

Hanford Reach Fall Chinook Protection Program

This Agreement is made and entered into this ___ day of ____, 2004, between and among Public Utility District No. 2 of Grant County, Washington ("Grant"), Public Utility District No. 1 of Chelan County, Washington ("Chelan"), Public Utility District No. 1 of Douglas County, Washington ("Douglas"), the United States Department of Energy acting by and through the Bonneville Power Administration ("BPA"), NOAA Fisheries ("NOAA"), the Washington Department of Fish and Wildlife ("WDFW") and the Confederated Tribes of the Colville Indian Reservation ("CCT"). Each of the above entities may be referred to individually as a "Party" or collectively as the "Parties"; NOAA, WDFW and CCT may be referred to individually as an "Agency Party" or collectively as the "Agency Parties"; Grant, Chelan, Douglas and BPA may be referred to individually as an "Utility Party" or collectively as the "Utility Parties".

A. DEFINITIONS

"BPA's Friday Priest Rapids Outflow Estimates" – estimate of Priest Rapids Outflow for Saturday and Sunday provided by BPA on Friday afternoon based on expected operations at Chief Joseph Dam plus Side Inflows.

"Chief Joseph" – the Chief Joseph Dam located on the Columbia River System.

"Chief Joseph Uncoordinated Request" – the generation request which BPA determines is the desired output in megawatts of Chief Joseph at any time. Through the operation of Mid-Columbia Hourly Coordination, the Chief Joseph actual generation may be higher or lower than the Chief Joseph Uncoordinated Request. At any time, Chief Joseph Uncoordinated Request plus Chief Joseph bias must equal Chief Joseph actual generation.

"Corps of Engineers" – the United States Army Corps of Engineers.

"Critical Elevation" – the elevation on Vernita Bar at which the Protection Level Flow will be established as provided in subsection C.6.

"Critical Runoff Volume" – the volume of runoff for the January through July period at Grand Coulee for the year 1929 (42.6 million acre feet).

"Daylight Hours" – the time period from one hour before sunrise to sunset at Priest Rapids Dam.

"Emergence" – the point at which the water over eggs in Redds at Vernita Bar or other areas designated in Exhibit A have accumulated 1,000 (°C) Temperature Units after the Initiation of Spawning.

"Emergence Period" – the time period beginning with Emergence and continuing thereafter until 1,000 (°C) Temperature Units have been accumulated at Vernita Bar after the end of the Spawning Period.

“Hanford Reach” – an approximately 50-mile long section of the Columbia River extending from downstream of Priest Rapids Dam to just north of Richland, WA.

"Hatching" – the point at which the water over eggs in redds at Vernita Bar has accumulated 500 (°C) Temperature Units after the Initiation of Spawning.

"Holiday" – means any day designated as a national holiday in the Northwest Power Pool accounting procedures.

"Initiation of Spawning" – the Wednesday before the weekend on which the Monitoring Team first identifies five (5) or more Redds pursuant to subsection C.6. Separate dates for Initiation of Spawning will be set for the 36-50 kcfs zone and for the zone above 50 kcfs within areas identified in Exhibit A and in areas of the Hanford Reach below the 36kcfs level and/or outside the area specified in Exhibit A.

"kcfs" – thousand cubic feet per second.

"kcfs elevation" – the level along Vernita Bar reached by a specific rate of flow measured in kcfs.

"kcfs zone" – the area inundated by a specific rate of flow past Vernita Bar as measured in kcfs.

"kcfsh" – volume of water in thousand cubic feet per second hours.

"Mid-Columbia Hourly Coordination" – the operation of Grand Coulee, Chief Joseph, Wells, Rocky Reach, Rock Island, Wanapum, and Priest Rapids pursuant to the "Agreement For The Hourly Coordination Of Projects On The Mid-Columbia River", effective July 1, 1997 through June 30, 2017, as such may be amended, extended, or replaced.

"Monitoring Team" – a group of three individuals composed of one fishery biologist designated by each of the following: (1) Grant PUD; (2) Washington Department of Fish and Wildlife; and (3) a signatory fishery agency or tribe.

"Post-Hatch Period" – the time period between Hatching and Emergence.

"Pre-Hatch Period" – the time period between the Initiation of Spawning and Hatching.

“Previous Day’s Average Weekday Wanapum Inflow” – the total volume of water discharged into the Wanapum development measured as a daily average discharge from Rock Island Dam. This measure is used from Monday to Friday to determine the allowable flow fluctuation during the Rearing Period and will be calculated based on data available to Grant that is reported on the Corps of Engineers website [<http://nwd-wc.usace.army.mil/report/projdata.htm>].

"Priest Rapids Project" – the Priest Rapids and Wanapum hydroelectric developments located on the Columbia River System.

“Priest Rapids” – the Priest Rapids Dam located on the Columbia River System.

"Priest Rapids Outflow" – the total volume of water discharged by Priest Rapids in any hour from all sources, measured in kcfs. For the purposes of the Spawning Period, Pre-Hatch Period, Post-Hatch Period and Emergence Periods, Priest Rapids Outflow shall be measured at the USGS station below Priest Rapids when possible. When USGS station data are not available and for the purposes of the Rearing Period, it will be calculated at Priest Rapids based on data available to Grant that are reported on the Corps of Engineers website [<http://www.nwd-wc.usace.army.mil/report/projdata.htm>].

"Priest Rapids Weekday Outflow Delta" – this is the difference between minimum Priest Rapids Outflow and maximum Priest Rapids Outflow over a 24 hr period beginning at 0001 hrs and extending to 2400 hrs. Priest Rapids Weekday Outflow Delta will be calculated at Priest Rapids based on data available to Grant that are reported on the Corps of Engineers website [<http://www.nwd-wc.usace.army.mil/report/projdata.htm>].

"Priest Rapids Weekend Outflow Delta" – this is the difference between minimum Priest Rapids Outflow and maximum Priest Rapids Outflow over a 48-hr period beginning at 0001 hrs on Saturday morning and extending to 2400 hrs on Sunday night. Priest Rapids Weekend Outflow Delta will be calculated at Priest Rapids based on data available to Grant that is reported on the Corps of Engineers website [<http://www.nwd-wc.usace.army.mil/report/projdata.htm>].

"Protection Level Flow" – the amount of water flowing over Vernita Bar which is needed to provide protection to Redds as specified in subsections C.2 through C.4 of this Agreement.

“Rearing Period” – the time period beginning with the start of the Emergence Period and continuing thereafter until 400 (°C) Temperature Units have been accumulated at Vernita Bar after the end of the Emergence Period.

“Redds” – defined area of riverbed material containing salmon eggs.

"Reverse Load Factoring" – the intentional reduction of power generation during Daylight Hours and the corresponding increase in power generation during hours of darkness for the purpose of influencing the location of Redds on Vernita Bar. Reverse Load Factoring does not include spilling at night to allow lower daytime flows.

"Rocky Reach" – the Rocky Reach Dam located on the Columbia River System.

"Side Inflows" – the algebraic sum of the flow rates of water entering or leaving the Columbia River from all sources between Chief Joseph and Priest Rapids as calculated by the method presently specified by Mid-Columbia Hourly Coordination.

"Spawning Period" – the time period beginning with the Initiation of Spawning and continuing until 2400 hours on the last Sunday prior to Thanksgiving.

"Temperature Unit" – one degree Celsius of water temperature above freezing (0°C) for 24 hours.

"Vernita Bar" – the gravel bar located in the Columbia River approximately four miles downstream from Priest Rapids.

"Wanapum" – the Wanapum Dam located on the Columbia River System.

"Wanapum Inflow" – the daily average flow rate for water flowing into the Wanapum reservoir calculated at Rock Island based on data available to Chelan.

"Wells" – the Wells Dam located on the Columbia River System.

B. SCOPE AND DURATION

1. Purpose of Agreement and Relationship to Prior Agreement

This Agreement establishes the obligations of the Parties with respect to the protection of fall Chinook in the Hanford Reach of the Columbia River. The Parties agree that during the term of the Agreement these flow regimes address all issues in the Hanford Reach with respect to fall Chinook protection and the impact of operation of the seven dams operating under Mid-Columbia Hourly Coordination, including the obligations of Grant, Chelan, and Douglas under any new licenses issued by the Federal Energy Regulatory Commission (FERC).

It is the intent of the Parties that this Agreement replaces and supersedes the original **June 16, 1988 Vernita Bar Agreement**.

2. Term, Effectiveness, and Regulatory Approvals

(a) This Agreement shall become effective on the date of execution of this Agreement by all Parties and shall continue for a period equal to the remainder of the current license for Priest Rapids Project No. 2114, plus the term(s) of any annual license(s) and the next new Priest Rapids Project license which may be issued thereafter.

(b) By signing this Agreement, the Agency Parties represent that they have assembled and reviewed substantial evidence, and that based on that substantial evidence, they will recommend to FERC that this Agreement be approved in its entirety.

(c) Promptly after the execution of this Agreement, Grant shall file it with the FERC and request that FERC include appropriate conditions in the new license for the Priest Rapids Project reflecting the terms and conditions of this Agreement. All Parties agree to submit a statement of support of this Agreement to FERC within a reasonable time of Grant's filing. The Parties, however, shall, without limitation or qualification, commence implementation of this Agreement at the beginning of the 2004 Rearing period.

(d) In the event that FERC shall issue an order which makes any material modification to the terms of this Agreement, either by additions to or omissions from its terms, any Party may,

within 60 days following the issuance of a FERC order denying a request for rehearing, withdraw from this Agreement after giving the other Parties 30 days written notice of its intention to do so and of the reasons for its decision to withdraw.

(e) The Agency Parties represent and stipulate that this Agreement shall constitute the agency Parties terms, conditions and recommendations for any FERC licensing process of the Utility Parties; including any such necessary filings with the Washington Department of Ecology Section 401 certification process with respect to protection of fall Chinook in the Hanford Reach of the Columbia River.

(f) The Parties represent and stipulate that all submittals and recommendations to FERC, including those to Washington Department of Ecology, for inclusion in the new licenses for the Priest Rapids Project, the Rocky Reach Project and the Wells Project will in all respects be consistent with the terms and conditions of this Agreement.

(g) An Utility Party may, upon 30-days notice, withdraw from this Agreement and be relieved of all obligations under this Agreement in the event FERC, the Washington Department of Ecology, or other regulatory authority imposes on such Party any measure inconsistent with this Agreement or additional obligations with respect to the protection of fall Chinook and other aquatic resources in the Hanford Reach of the Columbia River.

(h) Nothing in this Agreement will limit or prohibit any action by any Party based on non-compliance with this Agreement.

3. Reopener Limitation/Withdrawal

(a) No Party may petition the FERC directly, or through the Washington Department of Ecology, to modify any provision of this Agreement or request any flows, minimum flows or other operation that is inconsistent with this Agreement, until ten years from the effective date of this Agreement, unless such modification is jointly requested by all Parties.

(b) Ten years following the effective date of this Agreement, a Party may:

- (1) Request reopening of this Agreement and the imposition by the FERC of different, additional or modified fall Chinook protection measures for the Hanford Reach;
- (2) Bring any cause of action, raise any defense (including exhaustion of administrative remedies at the FERC) or claim, or rely on any theory in any appropriate forum;
- (3) Petition any other appropriate administrative agency or political body for relief, including the deletion of one or more measures otherwise in effect under this Agreement, or;
- (4) Take other appropriate action relating to any issue or matter addressed by this Agreement that could have been addressed by this Agreement or the Parties with respect to protection of aquatic resources in the Hanford Reach.

(c) In any action under this subsection B.3(b) the petitioning Party shall have the burden of proof. The Parties will continue to implement this Agreement until the relief sought becomes effective by operation of law, unless otherwise agreed.

(d) With respect to any petition or suit filed pursuant to this subsection B.3(b) and any subsequent judicial review thereof, nothing in this Agreement shall bar, limit or restrict any Party from raising any relevant issue of fact or law, regardless of whether such issue is or could have been addressed by this Agreement.

(e) Notwithstanding any other provisions of this subsection B.3(b) any Party may participate in any legislative or administrative proceeding dealing with fish protection or compensation issues; provided that no Party may contend on its own behalf, or support any contention by other persons in any proceeding or forum, including the Northwest Power and Conservation Council, the Washington Department of Ecology Section 401 certification process, and/or Congress, that additional or different measures for protection of fall Chinook salmon in the Hanford Reach should be imposed on any Party until a period of ten years following the effective date of this Agreement has passed.

4. Stipulation of Adequacy

For ten years from the effective date of this Agreement, the Parties stipulate as follows:

(a) Performance of the requirements of Grant, Chelan, Douglas and BPA under this Agreement shall constitute acceptable protection of fall Chinook in the Hanford Reach, taking into account both hydropower and fishery needs.

(b) Performance by any Utility Party of its obligations under this Agreement satisfies the obligations of such Party with respect to protection of fall Chinook salmon in the Hanford Reach arising under applicable laws and regulations, including but not limited to the Endangered Species Act, the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Pacific Northwest Electric Power Planning and Conservation Act, the Fish and Wildlife Coordination Act and the Magnuson-Stevens Fisheries Conservation and Management Act. In any and all disputes, proceedings and hearings under the above applicable laws and regulations, the Parties will support the adequacy of protection for fall Chinook salmon in the Hanford Reach pursuant to this Agreement.

(c) Performance by any Party of its obligations under this Agreement shall constitute compliance with the applicable provisions of the Northwest Power and Conservation Council's Fish and Wildlife Program as currently written.

C. HANFORD REACH FALL CHINOOK PROTECTION

Subject to the limitations and conditions set out in this Agreement, Grant, Chelan, Douglas and BPA shall provide the following flow regimes for the Spawning through Rearing Period for Hanford Reach fall Chinook salmon in the Hanford Reach of the Columbia River.

1. Spawning Period

(a) All Parties agree that flows maintained during the Spawning Period and escapement levels are factors influencing the placement of Redds. The flow manipulation under this subsection C.1 is directed to minimize formation of Redds above the 70 kcfs elevation. Minimizing formation of Redds above the 70 kcfs elevation in turn is a key factor influencing the success of the flow regime under subsection C.4 during the Emergence Period.

(b) During the Spawning Period(s) of 2005 and 2006, Grant will experiment with alternative operations for flow manipulation. The requirement of the alternative operations will be to ensure that Priest Rapids Outflows are not higher than 70 kcfs and not lower than 55 kcfs for a continuous period of at least 12 hours out of each day during the Spawning Period. Grant will provide continuous monitoring of Redd formation during these tests and report the results weekly. These experiments may continue as long as no more than 31 Redds are located above the 65 kcfs elevation on Vernita Bar. If Redd counts reveal that more than 31 Redds are located above the 65 kcfs elevation, Spawning Period operations will default to the procedures of C.1(c) below. If Redd counts show that alternative Spawning Period operations can limit the formation of Redds above 70 kcfs, then Grant shall be allowed to choose between use of C.1(b) or C.1(c) as guidelines for operational parameters during the Spawning Period of future years.

(c) If the experimental operations testing during C.1(b) above are unsuccessful in minimizing formation of Redds above the 70 kcfs elevation, Grant's operations will revert to the default operation specified in this paragraph. During the Spawning Period, Grant will operate Priest Rapids Project No. 2114 to the extent feasible through use of the Mid-Columbia Hourly Coordination and Reverse Load Factoring to produce a Priest Rapids Outflow during Daylight Hours that can range from 55 to 70 kcfs. The goal during the Spawning Period is to limit spawning to the area below the 70 kcfs elevation on Vernita Bar. In the event physical changes are made at the Priest Rapids Project which affect Grant's ability to provide Reverse Load Factoring, Grant agrees to meet with the Parties to this Agreement to determine what adjustments to Grant's obligation under this subsection C.1(c) shall be made, notwithstanding the provisions of subsections B.4 and B.5.

(d) The Parties agree that BPA has no obligation under this Agreement to limit fall flows to influence Redd location. This is, however, without prejudice to the rights of any Party to assert, except before the FERC prior to ten years from the effective date of this Agreement, that BPA may have an obligation apart from this Agreement to limit such flows and the rights of any Party to request cooperation of BPA, the Bureau of Reclamation and the Corps of Engineers to limit such flows. The Parties agree to work together to obtain the cooperation of BPA, the Bureau of Reclamation and the Corps of Engineers to achieve the desired flow regime.

2. Pre-Hatch Period

During the Pre-Hatch Period the Priest Rapids Outflow may be reduced to 36 kcfs for up to 8 hours on weekdays and 12 hours on weekends (with no two consecutive minimum periods). All Parties recognize that utilization of the 36 kcfs minimum may have to be limited to achieve the Priest Rapids Outflow goal during the Spawning Period.

3. Post-Hatch Period

(a) After Hatching has occurred at Redds located in the 36 to 50 kcfs zone, the Protection Level Flow shall be maintained over Vernita Bar so that the intergravel water level is no less than 15 cm below the 50 kcfs elevation.

(b) After Hatching has occurred at Redds located in the zone above the 50 kcfs elevation, the Protection Level Flow shall be maintained over Vernita Bar through the Post Hatch Period so that the intergravel water level is no less than 15 cm below the Critical Elevation.

4. Emergence Period

(a) During the Emergence Period, after Emergence has occurred in the 36 to 50 kcfs zone, the Protection Level Flow shall not be less than necessary to maintain water over Vernita Bar at the 50 kcfs elevation.

(b) During the Emergence Period, after Emergence has occurred above the 50 kcfs elevation, the Protection Level Flow shall be maintained at or above the Critical Elevation.

5. Rearing Period

(a) All Parties recognize that flow fluctuations during the Rearing Period may impact juvenile Hanford Reach fall Chinook. The Parties also recognize that elimination of all flow fluctuations is not physically possible without severely impacting the ability of Mid-Columbia Operators to produce a reliable supply of electricity. The goal during the Rearing Period is to provide a high level of protection for juvenile Hanford Reach fall Chinook rearing in the Hanford Reach by limiting flow fluctuations while retaining operational flexibility at each of the seven dams on the Mid-Columbia River.

(b) During the Rearing Period, Grant will operate Priest Rapids Project No. 2114 to the extent feasible through use of the Mid-Columbia Hourly Coordination to produce a Priest Rapids Outflow that limits flow fluctuations according to the following criteria:

(1) When the Previous Day's Average Weekday Wanapum Inflow is between 36 and 80 kcfs limit Priest Rapids Weekday Outflow Delta to no more than 20 kcfs. When the average of BPA's Friday Chief Joseph Outflow Estimates plus side flow estimates for Saturday and Sunday is between 36 and 80 kcfs limit the Priest Rapids Weekend Outflow Delta to no more than 20 kcfs.

(2) When Previous Day's Average Weekday Wanapum Inflow is between 80 and 110 kcfs limit Priest Rapids Weekday Outflow Delta to no more than 30 kcfs. When the average of BPA's Friday Chief Joseph Outflow Estimates plus side flow estimates for Saturday and Sunday is between 80 and 110 kcfs limit the Priest Rapids Weekend Outflow Delta to no more than 30 kcfs.

(3) When Previous Day's Average Weekday Wanapum Inflow is between 110 and 140 kcfs limit Priest Rapids Weekday Outflow Delta to no more than 40 kcfs. When the average of BPA's Friday Chief Joseph Outflow Estimates plus side flow estimates for Saturday and Sunday is between 110 and 140 kcfs limit the Priest Rapids Weekend Outflow Delta to no more than 40 kcfs.

(4) When Previous Day's Average Weekday Wanapum Inflow is between 140 and 170 kcfs limit Priest Rapids Weekday Outflow Delta to no more than 60 kcfs. When the average of BPA's Friday Chief Joseph Outflow Estimates plus side flow estimates for Saturday and Sunday is between 140 and 170 kcfs limit the Priest Rapids Weekend Outflow Delta to no more than 60 kcfs.

(5) When Previous Day's Average Weekday Wanapum Inflow is greater than 170 kcfs Priest Rapids Outflow for the following weekday will be at least 150 kcfs. When the average of BPA's Friday Chief Joseph Outflow Estimates plus side flow estimates for Saturday and Sunday is greater than 170 kcfs, Priest Rapids Outflow for Saturday and Sunday will be at least 150 kcfs.

(6) On four consecutive Saturdays and Sundays that occur after 800 TUs have accumulated after the end of the Spawning Period, Priest Rapids Outflow will be maintained to at least a minimum flow calculated as the average of the daily hourly minimum flow from Monday through Thursday of the current week.

(c) All Parties agree that perfect compliance with the flow constraints of C.5(b) is not possible. Conditions related to inflow, reservoir elevation, accuracy of BPA estimates, emergencies and human error can contribute to exceeding the Priest Rapids Outflow Delta or Priest Rapids Outflow dropping below minimums specified. Grant will make every effort to meet the operating constraints.

On Monday, following lower flows from the weekend it is not considered a violation of the provisions in C.5(b) when Monday inflows require increasing the Priest Rapids discharge above the upper limit established at midnight on Sunday. If the upper limit is raised on Monday, the lower limit must be raised to allow the difference between the maximum and new minimum flow to remain within the applicable Priest Rapids Weekday Outflow Delta limit.

Problems can be expected from time to time. Grant will detail the circumstances associated with its inability to meet these constraints in the annual report described under C.6(c). In addition to annual reporting, the Parties agree to use the dispute resolution process described under E.9 whenever any Party claims excessive non-compliance.

6. Monitoring Team

For purposes of determining the Protection Level Flow during the Post Hatch and Emergence Periods, a Critical Elevation shall be determined each year as follows:

(a) The Monitoring Team will survey Redds on Vernita Bar in the area specified on Exhibit A for the purpose of determining the Initiation of Spawning, the location of Redds and the extent of spawning. The Monitoring Team will also provide a concurrent aerial survey of the Hanford Reach on the same weekend(s). The aerial survey(s) will be utilized to determine if Initiation of Spawning in areas of the Hanford Reach below the 36 kcfs level and/or outside the area specified on Exhibit A occurs prior to Initiation of Spawning within the Exhibit A area above the 36 kcfs level. Once an initiation of Spawning date has been determined, based upon the presence of 5 or more redds in an individual survey, the aerial surveys maybe discontinued for that year. The surveys will be conducted on weekends beginning on the weekend prior to October 15 of each year.

(b) The Monitoring Team will make a final Redd survey the weekend prior to Thanksgiving to determine the Critical Elevation. The Monitoring Team may also make a supplemental Redd survey the weekend after Thanksgiving to determine if additional Redds are present above the 50 kcfs elevation. A preliminary estimate of the Critical Elevation will be made following the final Redd survey and will be confirmed or adjusted based on the supplemental survey. The Critical Elevation will be set as follows: (Elevations must be in 5 kcfs increments beginning at the 40 kcfs elevation.)

(1) If 31 or more Redds are located above the 65 kcfs elevation, the Critical Elevation will be the 70 kcfs elevation.

(2) If there are 15 to 30 Redds above the 65 kcfs elevation, the Critical Elevation will be the 65 kcfs elevation.

(3) If there are fewer than 15 Redds above the 65 kcfs elevation, then the Critical Elevation will be the first 5 kcfs elevation above the elevation containing the 16th highest Redd within the survey area on Vernita Bar (see Table 1 below for examples of the application of these counts).

Table 1. Examples illustrating theoretical final Vernita Bar Redd counts and the resulting Critical Elevations, elevations are provided in kcfs ranges.

	36-50 kcfs	50-55 kcfs	55-60 kcfs	60-65 kcfs	65-70 kcfs	70+ kcfs	Resulting Critical Elevation
Example 1	836	418	148	71	48	34	70
Example 2	283	94	65	28	16	4	65
Example 3	105	35	10	3	1	0	55

(c) Additional activities of the Monitoring Team will include calculation of Temperature Units, determination of the dates of Initiation of Spawning, Hatching, Emergence, the end of the

Emergence Period and the end of the Rearing Period. The Monitoring Team may also make non-binding recommendations to any of the Parties to this Agreement, including non-binding recommendations to protect Redds above the Critical Elevation or to address special circumstances. By September 1 of the following year, Grant will submit an annual report to the Monitoring Team and BPA. The annual report will include, but not be limited to: 1) Vernita Bar Redd Counts, 2) dates on which the Hatching, Emergence, End of Emergence and End of Rearing Periods occurred, 3) a record of Columbia River flows through the Hanford Reach based on Priest Rapids discharges, and 4) a description of the actual flow regimes from the Initiation of Spawning through the Rearing Period based on available data. During the rearing period, Grant will provide a weekly operations report to the Parties. After review by the Monitoring Team, the final report will be sent to all Parties. During the Rearing Periods of 2011, 2012 and 2013, the Parties will also meet to develop a follow-up monitoring program to estimate fry losses. This monitoring program will be designed according to protocols developed from 1999 to 2003 or alternatively with different methods developed by the Parties.

(d) If from time to time, disputes arise regarding activities of the Monitoring Team, the Parties agree to use the dispute resolution process described under E.9 below.

7. Redds Above Critical Elevation

This Agreement is not intended either to preclude or require protection of Redds above the Critical Elevation. The Parties shall meet annually to determine if there are measures that, in the joint discretion of Grant, Chelan, Douglas and BPA, can be taken to protect any Redds located above the Critical Elevation.

D. RIVER OPERATIONS

In order to achieve the required Protection Level Flows during the Post Hatch and Emergence Periods and to provide the desired flow regimes during the Rearing Period, Grant, Chelan, Douglas and BPA agree to the following:

1. Weekday Request

On any day other than a Saturday, Sunday or Holiday, BPA shall provide a Chief Joseph Uncoordinated Request that will, on a daily average basis and when converted from megawatts to Chief Joseph discharge, be not less than the Protection Level Flow minus Side Inflows. For example, if the Critical Elevation is established at 65 kcfs, BPA shall be required to submit a Chief Joseph Uncoordinated Request during the periods described in subsections C.3(b) and C.4(b) which is not less than (but nothing in this Agreement shall require the request to be greater than) 65 kcfs minus Side Inflows on a daily average basis. For Saturdays, Sundays, and Holidays, the Chief Joseph Uncoordinated Request shall not be less than the amounts set out in subsections D.2 and D.3 below.

2. Saturday Request

Beginning 0000 hours on any Saturday, BPA may reduce the Chief Joseph Uncoordinated Request so long as the Saturday midnight accumulation of the difference between the resulting Chief Joseph discharge and the Protection Level Flow minus the Side Inflows does not exceed 925 kcfsh. The accumulated difference calculated above will be identified as the Chief Joseph Accumulated Deficiency (CJAD).

3. Sunday or Holiday Request

On any Sunday or Holiday, BPA may reduce the Chief Joseph Uncoordinated Request so long as the midnight CJAD does not exceed 854 kcfsh.

4. Post-Sunday or Holiday Deficiency

Following any Sunday or Holiday, BPA shall provide a Chief Joseph Uncoordinated Request so that CJAD does not exceed at midnight on any day the CJAD of the preceding midnight. On any weekend or holiday weekend when CJAD exceeds 0, BPA shall provide Chief Joseph Uncoordinated Requests such that CJAD will return to zero by 1200 hours on Wednesday of the following week.

5. Weekends During the Rearing Period

(a) BPA will provide flows necessary to meet the four weekend minimum flows as provided in C.5(b)(6). However, on any Saturday and Sunday of the prescribed four weekends BPA may reduce the Chief Joseph Uncoordinated Request so long as the resultant Sunday midnight accumulation of the difference between the resulting Chief Joseph discharge and the established weekend minimum flow minus the side inflows does not exceed the following criteria: 1) 925 kcfsh on Saturday at midnight, 2) 854 kcfsh on Sunday or any holiday at midnight.

(b) The accumulated difference calculated above will be identified as the Chief Joseph Accumulated Deficiency – II (CJAD-II). On all four designated weekends when CJAD-II exceeds 0, BPA shall provide Chief Joseph Uncoordinated Requests such that CJAD-II will return to zero by 1200 hours on Wednesday of the following week.

6. Grant, Chelan, Douglas and BPA Drafts and Refill

(a) Spawning through Emergence Period provisions are as follows:

- (i) Grant, Chelan and Douglas shall utilize the actual discharges from the Chief Joseph Project and Side Inflows to meet the required Protection Level Flow. To the extent that actual discharges from the Chief Joseph Project, together with Side Inflows, are insufficient to meet the Protection Level Flow, Grant, Chelan and Douglas shall make up the deficiency by drafting their reservoirs in the following order and quantities to the extent required to comply with the flow regimes specified in this Agreement: 1) Grant will draft up to 3 feet from Priest Rapids, 2) Grant will draft up to 2 feet from Wanapum,

3) Chelan will draft up to 1 foot from Rocky Reach, (4) Douglas will draft up to 1 foot from Wells, and 5) Grant will draft up to 0.7 feet from Priest Rapids; provided, that in lieu of so drafting their reservoirs, Grant, Chelan and Douglas may, upon their agreement, draft their reservoirs in any alternative manner which provides the equivalent amount of total draft. Subsequent refill of the reservoirs shall be accomplished in the reverse order of draft (i.e., 0.7 feet at Priest Rapids, 1 foot at Wells, 1 foot at Rocky Reach, 2 feet at Wanapum and 3 feet at Priest Rapids) or in an alternative manner by agreement of Grant, Chelan and Douglas.

- (ii) After BPA has met its Chief Joseph Uncoordinated Request obligations, and after Grant, Chelan and Douglas have provided the drafts described above, additional water may still be required from time to time on a short-term basis to meet the flow regimes specified in this Agreement. Such additional water may be required to the extent that: 1) actual discharges from the Chief Joseph Project differ from Chief Joseph discharges which would have resulted from Chief Joseph Uncoordinated Requests, and/or 2) the CJAD exceeds, from time to time, 925 kcfsh. Whenever such additional water is required on a short-term basis, it will be provided by the draft of all seven dams associated with the operation of Mid-Columbia Hourly Coordination in proportion to 50% Federal and 50% Non-Federal contribution on a content basis.

(b) During the Rearing Period prescribed in C.5 Grant will operate Priest Rapids Project No. 2114 to limit flow fluctuations and maintain a minimum flow for the four designated weekends as described in C.5(b) through the following provisions:

- (i) After drafts of 1 foot from each of Wanapum and Priest Rapids (or combination thereof) have been provided, Chelan and Douglas will provide drafts of up to 1 foot from Rocky Reach and Wells Projects. All drafts will be measured from a pre-determined baseline.
- (ii) After conditions under (i) above have been provided, Grant will draft Wanapum and/or Priest Rapids beyond 1 foot each as necessary to meet the rearing requirements under C.5., limited to a total equivalent draft of 3.7 feet at Priest Rapids and 2 feet at Wanapum.
- (iii) Chelan, Douglas and Grant, upon their agreement may draft their reservoirs in any alternative manner, which provides an equivalent amount of total draft.
- (iv) After BPA has met its Chief Joseph Uncoordinated Request obligations, and after Grant, Chelan and Douglas have provided the drafts described above, additional water may still be required from time to time on a short-term basis to meet the flow regimes of C.5. Such additional water may be required to the extent that: 1) actual discharges from the Chief Joseph Project differ from Chief Joseph discharges which would have resulted from Chief Joseph Uncoordinated Requests, and/or 2) the CJAD-II exceeds, from time to time, 925 kcfsh. Whenever such additional water is required on a short-term basis, it will be provided by the draft of all seven dams associated with the operation of Mid-Columbia Hourly Coordination in proportion to 50% Federal and 50% Non-Federal contribution on a content basis.

7. BPA Request Requirements

BPA shall provide sufficient generation requests and hourly coordination operating parameters for Grand Coulee and Chief Joseph via Mid-Columbia Hourly Coordination such that the discharge from Chief Joseph, which would result absent modification by non-Federal generation requests via Mid-Columbia Hourly Coordination, would not be less than the flows required in subsections D.1 through D.5 above.

8. Relationship to Section C

Nothing in the foregoing subsections D.1 through D.7 shall limit or diminish the obligations of the Parties under Section C.

9. Draft at Mid-Columbia Projects

Notwithstanding any other provision of this Agreement, Grant, Chelan and Douglas shall not be required to draft their respective reservoirs in a manner which would be inconsistent with the requirements of any applicable FERC license or to a level less than one (1) foot above the applicable FERC license minimum reservoir elevation. At any time that a reservoir is within one (1) foot above the applicable FERC license minimum reservoir elevation, that project shall have no further obligation under this Agreement except to pass the inflow entering that project's reservoir.

Whenever the sum of the remaining pondage in Priest Rapids, Wanapum, Rocky Reach, and Wells is less than 1500 kcfsh, Grant, Chelan, Douglas and BPA shall confer to coordinate operations regarding the maintenance of the Protection Level Flow or operations necessary to meet Priest Rapids Weekday and Weekend Outflow Delta limits during the Rearing Period.

10. Excuse of Performance

In the event any performance by any Party is rendered impossible by an act of the Bureau of Reclamation or the Corps of Engineers which is beyond the control of such Party, such performance shall be excused until the cause of such impossibility is removed or eliminated.

11. Adverse Water Conditions

When the National Weather Service/Soil Conservation Service Joint official March 1, January-July volume of runoff forecast at Grand Coulee is less than the Critical Runoff Volume, the Parties will meet prior to any reductions and discuss an allocation of available flows between power interests, fishery interests at the Hanford Reach and other nonpower interests. After such discussions, BPA may reduce its flow requests below those required under Section D resulting in a proportional reduction in the Protection Level Flow and Critical Elevation, provided that such reductions are approximately proportional to the adverse impact on Columbia River firm hydropower generation from the reduced flow volume, and provided that failure to refill shall not be the determining factor in measuring such adverse impacts. In no event shall the effect of this

paragraph result in a reduction in the Protection Level Flow of greater than 15% or below 50 kcfs, whichever provides for a higher Protection Level Flow.

12. Instantaneous Minimum Flow for the Hanford Reach

The Parties further agree that a minimum instantaneous release of 36 kcfs from Priest Rapids Dam as measured at USGS gauge No. 12472800 will be maintained during all time periods except for those times when maintenance of the Protection Level Flow and Rearing Period operation constraints require a higher instantaneous minimum flow. The Parties agree that this minimum flow was historically intended to provide general protection for aquatic resources, water quality, recreation, and operation of water intakes of the Hanford Reservation and other beneficial uses of the Hanford Reach of the Columbia River.

E. MISCELLANEOUS

1. No Prejudice

All Parties stipulate that, except as expressly provided herein neither FERC approval nor any Party's execution of this Agreement shall constitute approval or admission of, or precedent regarding, any principle, fact or issue in any FERC or in any other administrative or judicial proceeding, including subsequent modification proceedings under Section B of this Agreement.

2. Waiver of Default

Any waiver at any time by any Party hereto of any right with respect to any other Party or with respect to any matter arising in connection with this Agreement shall not be considered a waiver with respect to any subsequent default or matter.

3. Entire Agreement—Modifications

All previous communications between the Parties hereto, either verbal or written, with reference to the subject matter of this Agreement are hereby abrogated, and this Agreement duly accepted and approved, constitutes the entire Agreement between the Parties hereto, and no modifications of this Agreement shall be binding upon any Party unless executed or approved in accordance with the procedures set forth in Section B.

4. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successor and assigns.

5. Force Majeure

No Party shall be liable for failure to perform or for delay in performance due to any cause beyond its control. This may include, but is not limited to, fire, flood, terrorism, strike or other labor disruption, act of God or riot. The Party whose performance is affected by a force majeure

will make all reasonable efforts to promptly resume performance once the force majeure is eliminated.

6. Execution

This Agreement may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original Agreement. The date of execution shall be the date of the final Party's signature.

7. Authority

Each Party to this Agreement hereby represents and acknowledges that it has full legal authority to execute this Agreement and shall be fully bound by the terms hereof.

8. Captions

Captions and titles used to identify sections of this Agreement are for the convenience of the Parties and shall not have any substantive meaning.

9. Dispute Resolution

(a) Disputes covering issues associated with the implementation of this Hanford Reach Fall Chinook Protection Program shall be subject to the dispute resolution procedures.

(b) In the event that a dispute arises over an issue associated with the implementation of the Hanford Reach Fall Chinook Protection Program, the Party raising the issue shall provide written notice of the issue and the supporting rationale to each Party to the Agreement. Within five days of receipt of such notice, the Parties shall develop a subcommittee to review the disputed issue(s). The subcommittee shall be composed of one (1) representative of each Party. Within twenty (20) days of receipt of notice of a dispute, the subcommittee shall seek to resolve the dispute. Parties shall endeavor in good faith to reach a resolution of the dispute using the best available information.

(c) At the end of the twenty-(20) day period, the appropriate subcommittee shall provide a report to the Parties describing the outcome of their efforts under Section C.8(b), above. In the event that the subcommittee has identified a proposed resolution that is consistent with terms of the Hanford Reach Fall Chinook Protection Program, the report shall describe the proposed resolution, the basis for the proposed resolution, and such additional information as may be necessary to support the proposed resolution. In the event that the subcommittee was unable to resolve the dispute, the report shall describe the remaining issues in dispute, the efforts to resolve them, and any additional information pertinent to resolving the outstanding issues in a timely manner.

(d) Upon receipt of a report described above, the Parties, within thirty (30) days, will approve or disapprove the proposed resolution. In the event that it approves the proposal, the Parties will implement the resolution as accepted. In the event that the resolution requires the regulatory

approval of FERC or another regulatory entity, Grant PUD, with the support of the Parties, shall seek prompt approval of the resolution by FERC or the relevant regulatory authority, and the appropriate Party or Parties shall proceed with its implementation upon receipt of the required approval. In the event that the report identifies unresolved issues, the Parties shall undertake to resolve the matter according to procedures identified in the Alternative Dispute Resolution section below.

(e) Alternative Dispute Resolution: The Parties may use non-binding alternative dispute resolution (ADR) procedures involving a third-party mediator and in cooperation with FERC representatives to seek a resolution of an outstanding dispute that could not be resolved by the designated subcommittee. The Parties shall cooperate in good faith to promptly schedule, attend and participate in the ADR, and to devote the time, resources and attention to the ADR as may be necessary to attempt to resolve the dispute as promptly as possible.

(f) Final Action: If, by the end of the thirty (30) day period (or the period otherwise agreed to), the Parties have not resolved the dispute, any Party may petition FERC for a remedy.

10. Relationship to Mid-Columbia Hourly Coordination

This Agreement is not intended to prohibit Grant, Chelan, Douglas or BPA from exercising their rights to give notice of termination of the Agreement for Hourly Coordination of Projects on the Mid-Columbia River according to its terms. The termination of that agreement shall not relieve any Party from its obligations under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first written above.