

Settlement between Yakama Nation and Grant County PUD

This Agreement is made and entered into this 11th day of June 2007, between the Public Utility District No.2 of Grant County (Grant PUD) and the Yakama Nation. The entities described above may be referred to individually as a Party or collectively as Parties.

A. Scope and Duration

1. Purpose and Intent of Settlement

The Yakama Nation and Grant PUD have developed this Agreement, the Hanford Reach Fall Chinook Protection Program and the Priest Rapids Project Salmon and Steelhead Settlement Agreement through good faith negotiations to fully resolve the broad range of issues associated with any and all comments, claims, allegations, requests, filings, and other Yakama Nation actions related to the effects of the Priest Rapids Project on any and all fish and wildlife resources, power resources, or socioeconomic issues affected directly or indirectly by the presence, management, maintenance, dam structures, impoundments, other appurtenant facilities and operation of the Priest Rapids Project.

It is the intent of the Yakama Nation and Grant PUD to form a long-term partnership that provides benefits to both Parties. Specific reasons include, but are not limited to, the following:

- (a) A key purpose of this Agreement is to settle litigation between the Parties currently pending before the Ninth Circuit Court of Appeals with both Parties relying on the consideration set forth herein. A primary consideration for settlement is resolution of issues related to Priest Rapids Project power purchaser allocations for the Yakama Nation.
- (b) Resolution of issues between Grant PUD and the Yakama Nation related to Priest Rapids Project relicensing including mitigation for impacts to fish and wildlife populations affected by the Priest Rapids Project and to assist Yakama Nation efforts to develop off-site mitigation programs.
- (c) Cooperation in specific activities to provide public power to consumers on the Yakama Reservation that are not currently served by public power.
- (d) Cooperation in the development of renewable or other energy resources that provide mutual benefits.

2. Duration of Agreement

The Parties have agreed that the term of this Agreement will extend from the date of execution throughout the term of the new Priest Rapids Project license order issued by the Federal Energy Regulatory Commission (FERC).

3. Regulatory Filings

The Parties to this Agreement have agreed to submit a joint explanatory statement to FERC pursuant to 18 CFR § 385.602 explaining the purpose and intent of this Agreement as it relates to the relicensing of the Priest Rapids Project. The explanatory statement will recommend that FERC approve those portions of the Agreement that it deems relevant to any disputed issue associated with Yakama Nation comments, recommendations or contentions about the terms and conditions that FERC may apply to a Priest Rapids Project license order to be issued. The statement will be completed and submitted to FERC within 30 days of execution of this Agreement.

4. Adequacy and Release of Claims

(a) Within 10 days of the effective date of this Agreement the Parties will jointly file with the United States Court of Appeals for the Ninth Circuit a motion for voluntary dismissal of their pending petitions for review (docketed as Case Nos. 03-71825 and 03-73428).

(b) Under this Agreement, the Yakama Nation releases, waives and or discharges Grant PUD and its commissioners, agents, representatives and employees, from any and all past claims, demands, obligations, promises, liabilities, actions, damages and causes of action regarding fish and wildlife resources, power resources, or socioeconomic issues arising under Yakama Hydroelectric's Priest Rapids Project license competition attempts, the appeal filed by the Yakama Nation to the United States Court of Appeals for the Ninth Circuit and any other such issue related to operation, construction, or management of the Priest Rapids Project during the initial license term and any term covered by annual licenses, with the exception of cultural resource management plans and related cultural resource issues which have not yet been finalized.

5. Limitation and Withdrawal

(a) Except as provided in Section F.3., nothing in this Agreement is intended to nor shall in any way abridge, limit, diminish, abrogate, adjudicate, affect, or resolve any rights reserved to the Yakama Nation under the Treaty of 1855.

(b) Both Parties have agreed that withdrawal from this Agreement, subject to the dispute resolution provisions of Section F.6., will be limited to circumstances that may arise whereby there is mutual agreement of both Parties that the terms and conditions of the Agreement are no longer valid and the Agreement should have no additional force or effect. In the event that there is mutual agreement that termination is necessary, both Parties shall jointly execute a written statement terminating the Agreement and file an application to FERC requesting amendment of the new Priest Rapids Project license to delete any provisions added to effectuate this Agreement.

B. Commitments of Grant PUD

1. Reservation of BPA Power Allocation

(a) Grant PUD has worked with the Bonneville Power Administration through the Regional Dialogue Process in an attempt to secure an additional 25 MW of Tier 1 power on behalf of Yakama Power. As a result of Grant PUD's efforts it is anticipated that BPA, through the Regional Dialogue Process, will provide an additional 25 MW of Tier 1 BPA power to Yakama Power, above their High Water Mark. This will allow them to grow their utility loads. This is anticipated to occur following BPA's issuance of its Record of Decision in the Regional Dialogue process.

(b) In the event that BPA fails to provide the additional 25 MW of Tier 1 BPA power, Grant PUD will retain any contractual rights it has to establish a High Water Mark under a new BPA Contract. If Grant PUD is able to secure a new BPA Contract it will make 25 MW of power from the Priest Rapids Project available to Yakama Power on the same terms and conditions as is made available to the Grant PUD by BPA, subject to applicable rights of the existing Priest Rapids Project Purchasers. If the additional 25 MW of Tier 1 BPA power is made available to Yakama Power by BPA as described in subsection B.1.(a) above, Grant PUD will have no obligation to provide Priest Rapids Project Power to Yakama Power pursuant to this subsection B.1.(b).

2. Priest Rapids Project Power Sales Contract

(a) Within 30 days of the effective date of this Agreement, Grant PUD will make available the following amounts of Priest Rapids Project Power to Yakama Power: 20 aMW during 2007, 2008 and 2009, 15 aMW annually from 2010 through 2015 and 10 aMW in 2016 throughout the term of the Agreement.

(b) Pursuant to the objectives described in Section A.1. above, the Parties agree that the Priest Rapids Project Power Allocation in B.2.(a) shall be utilized in the following manner:

(i) For the initial period from 2007 through 2015, Grant PUD agrees to market such power on behalf of the Yakama Nation at rates equal to the "Average Annual Melded Power Cost" from the Priest Rapids Project and distribute the Monthly Net Revenues to a "Priest Rapids Project Allocation Account" that will be created at Yakama Power and managed solely by and for the benefit of Yakama Power and the Yakama Nation Department of Natural Resources. Monthly Net Revenues will be determined each month by multiplying the applicable Priest Rapids Project Power Allocation of Section B.2.(a) by the "Weighted Average Index Price" reflected by the Intercontinental Exchange (ICE) Daily Power Indices for the Mid C at peak and off-peak for the month times the applicable amount of Priest Rapids Project Power identified in Section B.2.(a) less the Average Annual Melded Power Cost from the Priest Rapids Project from the prior calendar year and any costs associated with Grant PUD's marketing and administration of the Priest Rapids Project Power Allocation. Payments of Monthly Net Revenues shall be due and payable by electronic funds transfer in U.S.D. to the Yakama's

Priest Rapids Project Allocation Account, on the 20th calendar day of each month. Payments will be made on a one month lag.

(ii) Beginning in 2015, under Section C.4.(c) below, the Yakama Nation shall have the option to provide Grant PUD with advance written notification of one year that it desires to take physical delivery of all or a portion of Priest Rapids Project Power Allocation in addition to its BPA power allocation available at that time to serve the loads of Yakama Power. Under this option, Yakama Power will provide monthly payments to Grant PUD in the amount of the Average Annual Melded Power Cost times the amount of the metered delivery, adjusted for losses, plus any transmission costs incurred for the delivery of such power from a designated point of delivery to a designated point of receipt and any costs associated with administration of the contract. Any portion of the Priest Rapids Project Power Allocation described in Section B.2.(a) above not delivered would be marketed according to the procedures of B.2.(b)(i). Monthly payments to Grant PUD under this Section would be due and payable on the 20th calendar day of each month.

(iii) The option to convert the Priest Rapids Project Power Allocation of B.2.(a) to a physical delivery under B.2.(b)(ii) will be subject to and contingent upon: (1) delivery of at least 10 aMW of New Generation Resources to Grant PUD as described in Sections B.3. and C.3. of this Agreement; (2) Grant PUD being able to make adequate provision for its power supply needs both actual and prospective as required by RCW 54.16.040; and (3) amendment of the existing Priest Rapids Project Product Sales Contracts to reduce the amounts of Priest Rapids Project Output by such amounts that Grant PUD may be required to physically deliver pursuant to this Agreement.

(c) During the one year period described in Section B.2.(b)(ii) above, Grant PUD and the Yakama Nation agree to explore the opportunity for Grant PUD to provide scheduling and load management services to Yakama Power. The details of these services would be developed through a separate contract and would include payment for such fees that may be necessary to cover Grant PUD's costs associated with those services.

3. Development of New Generation Resources

Under this Agreement, the Yakama Nation has agreed to provide Grant PUD with the right of first refusal to participate in the development of New Generation Resources, and Grant PUD and the Yakama Nation have jointly agreed to cooperatively develop such new generation projects that would mutually benefit the Parties for which Grant PUD exercises its right of first refusal. Both Parties understand that there is uncertainty regarding the details, cost, feasibility, and economic viability of potential projects. That process is detailed in Section D of this Agreement.

(a) Within 90 days of receipt of a written proposal from the Yakama Nation to jointly participate in the development of a New Generation Resource, Grant PUD will provide the Yakama Nation with a written decision of whether or not it will exercise its right of first refusal to jointly participate in the development of such project. In cases where Grant PUD elects not to exercise its right of first refusal, its written decision shall explain why Grant PUD's participation in the project is not in the best interests of its ratepayers. Grant PUD agrees to provide financing for

those New Generation Resources for which it has exercised its right of first refusal and thus will be jointly developing those projects with the Yakama Nation. Prior to joint development of a New Generation Resource, the Parties will develop a "New Resource Development Contract" for that project that will specify the terms, conditions, allocation percentage, financing, and payment structure associated with that project.

(b) Grant PUD further agrees to market any "New Resource Allocation" that may be retained by the Yakama Nation and distribute the monthly net revenues to the Yakama Nation. The Yakama Nation will, however, have the option to take physical delivery of all or a portion of their allocation under a New Resource Development Contract.

(c) If Grant PUD does not exercise its development rights under Section B.3.(a), then it agrees to sell its allocation of Renewable Energy Credits detailed in Section C.3.(b) to a Project Developer not a Party to this Agreement or to the Yakama Nation by an amount equal to the market value of the Renewable Energy Credits multiplied by 0.75.

4. Fish and Wildlife Measures

(a) Grant PUD and the Yakama Nation are signatories to the Priest Rapids Project Salmon and Steelhead Settlement Agreement and both Parties agree that this separate agreement describes the measures and commitments of Grant PUD with respect to salmon and steelhead. Nothing in this Agreement shall conflict with the Salmon and Steelhead Settlement Agreement.

(b) Grant PUD and the Yakama Nation are signatories to the Hanford Reach Fall Chinook Protection Program and both Parties agree that this separate agreement describes the measures and commitments of Grant PUD with respect to management of flow regimes in the Hanford Reach of the Columbia River for the protection of fall Chinook salmon. Nothing in this Agreement shall conflict with the Hanford Reach Fall Chinook Protection Program.

(c) Grant PUD and the Yakama Nation agree to cooperatively develop a Pacific Lamprey Management Plan that includes measures to address upstream and downstream passage impacts directly related to the Priest Rapids Project and to identify or develop mitigation programs that would address unavoidable losses of Pacific Lamprey attributable to the Priest Rapids Project. The Parties further agree to seek the support and involvement of other fisheries agencies and tribes in development of the Pacific Lamprey Management Plan and to file such a plan with FERC within one year of receipt of a new Priest Rapids Project license order. In the event that FERC includes requirements for Pacific Lamprey measures in a Priest Rapids Project license order that differ from this Agreement, the Parties will meet within 60 days of issuance of the license order to compare the requirements of the license order with this provision. Both Parties agree to develop and implement a single plan that would comply with the requirements of both the license order and this Agreement.

(d) Grant PUD and the Yakama Nation agree to cooperatively develop a White Sturgeon Management Plan that includes as its primary measure, development of a white sturgeon conservation aquaculture facility and associated operation, monitoring and evaluation program. The Parties further agree to seek the support and involvement of other fisheries agencies and

tribes in development of the White Sturgeon Management Plan and to file such a plan with FERC within one year of receipt of a new Priest Rapids Project license order. In the event that FERC includes requirements for white sturgeon measures in a Priest Rapids Project license order that differ from this Agreement, the Parties will meet within 60 days of issuance of the license order to compare the requirements of the license order with this provision. Both Parties agree to develop and implement a single plan that would comply with the requirements of both the license order and this Agreement.

(e) During implementation of various fish and wildlife programs during the term of the new Priest Rapids Project license, the Parties anticipate that a substantial amount of professional services contract activity will be required. For implementation of professional services contract activity related to fish and wildlife projects, Grant PUD agrees to evaluate the qualifications of the Yakama Nation and where such qualifications are equivalent to other potential contractors, Grant PUD would give preference for the work to the Yakama Nation. Both Parties agree that this preference is not without limitation and may be affected by a number of factors related to timeliness, resource availability, cost, regulatory compliance requirements or other circumstances not detailed herein.

C. Commitments of Yakama Nation

1. Settlement Authority

The Yakama Nation hereby represents, acknowledges, and warrants that no approval of this Agreement by the Bureau of Indian Affairs of the U.S. Department of the Interior, the Secretary of the Interior, or any other federal agency or official is required in order for the Yakama Nation to execute this Agreement or for this Agreement to be effective and binding upon the Yakama Nation.

2. Relicensing Support

(a) In support of the joint explanatory statement to FERC described in Section A.3. above, the Yakama Nation agrees to submit an additional filing to FERC withdrawing all prior comments, recommendations, claims, allegations and requests related to the relicensing of the Priest Rapids Project. This filing will describe this Agreement as a global settlement for the broad range of fish, wildlife, power resource or socioeconomic issues that the Yakama Nation had raised before FERC and will provide a statement of support for FERC issuance of a license order with a 50 year term and support for the FERC required marketing plan for the Reasonable Portion of Project output submitted by Grant PUD. The statement will be filed within 30 days of this Agreement. The Yakama Nation also agrees to not seek rehearing or judicial review of a new Priest Rapids Project license order.

(b) The Yakama Nation agrees that it will not appeal the Section 401 Clean Water Act Certification for Priest Rapids Project relicensing to the Pollution Control Hearings Board and will not appeal any PCHB decision.

(c) The Yakama Nation agrees to represent itself on committees, subcommittees and groups associated with implementation of the Priest Rapids Project Salmon and Steelhead Settlement Agreement, the Hanford Reach Fall Chinook Protection Program, this Agreement, activities related to implementation of a new Priest Rapids Project license, 401 Water Quality Certification or any other forum or process where the Yakama Nation and Grant PUD may interact on natural resource, cultural resource, or power issues.

(d) The Yakama Nation agrees to provide direct representation on the Priest Rapids Project Cultural Resources Work Group and to work with Grant PUD to develop a Historic Properties Management Plan for protection and management of cultural resources affected by the Priest Rapids Project. The Yakama Nation reserves the right of the Tribal Council to review any plan developed under this section. In the event of a dispute regarding such plan, the Parties shall resolve it pursuant to the dispute resolution section of this Agreement in Section F.6.

3. Development of New Generation Resources

(a) Through this Agreement, the Yakama Nation agrees to provide a right of first refusal to Grant PUD for joint development of New Generation Resources. Both Parties understand that there is uncertainty regarding the details, costs, feasibility and economic viability of potential projects. That process is detailed in Section D of this Agreement. This Agreement however, represents a basic commitment to jointly develop future projects.

(b) In recognition of the value provided by the Priest Rapids Power Allocation described in Section B.2.(a), the Yakama Nation agrees to provide Grant PUD 75% of all Renewable Energy Credits associated with any renewable generation project developed by Yakama Power or the Yakama Nation up to 75 aMW of production. For generation in excess of 75 aMW, such allocation to Grant PUD throughout the term of this Agreement would drop to 50% of all Renewable Energy Credits associated with any renewable generation projects. Under the provisions of Section B.3.(c), these credits could be acquired by a third party developer or the Yakama Nation. This provision shall apply only to situations in which Yakama Power or the Yakama Nation is the actual Project Developer or a specific participant with the actual Project Developer in any legal entity other than a lease or rental agreement.

(c) The Yakama Nation agrees to support Grant PUD in the development of the Cle Elum Project, provided that the Yakama Nation finds that the Project proposal provides adequate passage for adult and juvenile fish and protection for other affected natural resources.

4. Priest Rapids Project Power Sales Contract

(a) The Yakama Nation agrees that the Priest Rapids Project Power Allocation under the terms of Section B.2.(a) above satisfies any and all requests, obligations, allegations and demands that the Yakama Nation may make or has made related to power allocation issues or legal challenges associated with the Priest Rapids Project.

(b) The Yakama Nation further agrees to form a "Priest Rapids Project Allocation Account" at Yakama Power that will be created and managed solely by and for the benefit of the Yakama

Power and the Yakama Nation Department of Natural Resources to implement the purpose and intent of this Agreement described in A.1 above. The Yakama Nation agrees to utilize the Monthly Net Revenues for formation, growth and development of the Yakama Power utility and for fish and wildlife projects identified, managed and implemented by the Yakama Nation.

(c) Beginning in 2015, the Yakama Nation shall have the option to provide Grant PUD with advance written notification of one year that it desires to take physical delivery of all or a portion of Priest Rapids Project Power Allocation to serve the loads of Yakama Power. Under this option, Yakama Power would provide monthly payments to Grant PUD in the amount of the Average Annual Melded Power Cost times the amount of the metered delivery, adjusted for losses, plus any transmission costs incurred for the delivery of such power from a designated point of delivery to a designated point of receipt and any costs associated with administration of the contract. Any portion of the Priest Rapids Project Power Allocation described in Section B.2.(a) above not delivered would be marketed according the procedures of B.2.(b)(1). Monthly payments to Grant PUD under this Section would be due and payable on the 20th calendar day of each month.

(d) The Yakama Nation agrees that the Priest Rapids Project Power Allocation described in Section B.2.(a) shall only be sold to the retail customers of Yakama Power.

5. Fish and Wildlife Measures

(a) The Yakama Nation agrees that the terms, conditions and measures of the Priest Rapids Project Salmon and Steelhead Settlement Agreement are sufficient to address all effects of the Priest Rapids Project on covered species as specified in that agreement. This Agreement does not waive any rights of Yakama Nation under that agreement.

(b) The Yakama Nation agrees that the terms, conditions and measures of the Hanford Reach Fall Chinook Protection Program are sufficient to address all effects of the Priest Rapids Project related to instream flows in the Hanford Reach of the Columbia River. This Agreement does not waive any rights of the Yakama Nation under that agreement.

(c) The Yakama Nation agrees that it will provide full participation and self-representation on the committees, subcommittees, workgroups or boards established pursuant to the Priest Rapids Project Salmon and Steelhead Settlement Agreement, Hanford Reach Fall Chinook Protection Program, 401 Certification for the Priest Rapids Project or any other agreement or license condition associated with the Priest Rapids Project.

(d) The Yakama Nation and Grant PUD agree to cooperatively develop a Pacific Lamprey Management Plan that includes measures to address upstream and downstream passage impacts directly related to the Priest Rapids Project and to identify or develop mitigation programs that would address unavoidable losses of Pacific Lamprey attributable to the Priest Rapids Project. The Parties further agree to seek the support and involvement of other fisheries agencies and tribes in development of the Pacific Lamprey Management Plan and to file such a plan with FERC within one year of receipt of a new Priest Rapids Project License order. In the event that FERC includes requirements for Pacific Lamprey measures in a Priest Rapids Project License order that differ from this Agreement, the Parties will meet within 60 days of issuance of the

license order to compare the requirements of the license order with this provision. Both Parties agree to develop and implement a single plan that would comply with the requirements of both the license order and this Agreement.

(e) The Yakama Nation and Grant PUD agree to cooperatively develop a White Sturgeon Management Plan that includes as its primary measure, development of a white sturgeon conservation aquaculture facility and associated operation, monitoring and evaluation program. The Parties further agree to seek the support and involvement of other fisheries agencies and tribes in development of the White Sturgeon Management Plan and to file such a plan with FERC within one year of receipt of a new Priest Rapids Project License order. In the event that FERC includes requirements for white sturgeon measures in a Priest Rapids Project License order that differ from this Agreement, the Parties will meet within 60 days of issuance of the license order to compare the requirements of the license order with this provision. Both Parties agree to develop and implement a single plan that would comply with the requirements of both the license order and this Agreement.

(f) The Yakama Nation and Grant PUD will cooperate in the review of federal, state, or local proposals that affect the management of the Columbia River. Where the Parties mutually agree, they will file joint comments and advocate for the mutual interests of Grant PUD and the Yakama Nation to promote the terms and conditions of this Agreement. To the extent that any third party raises cumulative effects issues that may relate to the operation of the Priest Rapids Project, Yakama Nation and Grant PUD will advocate for their joint and mutual interests to resolve those issues.

D. New Resource Evaluation and Development

The Yakama Nation and Grant PUD shall work together to explore development of new energy resources under the following process:

1. Potential Projects

(a) The Yakama Nation and Grant PUD mutually agree to explore opportunities for development of a project or projects. The current range of projects includes, but is not limited to:

- i) Cogeneration at Yakama Forest Products.
- ii) Hydroelectric generation at the Cle Elum Dam.
- iii) Wind development on or near the Yakama Reservation.
- iv) Expansion and development of new generation on the Wapato Irrigation Project.
- v) Rehabilitation of Generation Facilities of the Wapato Irrigation Project.
- vi) Other potential generation projects that may be identified in the future.

(b) Grant PUD would provide the technical and financial resources necessary to develop a mutually acceptable feasibility study of the selected project(s).

(c) If the Parties mutually determine that a project is feasible and provides adequate protection of

affected natural resources, the Yakama Nation and Grant PUD shall enter into a "New Resource Development Contract" that would include:

- i) A financial plan to jointly develop the project;
- ii) A management structure for construction and operation;
- iii) An agreement for marketing, shaping, and distributing the power; and
- iv) An allocation of the benefits that would, over time, reimburse Grant PUD for the costs associated with development of the project and would equitably share the remaining benefits.

(d) Any disputes shall be subject to the provisions of the dispute resolution process, Section F.4.

E. Definitions

As used in this Agreement, the following terms when initially capitalized shall have the following meanings:

"Agreement" shall mean this Agreement.

"Average Annual Melded Power Cost" as used in this Agreement shall mean all of Grant PUD's costs and expenses incurred from the ownership, operation, maintenance of and improvements to the Priest Rapids Project for a calendar year based on that year's audited financial statements, divided by Priest Rapids Project net generation (the amount of energy from the Priest Rapids Project after correction for encroachment, Canadian entitlement, station and project use, and reductions in generation required by the FERC License or other regulatory requirements) for the same period. This unit cost of power will be fixed for a one-year period following completion of the prior year's audited financial statements which will be applied from May of the current year to April of the following year.

"Cle Elum Project" shall mean the Cle-Elum Hydroelectric Project located on the Cle Elum River in Kittitas County, Washington, Project No. 12746.

"FERC" shall mean the Federal Energy Regulatory Commission or its successor.

"Hanford Reach Fall Chinook Protection Program" shall mean the Hanford Reach Fall Chinook Protection Program Agreement adopted on the 5th of April, 2004, amended on the 17th of July, 2006 to add the United States Fish and Wildlife Service as a Party and further amended on the 17th of November, 2006 to add the Yakama Nation as a Party.

"High Water Mark" shall mean the calculation used by the Bonneville Power Administration (BPA) to establish utilities' net requirements.

"Intercontinental Exchange (ICE) Daily Power Indices for the Mid C" shall be the power price index provided at: <https://www.theice.com/marketdata/naPower/naPowerIndex.jsp>.

“New Generation Resource(s)” means a resource(s) on the Yakama Reservation developed after the date of this agreement by the Yakama Nation or Yakama Power.

“New Resource Allocation” shall mean the amount of energy retained by the Yakama Nation resulting from a New Generation Resource.

“Pollution Control Hearings Board” shall mean the Board that operates under the Rules of Practice and Procedure of the Pollution Control Hearings Board, WAC 371-08.

“Priest Rapids Development” shall mean the separate utility system of the District, including a dam at the Priest Rapids Development, all generating and transmission facilities associated therewith, and all betterments, renewals, replacements, and additions to such system, as further described in Section 2(f) of Exhibit 1 of District Resolution No. 390, but shall not include any additional generation, transmission and distribution facilities hereafter constructed or acquired by the District as a part of the Electric System or the Wanapum Development or any other utility properties of the District acquired or constructed as a separate utility system.

“Priest Rapids Project” shall mean the hydroelectric project on the Columbia River in the State of Washington designated by the Federal Power Commission as Project No. 2114. The Priest Rapids Project consists of the Priest Rapids Development and the Wanapum Development.

“Priest Rapids Project Cultural Resources Work Group” shall mean the group of representatives tasked with the development of a Historic Properties Management Plan for the protection and management of cultural resources affected by the Priest Rapids Project.

“Priest Rapids Project License” shall mean the new license for the Priest Rapids Project issued by FERC to Grant PUD.

“Priest Rapids Project Power” shall mean energy or its financial equivalent derived from the Priest Rapids Project in equal shares from the Priest Rapids Development and the Wanapum Development.

“Priest Rapids Project Power Allocation” shall mean 20 average megawatts (aMW) annually for the period beginning from the execution date of this Agreement through hour ending (HE) 2400, on December 31, 2009, 15aMW annually from HE 2400, December 31, 2009 through HE 2400 December 31, 2015, and 10 aMW annually from HE 2400 December 31, 2015 through the term of this Agreement.

“Priest Rapids Project Purchasers” shall mean the entities that have entered into long-term contracts with Grant PUD for the purchase of output from the Priest Rapids Project.

“Priest Rapids Project Salmon and Steelhead Settlement Agreement” shall mean the Agreement adopted on the 9th of February, 2006; the Yakama Nation became a Party to this Agreement on the 10th of August, 2006.

“Project Developer” shall mean any person or entity that is not a Party to this Agreement who enter into a contract with the Yakama Nation to develop a New Generation Resource.

“Record of Decision” shall mean the Bonneville Power Administration administrator’s filed written determination in response to the Regional Dialogue Process.

“Regional Dialogue Process” shall mean the process administered by the Bonneville Power Administration in which regional discussion on how BPA will market power and distribute the costs and benefits of the Federal Columbia River Power System (FCRPS) in the Pacific Northwest after the expiration of current BPA power sales contracts is submitted and considered for policy making.

“Renewable Energy Credits” or “RECs” also known as Green tags, Renewable Energy Certificates, or Tradable Renewable Certificates (TRCs), shall mean the property rights to the environmental benefits from generating electricity from renewable energy sources.

“Section 401 Clean Water Act Certification” shall mean the final water quality certificate issued by the Department of Ecology under Section 401 of the Federal Clean Water Act for the Priest Rapids Project License specifying ways for Grant PUD to comply with state water-quality standards and other state regulations protecting the environment.

“Wanapum Development” shall mean the second stage of the Priest Rapids Project as more fully described in Section 2.2 of District Resolution No. 474, but shall not include any generation, transmission and distribution facilities hereafter constructed or acquired by the District as a part of the Electric System or the Priest Rapids Development, or any other utility properties of the District acquired or constructed as a separate utility system.

“Weighted Average Index Price” in section B.2.(b) shall mean the Intercontinental Exchange (ICE) Daily Power Indices for the Mid C prices for power traded for peak hours 0600 through 2200, Pacific Prevailing Time (PPT) for Monday through Saturday multiplied by the number of peak hours during the applicable month plus the average price of power traded for off-peak hours 2200 through 0600 PPT for Monday through Saturday multiplied by the number of off-peak hours for the applicable month plus the average price of power traded for the 24 off-peak hours for Sundays and Holidays (as observed by the National Energy Regulatory Commission) during each month multiplied by the number of Sunday and Holiday hours for the applicable month all divided by the total number of hours in the applicable month.

“Yakama Hydroelectric” shall mean the enterprise of the Yakama Nation known as Yakama Hydroelectric.

“Yakama Power” shall mean the utility registered as an Enterprise of the Yakama Nation with the State of Washington.

“Yakama Nation Tribal Council” shall mean the fourteen member council elected by the Yakama Nation tribal members.

The following terms are defined in the cited sections of this Agreement:

“Historic Properties Management Plan” at Section C.2.(d).

“Monthly Net Revenues” at Section B.2.(b)(i).

- “New Resource Development Contract” at Section B.3.(a).
- “Pacific Lamprey Management Plan” at Section C.5.(d).
- “Party” and “Parties” at the Preamble.
- “Priest Rapids Project Allocation Account” at Section B.2.(b)(i) and C.4.(b).
- “White Sturgeon Management Plan” at Section C.5.(e).

F. Miscellaneous

1. Assignment

This Agreement shall be binding upon and inure to the benefit of the Yakama Nation and Grant PUD. No assignment of this Agreement to any successor of any kind is allowed.

2. Authority

The Parties to this Agreement each represents and acknowledges that is has full legal authority to execute this Agreement and shall be fully bound by the terms hereof.

3. Limited Waiver of Sovereign Immunity

To the extent that the Yakama Nation has sovereign immunity from suit or execution under the Constitution of the laws of the United States of America and under tribal law, it hereby makes a limited waiver of such immunity with regards to suit or judicial process relating to the performance or enforcement of this Agreement.

4. Effective Date

The effective date of this Agreement shall be the date of execution by the last Party to provide an authorized signature to the Agreement.

5. Force Majeure

Neither Grant PUD nor the Yakama Nation shall be liable for failure to perform or for delay in performance due to any cause reasonably beyond its control. This may include, but is not limited to, acts of God, fire, flood, explosion, strike, sabotage, act of the public enemy, civil or military authority, including court orders, injunctions, and orders of government agencies with proper jurisdiction, insurrection or riot, an act of the elements, failure of equipment or contractors, or inability to obtain or ship materials or equipment because of the affect of similar causes on suppliers or carriers. The Party whose performance is affected by a force majeure will make all reasonable efforts to promptly resume performance once the force majeure is no longer in effect.

6. Dispute Resolution

(a) Informal Dispute Resolution: the Parties shall use their best efforts to resolve any dispute that may arise under this Agreement in accordance with this section and without resort to

administrative, judicial or other formal dispute resolution procedures. The purpose of this section is to provide both Parties an opportunity to fully and candidly discuss and resolve disputes without the expense, risk and delay of a formal dispute resolution. To these ends, if any dispute arises under or related to this Agreement any Party may provide to the other Party a general statement of its claim(s) and positions(s). Upon receipt of such general statement any other Party may choose to respond either orally or in writing. It is desirable but not required that the Parties meet in person to discuss resolution.

(b) If the Parties are still unable to resolve the dispute through informal dispute resolution described in Section F.6.(a) above, then the issue will be elevated to a meeting between a Tribal Council member that is designated by the Yakama Nation Tribal Council, a Commissioner that is designated by the Grant PUD Commission, the General Manager of Yakama Power or the Deputy Director of the Yakama Nation Department of Natural Resources, and the General Manager of Grant PUD.

(c) If the Parties cannot resolve the dispute within 30 days after the receipt of such written statement, any Party may, within 40 days after delivery of such statement, commence non-binding mediation by giving written notice to all other Parties. The mediation shall be conducted and the mediator selected in accordance with the then applicable American Arbitration Association commercial mediation rules, or if the Parties so desire, simply by mutual agreement as to a mediator. The mediator's costs shall be shared equally between the Parties. Each Party shall bear all other costs it incurs. If the mediation resolves the dispute, the terms of the resolution shall be reduced to writing and signed by the Parties. In the event that either Party seeks an appropriate remedy in a court of competent jurisdiction as set forth in F.6.(d) below, discussion of and any decision made in this mediation shall be inadmissible in said court proceeding, unless specifically agreed to in writing by the Parties in advance of the court proceeding.

(d) In the event that the Parties are not able to resolve the dispute through the dispute resolution process described in Sections F.6.(a)(b)(c) above, then either Party may only seek appropriate remedy before FERC or appropriate Washington State or United States Federal Court of competent jurisdiction.

7. Modifications

This Agreement may be modified only by written amendment executed through the signature of both Parties.

8. Implied Covenants

The Parties agree in construing this Agreement that no covenant shall be implied between the Parties except the covenants of good faith and fair dealing.

9. Entire Agreement

This Agreement, including any attached exhibits, is the final understanding of the Parties. The

Priest Rapids Project Salmon and Steelhead Settlement Agreement and the Hanford Reach Fall Chinook Protection Program represent separate commitments of Grant PUD and the Yakama Nation and are included herein by reference although each shall be governed by the independent terms of those agreements.

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

Public Utility District No. 2 of Grant County

Yakama Nation

By: *Randy Allred*

Name: Randy Allred
Title: President, Grant PUD Commission

By: *Lavina Washines*

Name: Lavina Washines
Title: Chair, Yakama Nation Tribal Council

Attorney review See email
Auditor review see email
Manager review CI

RESOLUTION NO. 8126

A RESOLUTION APPROVING AND AUTHORIZING AGREEMENT WITH
YAKAMA NATION

Recitals:

1. In order to provide for the power needs of the District, both actual and prospective, the District undertook development of the Priest Rapids Hydroelectric Project; and
2. On July 27, 1954 the District obtained federal authorization to construct the Priest Rapids Hydroelectric Project pursuant to Public Law 83-544; and
3. On November 4, 1955 the Federal Power Commission granted the District a license ("FERC license") for the construction, operation and maintenance of Project No. 2114 consisting of the Priest Rapids Development and the Wanapum Development, which are herein collectively referred to as the Priest Rapids Hydroelectric Project; and
4. The original FERC License for the Priest Rapids Hydroelectric Project expired on October 31, 2005 and the District has applied for a new FERC license; and
5. In order to facilitate financing the construction of the Priest Rapids Hydroelectric Project, the District entered into power sales contracts with various municipal and private utilities within the Pacific Northwest; and
6. The existing power sales contracts expired on October 31, 2005 for the Priest Rapids Development and will expire on October 31, 2009 for the Wanapum Development; and
7. The District's current FERC license for the Priest Rapids Hydroelectric Project expired October 31, 2005 and the District has made application for a new FERC license and the District is diligently pursuing a new federal license to continue its operation of the Priest Rapids Hydroelectric Project; and
8. In furtherance of the District's relicensing efforts, in 2001 the District executed new power sales contracts with its existing Priest Rapids Development and Wanapum Development power purchasers, Kootenai Electric Cooperative, Inc., Clearwater Power Company, Idaho County Light and Power Cooperative Association, Northern Lights, Inc. and the Snake River Power Association, Inc.; and
9. In March 2002, the Yakama Nation filed a Complaint with the FERC challenging the new power sales contracts and seeking an award of damages and barring the District's application for a new FERC License; and
10. On November 21, 2002 the FERC issued an Order dismissing the Yakama Complaint and the Yakama Nation has appealed the dismissal to the U.S. Ninth Circuit Court of Appeals; and
11. The District's Manager has negotiated a proposed agreement with the representatives of the Yakama Nation, a copy of which is attached hereto as Exhibit A (copy on file with District records); and

- 12. The District's Manager has recommended that the District's Commission approve and authorize the proposed agreement with the Yakama Nation: and
- 13. The proposed agreement requires the District to make Priest Rapids Project Power, or its financial equivalent, available to the Yakama Nation and Yakama Power throughout the term of the new FERC license; and
- 14. RCW 54.16.040 provides that contracts for the sale of power entered into by the District "shall extend over such period of years and contain such terms and conditions for the sale thereof [electric current] as the commission of the district shall elect; and "such contract shall only be made pursuant to a resolution of the commission authorizing such contract, which resolution shall be introduced at a meeting of the commission at least ten days prior to the adoption of the resolution"; and

NOW, THEREFORE, BE IT RESOLVED by the Commission of Public Utility District No. 2 of Grant County, Washington as follows:

Section 1. The Commission hereby finds and determines that the attached settlement agreement with the Yakama Nation makes adequate provision for the needs of the District, both actual and prospective as required by RCW 54.16.04.

Section 2. The agreement is hereby determined to be in the District's best interests and is approved.

PASSED AND APPROVED by the Commission of Public Utility District No. 2 of Grant County, Washington this 4th day of June, 2007.

Randy Adams
President

ATTEST:

Tom Hunt
Vice President

Greg Hansen *Voted No*
Secretary

Bob Beaud
Assistant Secretary

Terry L. Beave
Commissioner



Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

RESOLUTION

T-125-07
amended

WHEREAS, the Yakama Nation is a federally recognized Nation pursuant to the Treaty of 1855 (12 Stat. 951), and

WHEREAS, the Yakama Tribal Council is the governing body of the Confederated Tribes and Bands of the Yakama Nation by the authority delegated by Resolution T-38-56, and

WHEREAS, the Yakama Nation places the greatest importance on preserving the fish, wildlife, and cultural resources reserved in the Treaty for the benefit of present and future generations, and

WHEREAS, the Yakama Nation through resolutions GC-04-98 and T-075-00, established Yakama Power as a tribal electrical utility with the purpose of providing low-cost power to areas of the Yakama Reservation, and

WHEREAS, Grant County PUD operates the Priest Rapids Project on the Columbia River within the Ceded Area for the purpose of generating electric power, and

WHEREAS, the Yakama Nation filed in the 9th Circuit of Appeals for redress of damages to Yakama Power and the Yakama Nation caused by unfair competitive business practices by Grant County PUD in excluding the Yakama Nation from a reasonable opportunity to compete for a new FERC license to operated the Priest Rapids Project, and

WHEREAS, the Yakama Nation and Grant County PUD entered into mediation in 2004 to settle the 9th Circuit lawsuit in a manner that provides benefits to both parties in the form of assistance in expanding Yakama power, access to needed electrical power resources at cost, and mitigation for fish and wildlife resources on the Yakama Reservation and elsewhere in the Yakama Nation's Ceded Area, and

WHEREAS, Grant County PUD now offers for signature a Settlement Agreement that provides mutual benefits and opportunities for joint ventures with the Yakama Nation that will support the development of Yakama Power, and assist in developing new sources of renewable energy on the Yakama Reservation, and

WHEREAS, Grant County PUD now offers to assist in the restoration and maintenance of fish and wildlife resources on the reservation and elsewhere, and

WHEREAS, Yakama Power, Fisheries and Wildlife staff, and Legal Counsel Tim Weaver have assisted Tribal Council Members in the development and review of the proposed Settlement Agreement and recommend Tribal Council approval for signature.

Yakama Tribal Council Resolution, T-125-07
****amended****

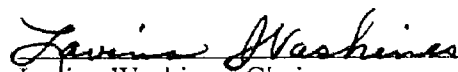
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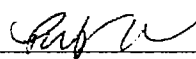
NOW, THEREFORE, BE IT RESOLVED, by the Yakama Tribal Council meeting in Special Session at the Governmental Headquarters of the Confederated Tribes and Bands of the Yakama Nation, Toppenish, Washington, with a quorum being present, that the Chair be authorized and directed to sign the above-referenced document.

BE IT FINALLY RESOLVED, that the Yakama Nation does not waive, alter, or otherwise diminish its Sovereign Immunity, whether expressed or implied, ****other than as set forth in the terms of the agreement.*** for any and all administrative or legal action which may arise directly or indirectly from the same, nor does the Yakama Nation waive, alter, or otherwise diminish its rights, privileges, remedies or services guaranteed by the Treaty of 1855.

DONE AND DATED on this 6th day of June, 2007, by the Yakama Tribal Council by a vote of 8 for, 0 against, and 0 abstentions.


Lavina Washines, Chairwoman
Yakama Tribal Council

ATTEST:



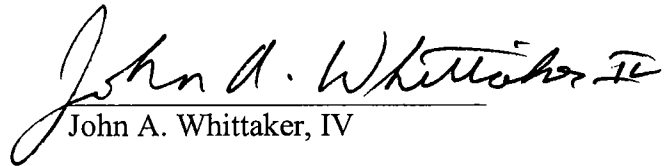
Portia J. Shields, Secretary
Yakama Tribal Council

Cc: *file*
OEDP ca# 94-2007-1

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the parties designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 11th day of July 2007.


John A. Whittaker, IV

Submission Contents

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