
SKAGIT RIVER HYDROELECTRIC PROJECT

FERC No. 553

OFFER OF SETTLEMENT

**BEFORE THE
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

APRIL 1991

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City of Seattle, Skagit River)
Hydroelectric Project)
No. 553)
_____)

Project No. 553

Docket No. EL 78-36

OFFER OF SETTLEMENT

In accordance with Rule 602 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure, 18 C.F.R. Section 385.602, the City of Seattle, City Light Department (City or Applicant); the U.S. Department of the Interior, National Park Service (NPS), Fish and Wildlife Service (FWS) and Bureau of Indian Affairs (BIA); the U.S. Department of Agriculture, Forest Service (USFS); the U.S. Department of Commerce, National Marine Fisheries Service (NMFS); the Upper Skagit Tribe, Sauk-Suiattle Tribe, and Swinomish Indian Tribal Community (Tribes); the Washington Department of Fisheries (WDF); the Washington Department of Wildlife (WDW); and the North Cascades Conservation Council (NCCC) (collectively referred to as the "Intervenors" or "Parties" when acting jointly with the City) hereby submit this Offer of Settlement for the City's Skagit River Hydroelectric Project No. 553 (Project).

The Offer of Settlement summarizes the terms and provisions of the Settlement Agreements between the City and the Intervenors in the following subject areas: Fisheries; Wildlife; Recreation and Aesthetics; Erosion Control; Cultural Resources (Archaeological and Historic Resources); and Traditional Cultural Properties.

These Settlement Agreements resolve all issues for the period specified in each agreement, related to the effects of the Project, as currently constructed, upon the subject areas identified above. The Parties intend that the Settlement Agreements shall remain in effect for the duration of the term of the new license period for the Project, including the term(s) of any annual license(s) issued thereafter. However, certain specific provisions contained in these Agreements have been negotiated based upon an assumed 30-year license period. If the FERC issues a license for longer

than a 30-year period, the Parties have agreed in making this Offer of Settlement that it shall give rise to a right of the Parties to initiate a proceeding before the FERC between the 25th and 30th year of the license to reopen the provisions which were specifically based upon a 30-year license period. The City agrees that it shall not oppose initiation of such a proceeding; the Parties, may, however, differ in their respective positions in such a proceeding.

The Parties request that the FERC approve the terms and provisions of the Settlement Agreements and dismiss the proceedings under Docket No. EL 78-36, pursuant to Rule 602, upon certification by the Chief Administrative Law Judge, as appropriate.

The Parties have agreed that each Settlement Agreement shall constitute a unit. The Parties also request that the FERC accept and approve the Settlement Agreements as a package. Any material modification of the terms of a Settlement Agreement, approval of less than the entire Agreement, or the addition of any material terms to a Settlement Agreement will make the Agreement voidable at the option of any Party. The City and the other Parties reserve the right to appeal the issuance of a license if unacceptable provisions are added.

I. EXPLANATORY STATEMENT

A. FACTUAL AND PROCEDURAL BACKGROUND

1. Introduction

The City of Seattle is the licensee for the Skagit River Hydroelectric Project (FERC No. 553), which is located on the Skagit River in Whatcom County, Washington. The Project includes the Gorge, Diablo, and Ross dams and associated facilities and transmission lines within the Project area in Whatcom, Skagit and Snohomish counties. The three dams currently provide the City with a significant generating capacity and supply approximately a quarter of the City's electrical power requirements. The Project also provides flood control storage, recreational opportunities, and downstream flow regulation including flow conditions for the protection of anadromous fish.

2. Skagit Project History

The City was issued a permit for the Gorge Diversion Dam by the Department of Agriculture in 1918, and the original timber crib structure was constructed between 1919 and 1924. In 1927, the Federal Power Commission (FPC) issued the City a license to construct and

operate Diablo Dam. Diablo, a concrete arch dam, was constructed between 1927 and 1929. It has been in operation since 1936. Originally referred to as Ruby Dam, Ross Dam was constructed in several stages between 1937 and 1967. Gorge Diversion Dam was reconstructed in concrete in 1950. The new Gorge High Dam, a concrete arch and gravity structure, was constructed slightly downstream of the diversion dam in 1961.

3. Procedural and Factual Developments

a. Relicensing

The City's license to operate the three dams expired in 1977, at which time the City filed an application for a new license with the FPC. A revised application was filed in 1978 and was accepted and noticed by the FPC in early 1979. Several state and federal agencies, Indian Tribes, and an environmental group moved to intervene and were granted intervenor status by the FPC. Since the filing of the application, the FPC and its successor, the FERC, has issued the City annually renewed licenses, and has required the City to consider the relevant issues with the intervening parties and to conduct studies necessary to the resolution of identified issues.

After reviewing the City's application for some period, the FERC directed the City, in an Additional Information Request dated October 31, 1988, to provide additional data, conduct additional studies, and submit several updated mitigation and enhancement plans for various environmental resources.

On October 31, 1989, the City responded to the FERC's information request by submitting the results of extensive studies and new data for the various resources, together with the comments of the Intervenor and the City's responses to those comments. This information was accepted by the FERC on January 10, 1990, at which time the City was given until November 30, 1990 to submit its final resource plans.

Over the past eleven years, the Parties have been involved in studies and negotiations related to the Project's effect upon the fish, wildlife, recreational and aesthetic, historic and cultural resources, and erosion control in the Project Area and vicinity. These negotiations were greatly intensified over the past three years in an effort to bring this matter to closure via settlement agreements between the Parties. On November 20, 1990, the Parties jointly submitted a request to the FERC to allow the Parties additional time to negotiate final settlement agreements. On December 3, 1990, the FERC granted the Parties' request, and set May 1, 1991 as the final date that the FERC would accept a submittal. The Parties successfully concluded negotiations in

March, 1991, and the final settlement agreements were circulated for signature by the parties shortly thereafter.

b. Instream Flow Proceeding

In response to petitions filed by several agencies and tribes on September 7, 1978, the FPC issued an order under Article 37 of the Project's license which directed the commencement of proceedings to examine the effects of the Project's flow regime on the Skagit River's fisheries resource (Docket No. EL 78-36).

In July of 1979, the parties to the flow amendment proceeding entered into negotiations to resolve issues relating to the Project's effect upon Skagit River flow levels and flow fluctuations and the anadromous fish resource.

After many months, the interested parties executed an interim agreement in Docket No. EL 78-36, which established certain flow regimes for the Skagit Project and required the City to perform further fishery studies. As modified, the interim agreement was to remain in force and effect until a permanent resolution to all outstanding issues was reached by the Parties. The interim agreement was approved by the FERC on May 12, 1981.

c. License Modification (High Ross)

The City in 1970 filed an application for amendment of the Project license to permit raising of Ross Dam. The FPC approved the license amendment in 1977, issuing its final order in 1978. Following judicial review, dispute resolution was pursued through the auspices of the International Joint Commission. Subsequently, a 1984 Treaty between the United States and Canada substituted a power supply arrangement between the Province of British Columbia in lieu of actual construction of High Ross. This solution has worked well, but if British Columbia should discontinue power deliveries, the City may pursue construction of High Ross. The Parties have agreed that the Agreements do not address mitigation in the event that the High Ross articles in the license are implemented. The Agreements provide a process for consideration of studies and mitigation for High Ross should the City proceed with their implementation. Further, no Party is precluded from asserting a challenge to High Ross construction.

II. THE SETTLEMENT AGREEMENTS

A. THE PARTIES

The Parties to the following Settlement Agreements are the same Parties that have submitted this Offer of Settlement.

B. PROVISIONS APPLICABLE TO ALL AGREEMENTS

1. General Provisions

The attached Settlement Agreements on fisheries, wildlife, recreation and aesthetics, erosion control, cultural resources and traditional cultural properties all contain similar generally applicable provisions. These general provisions include:

- **Statements of purpose and intent.** It is the intent of the Parties that all issues concerning environmental impacts from the relicensing of the Project, as currently constructed, are satisfactorily resolved by these Agreements.

- **Obligations of the Parties.** The City commits itself to implementation of the terms of the various Agreements. The Intervenor is committed to support a new Project license incorporating the provisions of the various Agreements, to support reasonable efforts to expedite the related NEPA process, and to file comments supporting the measures defined by the Settlement Agreements as the preferred action for the purpose of the Project's EA or EIS. The Parties are committed to cooperating in the implementation of the Agreements, including the submittal of this agreed upon Offer of Settlement. The Parties agree to cooperate in conducting and participating in studies and other actions provided for in the Agreements and to provide assistance in obtaining any approvals or permits which may be required for the implementation of the Agreements.

- **Effective date and duration.** The Agreements take effect upon the effective date of the license issued by FERC consistent with the Agreements and remain in effect through the new license period and the term of any subsequent annual licenses. The Agreements have a uniform provision for reopening and reconsideration of the substantive terms in the event of changed circumstances.

- **Monetary issues and implementation.** Monies to be expended by the City under the Agreements are to be adjusted for inflation pursuant to a uniform procedure. The City will facilitate annual meetings among all Parties to discuss implementation issues relative to all Project mitigation and enhancement plans. These meetings will provide a forum for resolution of inter-plan implementation issues.

- **Dispute resolution.** Each Agreement has a dispute resolution procedure. The procedure for each has slight variations, depending upon the number of Parties involved, and the scope of issues to be considered. The procedure in each Agreement provides for final recourse to the FERC.

2. Gorge Bypass Reach

The Parties have agreed that the Agreements obviate the need for flows in the Gorge bypass reach for each of the resources covered by the Agreements. Further, the Intervenors agree to support the City's efforts to retain its existing water quality certificate for the Gorge bypass reach or to obtain a new certificate from the State of Washington, Department of Ecology.

3. Ross Lake Level Operations

The Parties have agreed on an operational scheme for Ross Lake. The City will fill the lake as early as possible after April 15 each year and maintain full pool through Labor Day weekend, subject to the provisions of the Agreements, particularly the Anadromous Fish Flow Plan.

C. FISHERIES SETTLEMENT AGREEMENT

1. General Intent

The Fisheries Settlement Agreement between the City and various Parties is intended to resolve all issues related to the effects on fisheries resources of the Project, as currently constructed, for the period of May 12, 1981 (FERC approval date of the Interim Agreement), through the duration of the Settlement Agreement. It consists of the Anadromous Fish Flow Plan (Flow Plan), and the Anadromous and Resident Fish Non-Flow Plan (Non-Flow Plan). For each plan, coordinating committees are established to provide general oversight and direction concerning plan implementation. In addition, the City agrees to establish a new environmental staff position dedicated primarily to this purpose.

2. Plan Elements

The Flow Plan addresses flows for the fishery resources in the mainstem Skagit River downstream of Gorge Powerhouse. Its primary purpose is to mitigate the effects of Project operations on salmon and steelhead. During spawning periods and subsequent incubation of eggs and alevins (pre-emergent fry), the effects of Project operations are addressed by limiting maximum flows during spawning, shaping daily flows for uniformity throughout the spawning period, and maintaining minimum flows through the incubation period that are adequate to keep most redds (spawning nests) covered until fry emerge from the gravel. For newly emerged fry, the effects of Project operations are addressed by limiting daily downramp amplitude, maintaining minimum flows throughout the fry protection period that are adequate to cover areas of gravel bar commonly inhabited by fry, and limiting downramping to various rates and time periods depending on the amount of Project discharge to minimize or prevent fry stranding.

Specific sections of the Flow Plan include: (1) provisions to regulate salmon and steelhead spawning and incubation flows for the purpose of protecting spawning redds and offspring; (2) provisions for minimum flows, and daily and seasonal flow fluctuations for the purpose of protecting salmon and steelhead fry; (3) conditions under which the City may have reduced minimum flow requirements; (4) circumstances under which the City has limited flow control, (5) operating considerations for implementing provisions of the Flow Plan; (6) provisions for field monitoring to determine the accuracy of various models, and to determine alternative spawning and fry protection periods; and (7) compliance requirements that include flow monitoring and recording, and the preparation by the City of semi-annual compliance reports.

Even with complete implementation of the Flow Plan, some level of impacts will continue to occur because of daily flow changes that are not common in the natural environment. In addition, the configuration and operation of the Project has rendered some formerly productive fish habitat inaccessible. The Non-Flow Plan is specifically intended to address these residual impacts and habitat losses and, possibly, to provide a measure of improvement. It establishes the City's commitment to provide a total of \$6,320,000 for support and implementation of the following programs: (1) steelhead production; (2) chinook salmon research; (3) off-channel chum salmon habitat development and improvement; (4) creation of additional off-channel salmon spawning and rearing habitat at the existing County Line and Newhalem Ponds; (5) instream or off-channel habitat improvement and sediment reduction measures on the Skagit Wild and Scenic River or its tributaries; and (6) resident trout protection and production to include: (a) removal of transitory tributary migration barriers in Ross, Diablo, and Gorge reservoirs, and (b) captive broodstock

supplementation designated for the Skagit River and its tributaries above Gorge Dam with special emphasis on Gorge and Diablo reservoirs.

D. WILDLIFE SETTLEMENT AGREEMENT

1. General Intent

The Wildlife Settlement Agreement between the City and various Parties is intended to resolve all issues related to the effects on wildlife resources of the Project, as currently constructed, for the period of October 28, 1977 (expiration of the previous license) through the duration of the Settlement Agreement. The Settlement Agreement incorporates the Wildlife Habitat Protection and Management Plan. The Wildlife Management Review Committee is established to provide general oversight and direction concerning plan implementation. In addition, the City agrees to establish a new environmental staff position at least partly dedicated to wildlife purposes.

2. Plan Elements

The City will make available a total amount of \$17,000,000 from which both the acquisition of wildlife habitat lands and habitat enhancement will be funded. The large majority of the money will be used to acquire property rights (preferably in fee simple) in order to preserve wildlife habitat in the upper Skagit River and South Fork Nooksack River valleys. Lands have been selected that possess riparian areas and corridors, wetlands, and mature forest communities; have eagle usage or provide elk winter range; and/or are adjacent to other protected lands. The City will begin to secure some of the identified lands in advance of the receipt of the new license. The City will implement a continuing program to retain some of the acquired lands in the Nooksack basin in early successional stages in order to provide winter forage for elk. Some low-intensity habitat enhancement and manipulation measures may also be employed (e.g., wetland habitat restoration) in several locations. The Agreement establishes the procedures by which monies are allocated and lands are selected and acquired.

The City will provide continuing support during the term of the new license to interagency wildlife and ecosystems research and monitoring efforts in the North Cascades with emphasis on research that will enhance the knowledge and practice of wildlife protection and management in the Project Area and Ross Lake National Recreation Area. In support of this mission, the City will make an annual payment of \$50,000 for the purpose of funding wildlife and environmental research and studies. A five member Wildlife Research Advisory Committee will solicit and

review the research proposals and select the projects for funding. The City will make an annual payment of \$20,000 to support the long-term monitoring of wildlife and environmental resources in the North Cascades National Park Service Complex. The City will also fund the inventory and monitoring of bald eagle activity and design and equip a North Cascades research facility in the Project Area.

As part of the City's support of the North Cascades Environmental Learning Center (see the Recreation and Aesthetics section), an annual payment of \$20,000 for the term of the license will be provided by the City to the Center to further the development of public knowledge and understanding of the values and issues in wildlife and ecosystems management and protection in the Project Area and the North Cascades Area.

A memorandum of understanding will provide the procedural framework for consultation with the National Park Service regarding management activities on the City's non-residential fee title lands in the Ross Lake National Recreation Area that are not part of the Project Area. The Settlement Agreement also describes the procedures by which the implementation of the Plan will be periodically reviewed, and establishes a Wildlife Management Review Committee to provide this review and oversight.

The Intervenor agree that the City's performance of the obligations detailed within the Agreement and Plan constitutes adequate wildlife resources protection and satisfactory mitigation for wildlife impacts caused by the Project, as currently constructed, for the period October 28, 1977 through the duration of this Agreement. The Intervenor agree that such performance by the City will satisfy its obligations under the Federal Power Act, the Fish and Wildlife Coordination Act, and the Wild and Scenic River Act for purposes of relicensing of the Project. The Intervenor agree to participate fully and in a timely manner in the conduct of the various technical, administrative, and decision-making activities, committees and procedures that are detailed in the Agreement and Plan.

E. CULTURAL RESOURCES (ARCHAEOLOGICAL AND HISTORIC RESOURCES) SETTLEMENT AGREEMENT

1. General Intent

The Settlement Agreement on Cultural Resources between the City, the National Park Service and the Tribes is intended to resolve all issues related to the effects of the Project, as

currently constructed on archaeological and historic resources for the period October 28, 1977 (expiration of the previous license) through the duration of the Settlement Agreement. The Settlement Agreement incorporates the City's Cultural Resources Mitigation and Management Plan, which includes both the Archaeological Resources Mitigation and Management Plan and the Historical Resources Mitigation and Management Plan. Procedures are established for the implementation and continuing oversight of the plans and measures and for consultation with the Washington State Historic Preservation Officer.

2. Plan Elements

The City will make available an estimated \$1,465,000 for the purpose of funding the archaeological measures and programs in the Settlement Agreement and Cultural Resources Plan. The monies for the archaeological measures are estimated amounts. The eligible resources will require mitigation; however, the choice of measures and methods to be used and the monetary amounts necessary for mitigation and management of the archaeological resources will be determined and negotiated by the Parties and the Washington State Historic Preservation Officer upon the completion of the field evaluations and testing of identified sites (tentatively in 2 to 3 years). The Archaeological Resources Plan will be completed no later than 1994. The cost estimates for archaeology are the best evaluation by archaeology professionals in the National Park Service of the likely results of the remaining field studies and the probable mitigation and management needs of the resources. Based on the actual results of the remaining field evaluations and the determinations by and negotiations between the Parties, the monies necessary to mitigate adverse impacts may be somewhat higher or lower than these estimates. Thus, these amounts are neither minimum nor maximum expenditure levels but rather are best estimates of the monies that will be needed to accomplish the mitigation of the final list of eligible archaeological resources.

The City will develop the Archaeological Resources Plan and its implementing Memorandum of Agreement—and future updates to the existing Memorandum of Agreement with the National Park Service—in cooperation with the National Park Service, the Washington State Historic Preservation Officer, the Upper Skagit Tribe, the Sauk-Suiattle Tribe, and the Swinomish Indian Tribal Community. The Plan will be developed so as to be consistent with tribal rights and to address their concerns. The Tribes will also be consulted and included in the development of archaeological study plans and in mitigation planning and implementation.

The City has already provided \$70,000 to the National Park Service for the purpose of inventorying, evaluating, and documenting the historic resources of the Project Area beyond the

normal documentation requirements. The City will make available an additional \$282,000 for the purpose of documenting, protecting, mitigating, and interpreting historic building and engineering resources in the Project Area, as described in the Historic Resources Mitigation and Management Plan that has been prepared by the City in consultation with the National Park Service and the Washington State Historic Preservation Officer.

The Historic Resources Plan defines a set of standards and procedures for the preservation and treatment of historic structures and resources at the Project. Categories of actions or activities that might affect the historic resources are defined and are tied back to the applicable standards and procedures.

A three-level procedure is established for the review and mitigation of activities (such as rehabilitation or alteration) that might affect historic resources. These levels correlate roughly with the level of intensity and size of the project, and integrate with the Capital Improvements Program (CIP) and other planning processes of the City.

The City will develop a set of Skagit Maintenance Guidelines to provide more detailed, resource- and task-specific guidance for the protection and maintenance of the historic resources. A computerized database will be developed to assist in the tracking and recording of activities and measures that are applied to these historic resources.

A cooperative program will be developed jointly by the City and the NPS for in-house training of City and NPS personnel in preservation techniques and to provide continuing information and assistance in these techniques and issues.

Historic Structure reports will be prepared by the City for two historic buildings in Newhalem for which either major rehabilitation or demolition are being considered, along with an historic landscape report for the Ladder Creek Gardens, for which rehabilitation activities may be proposed in the near future. An historic landscape assessment will also be prepared by the City for the grounds in Newhalem.

The City will develop several program measures and products to enhance the understanding and appreciation of the historic resources of the Area. Additional historic material will be integrated into the existing Skagit Tours program during the regular course of review and revision of this nationally recognized program. A self-guiding walking tour and brochure will be developed for the Newhalem area.

Four of the City's interpretive exhibits and displays in the Project Area will receive a comprehensive review and reassessment and will subsequently be revitalized. A new, fifth interpretive display will be developed by the City at the incline lift waiting station.

The City will produce, in conjunction with the National Park Service, one or more interpretive brochures which will use some of the documentation developed by the City and National Park Service. The City will also provide funding for the preservation of historic photographs which are in the keeping of the City's Engineering Department.

The City has concluded a Memorandum of Agreement with the Washington State Historic Preservation Officer (National Park Service concurring) which implements the Historic Resources Mitigation and Management Plan under the National Historic Preservation Act. A similar agreement will be concluded to implement the Archaeological Resources Plan once that plan has been developed.

The Intervenor agrees that the City's performance of the obligations detailed within the Settlement Agreement and the Cultural Resources Plan constitutes adequate cultural resources protection and satisfactory mitigation for archaeological and historic resources impacts caused by the Project, as currently constructed, for the period October 28, 1977 through the duration of this Settlement Agreement. The Intervenor agrees that such performance by the City will satisfy its obligations for historic and archaeological resources under the Federal Power Act and the National Historic Preservation Act (including Section 106) for purposes of relicensing of the Project.

The Intervenor agrees to participate fully and in a timely manner in the conduct of the various technical, administrative, and decision-making activities, committees and procedures that are detailed in the Settlement Agreement and the Historic Resources Mitigation and Management Plan. The National Park Service will conduct and complete the archaeological field studies and evaluations under the existing Memorandum of Agreement with the City to provide archaeological and historic survey and evaluation services and expertise. The National Park Service and the City will jointly plan and fund a seminar series on historic preservation topics as described in the Settlement Agreement and the Historic Resources Mitigation and Management Plan.

F. RECREATION AND AESTHETICS SETTLEMENT AGREEMENT

1. General Intent

The Settlement Agreement on Recreation and Aesthetics (Visual Quality) is intended to resolve all issues related to the effects on recreation and visual quality by the Project, as currently constructed, for the period October 28, 1977 through the duration of the Settlement Agreement. The Settlement Agreement includes a Recreation Plan and a Visual Quality Mitigation Plan. A separate Memorandum of Agreement (MOA) is entered into by the City, the National Park Service, and the North Cascades Institute (not a party to these proceedings) regarding the single largest element of the recreation plan, the North Cascades Environmental Learning Center. The Settlement Agreement establishes implementation procedures for both plans. In addition, the City will support implementation by dedicating part of the time of a new professional staff person to implement the plans.

2. Plan Elements

Under the Settlement Agreement, the City has agreed to carry out numerous measures at the Project intended to mitigate and enhance recreational opportunities and the visual quality of Project facilities. The following briefly summarizes the specific measures in the two plans:

a. Recreation Plan

The Recreation Plan provides that the City will fund a number of measures in the Project area to mitigate for the adverse impacts of reservoir level variations and to enhance recreational opportunities elsewhere in the Ross Lake National Recreation Area and on the Skagit Wild and Scenic River.

The total cost of the Skagit Project Recreation Plan is approximately \$17,000,000 over the term of the license, in 1990 dollars.

Continuing measures

The Recreation Plan provides for the City to continue providing a number of recreational opportunities and services in the Project Area.

These include:

- Conducting Skagit Tours, serving 10,000 persons per year;
- Operating the Newhalem visitor contact station, including rehabilitation of the facility, serving thousands of visitors each year;
- Operating Diablo Lake tugboat/ferry service, providing access to Ross Lake and Ross Lake Resort for hundreds of persons per year, including many with canoes and other small boats to be portaged to Ross Lake;
- Maintaining picnic and playground facilities open to the public in Newhalem and Diablo;
- Maintaining the Ladder Creek Falls trail behind the Gorge powerhouse; and
- Maintaining and replacing, if necessary, the electric supply cable to Colonial Creek campground on Diablo Lake.

The City will also continue to meet its obligations under the Treaty between the United States and Canada. This Treaty provides in part for the City to make monetary contributions for recreation purposes in the Project Area through the Skagit Environmental Endowment Commission.

Mitigation measures

The City will fund a number of measures to mitigate for the impacts of Project operations on recreation facilities on the Project reservoirs—Ross, Diablo, and Gorge Lakes. These measures include:

- Increasing the ability of boaters to access Ross Lake at Hozomeen by extension of the ramps to a lower elevation;
- Increasing accessibility of Ross Lake boat-in campgrounds by improvement of their docks; and
- Improving accessibility of Diablo and Gorge Lakes by improvements of boat ramp facilities on each reservoir.

The Plan allocates \$733,000 of City funds for these measures.

Enhancement measures—initial funding

The most significant new recreational facility to be funded by the City under the Plan is a North Cascades Environmental Learning Center (Learning Center) proposed for either Diablo Lake (the preferred site) or a site next to the National Park Service Visitor Center. The Learning Center will have an initial overnight capacity of 40 students and 12 faculty and designed for expansion to an overnight capacity of 60 students and 18 faculty. The Learning Center will be built by the City on federal land and initially operated by the North Cascades Institute, a non-profit educational organization, under the guidance of an oversight committee consisting of representatives of the City, the National Park Service and the operator. The City and the National Park Service will cooperate in support of Learning Center operations; the City, by providing substantial ongoing program support funding, and the National Park Service, by provision of sewer and water utilities and other support.

The City will also fund all or part of a number of other recreational facilities, and related infrastructure, both improvements and new construction. These facilities include:

- Interpretive facilities
- Goodell Creek raft access site
- Damnation Creek boat-in picnic site
- Marblemount boat access site
- Hozomeen area water supply system
- Gorge Creek overlook
- Thunder Lake handicap access fishing site
- Thunder Knob trail
- Happy Flats—Panther Creek trail
- Desolation—Hozomeen trail
- Black Peak overlook and rest area
- Steelhead county park
- Lower Sauk River boat access site
- Suiattle River boat access site
- Rocky Creek River access site

All of the foregoing measures are scheduled to begin by year seven of the new license period. The interpretive facilities are funded at five year intervals throughout the new license

period. The Plan provides for expenditures by the City of over \$11,000,000 to implement these measures; \$9,000,000 of that amount is for the Learning Center.

Enhancement measures—ongoing studies and funding

In order to provide for growth of recreational use of the Project area the City will provide funding throughout the new license period to address new recreation needs. These measures include:

- Recreation use and needs assessments every five years;
- Bicycle use and needs assessment;
- Capital funding of implementation of the needs identified through the assessments in consultation with National Park Service and the U.S. Forest Service, as appropriate; and
- Recreation facilities operation and maintenance support for National Park Service and U.S. Forest Service throughout the new license period.

b. Visual Quality Mitigation Plan

The Visual Quality Mitigation Plan provides for improvements of the visual quality of Project facilities. The main areas of concern were Project structures near the three dams, and the transmission line rights-of-way extending from the Project Area into Snohomish County.

The City estimates the total cost of the Skagit Project Visual Mitigation Plan at approximately \$7,500,000 over the term of the license, in 1990 dollars.

Mitigation measures

The City will undertake measures to mitigate for Project impacts on visual quality in the Project area. These measures include:

- Repainting of various Project facilities in less visually contrasting colors on the normal maintenance cycle, such as transmission towers, surge tanks, and the Gorge Dam Access Bridge;
- Removal of the Diablo person lift; and
- Modification of the Ross Dam Broom Gate Shed to decrease its contrast.

Enhancement measures—initial funding

Funding from the Erosion, Wildlife and Visual Quality (Aesthetics) Agreements will go toward the development of a new, larger greenhouse facility at the Project. The increased need for propagation of native plants called for by various measures in these three Agreements led to the need for such a facility.

Other Visual Quality Mitigation Plan elements to be undertaken by the City include:

- Revegetation and landscaping of a former housing area in Newhalem, including a river view trail and picnic facilities;
- Paving and landscaping of a parking area in Newhalem for use by Recreational Vehicles;
- Improvement of the Ladder Creek Falls Trail Parking Area in Newhalem by paving and revegetation;
- Landscaping to increase the screening of the Gorge switchyard; and
- Refill of Ross Lake as early as possible after April 15, in the recreation season consistent with other resource management constraints.

Enhancement measures—ongoing measures

The Project transmission lines and their attendant rights-of-way are addressed in the Rights-of-Way Vegetation Management Plan, which is a section of the Visual Quality Mitigation Plan. The primary concern is the visibility of the transmission line features from State Route 20 and the Skagit Wild and Scenic River. The City will continue to improve the visual quality of the rights-of-way by vegetation management that permits greater growth than in the past and by giving special treatment to seven target areas identified in one of the visual quality assessment studies.

Other plans

Several Erosion Control Plan elements simultaneously mitigate visual quality impacts. Measures include planting vegetation and placing earth and rock to discourage shoreline erosion. Similarly, a number of the Recreation Plan measures will improve the visual quality of the Project area by improving landscaping and orienting travelers' views away from Project facilities.

G. EROSION CONTROL SETTLEMENT AGREEMENT

1. General Intent

The Erosion Control Settlement Agreement between the City and the National Park Service is intended to resolve all issues related to the effects on soils and slope stability of the Project, as currently constructed, except for those erosion control requirements identified in the archaeological portion of the Settlement Agreement incorporating the Cultural Resources Mitigation and Management Plan for the period October 28, 1977 through the duration of the Erosion Control Settlement Agreement. It incorporates the Erosion Control Plan. Technical representatives of the City and the National Park Service will provide general oversight and direction concerning plan implementation. In addition, the City agrees to establish a new environmental staff position at least partly dedicated to erosion control purposes.

2. Plan Elements

As the licensee for the Project, the City has agreed to oversee the implementation of this Agreement. Jointly with the National Park Service, the City will, throughout the new license term, regularly evaluate previous erosion control work and update the work plan for erosion control work to be done in the subsequent years. The City will also construct greenhouse facilities and institute a plant propagation program to supply plant stock for vegetation at erosion control sites.

The National Park Service will have the lead role in most erosion control work and monitoring, primarily at reservoir shoreline sites. It will conduct its work after full consultation and agreement with the City. It will do the erosion control work at most of the sites identified in the Erosion Control Plan and at other sites identified in collaboration with the City during the new license term. The City will do much of the erosion control work at road sites in the Project area.

Erosion control will include passive and active measures. Passive measures will include monitoring of erosion rates and processes at sites where erosion control would be difficult because of a high potential for large mass slump movements of soils or where disturbance would be undesirable (e.g., osprey nesting trees). Active measures will be limited because of the wilderness setting of the Project, which precludes the use of large amounts of concrete, chemically treated lumber, or visually obtrusive structures. Active measures will include vegetation, logs, rock walls, and cribbing. Naturally occurring materials (local earth, rock, timber, and vegetation) that blend with the surrounding site features will be used to minimize the visual impacts of erosion control.

The City will provide funding for this Agreement as follows: (1) \$845,000 for erosion control work during the first nine years of the new license term at the sites specified in the Erosion Control Plan; (2) \$500,000 for erosion control measures at new sites, maintenance, and, if necessary, completion of work at the sites in the Erosion Control Plan; and (3) funding for the greenhouse facilities and the plant propagation program. The City will also fund erosion control at several high priority trail and campground sites up to a maximum of \$99,000 in the years before the new license is issued; interim expenditures will be deducted from erosion control obligations during the new license term.

H. TRADITIONAL CULTURAL PROPERTIES SETTLEMENT AGREEMENT

1. General Intent

Three substantively identical agreements are being executed by the City, one with each of the tribal intervenors. The three Traditional Cultural Properties Settlement Agreements are intended to resolve all mitigation issues related to Traditional Cultural Properties for the Project, as currently constructed, for the period October 28, 1977 through the duration of the Settlement Agreements. Included in each Settlement Agreement is a mitigation plan providing for further studies and monetary payments. The Settlement Agreements provide implementation procedures, including coordination among the three similar plans. In addition, the City will support implementation by dedicating part of the time of a new professional staff person to plan implementation.

2. Plan Elements

The Agreements provide for the City to fund studies to complete an inventory of traditional cultural properties in the Project Area, including Project impacts on these properties. The City will spend up to \$250,000 on this inventory, with possible additional contributions from the affected federal land management agencies, primarily the National Park Service.

The City will also fund cultural activities of the three Tribes in lieu of on-site mitigation measures. Over an eight-year period, each tribe will receive \$1,233,338 in 1990 dollars.

III. RELEVANT RECORD

The record in support of these Settlement Agreements consists of the entire record of this proceeding, including Docket No. EL 78-36. The Parties submit that the FERC should rely upon this record in assessing whether these Settlement Agreements are in the public interest.

IV. PROPOSED FERC ORDER

Pursuant to Rule 602, the Parties have attached a draft order approving the Settlement Agreements.

V. CONCLUSION

WHEREFORE, the Parties hereby request that the FERC approve the Settlement Agreements as submitted, and that, upon approval, the FERC conclude and terminate this proceeding, including Docket No. EL 78-36.

Respectively submitted,

Dated: April 25, 1991

THE CITY OF SEATTLE
MARK H. SIDRAN
City Attorney

ORIGINAL

By: 

William H. Patton
Assistant City Attorney
Director, Utilities Division
1111 Third Avenue, Suite 2640
Seattle, WA 98101

Dated: April 23, 1991

ORIGINAL

**U.S. DEPARTMENT OF INTERIOR;
NATIONAL PARK SERVICE, FISH AND WILDLIFE SERVICE,
AND BUREAU OF INDIAN AFFAIRS**

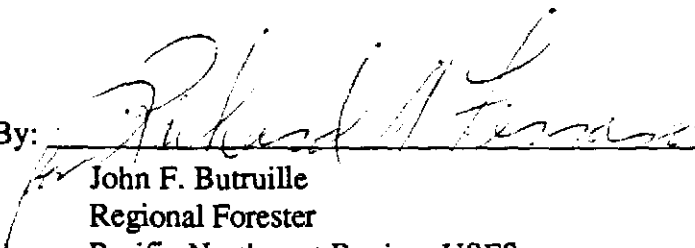
By: Susan K. Driver

Susan K. Driver
Attorney
Pacific Northwest Region
Suite 607
Portland, OR 97232

Dated: April 17, 1991

021311

U.S. DEPARTMENT OF THE AGRICULTURE, FOREST SERVICE

By: 
John F. Butruille
Regional Forester
Pacific Northwest Region, USFS
319 S.W. Pine Street
Portland, OR 97204

Dated: April 24, 1991

ORIGINAL

**UPPER SKAGIT TRIBE
SAUK-SUIATTLE TRIBE**


By: *Russell Busch*

Russell Busch
Attorney, Evergreen Legal Services
101 Yesler Way, Suite 301
Seattle, WA 98104

Dated: April 24th, 1991

04/24/91

SWINOMISH INDIAN TRIBAL COMMUNITY

By: 

Alan Olson
Attorney
Swinomish Indian Tribal Community
P.O. Box 817
LaConner, WA 98257

Dated: April 22nd, 1991

**WASHINGTON STATE DEPARTMENT OF FISHERIES
AND WASHINGTON STATE DEPARTMENT OF WILDLIFE**

By:



William C. Frymire
Assistant Attorney General
Office of Attorney General
7th Floor, Highway Licenses Bldg.
Olympia, WA 98504

Dated: April 24, 1991

NORTH CASCADES CONSERVATION COUNCIL

By: David Fluharty
David Fluharty
President, North Cascades Conservation Council
P.O. Box 95980
University Station
Seattle, WA 98145-1980

Dated: April 16, 1991

NATIONAL MARINE FISHERIES SERVICE

By: F. Lorraine Bodi
F. Lorraine Bodi, Attorney
NOAA, Office of General Council (GCNW)
National Marine Fisheries Service
7600 Sand Point Way, N.E., Building No. 1
Seattle, WA 98115

**BEFORE THE
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

City of Seattle, Skagit River)
Hydroelectric Project)
No. 553)
_____)

Project No. 553
Docket No. EL 78-36

**DRAFT
ORDER APPROVING SETTLEMENT AGREEMENTS AND
DISMISSING PROCEEDINGS UNDER DOCKET NO. EL 78-36**

(Issued _____, 199__)

On April _____, 1991, the City of Seattle, City Light Department; the U.S. Department of the Interior, National Park Service, Fish and Wildlife Service, and Bureau of Indian Affairs; the U.S. Department of Commerce, National Marine Fisheries Service; the Upper Skagit Tribe, Sauk-Suiattle Tribe, and Swinomish Indian Tribal Community; the Washington Department of Fisheries; the Washington Department of Wildlife; and the North Cascades Conservation Council; collectively submitted to the Commission an Offer of Settlement. The Commission finds that the Settlement Agreements proposed in that Offer of Settlement are in the public interest and should be approved.

THE COMMISSION ORDERS:

(A) The Settlement Agreements listed below that were submitted with the Offer of Settlement on April _____, 1991 are hereby approved:

- (1) Fisheries Settlement Agreement, incorporating the Anadromous Fish Flow Plan and the Anadromous and Resident Fish Non-Flow Plan;
- (2) Settlement Agreement Concerning Wildlife, incorporating the Wildlife Habitat Protection and Management Plan;

(3) Settlement Agreement on Recreation and Aesthetics (including the Recreation Plan and Visual Quality Mitigation Plan);

(4) Settlement Agreement Concerning Erosion Control, incorporating the Erosion Control Plan;

(5) Settlement Agreement Concerning Cultural Resources (Archaeological and Historic Resources), incorporating the Cultural Resources Mitigation and Management Plan, which includes the historic and archaeological resources mitigation and management plans; and

(6) Settlement Agreement Concerning Traditional Cultural Properties.

(B) The proceedings under Docket No. EL 78-36 are hereby dismissed.

(C) The Commission's approval of the Settlement Agreements shall not constitute approval or precedent regarding any principle or issue in this or any other proceeding.

BY THE COMMISSION