

UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

IN THE MATTER OF:)
)
)
Diablo Dry Dock)
Ladder Creek Settling Tank)
Newhalem Penstock)
)
North Cascades National Park Complex)
Ross Lake National Recreation Area)
)
City of Seattle,)
Seattle City Light Department)
)
Respondent)
)
Proceeding Under Sections 104,)
107 and 122 of the Comprehensive)
Environmental Response, Compensation,)
and Liability Act, 42 U.S.C. §§ 9604,)
9607 and 9622)
_____)

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTIONS**

**ADMINISTRATIVE SETTLEMENT AND ORDER ON CONSENT FOR EE/CA
INVESTIGATIONS AND REMOVAL ACTIONS**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement and Order on Consent (“Settlement”) is entered into voluntarily by the United States Department of the Interior (“DOI”), National Park Service (“NPS”) and Seattle City Light (“Respondent”). This Settlement provides for the performance of removal actions by Respondent and the payment of certain response costs incurred by the United States at or in connection with the Diablo Dry Dock Site, the Ladder Creek Settling Tank Site and the Newhalem Penstock Site (collectively referred to herein as “Site” or “Sites”), generally located within North Cascades National Park Complex, Ross Lake National Recreation Area, Whatcom County, Washington State.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9607 and 9622 (“CERCLA”).

3. NPS and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement. Respondent agrees to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

4. This Settlement is binding upon NPS and upon Respondent and their successors, and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent’s responsibilities under this Settlement.

5. Respondent is jointly and severally liable for carrying out all activities required by this Settlement.

6. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Respondent to this Settlement.

7. Respondent shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing Respondent with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Respondent or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

“Action Memorandum” shall mean the NPS-approved decision document authorizing and selecting a removal action.

“Affected Property” shall mean the Diablo Dry Dock Site, the Ladder Creek Settling Tank Site and the Newhalem Penstock Site on lands managed by NPS and all real property, including any structures or buildings, at those Sites owned by Respondent where NPS determines, at any time, that access or land, water, or other resource use restrictions are needed to implement the removal actions.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Diablo Dry Dock EE/CA Approval Memorandum” shall mean the memorandum signed by NPS approving of the conduct of an EE/CA at the Diablo Dry Dock Site.

“EE/CA” shall mean an Engineering Evaluation/Cost Analysis prepared pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and 40 C.F.R. § 300.415(b)(4).

“EE/CA Report” shall mean the NPS-approved report providing a comparative analysis of alternatives for clean up or removal of hazardous substances based on protectiveness to human health and the environment in addition to their implementation cost.

“EE/CA Work Plan” or “Work Plan” shall mean the NPS-approved plan that provides the general procedures, project management approach and projected schedule for implementing the EE/CA site investigation, conducting the human health and ecological risk assessments, and generating an EE/CA Report.

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXX.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 75 (Work Takeover), Paragraph 98 (Access to Financial Assurance), Paragraph 26 (Community Involvement Plan), Section XV (Dispute Resolution), and all litigation costs. Future Response Costs shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding each Site.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“Ladder Creek Settling Tank Action Memorandum” shall mean the NPS Action Memorandum relating to the Ladder Creek Settling Tank signed on August 7, 2017, by NPS Regional Director, Pacific West Region, and all attachments thereto. The “Ladder Creek Settling Tank Action Memorandum” is attached as Appendix A.

“Ladder Creek TCRA Completion Report” shall mean the NPS-approved report detailing removal activities at the Site, including but not limited to Site background, field activity, removal confirmation data, and post-implementation monitoring.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Newhalem Penstock Action Memorandum” shall mean the NPS Action Memorandum relating to the Newhalem Penstock Settling Tank signed on September 1, 2016, by NPS Regional Director, Pacific West Region, or his/her designee, and all attachments thereto. The “Newhalem Penstock Action Memorandum” is attached as Appendix B.

“Newhalem Penstock EE/CA Approval Memorandum” shall mean the memorandum signed by NPS approving of the conduct of an EE/CA at the Newhalem Penstock Site. The “Newhalem Penstock EE/CA Approval Memorandum” is attached as Appendix C.

“Paragraph” shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean NPS and Respondent.

“Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through May 31, 2018, plus Interest on all such costs through such date.

“Post-Removal Site Control” shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Settlement consistent with Sections 300.415(*l*) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

“Removal Work Plan” shall mean the NPS-approved plan that provides the general procedures, project management approach and projected schedule for implementing removal actions at the Diablo Dry Dock Site and at the Newhalem Penstock Site.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Respondent” shall mean the City of Seattle, Seattle City Light Department.

“Section” shall mean a portion of this Settlement identified by a Roman numeral.

“Settlement” shall mean this Administrative Settlement and Order on Consent and all appendices attached hereto (listed in Section XXIX (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” or “Sites” shall mean the Diablo Dry Dock Site, the Ladder Creek Settling Tank Site and the Newhalem Penstock Site, generally located within North Cascades National Park Complex, Ross Lake National Recreation Area, Whatcom County, Washington State and depicted generally on the map attached as Appendix D.

“State” shall mean the State of Washington.

“TCRA Completion Report” shall mean the NPS-approved report detailing the time-critical removal action implemented at the Ladder Creek Settling Tank Site.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including NPS.

“Waste Material” shall mean (a) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (c) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (d) any hazardous substance under Section 173-340-200 of the State’s Model Toxics Control Act.

“Work” shall mean all activities and obligations Respondent is required to perform under this Settlement except those required by Section XI (Record Retention).

IV. FINDINGS OF FACT

9. Ladder Creek Settling Tank Site

a. The Ladder Creek Settling Tank Site (“settling tank”) is located within Ross Lake National Recreation Area, in Whatcom County, Washington, in a remote, forested area approximately 40 feet from Ladder Creek, a very steep and cascading stream, and approximately 100 yards upstream of the creek’s confluence with the Skagit River. The Skagit River is the largest tributary to the Puget Sound, an inlet of the Pacific Ocean, and supports all five native species of salmon, including Puget Sound Chinook salmon (federally threatened), as well as Puget Sound steelhead and bull trout (federally threatened). The settling tank is situated on a flat bench surrounded by relatively steep slopes with occasional bedrock outcrops, approximately 300 feet in elevation above and approximately one quarter mile from the Gorge Powerhouse, the closet development, and across the Skagit River from (to the north and west of) the unincorporated community of Newhalem, Whatcom County, Washington.

b. Respondent operates Gorge Dam, and its associated powerhouse, as one of three Federal Energy Regulatory Commission (“FERC”) licensed hydroelectric dams along the Skagit River, managed together as the Skagit River Hydroelectric Project (FERC license #553).

c. The settling tank was originally constructed as part of the domestic water supply system for the community of Newhalem, a historic company town owned and operated by Respondent. Water was diverted from Ladder Creek into the settling tank, where silt and sand carried by the creek were settled out. Water then discharged from the settling tank and followed conveyance lines under gravity flow down to the Gorge powerhouse and into the community of Newhalem. The settling tank structure included a two-story framed building with a corrugated aluminum roof that fully enclosed the settling tank and protected it from the elements.

d. The protective building was completely burned during a 2015 wildfire; no portion of the structure was left standing. Assessments completed by NPS and Respondent following the wildfire found that the settling tank, which was left intact but impacted with residue from the fire, is now uncovered and is collecting rainwater. The assessments also found that the debris field on the ground surface surrounding the tank contains charred construction materials including paint, mastic coating, electrical cables/insulation, lighting, molten/re-solidified metal roof shards, and unidentified materials. Soil in approximately the same area as the debris field also was impacted by the fire, primarily by airborne fallout during the burning of the building structure.

e. At the request of NPS, Respondent conducted an initial field reconnaissance soon after the wildfire in fall 2015. This October field investigation consisted of in-situ XRF field screening of soil, collecting surface (0-3 inches in depth) soil samples from a number of transects for laboratory analysis to determine extent (width and depth) of potential contamination, collecting a water sample from the settling tank and sampling the charred coating material adhering to the exterior of the settling tank. Soil and water samples, including six soil samples collected from burned forested areas in the vicinity of the settling tank not known to be affected by anthropogenic sources, were then analyzed for concentrations of metals, semivolatiles (“SVOCs”), and carcinogenic polycyclic aromatic hydrocarbons (cPAHs). A

forensic analysis also was completed of the charred coating material adhering to the exterior of the settling tank.

f. The October 2015 field investigation identified concentrations of lead and arsenic within the settling tank and arsenic, chromium, lead, and cPAHs within the surrounding soil. Specifically, this investigation identified that the soil contaminants of potential concern for human health are arsenic and cPAHs, and the soil contaminants of potential concern for ecological receptors are arsenic, chromium (total), lead and cPAHs.

g. Results from the forensic analysis of the charred material indicate that the material consists mostly of carbon with low concentrations of magnesium and silicone, which are consistent with charred asphalt that contains some mineral/clay filler.

h. Due to the close proximity of the settling tank to Ladder Creek and the Skagit River and concerns about potential migration of hazardous substances, in the fall of 2015, NPS installed coir erosion logs to prevent or reduce migration of contaminants of concern present in the debris field and the surrounding soils. In May 2016, Respondent designed and installed a filtration system to treat, on an on-going basis, precipitation water that accumulated in the settling tank after the fire. Post-filtration sampling indicated that contaminants were removed by the system to below criteria established in Washington State's Model Toxics Control Act ("MTCA").

i. On August 7, 2017, in order to reduce the risk to human health and the environment, NPS approved, through an Action Memorandum, a Time Critical Removal Action ("TCRA") authorizing the cleaning of the interior of the settling tank until removal confirmation sampling, using a sampling design and analytical detection limits approved by NPS, indicates that water from the tank no longer contains the contaminants of concern in this location, namely lead and arsenic, the removal of debris and shallow surface contaminated soil resulting from the fire until removal confirmation indicates that soils remaining after the TCRA are at or below remediation goals, and recontouring and revegetating the area. Appendix A.

j. In August 2017, Respondent removed all materials from the interior of the settling tank and pressure-washed all interior surfaces. Post-cleaning confirmation sampling indicates that water from the tank no longer contains the contaminants of concern, namely lead and arsenic. In May 2018, Respondent removed the scattered fire debris and contaminated soil surrounding the tank. Removal confirmation sampling indicates that the removal of contaminants of concern, namely arsenic, chromium, lead and cPAHs within the surrounding soil is complete pursuant to applicable or relevant and appropriate requirements. Debris and soil removed from the site were disposed of at a RCRA Subtitle D landfill.

10. **Newhalem Penstock Site**

a. The Newhalem Penstock ("penstock") is located within Ross Lake National Recreation Area, directly across the Skagit River (on the south side) from Newhalem, Whatcom County, Washington. The penstock is part of the Newhalem Creek Hydroelectric Project, operated by Respondent, under FERC license. The Newhalem Creek Hydroelectric

Project is comprised of a powerhouse, penstock, bedrock power tunnel, and creek diversion structure.

Respondent originally constructed the penstock in the 1920s as part of the power plant used during construction of the Gorge Dam. The penstock continues to convey water to the Newhalem powerhouse for power generation for the residents of the community of Newhalem. The penstock is 1,122 feet long, approximately 904 feet of which is above ground. The remaining 218 feet is located within a bedrock tunnel. The aboveground portion of the 30 to 33-inch diameter penstock formerly rested on wood frame supports, or pedestals, with bases of wood, concrete, or stone. The aboveground portion of the penstock is located on a steep and somewhat rocky slope above the Newhalem powerhouse, and terminates roughly 600 feet from the Skagit River, where the diverted water of Newhalem Creek enters the Skagit River, a tributary to Puget Sound. An intermittent stream runs adjacent to a portion of the penstock, and flows down the slope to the powerhouse. Intermittent stream outflow enters the tailrace of Newhalem Creek and after passing over a fish barrier, discharges into the Skagit River. A trail system between the NPS Newhalem Campground (approximately one quarter mile west of the powerhouse) and “downtown” Newhalem (approximately one quarter mile east of the penstock) parallels the Skagit River immediately downslope from the penstock at the site of the Newhalem powerhouse, and a steep trail leads up the slope past the powerhouse and upper sections of the penstock.

b. In order to comply with FERC dam safety guidelines, in 2016-2017, Respondent replaced deteriorated wooden saddles with permanent cast-in-place concrete saddles. Of the original penstock saddles constructed in the 1920s, 52 were made entirely from treated wood. Treated wood often contains lead, arsenic and PAHs.

c. In August 2014, Respondent conducted soil sampling in the immediate vicinity of the penstock to investigate the existence of soil contamination. Prior to performing the saddle replacement work at the penstock, Respondent, on behalf of NPS, conducted additional sampling in October 2015 to further evaluate the extent of soil contamination and to determine proper handling of soil to be removed by the project. Samples also were collected in April 2016 from the wood saddles to determine the specific type of preservative(s) in the wood. Results of the soil sampling indicated that soil in the vicinity of the penstock contained levels of lead and arsenic above MTCA cleanup levels for human health for unrestricted use. Wood sample analysis results indicated the wood was preserved with coal-tar creosote. Results of soil sampling also indicated that in some locations, soil within approximately 3 inches of the wood saddles contained levels of carcinogenic PAHs above MTCA cleanup levels for human health. No evaluation of potential risk to ecological receptors was conducted.

d. On September 1, 2016, NPS approved, through an Action Memorandum, a TCRA at the penstock, authorizing the removal and disposal of contaminated soil excavated to complete the scope of work associated with Respondent project to replace the deteriorated wooden saddles along the penstock. Appendix B. Respondent completed implementation of the TCRA in September 2017. In the course of removing the saddles and implementing the TCRA, Respondent removed and disposed of approximately 171 tons of contaminated soil.

e. NPS has determined that an EE/CA is necessary in order to fully characterize nature and extent of contamination, evaluate risk to human health and ecological

receptors and evaluate removal alternatives. NPS signed an EE/CA approval memorandum authorizing the EE/CA on December 19, 2017. Appendix C.

11. **Diablo Dry Dock Site**

a. The Diablo Dry Dock Site (“dry dock”) is located on the north shore of Diablo Reservoir, Whatcom County, WA along the Skagit River in Ross Lake National Recreation Area, immediately adjacent to the North Cascades Environmental Learning Center’s campus. Specifically, the campus’ cafeteria and associated facilities, as well as a short peninsula trail, are within a few hundred feet of the dry dock, and all other developments on the campus (visitor center, offices, classrooms, dorms, etc.) are within a quarter mile. Several of Respondent’s boat facilities also are located along the access road to the dry dock, including a tour dock, ferry dock, boathouse, barge landing, and fuel dock, all of which are located on land managed by NPS. Dry dock is located along Deer Creek Cove on the Diablo Reservoir.

b. Constructed on Diablo Reservoir (after the completion of Diablo Dam in 1930), Respondent’s Diablo Marine Railway and Shelter (referred to as the Diablo Dry Dock) provided shelter for a marine railway used to build and maintain vessels operating on Diablo Reservoir. Respondent’s first tour boat, the Alice Ross I, was constructed at dry dock in 1935 and, used for Respondent’s Skagit Tours in 1936 and 1937. The railway and shelter have been used in this capacity ever since. The shelter, (aka dry dock building) was constructed on native soil using corrugated sheet metal on a wood framework, and supported by treated logs on concrete bases. It is open to the weather on two sides, and is surrounded by a chain-link fence. Rails on concrete footings extend from the shelter into the reservoir and a cradle on the rails is used to haul boats in and out of Diablo Reservoir.

c. Respondent completed an initial field investigation at dry dock in September 2014 that consisted of collecting surface soil and sediment samples around and within the dry dock building, measuring the locations of the soil samples from a corner of the dry dock building, collecting surface sediment samples from a boat, and documenting locations of all samples using a portable global positioning system (GPS) unit. The purpose of this investigation was to 1) determine if metals or hydrocarbons were released to soil at concentrations above the MTCA unrestricted land use screening levels, and 2) determine if metals or hydrocarbons were released to surface sediment at concentrations above the Washington State Sediment Management Standards screening levels for fresh water. The Respondent completed a subsequent field investigation in May of 2015.

d. Based on these investigations, soils at dry dock (both in and outside of the building) include elevated levels of arsenic, lead, and cPAHs above MTCA Method A or B cleanup levels, but no samples were classified as dangerous waste. While no samples exceeded the MTCA Method A cleanup levels for Unrestricted Land Use for diesel or lube oil-range organics, three of the seven samples contained diesel-range organics below the cleanup level of 2000 mg/kg.

e. NPS has determined that an EE/CA is necessary in order to fully characterize nature and extent of contamination, evaluate risk to human health and ecological receptors and evaluate removal alternatives.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

12. Based on the Findings of Fact set forth above, and the administrative records, NPS has determined that:

- a. Each Site is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. The contamination found at each Site, as identified in the Findings of Fact above, includes “hazardous substance(s)” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Respondent is a “person” at each Site as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondent is a responsible party at each Site under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
- e. The conditions described in the Findings of Fact above constitute an actual or threatened “release” of a hazardous substance from each facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- f. The removal actions required by this Settlement are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

VI. SETTLEMENT AND ORDER

13. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative records, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

14. Respondent shall retain one or more contractors or subcontractors to perform the Work at the Sites and shall notify NPS of the names, titles, addresses, telephone numbers, email addresses, and qualifications of such contractors or subcontractors within ninety (90) days after NPS signature on the applicable EE/CA approval memorandum or non-time critical removal Action Memorandum for each Site. Respondent shall also notify NPS of the names, titles, contact information, and qualifications of any other contractors or subcontractors retained to perform the Work at least thirty (30) days prior to commencement of such Work. NPS retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If NPS disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify NPS of that contractor’s or subcontractor’s name, title, contact information, and qualifications within sixty (60) days after NPS’s disapproval. With

respect to any proposed contractor, Respondent shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs – Requirements with guidance for use” (American Society for Quality, February 2014), by submitting a copy of the proposed contractor’s Quality Management Plan (“QMP”) or other documentation, as approved by NPS. The QMP should be prepared in accordance with “EPA Requirements for Quality Management Plans (QA/R-2)” (EPA/240/B-01/002, Reissued May 2006) or as otherwise specified by NPS. The qualifications of the persons undertaking the Work for Respondent shall be subject to NPS’s review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to the project.

15. Respondent has designated, and NPS has not disapproved, the following individual as Project Coordinator, who shall be responsible for administration of all actions by Respondent required by this Settlement:

Tom Meyer, Strategic Advisor II
(206) 386-9168
tom.meyer@seattle.gov

Street address:
Environment, Land and Licensing Unit
Seattle City Light
700 5th Avenue, Suite 3200
Seattle, WA 98124

Mailing address:
Environment, Land and Licensing Unit,
Seattle City Light
P.O. Box 34023
Seattle, WA 98124-4023

To the greatest extent possible, the Project Coordinator shall be present or readily available during work at each Site. NPS retains the right to disapprove of the designated Project Coordinator who does not meet the requirements of Paragraph 14. If NPS disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify NPS of that person’s name, title, contact information, and qualifications within thirty (30) days following NPS’s disapproval. Notice or communication relating to this Settlement from NPS to Respondent’s Project Coordinator shall constitute notice or communication to Respondent.

16. NPS has designated Travis Kraft, as its On-Scene Coordinator (OSC). NPS and Respondent shall have the right, subject to Paragraph 15, to change their respective designated OSC or Project Coordinator. Respondent shall notify NPS fifteen (15) days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

17. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other removal action undertaken at the Sites. Absence of the OSC from the Sites shall not be cause for stoppage of work unless specifically directed by the OSC.

VIII. WORK TO BE PERFORMED

18. Respondent shall perform, at a minimum, all actions necessary to implement the following items. The actions to be implemented generally include, but are not limited to, the following:

- a. Preparation of EE/CA Report (and associated deliverables) at the Diablo Dry Dock Site and at the Newhalem Penstock Site;
- b. Preparation of TCRA Completion Report at the Ladder Creek Settling Tank Site; and
- c. Implementation of selected removal action, if any, by NPS through an Action Memorandum, at the Diablo Dry Dock Site, at the Ladder Creek Settling Tank Site and at the Newhalem Penstock Site.

19. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from NPS of the modification, amendment, or replacement.

20. EE/CA Work Plan

a. Within one hundred and eighty days (180) days after the Effective Date, in accordance with Paragraph 23 (Submission of Deliverables), Respondent shall submit to NPS for approval separate draft work plans for performing an EE/CA (the "EE/CA Work Plan") at the Diablo Dry Dock Site and at the Newhalem Penstock Site. Each draft EE/CA Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

b. NPS may approve, disapprove, require revisions to, or modify any draft EE/CA Work Plan in whole or in part. If NPS requires revisions, Respondent shall submit a revised draft EE/CA Work Plan within sixty (60) days after receipt of NPS's notification of the required revisions. Respondent shall implement an EE/CA Work Plan as approved in writing by NPS in accordance with the schedule approved by NPS. Once approved, or approved with modifications, an EE/CA Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of an EE/CA Work Plan, Respondent shall commence implementation of the Work in accordance with the schedule included therein. Respondent shall not commence or perform any Work except in conformance with the terms of this Settlement unless otherwise approved in writing by NPS and in accordance

with a schedule approved by NPS. Respondent shall update any EE/CA Work Plan, as necessary, or as otherwise directed by NPS.

21. **EE/CA Report**

a. Within one hundred eighty (180) days after completion of the EE/CA investigation at each Site, Respondent shall submit to NPS for approval separate draft EE/CA Reports at the Diablo Dry Dock Site and at the Newhalem Penstock Site.

b. NPS may approve, disapprove, require revisions to, or modify any draft EE/CA Report in whole or in part. If NPS requires revisions, Respondent shall submit a revised draft EE/CA Report within sixty (60) days after receipt of NPS's notification of the required revisions. Once approved, or approved with modifications, an EE/CA Report and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

22. **Removal Work Plan and Implementation**

a. Within one hundred eighty (180) days after NPS issues an Action Memorandum at the Diablo Dry Dock Site and the Newhalem Penstock Site, in accordance with Paragraph 23 (Submission of Deliverables), Respondent shall submit to NPS for approval separate draft work plans for performing the removal action (the "Removal Work Plan") at the Diablo Dry Dock Site and at the Newhalem Penstock Site. A draft Removal Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement.

b. NPS may approve, disapprove, require revisions to, or modify any draft Removal Work Plan in whole or in part. If NPS requires revisions, Respondent shall submit a revised draft Removal Work Plan within sixty (60) days after receipt of NPS's notification of the required revisions. Respondent shall implement a Removal Work Plan as approved in writing by NPS in accordance with the schedule approved by NPS. Once approved, or approved with modifications, a Removal Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of a Removal Work Plan Respondent shall commence implementation of the Work in accordance with the schedule included therein. Respondent shall not commence or perform any Work except in conformance with the terms of this Settlement.

d. Unless otherwise provided in this Settlement, any additional deliverables that require NPS approval under an EE/CA Work Plan or Removal Work Plan shall be reviewed and approved by NPS in accordance with this Paragraph.

23. **Submission of Deliverables**

a. **General Requirements for Deliverables**

(1) Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the OSC at Travis Kraft, Project Manager, North Cascades National Park, 810 State Route 20, Sedro-

Woolley, Washington, 98284, (360) 854-7264, travis_kraft@nps.gov. Respondent shall submit all deliverables required by this Settlement, or any approved work plan, to NPS in accordance with the schedule set forth in such plan.

(2) Respondent shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 23.b. All other deliverables shall be submitted to NPS in the form specified by the OSC. If any deliverable includes maps, drawings, or other exhibits that are larger than 11 x 17 inches, Respondent shall also provide NPS with paper copies of such exhibits, unless otherwise specified by the OSC.

b. Technical Specifications for Deliverables

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.

(3) Each file must include an attribute name for each site unit or sub-unit submitted. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Respondent does not, and is not intended to, define the boundaries of any of the Sites.

24. **Health and Safety Plans.** Prior to: (a) one hundred eighty (180) days after the Effective Date of the Settlement, or (b) ninety (90) days after NPS signature on the applicable EE/CA approval memorandum or non-time critical removal Action Memorandum, Respondent shall submit for NPS review and comment a separate plan that ensures the protection of the public health and safety during performance of on-Site work at the Diablo Dry Dock Site and the Newhalem Penstock Site. These plans shall be prepared in accordance with “OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <https://www.epa.gov/nscep>, and “EPA’s

Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at <https://www.epaossc.org/HealthSafetyManual/manual-index.htm>. In addition, the plan(s) shall comply with all currently applicable Occupational Safety and Health Administration (“OSHA”) regulations found at 29 C.F.R. Part 1910. If NPS determines that it is appropriate, the plan(s) shall also include contingency planning. Respondent shall incorporate all changes to the plan(s) recommended by NPS and shall implement the plan(s) during the pendency of the EE/CAs and the removal actions at the Diablo Dry Dock Site and at the Newhalem Penstock Site.

25. **Quality Assurance, Sampling, and Data Analysis**

a. Respondent shall use quality assurance, quality control, and other technical activities and chain of custody procedures for all samples consistent with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” EPA/240/B-01/003 (March 2001, reissued May 2006), “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. **Sampling and Analysis Plan for EE/CA Reports.** Within one hundred twenty (120) days after NPS signature on the applicable EE/CA approval memorandum for the Diablo Dry Dock Site and the Newhalem Penstock Site, Respondent shall submit separate Sampling and Analysis Plans to NPS for review and approval at the Diablo Dry Dock Site and at the Newhalem Penstock Site. These plans shall include NPS-approved data quality objectives, a Field Sampling Plan (“FSP”) and a Quality Assurance Project Plan (“QAPP”) that is consistent with the EE/CA Work Plans at the Diablo Dry Dock Site and at the Newhalem Penstock Site, the NCP, NPS’s Sampling and Analysis Plan Template, and EPA guidance, including, but not limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissued May 2006), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by NPS, the Sampling and Analysis Plans shall be incorporated into and become enforceable under this Settlement.

c. **Sampling and Analysis Plan for Implementation of Removal.** Within one hundred eighty (180) days after NPS issues an Action Memorandum at the Diablo Dry Dock Site and the Newhalem Penstock Site, Respondent shall submit separate Sampling and Analysis Plans to NPS for review and approval at the Diablo Dry Dock Site and at the Newhalem Penstock Site. These plans shall include NPS-approved data quality objectives, a FSP and QAPP that is consistent with the Removal Work Plans at the Diablo Dry Dock Site and at the Newhalem Penstock Site, the NCP, NPS’s Sampling and Analysis Plan Template and EPA guidance, including, but not limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissued May 2006), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by NPS, the Sampling and Analysis Plans shall be incorporated into and become enforceable under this Settlement.

d. Respondent shall ensure that NPS personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Respondent in implementing this Settlement. In addition, Respondent shall ensure that such laboratories shall analyze all samples submitted by NPS pursuant to the QAPP for quality assurance, quality control, and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with EPA's "EPA QA Field Activities Procedure," CIO 2105-P-02.1 (9/23/2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Respondent shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA's "Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions" available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to accepted NPS or EPA methods. Accepted NPS or EPA methods consist of, but are not limited to, methods that are documented in the EPA's Contract Laboratory Program (<http://www.epa.gov/clp>), SW 846 "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" (<https://www.epa.gov/hw-sw846>), "Standard Methods for the Examination of Water and Wastewater" (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, "Air Toxics - Monitoring Methods" (<http://www3.epa.gov/ttnamtl1/airtox.html>).

e. However, upon approval by NPS, Respondent may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP, (ii) the analytical method(s) are at least as stringent as the methods listed above, and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Respondent shall ensure that all laboratories they use for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs - Requirements with guidance for use" (American Society for Quality, February 2014), and "EPA Requirements for Quality Management Plans (QA/R-2)" EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by NPS. NPS may consider Environmental Response Laboratory Network (ERLN) laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP), or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Respondent shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in any QAPP approved by NPS.

f. Upon request, Respondent shall provide split or duplicate samples to NPS or its authorized representatives. Respondent shall notify NPS not less than seven (7) days in advance of any sample collection activity unless shorter notice is agreed to by NPS. In addition, NPS shall have the right to take any additional samples that NPS deems necessary. Upon request, NPS shall provide to Respondent split or duplicate samples of any samples it takes as part of NPS's oversight of Respondent's implementation of the Work.

g. Respondent shall submit to NPS the results of all sampling and/or tests or other data obtained or generated by or on behalf of Respondent with respect to each Site and/or the implementation of this Settlement.

h. Respondent waives any objections to any data gathered, generated, or evaluated by NPS or Respondent in the performance or oversight of the Work that has been verified according to the QA/QC procedures required by the Settlement or any NPS-approved Work Plans or Sampling and Analysis Plans. If Respondent objects to any other data relating to the Work, Respondent shall submit to NPS a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to NPS within thirty (30) days after the monthly progress report containing the data.

26. **Community Involvement Plan.** NPS will prepare a community involvement plan, in accordance with NPS and EPA guidance and the NCP. If requested by NPS, Respondent shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by NPS to explain activities at or relating to any of the Sites. Respondent's support of NPS's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any community advisory groups, (2) any technical assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondent at NPS's request are subject to NPS's oversight. Upon NPS's request, Respondent shall establish a community information repository at or near to any of the Sites to house one copy of an administrative record for a Site or the Sites.

27. **Post-Removal Site Control.** If required by the response action selected by NPS in any Action Memorandum at the Dry Dock Diablo Site, at the Ladder Creek Settling Tank Site or at the Newhalem Penstock Site, in accordance with a Removal Work Plan schedule, or as otherwise directed by NPS, Respondent shall submit a proposal for Post-Removal Site Control(s). Upon NPS approval, Respondent shall either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as NPS determines that no further Post-Removal Site Control is necessary. Respondent shall provide NPS with documentation of all Post-Removal Site Control commitments.

28. **Progress Reports.** Respondent shall submit a written progress report to NPS concerning actions undertaken pursuant to this Settlement on a quarterly basis, or as otherwise requested by NPS, from the date of receipt of NPS's approval of any EE/CA Work Plan or any Removal Work Plan until issuance of Notice of Completion of Work pursuant to Section XXVIII, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

29. **Final Report.** For each of the Sites, within one hundred eighty (180) days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 105 (notice of completion), Respondent shall submit for NPS review and approval a separate final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed from any of the Sites or handled on any of the Sites, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the implementation of the EE/CA investigation and the removal actions (e.g., manifests, invoices, bills, contracts, and permits) at each Site. The final report shall also include the following certification signed by a responsible corporate official of Respondent or Respondent's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

30. **Off-Site Shipments**

a. Respondent may ship hazardous substances, pollutants and contaminants from any Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from NPS that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondent may ship Waste Material from any Site to an out-of-state waste management facility only if, prior to any shipment, they provide written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action at the at the Diablo Dry Dock Site, at the Ladder Creek Settling Tank Site and at the Newhalem Penstock Site and before the Waste Material is shipped.

c. Respondent may ship Investigation Derived Waste (“IDW”) from any Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA’s “Guide to Management of Investigation Derived Waste,” OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in any NPS Action Memorandum for the Diablo Dry Dock Site, the Ladder Creek Settling Tank Site and the Newhalem Penstock Site. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

IX. PROPERTY REQUIREMENTS

31. NPS shall provide Respondent and its representatives, contractors and subcontractors, with access at all reasonable times to the Affected Property or Sites located on lands managed by NPS to conduct any activity related to this Settlement.

32. Respondent shall, with respect to Respondent’s Affected Property: (i) provide NPS and its representatives, contractors, and subcontractors with access at all reasonable times to such Affected Property to conduct any activity regarding the Settlement, including those activities listed in Paragraph 32.a (Access Requirements); and (ii) refrain from using such Affected Property in any manner that NPS determines will pose an unacceptable risk to human health or to the environment or interfere with or adversely affect the implementation, integrity, or protectiveness of the removal action.

a. **Access Requirements.** The following is a list of activities for which access is required regarding the Affected Property:

- (1) Monitoring the Work;
- (2) Verifying any data or information submitted to the United States;
- (3) Conducting investigations regarding contamination at or near the Sites;
- (4) Obtaining samples;
- (5) Assessing the need for, planning, implementing, or monitoring response actions;
- (6) Assessing implementation of quality assurance and quality control practices as defined in the approved quality assurance quality control plan and as defined in the approved QAPP;
- (7) Implementing the Work pursuant to the conditions set forth in Paragraph 755 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Respondent or its agents, consistent with Section X (Access to Information);

(9) Assessing Respondent's compliance with the Settlement;

(10) Determining whether the Affected Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement; and

(11) Implementing, monitoring, maintaining, reporting on, and enforcing any land, water, or other resource use restrictions regarding the Affected Property.

33. If NPS determines in a decision document prepared in accordance with the NCP that institutional controls in the form of state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices are needed, Respondent shall cooperate with NPS's efforts to secure and ensure compliance with such institutional controls.

34. In the event of any Transfer of the Affected Property, unless NPS otherwise consents in writing, Respondent shall continue to comply with their obligations under the Settlement, including their obligation to ensure compliance with any land, water, or other resource use restrictions regarding the Affected Property.

35. Notwithstanding any provision of the Settlement, NPS retains all of its access authorities and rights, as well as all of its rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

36. Respondent shall provide to NPS, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondent's possession or control or that of their contractors or agents relating to activities at the Sites or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondent shall also make available to NPS, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

37. Privileged and Protected Claims

a. Respondent may assert all or part of a Record requested by NPS is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 37.b, and except as provided in Paragraph 37.c.

b. If Respondent asserts such a privilege or protection, they shall provide NPS with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a

claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to NPS in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that they claim to be privileged or protected until NPS has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Sites; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement.

38. **Business Confidential Claims.** Respondent may assert that all or part of a Record provided to NPS under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records that Respondent claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to NPS, or if NPS has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Respondent.

39. Notwithstanding any provision of this Settlement, NPS retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

40. Until ten (10) years after NPS provides Respondent with notice, pursuant to Section XXVIII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their liability under CERCLA with regard to the Sites, and all Records that relate to the liability of any other person under CERCLA with respect to the Sites. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

41. At the conclusion of the document retention period, Respondent shall notify NPS at least ninety (90) days prior to the destruction of any such Records, and, upon request by NPS,

and except as provided in Paragraph 37 (Privileged and Protected Claims), Respondent shall deliver any such Records to NPS.

42. Respondent certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Sites since notification of potential liability by NPS and that it has fully complied with any and all NPS requests for information regarding the Sites pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

43. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by NPS, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws. Respondent shall include ARARs selected by NPS in any Removal Work Plans for the Diablo Dry Dock Site and the Newhalem Penstock Site.

44. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondent may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

45. **Emergency Response.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Sites that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the NPS Chief Ranger for NOCA at (306) 8547240 or (360) 854-7249 of the incident or Site conditions. In the event that Respondent fails to take appropriate response

action as required by this Paragraph, and NPS takes such action instead, Respondent shall reimburse NPS for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

46. **Release Reporting.** Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the OSC or, in the event of his/her unavailability the NPS Chief Ranger for NOCA at (306) 8547240 or (360) 854-7249 and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

47. For any event covered under this Section, Respondent shall submit a written report to NPS within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIV. PAYMENT OF RESPONSE COSTS

48. **Payment for Past Response Costs.** Within thirty (30) days after the Effective Date, Respondent shall pay to NPS \$46,181.73 for Past Response Costs. Respondent shall make payment to the DOI's Central Hazardous Materials Fund (CHF) by automated clearing-house known as the Department of the Treasury's Automated Clearing House (ACH)/Remittance Express program as follows:

Receiver name:	Central Hazardous Materials Fund ALC 14010001
Receiver Tax ID Number:	53-0196949
Receiver address:	7401 West Mansfield Ave. Mailstop D-2777 Lakewood, CO 80235
Receiver bank:	Federal Reserve Bank New York, NY ABA # 051036706
Receiver ACH Account No.:	312024

Respondent shall send notification of its payment referencing the amount of its payment and the Site name to the following individuals:

U.S. Department of the Interior
Office of Environmental Policy and Compliance
Jamey Watt
Central Hazardous Materials Fund Manager

1849 C Street, NW, MS 5538
Washington, DC 20240

Nathalie Doherty
U.S. Department of the Interior
Office of the Solicitor
601 SW 2nd Avenue, Suite 1950
Portland, OR 97204

Gregory P. Nottingham
U.S. National Park Service
Contaminants Cleanup Branch
P.O. Box 25287
Denver, CO 80225-0287

49. **Payments for Future Response Costs** Respondents shall pay NPS all Future Response Costs not inconsistent with the NCP. On a periodic basis, NPS will send Respondent an invoice requiring payment that includes direct and indirect costs incurred by DOI, NPS, its contractors, subcontractors, and the United States Department of Justice. Respondent shall pay all invoices within thirty (30) days after Respondent's receipt of each invoice requiring payment, except as otherwise provided in Paragraph 51 (Contesting Response Costs). Respondent shall make payment to the DOI's Central Hazardous Materials Fund (CHF) by automated clearing-house known as the Department of the Treasury's Automated Clearing House (ACH)/Remittance Express program as follows:

Receiver name:	Central Hazardous Materials Fund ALC 14010001
Receiver Tax ID Number:	53-0196949
Receiver address:	7401 West Mansfield Ave. Mailstop D-2777 Lakewood, CO 80235
Receiver bank:	Federal Reserve Bank New York, NY ABA # 051036706
Receiver ACH Account No.:	312024

Respondent shall send notification of its payment referencing the amount of its payment and the Site name to the following individuals:

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Office of the Solicitor
601 SW 2nd Avenue, Suite 1950
Portland, OR 97204

Gregory P. Nottingham
U.S. National Park Service
Contaminants Cleanup Branch
P.O. Box 25287
Denver, CO 80225-0287

50. **Interest.** In the event that any payment for Past Response Costs or Future Response Costs is not made within 30 days of Respondent's receipt of an invoice requiring payment, Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs and Future Response Costs shall begin to accrue on the date of Respondent's receipt of the invoice requiring payment, and shall accrue through the date of Respondent's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVII (Stipulated Penalties).

51. **Contesting Future Response Costs.** Respondent may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 49 (Payments for Future Response Costs) if they determine that NPS has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe NPS incurred excess costs as a direct result of a NPS action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondent shall submit a Notice of Dispute in writing to the OSC within thirty (30) days after receipt of the invoice. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to NPS in the manner described in Paragraph 48, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If NPS prevails in the dispute, within five (5) days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to NPS in the manner described in Paragraph 48. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to NPS in the manner described in Paragraph 48. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution)

shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse NPS for its Future Response Costs.

XV. DISPUTE RESOLUTION

52. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. The Parties shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

53. **Informal Dispute Resolution.** If Respondent objects to any NPS action taken pursuant to this Settlement, including billings for Past Response Costs or Future Response Costs, it shall send NPS a written Notice of Dispute describing the objection(s) within fifteen (15) days after such action. NPS and Respondent shall have thirty (30) days from NPS's receipt of Respondent's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of NPS. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

54. **Formal Dispute Resolution.** If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to the OSC. NPS may, within twenty (20) days thereafter, submit a statement of position. Thereafter, an NPS management official at the Chief, Contaminants Cleanup Branch or higher will issue a written decision on the dispute to Respondent. NPS's decision shall be incorporated into and become an enforceable part of this Settlement. Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with NPS's decision, whichever occurs.

55. Except as provided in Paragraph 51 (Contesting Future Response Costs) or as agreed by NPS, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Except as provided in Paragraph 65, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

56. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the

delay and any adverse effects of the delay are minimized to the greatest extent possible. "Force majeure" does not include financial inability to complete the Work or increased cost of performance.

57. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify NPS's OSC orally or, in the event the OSC is unavailable, the NPS Chief Ranger for NOCA at (306) 8547240 or (360) 854-7249 within three (3) days of when Respondent first knew that the event might cause a delay. Within five (5) days thereafter, Respondent shall provide in writing to NPS an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if NPS, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 566 and whether Respondent has exercised its best efforts under Paragraph 56, NPS may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

58. If NPS agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by NPS for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If NPS does not agree that the delay or anticipated delay has been or will be caused by a force majeure, NPS will notify Respondent in writing of its decision. If NPS agrees that the delay is attributable to a force majeure, NPS will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

59. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than fifteen (15) days after receipt of NPS's notice. In any such proceeding, Respondent shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Respondent complied with the requirements of Paragraphs 56 and 57. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to NPS.

60. The failure by NPS to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Respondent from meeting one or more deadlines under the Settlement, Respondent may seek relief under this Section.

XVII. STIPULATED PENALTIES

61. Respondent shall be liable to NPS for stipulated penalties in the amounts set forth in Paragraphs 62.a and 63 for failure to comply with the obligations specified below, unless excused under Section XVI (Force Majeure). “Comply” as used in the previous sentence include compliance by Respondent with all applicable requirements of this Settlement, within the deadlines established under this Settlement.

62. Stipulated Penalty Amounts - Payments, Financial Assurance, Major Deliverables, and Other Milestones

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 62.b.:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500	1st through 14th day
\$1,000	15th through 30th day
\$3,000	31st day and beyond

b. Obligations

(1) Payment of any amount due under Section XIV (Payment of Response Costs).

(2) Establishment and maintenance of financial assurance in accordance with Section XXV (Financial Assurance).

(3) Establishment of an escrow account to hold any disputed Future Response Costs under Paragraph 51 (Contesting Future Response Costs).

(4) Preparing EE/CA Report(s) or modifications thereto;

(5) Implementation of any NPS-selected removal action through an Action Memorandum, or modifications thereto, at the Diablo Dry Dock Site, the Ladder Creek Settling Tank Site and the Newhalem Penstock Site.

63. **Stipulated Penalty Amounts – Other Deliverables.** The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement, other than those specified in Paragraph 62.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
--------------------------------------	--------------------------------

\$500	1st through 14th day
\$750	15th through 30th day
\$1,000	31st day and beyond

64. In the event that NPS assumes performance of a portion or all of the Work pursuant to Paragraph 75 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of \$750,000. Stipulated penalties under this Paragraph are in addition to the remedies available to NPS under Paragraphs 75 (Work Takeover) and 98 (Access to Financial Assurance).

65. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within fifteen (15) days after the agreement or the receipt of NPS's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after NPS's receipt of such submission until the date that NPS notifies Respondent of any deficiency; and (b) with respect to a decision by the NPS Management Official at the Chief, Contaminants Cleanup Branch level or higher, under Paragraph 54 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the NPS Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

66. Following NPS's determination that Respondent has failed to comply with a requirement of this Settlement, NPS may give Respondent written notification of the failure and describe the noncompliance. NPS may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether NPS has notified Respondent of a violation.

67. All penalties accruing under this Section shall be due and payable to NPS within thirty (30) days after Respondent's receipt from NPS of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to NPS under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 49 (Payments for Future Response Costs).

68. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 65 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 67 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

69. The payment of penalties and Interest, if any, shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement.

70. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of NPS to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that NPS shall not seek civil penalties pursuant to Section 106(b) or Section 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that NPS assumes performance of a portion or all of the Work pursuant to Paragraph 75 (Work Takeover).

71. Notwithstanding any other provision of this Section, NPS may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XVIII. COVENANTS BY NPS

72. Except as provided in Section XIX (Reservations of Rights by NPS), NPS covenants not to sue or to take administrative action against Respondent pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for the Work, Past Response Costs, and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of their obligations under this Settlement. These covenants extend only to Respondent and do not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY NPS

73. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of NPS or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement shall prevent NPS from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

74. The covenants set forth in Section XVIII (Covenants by NPS) do not pertain to any matters other than those expressly identified therein. NPS reserves, and this Settlement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- Settlement;
- a. liability for failure by Respondent to meet a requirement of this Settlement;
 - b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;
 - c. liability for performance of response action other than the Work;
 - d. criminal liability;
 - e. liability for violations of federal or state law that occur during or after implementation of the Work;
 - f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
 - g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
 - h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

75. Work Takeover

a. In the event NPS determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in their performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, NPS may issue a written notice (“Work Takeover Notice”) to Respondent. Any Work Takeover Notice issued by NPS (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Respondent a period of three (3) days within which to remedy the circumstances giving rise to NPS’s issuance of such notice.

b. If, after expiration of the 3-day notice period specified in Paragraph 75.a, Respondent has not remedied to NPS’s satisfaction the circumstances giving rise to NPS’s issuance of the relevant Work Takeover Notice, NPS may at any time thereafter assume the performance of all or any portion(s) of the Work as NPS deems necessary (“Work Takeover”). NPS will notify Respondent in writing (which writing may be electronic) if NPS determines that implementation of a Work Takeover is warranted under this Paragraph 75.b. Funding of Work Takeover costs is addressed under Paragraph 98 (Access to Financial Assurance).

c. Respondent may invoke the procedures set forth in Paragraph 54 (Formal Dispute Resolution) to dispute NPS’s implementation of a Work Takeover under Paragraph 75.b. However, notwithstanding Respondent’s invocation of such dispute resolution procedures, and during the pendency of any such dispute, NPS may in its sole discretion commence and continue a Work Takeover under Paragraph 75.b until the earlier of (1) the date that Respondent remedy, to NPS’s satisfaction, the circumstances giving rise to NPS’s issuance of the relevant Work

Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 54 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, NPS retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANTS BY RESPONDENT

76. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, and this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Past Response Costs, Future Response Costs, and this Settlement; or

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Washington State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

77. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by NPS), other than in Paragraph 74.a (liability for failure to meet a requirement of the Settlement), 74.d (criminal liability), or 74.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

78. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

79. Respondent reserves, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on NPS's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

XXI. OTHER CLAIMS

80. By issuance of this Settlement, the United States and NPS assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or NPS shall not be deemed a party to any contract entered into by Respondent or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement.

81. Except as expressly provided in Section XVIII (Covenants by NPS), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

82. No action or decision by NPS pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

83. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to any of the Sites against any person not a Party hereto. Nothing in this Settlement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

84. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement. The “matters addressed” in this Settlement are the Work, Past Response Costs, and Future Response Costs.

85. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

86. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify NPS in writing no later than sixty (60) days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought

against it for matters related to this Settlement, notify NPS in writing within then (10) days after service of the complaint or claim upon it. In addition, Respondent shall notify NPS within ten (10) days after service or receipt of any Motion for Summary Judgment and within then (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

87. In any subsequent administrative or judicial proceeding initiated by NPS, or by the United States on behalf of NPS, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by NPS set forth in Section XVIII (Covenants by NPS).

88. Effective upon signature of this Settlement by Respondent, Respondent agrees that the time period commencing on the date of its signature and ending on the date NPS receives from Respondent the payments required by Paragraphs 48 (Payment for Past Response Costs) and, if any, Section XVII (Stipulated Penalties) shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States related to the “matters addressed” as defined in Paragraph 84 and that, in any action brought by the United States related to the “matters addressed,” Respondent will not assert, and may not maintain, any defense or claim based upon principles of statute of limitations, waiver, laches, estoppel, or other defense based on the passage of time during such period. If NPS gives notice to Respondent that it will not make this Settlement effective, the statute of limitations shall begin to run again commencing ninety (90) days after the date such notice is sent by NPS.

XXIII. INDEMNIFICATION

89. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as NPS’s authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent’s behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Respondent agrees to pay the United States all costs it incurs, including but not limited to attorneys’ fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

90. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

91. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

92. No later than fifteen (15) days before commencing any Work at the Sites initiated under this Settlement after the Effective Date, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVIII (Notice of Completion of Work), general liability insurance with limits of liability of \$1 million per occurrence, automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required general liability and automobile liability limits. In addition, for the duration of the Settlement, Respondent shall provide NPS with proof of such insurance. Respondent shall resubmit such proof each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to NPS that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Respondent shall ensure that all submittals to NPS under this Paragraph identify the Diablo Dry Dock Site, the Ladder Creek Settling Tank Site and the Newhalem Penstock Site.

XXV. FINANCIAL ASSURANCE

93. In order to ensure completion of the Work, Respondent shall secure financial assurance, initially in the amount of \$1.5 million ("Estimated Cost of the Work"), for the benefit of NPS. The financial assurance must be one or more of the mechanisms listed below, in a form substantially identical to the relevant sample documents available from EPA or under the "Financial Assurance - Settlements" category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>, and satisfactory to NPS. Respondent may use multiple mechanisms if they are limited to surety bonds guaranteeing payment, letters of credit, trust funds, and/or insurance policies.

a. A surety bond guaranteeing payment and/or performance of the Work that is issued by a surety company among those listed as acceptable sureties on federal bonds as set forth in Circular 570 of the U.S. Department of the Treasury;

b. An irrevocable letter of credit, payable to or at the direction of NPS, that is issued by an entity that has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency;

c. A trust fund established for the benefit of NPS that is administered by a trustee that has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency;

d. A policy of insurance that provides NPS with acceptable rights as a beneficiary thereof and that is issued by an insurance carrier that has the authority to issue insurance policies in the applicable jurisdiction(s) and whose insurance operations are regulated and examined by a federal or state agency;

e. A demonstration by Respondent that it meets the financial test criteria of Paragraph 95, accompanied by a standby funding commitment, which obligates Respondent to pay funds to or at the direction of NPS, up to the amount financially assured through the use of this demonstration in the event of a Work Takeover; or

f. A guarantee to fund or perform the Work executed in favor of NPS by a company: (1) that is a direct or indirect parent company of Respondent or has a “substantial business relationship” (as defined in 40 C.F.R. § 264.141(h)) with Respondent; and (2) can demonstrate to NPS’s satisfaction that it meets the financial test criteria of Paragraph 93.

94. Respondent shall, within thirty (30) days after the Effective Date, obtain NPS’s approval of the form of Respondent’s financial assurance. Within thirty (30) days of such approval, Respondent shall secure all executed and/or otherwise finalized mechanisms or other documents consistent with the EPA-approved form of financial assurance and shall submit such mechanisms and documents to the OSC.

95. Respondent seeking to provide financial assurance by means of a demonstration or guarantee under Paragraph 93.e or 93.f must, within thirty (30) days of the Effective Date:

a. Demonstrate that:

(1) Respondent or guarantor has:

i. Two of the following three ratios: a ratio of total liabilities to net worth less than 2.0; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; and a ratio of current assets to current liabilities greater than 1.5; and

ii. Net working capital and tangible net worth each at least six times the sum of the Estimated Cost of the Work and the

amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; or

(2) Respondent or guarantor has:

- i. A current rating for its senior unsecured debt of AAA, AA, A, or BBB as issued by Standard and Poor's or Aaa, Aa, A or Baa as issued by Moody's; and
- ii. Tangible net worth at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and
- iii. Tangible net worth of at least \$10 million; and
- iv. Assets located in the United States amounting to at least 90 percent of total assets or at least six times the sum of the Estimated Cost of the Work and the amounts, if any, of other federal, state, or tribal environmental obligations financially assured through the use of a financial test or guarantee; and

b. Submit to NPS for Respondent or guarantor: (1) a copy of an independent certified public accountant's report of the entity's financial statements for the latest completed fiscal year, which must not express an adverse opinion or disclaimer of opinion; and (2) a letter from its chief financial officer and a report from an independent certified public accountant substantially identical to the sample letter and reports available from EPA or under the "Financial Assurance - Settlements" subject list category on the Cleanup Enforcement Model Language and Sample Documents Database at <https://cfpub.epa.gov/compliance/models/>.

96. Respondent providing financial assurance by means of a demonstration or guarantee under Paragraph 93.e or 93.f must also:

a. Annually resubmit the documents described in Paragraph 95.b within ninety (90) days after the close of Respondent's or guarantor's fiscal year;

b. Notify NPS within thirty (30) days after Respondent or guarantor determines that it no longer satisfies the relevant financial test criteria and requirements set forth in this Section; and

c. Provide to NPS, within thirty (30) days of NPS's request, reports of the financial condition of Respondent or guarantor in addition to those specified in Paragraph 95.b; NPS may make such a request at any time based on a belief that Respondent or guarantor may no longer meet the financial test requirements of this Section.

97. Respondent shall diligently monitor the adequacy of the financial assurance. If Respondent becomes aware of any information indicating that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, Respondent shall notify NPS of such information within seven (7) days. If NPS determines that the financial assurance provided under this Section is inadequate or otherwise no longer satisfies the requirements of this Section, NPS will notify Respondent of such determination. Respondent shall, within thirty (30) days after notifying NPS or receiving notice from NPS under this Paragraph, secure and submit to NPS for approval a proposal for a revised or alternative financial assurance mechanism that satisfies the requirements of this Section. NPS may extend this deadline for such time as is reasonably necessary for Respondent, in the exercise of due diligence, to secure and submit to NPS a proposal for a revised or alternative financial assurance mechanism, not to exceed sixty (60) days. Respondent shall follow the procedures of Paragraph 99 (Modification of Amount, Form, or Terms of Financial Assurance) in seeking approval of, and submitting documentation for, the revised or alternative financial assurance mechanism. Respondent's inability to secure financial assurance in accordance with this Section does not excuse performance of any other obligation under this Settlement.

98. Access to Financial Assurance

a. If NPS issues a notice of implementation of a Work Takeover under Paragraph 75.b, then, in accordance with any applicable financial assurance mechanism and/or related standby funding commitment, NPS is entitled to: (1) the performance of the Work; and/or (2) require that any funds guaranteed be paid in accordance with Paragraph 98.d.

b. If NPS is notified by the issuer of a financial assurance mechanism that it intends to cancel the mechanism, and Respondent fails to provide an alternative financial assurance mechanism in accordance with this Section at least thirty (30) days prior to the cancellation date, the funds guaranteed under such mechanism must be paid prior to cancellation in accordance with Paragraph 98.d.

c. If, upon issuance of a notice of implementation of a Work Takeover under Paragraph 75.b, either: (1) NPS is unable for any reason to promptly secure the resources guaranteed under any applicable financial assurance mechanism and/or related standby funding commitment, whether in cash or in kind, to continue and complete the Work; or (2) the financial assurance is a demonstration or guarantee under Paragraph 93.e or 93.f, then NPS is entitled to demand an amount, as determined by NPS, sufficient to cover the cost of the remaining Work to be performed. Respondent shall, within fifteen (15) days of such demand, pay the amount demanded as directed by NPS.

d. Any amounts required to be paid under this Paragraph 98 shall be, as directed by NPS: (i) paid to NPS in order to facilitate the completion of the Work by NPS or by another person; or (ii) deposited into an interest-bearing account, established at a duly chartered bank or trust company that is insured by the FDIC, in order to facilitate the completion of the Work by another person. If payment is made to NPS, NPS may deposit the payment into the DOI CHF to be retained and used to conduct or finance response actions at or in connection with the Site.

e. All NPS Work Takeover costs not paid under this Paragraph 98 must be reimbursed as Future Response Costs under Section XIV (Payments for Response Costs).

99. **Modification of Amount, Form, or Terms of Financial Assurance.** Respondent may submit, on any anniversary of the Effective Date or at any other time agreed to by the Parties, a request to reduce the amount, or change the form or terms, of the financial assurance mechanism. Any such request must be submitted to NPS in accordance with Paragraph 93, and must include an estimate of the cost of the remaining Work, an explanation of the bases for the cost calculation, and a description of the proposed changes, if any, to the form or terms of the financial assurance. NPS will notify Respondent of its decision to approve or disapprove a requested reduction or change pursuant to this Paragraph. Respondent may reduce the amount of the financial assurance mechanism only in accordance with: (a) NPS's approval; or (b) if there is a dispute, the agreement or written decision resolving such dispute under Section XV (Dispute Resolution). Respondent may change the form or terms of the financial assurance mechanism only in accordance with NPS's approval. Any decision made by NPS on a request submitted under this Paragraph to change the form or terms of a financial assurance mechanism shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum. Within thirty (30) days after receipt of NPS's approval of, or the agreement or decision resolving a dispute relating to, the requested modifications pursuant to this Paragraph, Respondent shall submit to NPS documentation of the reduced, revised, or alternative financial assurance mechanism in accordance with Paragraph 94.

100. **Release, Cancellation, or Discontinuation of Financial Assurance.** Respondent may release, cancel, or discontinue any financial assurance provided under this Section only: (a) if NPS issues a Notice of Completion of Work under Section XXVIII (Notice of Completion of Work); (b) in accordance with NPS's approval of such release, cancellation, or discontinuation; or (c) if there is a dispute regarding the release, cancellation, or discontinuance of any financial assurance, in accordance with the agreement or final decision resolving such dispute under Section XV (Dispute Resolution).

XXVI. MODIFICATION

101. The OSC may modify any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by NPS promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the Parties.

102. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to NPS for approval

outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 1011.

103. No informal advice, guidance, suggestion, or comment by the OSC or other NPS representatives regarding any deliverable submitted by Respondent shall relieve Respondent of their obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVII. ADDITIONAL REMOVAL ACTION

104. If NPS determines that additional removal actions not included in any Removal Work Plan or other approved plan(s) are necessary to protect public health, welfare, or the environment, NPS will notify Respondent of that determination. Unless otherwise stated by NPS, within sixty (60) days after receipt of notice from NPS that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by NPS a work plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon NPS's approval of the plan pursuant to Paragraph 22 (Removal Work Plan and Implementation), Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXVI (Modification).

XXVIII. NOTICE OF COMPLETION OF WORK

105. When NPS determines, after NPS's review of the Sites' Final Reports, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, NPS will provide written notice to Respondent. If NPS determines that such Work has not been completed in accordance with this Settlement, NPS will notify Respondent, provide a list of the deficiencies, and require that Respondent modify any Removal Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Removal Work Plan and shall submit a modified Final Report in accordance with the NPS notice. Failure by Respondent to implement the approved modified Removal Work Plan shall be a violation of this Settlement.

XXIX. INTEGRATION/APPENDICES

106. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement:

- a. "Appendix A" is the Ladder Creek Settling Tank Action Memorandum.
- b. "Appendix B" is the Newhalem Penstock Action Memorandum.

- c. “Appendix C” is the Newhalem Penstock EE/CA Approval Memorandum
- d. “Appendix D” is the Map of the Sites.

XXX. EFFECTIVE DATE

107. This Settlement shall be effective the Day upon which the Settlement has been fully executed by all Parties.

IT IS SO AGREED AND ORDERED:

Diablo Dry Dock Site
Ladder Creek Settling Tank Site
Newhalem Penstock Site
Administrative Settlement and Order on Consent for
EE/CA Investigations and Removal Actions

**U.S. DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE**

Date

Shawn P. Mulligan
Chief
Contaminants Cleanup Branch

Date

Shawn Bengé
Associate Director
Park Planning, Facilities and Lands

Diablo Dry Dock Site
Ladder Creek Settling Tank Site
Newhalem Penstock Site
Administrative Settlement and Order on Consent for
EE/CA Investigations and Removal Actions

**U.S. DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR**

Date

Aaron Moody, Acting Associate Solicitor
Division of Land Resources

Diablo Dry Dock Site
Ladder Creek Settling Tank Site
Newhalem Penstock Site
Administrative Settlement and Order on Consent for
EE/CA Investigations and Removal Actions

FOR _____
City of Seattle, Seattle City Light

Dated

Debra Smith
General Manager and CEO