout Program). Douglas will meet with WDFW in April of each year to establish the annual rearing goals of each year's Trout Program and to determine how best to meet the trout obligation. Approval of the annual Trout Program will take place prior to May 1st and in time for WDFW to modify the following year's planting schedule. If Douglas cannot raise all or part of the trout covered under the Trout Program at the Wells Fish Hatchery, then Douglas will purchase the remaining portion of the program per Section 4.1.

5.1.2 Wildlife Area Operation and Maintenance (O&M) Funding

Douglas will provide annual O&M funding for the Wells Wildlife Area Program as described in Section 4.3 (Wells Wildlife Area Program). Douglas will meet with WDFW by April 1 of each year to discuss the wildlife mitigation program, annual objectives and budget for the state fiscal year (July 1 to June 30). The annual budget, due by May 15, will include: salaries and benefits, goods and services, equipment repair and replacement, property taxes, fire protection contracts, land rental, training and travel. The Douglas Board of Commissioners will consider the budget before July 1. Upon approval of the yearly budget, Douglas will pay, on a time and material basis, reasonable monthly billings from WDFW for the operation of the Wells Wildlife Area. All billings will be paid within 30 days of receipt of a correct bill with adequate documentation. All billings must be submitted to Douglas before September 15th for the previous fiscal year. The total amount billed each year will not exceed \$200,000 (2007 dollars), for the maintenance and operation of the Wells Wildlife Area for that fiscal year. This amount does not include costs related to the Capital Equipment Replacement Fund and does not include costs associated with the Habitat Restoration Fund. The dollar figure provided above shall be adjusted for inflation on the 1st day of January of each year based upon the Consumer Price Index for all Urban Consumers, U.S. City Averages, All Items, Not Seasonally Adjusted. The price index is published by the U.S. Department of Labor, Bureau of Labor Statistics. If said index is discontinued or becomes unavailable, a comparable index, mutually agreed upon by both Parties, will be substituted.

5.1.3 Habitat Restoration Funding

Douglas will provide WDFW with Habitat Restoration Funding to restore habitat damaged by fire on the Wells Wildlife Area in the amount not to exceed \$50,000 (2012 dollars) over the term of this Agreement. The dollar figure provided above shall be adjusted for inflation as described in Section 5.1.2 (Wildlife Area O & M Funding). Use of the fund will be by mutual agreement between Douglas and WDFW. WDFW will bill separately for seed, nursery stock, fertilizer, and herbicide costs for the restoration work.

5.1.4 Capital Equipment Replacement Funding

Douglas will provide WDFW with funds to replace capital equipment necessary for the maintenance of the Wells Wildlife Area over the term of the Agreement. Equipment listed in Appendix A will be replaced when it has reached the end of its Useful Life.

Useful Life is defined as the time when equipment repairs exceed the current value of the equipment. WDFW agrees to maintain all equipment (e.g., oil, lubrication, filters and hour meter) in working condition and maintain records of hours of use and cost of repairs. These records will be used to assist with the decision to replace or continue repairing equipment. Replacement of equipment will be by mutual agreement by Douglas and WDFW. Douglas will pay only the dealer's invoice cost of the equipment replacement, upon receipt of a correct invoice from WDFW with a copy of the dealer's invoice.

WDFW agrees to surplus each piece of equipment, unless mutually agreed to retain, replaced by Douglas and provide Douglas with title to the equipment. The surplus equipment will be sold during Douglas's Annual Surplus Sale. Douglas will retain the proceeds from any equipment sold.

5.1.5 Off-Site Use of Wells Wildlife Area Equipment

Sharing of equipment listed in Appendix A with other wildlife areas is not normal day to day operations of the Wells Wildlife Area. Equipment sharing is intended to benefit the Wells Wildlife Area or for emergencies when equipment breaks and time sensitive farming operations must be completed. Equipment purchased through this Agreement can only be taken off of the Wells Wildlife Area following approval of both Parties and pursuant to WDFW being required to keep accurate and adequate records to demonstrate that equipment is being shared equitably between programs.

5.1.6 Use of Project Lands within the Wells Wildlife Area

During the term of this Agreement, Douglas grants to WDFW the right to manage Wells Project lands between the Project Boundary and Wells Reservoir within the boundaries of the Bridgeport Bar, Washburn Island and Okanogan units of the Wells Wildlife Area. WDFW's right to use Project lands is subject to the requirement of Section 5.2.6.4 and 8.0 (Cultural Resources) of this Agreement, and is subject to Douglas's rights, as owner, to use all Wells Project lands for Project purposes.

5.1.7 Additional Grant Funding

Douglas is encouraged to apply for grants and special funding to provide habitat enhancement on the Wells Wildlife Area to meet goals compatible with the Wells Wildlife Area Program in this Agreement. Douglas agrees to provide WDFW with a copy of the draft grant application prior to it being submitted for funding.

5.2 WDFW's Responsibilities

5.2.1 License Application

WDFW agrees to support the Aquatic and Terrestrial measures proposed in the Wells License Application for the New Operating License. This Agreement does not prevent WDFW from providing technical support and expert testimony to the Washington Department of Ecology in connection with the CWA § 401 water quality certification for the Wells Hydroelectric Project.

5.2.2 License Term

WDFW agrees to support Douglas's request for a New Operating License for a term of 50 years.

5.2.3 Water Quality Certification

WDFW agrees to reference only the goals and objectives contained within the management plans attached to the Aquatic Settlement Agreement and the measure(s) contained within this Agreement when working with Washington Department of Ecology to develop the original conditions of the CWA § 401 water quality certification for the New Operating License for the Wells Hydroelectric Project.

5.2.4 FPA Section 10(a) and 10(j)

WDFW agrees to refrain from requesting or advocating for additional FPA section 10(a) and 10(j) conditions or measures for Wildlife Resources, Resident Fish, Resident Fish habitat and lost Resident Fish harvest opportunities during the relicensing proceedings related to the issuance of a New Operating License for the Wells Project.

5.2.5 Trout Agreement

5.2.5.1 WDFW will meet with Douglas in April of each year to establish the annual rearing goals and transportation protocols for each year's Trout Program and to determine how to best meet the trout obligation. A draft budget for the Wells Fish Hatchery is due on March 1st of each year. Approval of the annual Trout Program will take place prior to May 1st and in time for Douglas to modify the hatchery budget for the Wells Fish Hatchery.

5.2.5.2 WDFW agrees to publicly recognize Douglas's contributions to the enhancement of recreational fishing opportunities in Okanogan and Douglas counties by agreeing to allow Douglas to post signage at the lakes enhanced by this program. Language for such signage shall be agreed to by both Parties prior to posting.

5.2.6 Wells Wildlife Program

- 5.2.6.1 WDFW will provide Douglas with a proposed budget, not exceeding \$200,000 (2007 dollars), and will provide a general description of how the proposed budget addresses the goals of the program (see Section 4.3) for the Wells Wildlife Area by March 1st of each year. The dollar figure provided above shall be adjusted for inflation based upon the language provided in Section 5.1.2 (Wildlife Area O & M Funding).
- 5.2.6.2 WDFW will provide complete documentation of all expenditures with each monthly bill. Documentation includes: time records, invoices paid for goods and services, vehicle mileage reports and equipment time logs and reimbursed expenditures. All billings for the previous fiscal year must be submitted to Douglas before September 15th.
- 5.2.6.3 WDFW is encouraged to apply for grants and special funding to provide habitat enhancement on the Wells Wildlife Area to meet State management goals compatible with the Wells Wildlife Area Program in this Agreement. WDFW agrees to provide Douglas with a copy of the draft grant application prior to it being submitted for funding for Douglas's concurrence.
- 5.2.6.4 WDFW will not release or propagate any rare, threatened or endangered (RTE) species below the Project Boundary, not currently found within Project Boundary, without written permission from Douglas. If WDFW releases or raises RTE terrestrial or botanical species on the Wells Wildlife Area, Douglas will not incur any expenses related to those species.
- 5.2.6.5 To ensure consistency with this Agreement, WDFW will provide Douglas with an opportunity to review and modify any action that is expected to take place within the Wells Project Boundary.

6.0 DISPUTE RESOLUTION

6.1 Informal Dispute Resolution

If a dispute arises out of or relates to this Agreement, the Parties agree to first use their best efforts to cooperatively resolve such dispute. Douglas and WDFW shall use their best efforts to resolve disputes arising in the normal course of business at the lowest organizational level between each Party's staff with appropriate authority to resolve such disputes. When a dispute arises between Douglas and WDFW which cannot be resolved in the normal course of business, each Party shall notify the other of the dispute, with a Notice specifying the disputed issues.

The Notice specifying the disputed issues shall initially be sent to WDFW's Regional Program Manager (Fish Program for trout issues or Wildlife Program for wildlife issues)

and Douglas's Supervisor of Relicensing, who shall have 10 business days to resolve the dispute. The discussion at this level may be extended by agreement, or at the conclusion of 10 business days either Party may send a Notice specifying the disputed issues to the second level, WDFW's Regional Director and Douglas's Chief of Environmental and Regulatory Services. The second level shall have 15 business days to resolve the dispute. Discussion at this level may be extended by agreement, or at the conclusion of 15 business days either Party may send a Notice specifying the disputed issues to WDFW's Director and Douglas's General Manager. If the Director and General Manager cannot resolve the dispute within 20 days either Party may proceed to Section 6.2 (Arbitration and Venue).

6.2 Arbitration and Venue

If the Parties are unable to settle the dispute, it is hereby agreed that the dispute shall then be referred to a mutually acceptable arbitrator, or if one cannot be agreed upon, to the nearest office of Washington Arbitration & Mediation Service (WAMS) for resolution within ninety (90) days of a written request for arbitration submitted by either Party. The Parties agree that if they cannot agree on a mutually acceptable arbitrator within ten (10) business days of the request for arbitration by either party, the dispute will be referred to WAMS for preparation of a Strike List for arbitrator selection. All arbitration proceedings shall be conducted in accordance with the Rules of Arbitration of WAMS or applicable administrative service, RCW 7.04 and reasonable discovery provisions as may be stipulated or ordered. The arbitrator's decision shall be final and binding and judgment may be entered thereon, with all remedies otherwise available in court also available in arbitration. The parties agree to equally share the costs of the arbitration process.

WDFW and Douglas agree that the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by Douglas hereunder, WDFW shall continue providing the work pending resolution of the dispute provided Douglas pays WDFW the amount Douglas, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount WDFW, in good faith, believes is due and payable.

The only legal action permissible under this Agreement is one based on the premise that the arbitration award exceeded the scope of the arbitrator's authority under the Revised Code of Washington. The sole and exclusive jurisdiction and venue of any such legal action shall be in the Superior Court in and for the State of Washington.

6.3 Choice of Laws

This Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the substantive law of the State of Washington (without reference to any principles of conflicts of laws).

7.0 LIMITATIONS OF REOPENING

WDFW shall not invoke or rely upon any reopener clause set forth in the New Operating License for the purposes of 1) obtaining additional Resident Fish or Wildlife Resource measures or 2) obtaining changes in project structures or operations pertaining to Resident Fish, Resident Fish habitat and Wildlife Resources.

However, WDFW may raise issues and advocate measures for Wildlife Resources and Resident Fish through the Aquatic and Terrestrial work groups. Wildlife and Resident Fish mitigation requirements raised outside of this Agreement, through the various resource work groups, should, whenever logistically feasible, be addressed through the implementation of this Agreement provided that those issues are related to the goals of this Agreement and do not significantly diminish or conflict with the ability of WDFW to achieve all of the goals of this Agreement. Mitigation requirements raised outside of this Agreement that significantly conflict or diminish the ability of WDFW to achieve the goals of this Agreement may require Douglas to provide mitigation outside of the Agreement.

8.0 CULTURAL RESOURCES

Douglas is required to comply with federal and state cultural resource protection laws and regulations for activities on lands owned by Douglas. WDFW is required to comply with applicable federal and state cultural resource protection laws and regulations for activities on lands owned by WDFW. WDFW is further required to follow the requirements of the Wells Historic Properties Management Plan (HPMP) for activities on Douglas owned lands.

9.0 FORCE MAJEURE

Neither Party shall be liable to the other for, or be considered to be in breach of or in default under this Agreement because of, any failure or delay in performance by such Party under this Agreement to the extent such failure or delay is caused by or results from any cause or condition which is beyond such Party's reasonable control, to the extent which such Party is unable to prevent or overcome such failure or delay by exercise of reasonable diligence (any such cause or condition, a "Force Majeure"), including but not limited to: failure or threat of failure of facilities or equipment; fire, lightning, flood, earthquake, volcanic activity, wind, drought, storm and other natural disasters or acts of the elements; court order and act, or failure to act, of civil, military or governmental authority; change in governmental law or regulation; strike, lockout and other labor dispute; epidemic, riot, insurrection, sabotage, terrorism, war and other civil disturbance or disobedience; and labor or material shortage.

The Party whose performance is affected by Force Majeure shall notify the other Party in writing within 24 hours, or as soon thereafter as practicable, after becoming aware of any event that such affected 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 affected 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 Party written notice to that effect. Upon receipt of notice of a Force Majeure event, any Party may request that the Parties engage in discussion in an effort to modify this Agreement in a mutually satisfactory manner.

10.0 LIABILITY OF PARTIES

Each Party to this Agreement shall be responsible for its own acts or omissions. Except as provided in the preceding sentence, no Party to this Agreement shall be responsible to the other Party for the acts or omissions of entities or individuals not a party to this Agreement.

11.0 NOTICES

11.1 Means of Notification

Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by telegraph, telex, or fax or by acknowledged delivery, or sent by registered or certified mail, postage prepaid to the person specified below:

To WDFW:

Washington Department of Fish and Wildlife
Director
600 Capitol Way North
Olympia, WA 98501-1091

Washington Department of Fish and Wildlife
Regional Director, Region 2
1550 Alder Street NW
Ephrata, WA 98823-9699

To Douglas:

Public Utility District No. 1 of Douglas County
General Manager
1151 Valley Mall Parkway
East Wenatchee, WA 98802-4497

12.0 ASSIGNMENT OF AGREEMENT

Neither this Agreement nor any right, interest or obligation hereunder may be assigned, sold, transferred or conveyed by either Douglas or WDFW without the prior written consent of the other, which Party may withhold its consent in its sole discretion, and any attempted assignment not in compliance therewith shall be void, except assignments and transfers which occur by operation of law. No assignment or transfer of this Agreement, or any interest therein, shall relieve the Parties of any obligation incurred hereunder.

13.0 MISCELLANEOUS

13.1 Further Assurances

Subject to the terms and conditions of this Agreement, each Party shall each use commercially reasonable efforts to take, or cause to be taken all actions and to do, or cause to be done, all things necessary, proper and advisable under applicable law to consummate and make effective this Agreement and, including efforts to obtain all required consents and approvals. Neither Douglas nor WDFW shall, without the prior written consent of the other, take or fail to take any action that would reasonably be expected to prevent or materially impede, interfere with or delay this Agreement.

From time to time after the date hereof, whether prior to or after the execution and without further consideration, the Parties shall, each at its own expense, execute and deliver such documents and provide such information to the other as such Party may reasonably request in order to accomplish, consummate and perform their respective obligations under this Agreement.

13.2 No Consequential, Incidental or Punitive Damages

Consistent with the Recitals to this Agreement, Douglas and WDFW desire to minimize to the extent possible the potential for future disagreements between them with respect to Project No. 2149 from matters arising under this Agreement. Douglas and WDFW also recognize the potential magnitude of the potential consequential, incidental or punitive damages that might arise from this Agreement and desire to eliminate the risks each might face were such categories of damages not excluded. For these reasons, Douglas and WDFW agree that the remedies available to them shall be limited as provided below.

13.2.1 Douglas and WDFW agree that for any claim arising from a theory based on contract law, in no event shall either Douglas or WDFW be liable to each other hereunder for any potential consequential, incidental or punitive damages.

13.2.2 Douglas and WDFW agree that for any claim arising from a theory based on tort law, in no event shall either Douglas or WDFW be liable to each other hereunder for potential consequential, incidental or punitive damages.

13.3 Severability

If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of either Party under this Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part thereof, (iii) the remaining provisions of this Agreement shall remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (iv) in lieu of such illegal, invalid or unenforceable provision, the Parties shall, in good faith, negotiate a mutually acceptable, legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible, and shall promptly take all actions necessary to amend the Agreement to include the mutually acceptable, legal, valid and enforceable provision.

13.4 Waivers

Except as otherwise provided herein, no provision of this Agreement may be waived except in writing. No failure by any Party to exercise, and no delay in exercising, short of the statutory period, any right, power or remedy under this Agreement shall operate as a waiver thereof. Any waiver at any time by a Party of its right with respect to a default under this Agreement, or with respect to any other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter.

13.5 No Third-Party Beneficiaries

None of the promises, rights or obligations contained in this Agreement shall inure to the benefit of any person or entity not a Party to this Agreement; and no action may be commenced or prosecuted against any Party by any third party claiming to be a third-party beneficiary of this Agreement or the transactions contemplated hereby.

13.6 No Reliance

Each Party acknowledges that in entering into this Agreement, it has not relied on any statement, representation or promise of the other Party or any other person or entity, except as expressly stated in this Agreement.

13.7 Assumption of Risk

In entering into this Agreement, each of the Parties assumes the risk of any mistake of fact or law, and if either or both of the Parties should subsequently discover that any understanding of the facts or the law was incorrect, none of the Parties shall be entitled to, nor shall attempt to, set aside this Agreement or any portion thereof.

13.8 Waiver of Defenses

Douglas and WDFW release each other from any and all Claims relating to the formation and negotiation of this Agreement, including reformation, rescission, mistake of fact, or mistake of law. The Parties further agree that they waive and will not raise in any court, administrative body or other tribunal any Claim in avoidance of or defense to the enforcement of this Agreement other than the express conditions set forth in this Agreement.

13.9 Independent Counsel

The Parties acknowledge that they have been represented by independent counsel in connection with this Agreement, they fully understand the terms of this Agreement and they voluntarily agree to those terms for the purposes of making a full compromise and settlement of the subject matter of this Agreement.

13.10 Headings

The headings used for the sections herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

13.11 Interpretations

In this Agreement, unless a clear contrary intention appears: (a) the singular number includes the plural number and vice versa; (b) reference to any person includes such person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity; (c) reference to any gender includes each other gender; (d) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (e) reference to any Section, Schedule or Exhibit means such Section, Schedule or Exhibit to this Agreement, and references in any Section, Schedule, Exhibit or definition to any clause means such clause of such Section, Schedule, Exhibit or definition; (f) "hereunder", "hereof", "hereto", "herein" and words of similar import are references to this Agreement as a whole and not to any particular section or other provision hereof unless specifically stated; (g) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (h) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (i) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

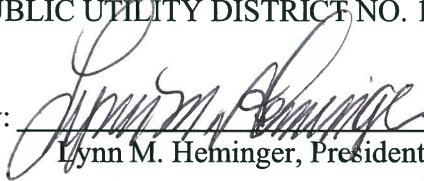
13.12 Legal Authority

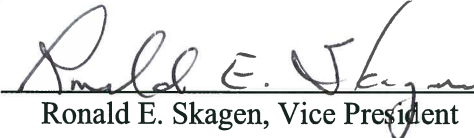
Each party represents and warrants to the other Party that it has full authority and power to enter into this Agreement, that the Party's representatives who sign below are duly authorized by it to enter into this Agreement, and that nothing herein violates any law, regulation, judicial or regulatory order, or agreement applicable to such warranting Party.

13.13 Agreement Execution

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their proper officers respectively being thereunto duly authorized, and their respective corporate seals to be hereto affixed, the 17th day of December, 2007.

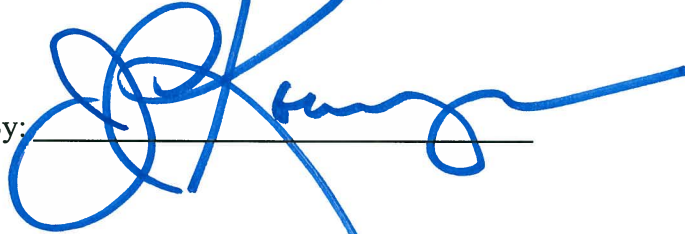
PUBLIC UTILITY DISTRICT NO. 1 of DOUGLAS COUNTY

By: 
Lynn M. Heminger, President

By: 
Ronald E. Skagen, Vice President

By: 
T. James Davis, Secretary

STATE OF WASHINGTON
DEPARTMENT OF FISH & WILDLIFE

By: 

By: _____

By: _____

APPENDIX A
CAPITAL EQUIPMENT REPLACEMENT SCHEDULE

**Appendix A Capital Equipment List for Replacement Under Section
5.1.4¹**

3/4 Ton Pickup Truck
1 Ton Pickup Truck with Flatbed
1/2 Ton Pickup
Snow Plow for one Pickup
Irrigation Trailer
70 hp Tractor and implements² over \$5,000

Maintenance or replacement costs for the Washburn Island irrigation system in excess of \$10,000 shall be split 50:50 between Douglas and WDFW

Wheel Line Replacement ~ 7,700 feet
Handlines 100 units
Irrigation for shrub plantings

30 Hp Irrigation Pumps (2)
20 HP Irrigation Pumps (3)
50 HP Irrigation Pump
100 HP Irrigation Pump

Building - Major Repairs \geq \$10,000
Fuel Tanks and Pumps

¹ The dollar figures contained within Appendix A shall be adjusted for inflation as described in Section 5.1.2 (Wildlife Area O & M Funding).

² Implements used with the 70 hp tractor include: front end loader, disc, drill, field cultivator, packer, 3-point sprayer, harrow, rotovator, shrub planter and corn planter.