

**SETTLEMENT AGREEMENT, RELEASE OF CLAIMS  
AND COVENANT NOT TO SUE**

**I. RECITALS**

1. Columbia Riverkeeper issued a notice of intent to sue for violations of the Clean Water Act (“CWA”) on September 19, 2018 (“Notice Letter”), alleging that Public Utility District No. 1 of Chelan County and Commissioners Gary Arseneault, Randy Smith, Ann Congdon, Steve McKenna, and Dennis Bolz, in their official capacities as Commissioners of Public Utility District No. 1 of Chelan County (collectively, “PUD”) are in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a), by discharging pollutants to the waters of the United States and to the State of Washington from the Rocky Reach Dam and the Rock Island Dam and from their associated structures and facilities (collectively, “Dams”) without obtaining National Pollutant Discharge Elimination System (“NPDES”) permits. Rocky Reach Dam (FERC Project No. 2145) is located on the Columbia River between Chelan County and Douglas County, Washington, at or about 47° 31’ 59” N, 120° 17’ 39” W. Rock Island Dam (FERC Project No. 943) is located on the Columbia River between Chelan County and Douglas County, Washington, at or about 47° 20’ 34” N, 120° 5’ 38” W.

2. Columbia Riverkeeper and the PUD (“Parties” or “Party,” as appropriate) and their counsel have engaged in discussions relating to the settlement of this matter and wish to resolve it without litigation.

3. By entering into this Settlement Agreement, Release Of Claims, And Covenant Not To Sue (“Settlement Agreement”), the PUD does not admit and expressly denies liability for all claims alleged by Columbia Riverkeeper in the Notice Letter.

4. The Parties have agreed that settlement of this matter is in the best interest of the Parties and that entry into this Settlement Agreement is the most appropriate means of resolving this dispute.

5. The Parties have entered into this Settlement Agreement without litigation, trial adjudication, or admission of any issue of fact or law.

## **II. BINDING EFFECT**

6. The provisions of this Settlement Agreement shall inure to the benefit of and be binding upon the Parties hereto, including their officials, agents, representatives, officers, commissioners, directors, employees, successors, and assigns. Changes in the organizational form or status of a Party shall have no effect on the binding nature of this Settlement Agreement or its applicability.

7. This Settlement Agreement shall apply to the PUD's operation of the Dams and all structures and facilities associated with the Dams. This Settlement Agreement has no bearing, and does not apply, to other facilities owned or operated by the PUD.

## **III. COMPLIANCE-RELATED MEASURES**

8. Within six months of the Effective Date of this Settlement Agreement, the PUD shall apply for NPDES permits to address alleged discharges of pollutants at the Dams, including, at a minimum, alleged discharges from powerhouse drainage sumps, unwatering sumps, oil-water separators, turbines, wicket gate bearings, and discharges of cooling water systems. This provision does not require a permit application for mere river flow through or over the Dams or for discharges of nonindustrial stormwater. The PUD shall diligently respond to any requests from the Washington Department of Ecology

(“Ecology”) related to the Dams’ NPDES permit applications. Provided that the PUD submits an application to Ecology within the time required by this paragraph, Ecology's request for additional information to process or consider the application shall not be deemed to be noncompliance with this paragraph.

9. Within one (1) year of the Effective Date of this Settlement Agreement, the PUD shall complete an assessment and report on the feasibility, based upon the considerations identified in this paragraph, of switching lubricants used at the Dams to one or more “Environmentally Acceptable Lubricants” (“EALs”)—where EALs are not already employed—for components of the Dams that have the potential to contribute to pollutant discharges. Thereafter, the PUD shall switch to using EALs where feasible and as soon as practicable in accordance with a schedule described in the assessment and report. The assessment of feasibility and the projected schedule will be made solely by the PUD, taking into consideration: applicable legal requirements; facility operational requirements; costs of conversion; risk of potential damage to the equipment; and maintenance and outage schedules. As used in this paragraph, EALs mean those lubricants that have been demonstrated to meet industry standards for biodegradability, toxicity, and bioaccumulation potential that minimize their likely adverse consequences in the aquatic environment compared to conventional lubricants. Upon completion of the assessment and report described in this paragraph, a copy shall be provided to Columbia Riverkeeper.

10. The PUD shall prepare an oil accountability plan that accounts, to the extent feasible, for all oils, greases, and lubricants delivered to the Dams to lubricate components that may contact the Columbia River. The oil accountability plan shall

include annual reports that describe, to the extent feasible, the locations, amounts, types, and uses of all aforementioned oils, greases, and lubricants. The intent of the oil accountability plan is to maintain, insofar as feasible, an accounting of the oil inputs and outputs at the Dams that would help identify leaks that may otherwise go unnoticed. The oil accountability plan shall be prepared within twelve (12) months of the Effective Date of this Settlement Agreement with the first annual report and subsequent reports prepared every twelve (12) months thereafter until NPDES permits are issued for the Dams. Copies of the oil accountability plan and annual report shall be provided to Columbia Riverkeeper upon completion.

11. The PUD shall forward to Columbia Riverkeeper any and all reports of spill events to the Columbia River that the PUD reports to the National Response Center, Ecology, and/or any other government agency; provided, however, that the PUD's obligation to provide such reports shall terminate when the PUD obtains NPDES permit coverage that addresses discharges of pollutants from the Dams. Such reports to Columbia Riverkeeper shall be forwarded as soon as practicable and in no instance more than seven (7) days of the PUD reporting the spill event to a government agency. The PUD's notification to Columbia Riverkeeper shall not constitute an admission by the PUD of a discharge of any pollutant in violation of the CWA or any other law.

#### **IV. RELEASES OF CLAIMS AND COVENANT NOT TO SUE**

12. The Parties agree that this Settlement Agreement represents a good faith compromise of all matters addressed in this Settlement Agreement. Columbia Riverkeeper hereby releases, discharges, and covenants not to assert (by way of commencement or filing of any action, the joinder of the PUD in an existing action, or in

any other fashion) any and all claims, causes of action, suits or demands of any kind in law or in equity against the PUD for any alleged unpermitted discharges of pollutants from the Rocky Reach Dam that occur prior to the issuance of an NPDES permit authorizing discharges from that Dam or three (3) years after the Effective Date of this Settlement Agreement, whichever is earlier. Columbia Riverkeeper further hereby releases, discharges, and covenants not to assert (by way of commencement or filing of any action, the joinder of the PUD in an existing action, or in any other fashion) any and all claims, causes of action, suits or demands of any kind in law or in equity against the PUD for any alleged unpermitted discharges of pollutants from the Rock Island Dam that occur prior to the issuance of a NPDES authorizing discharges from that Dam or three (3) years after the Effective Date of this Settlement Agreement, whichever is earlier.

Provided that an NPDES permit is issued within three (3) years of the Effective Date of this Settlement Agreement, the releases of claims and covenants not to sue provided in this paragraph shall continue through the pendency of any administrative or judicial appeal of the permit other than an appeal by the PUD. In the event that Columbia Riverkeeper commences any action against the PUD for alleged unpermitted discharges from the Dams after the passage of time as described in this paragraph, any ongoing obligations of the PUD under section III of this Settlement Agreement shall terminate.

## **V. MITIGATION**

13. The PUD shall make a payment in the amount of one hundred and five thousand dollars (\$105,000.00) to the Rose Foundation for Communities and the Environment for one or more projects benefiting water quality and/or aquatic habitat of the Columbia River in areas that have a nexus to the Dams' discharges, as described in

**Exhibit A** to this Settlement Agreement. Such payment shall be made within fifteen (15) days of the Effective Date of this Settlement Agreement by check payable and mailed to Rose Foundation for Communities and the Environment, attention: Tim Little, 201 Fourth Street, Suite 102, Oakland, CA 94607, and shall bear the notation “Columbia Riverkeeper/Chelan County Public Utility District Clean Water Act Settlement,” with a copy provided to Columbia Riverkeeper at that same time.

#### **VI. ATTORNEYS’ FEES AND COSTS**

14. Within seven (7) days of execution of this Settlement Agreement, the PUD shall pay Columbia Riverkeeper’s litigation expenses, including its attorneys’ fees and costs, in the amount of eighteen thousand, six hundred, and thirty-eight dollars \$18,638.00 by check payable and mailed to Kampmeier & Knutsen, PLLC, 221 S.E. 11th Avenue, Suite 217, Portland, Oregon 97214, in full and complete satisfaction of any claims that Columbia Riverkeeper may have under the Clean Water Act for fees and costs.

#### **VII. EFFECT OF SETTLEMENT AGREEMENT**

15. The undersigned representative for each Party certifies that he or she is fully authorized by the party he or she represents to enter into this Settlement Agreement and to legally bind such Party and its successors in interest to it.

16. Each Party hereto reserves all legal and equitable remedies available to enforce this Settlement Agreement, which the Parties intend to constitute a legally binding contract, and each Party reserves the right to assert any defenses to any subsequent actions or remedies sought by the other Party to enforce this Settlement Agreement in the future. The provisions of section 505(d) of the Clean Water Act, 33

U.S.C. § 1365(d), regarding awards of costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing Party, shall apply to any proceedings seeking to enforce the terms and conditions of this Settlement Agreement. Not less than thirty (30) calendar days before bringing any such action, the aggrieved Party shall provide written notice to the other Party of the dispute and the Parties or their counsel shall endeavor to confer to discuss means to resolve such dispute.

17. This Settlement Agreement is intended to be and shall constitute the exclusive remedy and final resolution between the Parties and their respective commissioners, officials, agents, representatives, officers, directors, employees, successors and assigns for any claim, demand or cause of action arising under the Clean Water Act related to unpermitted discharges of pollutants from the Dams to the Columbia River, whether known or unknown, asserted or unasserted, which accrued at any time prior to three years after the Effective Date of this Settlement Agreement and such additional time after three years after the Effective Date of this Settlement Agreement as provided in paragraph 12 of this Settlement Agreement.

18. Neither this Settlement Agreement nor the terms and performance thereof shall constitute an admission or adjudication with respect to any allegation in the Notice Letter or an admission or evidence of any violation, negligence, wrongdoing, misconduct or liability on the part of PUD or any of its officials, agents, representatives, commissioners, officers, directors, employees, successors and assigns. This Settlement Agreement shall not constitute or be deemed to constitute an admission or adjudication with respect to any allegation, fact or conclusion of law in or arising out of the Notice Letter.

## VIII. MODIFICATION

19. This Settlement Agreement may be modified only with the written consent of Columbia Riverkeeper and the PUD.

## IX. EFFECTIVE DATE

20. This Settlement Agreement shall take effect upon full execution by the Parties.

## X. NOTIFICATIONS

21. Notifications required by this Settlement Agreement shall be in writing. The sending Party may use any of the following methods of delivery: (1) personal delivery; (2) first-class mail, postage prepaid; (3) a nationally recognized overnight courier, with all fees prepaid; or (4) e-mail. For a notice or other communication under this Settlement Agreement to be valid, it must be delivered to the receiving Party at each of that Party's addresses or emails listed below or to any other address designated by the receiving Party in a notice in accordance with this paragraph.

### **Notifications to Columbia Riverkeeper:**

Simone Anter  
Associate Attorney, Columbia Riverkeeper  
Lauren Goldberg  
Legal & Program Director  
407 Portway Avenue, Suite 301  
Hood River, Oregon 97031  
simone@columbiariverkeeper.org  
lauren@columbiariverkeeper.org

and:

Brian A. Knutsen  
Kampmeier & Knutsen, PLLC  
221 S.E. 11th Avenue, Suite 217  
Portland, OR 97214  
brian@kampmeierknutsen.com

**Notifications to PUD:**

Erik Wahlquist  
General Counsel / Chief Compliance Officer  
Public Utility District No. 1 of Chelan County  
P.O. Box 1231  
Wenatchee, WA 98807-1231  
Erik.Wahlquist@chelanpud.org

Steve Wright  
General Manager  
Public Utility District No. 1 of Chelan County  
P.O. Box 1231  
Wenatchee, WA 98807-1231  
Steve.Wright@chelanpud.org

**XI. ENTIRE AGREEMENT**

22. This Settlement Agreement constitutes the entire agreement between the Parties. There are no other or further agreements, either written or verbal, except as expressly contained herein.

23. Both Parties are co-drafters of this Settlement Agreement. If a court determines that this Settlement Agreement is ambiguous and/or that one Party was the primary drafter of this Settlement Agreement, the court shall not construe this Settlement Agreement against the primary drafter on that basis.

24. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute one and the same Settlement Agreement. Signatures on faxed or emailed copies shall be deemed original signatures.

## **XII. TERMINATION**

25. This Settlement Agreement and all obligations under it, except for Columbia Riverkeeper's release and waiver of claims described in paragraph 12 of this Settlement Agreement, shall terminate upon the PUD's fulfillment of all of its obligations under Sections III, V, and VI of this Settlement Agreement.

## **XIII. SEVERABILITY**

If any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

## **XIV. FORCE MAJEURE**

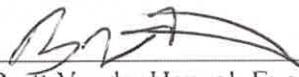
If any circumstance beyond the reasonable control of the PUD prevents or delays the performance of the PUD's obligations under this Settlement Agreement, the date of performance of the obligations shall be postponed for such reasonable time as the Event of Force Majeure requires. An Event of Force Majeure includes, without limitation, events such as fires, floods, other natural disasters, war or war-like hostilities, strikes and other similar circumstances beyond the reasonable control of the PUD. To invoke this Force Majeure clause, the PUD must notify Columbia Riverkeeper within 10 days of learning of the existence of an Event of Force Majeure and its potential to delay or prevent compliance with the PUD's obligations under this Settlement Agreement. The notice shall include a proposed revised date for performance of the obligations. The Parties shall in good faith make all reasonable efforts to designate a mutually agreeable and reasonable revised date for performance. Notwithstanding anything in this Settlement Agreement to the contrary, an Event of Force Majeure does not include events related to

increased costs, including, without limitation, increased costs of fuel, labor, insurance, or other expenses of performing the PUD's obligations.

**XV. NO THIRD-PARTY BENEFICIARIES**

This Settlement Agreement is made solely and specifically between and for the benefit of the Parties and their respective successors and assigns. No other person, including any non-Party recipient of funds under this Settlement Agreement, will have any rights, interest, or claim hereunder or be entitled to any benefits under or on account of this Settlement Agreement, whether as a third-party beneficiary or otherwise.

COLUMBIA RIVERKEEPER

By: \_\_\_\_\_  
Brett VandenHeuvel, Executive Director

Date: 3/19/19

CHELAN COUNTY PUD

By: \_\_\_\_\_  
Steve Wright, General Manager

Date: 3-18-19

# **EXHIBIT A**



3/18/2019

Simone Anter, Associate Attorney  
Columbia Riverkeeper  
407 Portway Ave., Ste. 301  
Hood River, OR 97031

Commissioners  
Chelan County Public Utilities District  
PO Box 1231  
Wenatchee, WA. 98807-1231

Re: Columbia Riverkeeper v. Chelan County Public Utilities District

Dear Ms. Anter and Commissioners,

This letter is intended to provide assurance that I have received the proposed Settlement Agreement between Columbia Riverkeeper and Chelan County Public Utilities District and that I am authorized by my Board of Directors to make the following binding commitments on behalf of the Rose Foundation.

1. I understand that the Rose Foundation should receive environmental mitigation funds from the Chelan County Public Utilities District as specified in the Settlement Agreement.
2. As required by the Settlement Agreement, the Rose Foundation shall only use these funds for one or more projects benefiting water quality and/or aquatic habitat in the Columbia River Basin in areas that have a nexus to the pollution discharges in the instant matter.
3. After the funds have been disbursed, the Rose Foundation shall send a report to the Parties describing how the funds were utilized and demonstrating conformance with the nexus of the Settlement Agreement.

**Rose Foundation for Communities and the Environment**

The Rose Foundation is a 501(c)(3) public charity (tax ID#94-3179772). Its mission is to support grassroots initiatives to inspire community action to protect the environment, consumers and public health. To fulfill this mission, the Rose Foundation conducts the following activities:

- Raise money to award as grants to qualified non-profit organizations conducting charitable operations. The Rose Foundation does not support lobbying activities that are prohibited by Section 501(c)(3) of the IRS Code, and no portion of the Chelan County Public Utilities District funds shall be used to support any political lobbying activities whatsoever.

- Work directly in schools and in the community to encourage environmental stewardship and civic participation.
- Help government efforts to control pollution and protect the environment by encouraging community engagement in local, state and federal research and policy development.

Within this broad range of activities, all of the Rose Foundation's work revolves around one or more of the following strategic themes:

- Build and maintain a bridge between the community and organized philanthropy.
- Protect the natural environment, public health, and community and consumer rights.
- Promote collaboration between labor, environmental, business, consumer and social interests.
- Cultivate a new generation of environmental stewards and social policy leaders.
- Respect the inalienable rights protected by our nation's constitution, and the essential human rights to clean air, clean water, and individual dignity and privacy.

The Rose Foundation is governed by a Board of Directors. Grant applicants are required to submit written proposals, which must include at a minimum specific information about the goals, activities and projected outcomes of the proposed project, background about the charitable applicant, budget information, and a specific funding request. The Foundation may require additional information in order to fully evaluate the application. Applications are first screened by Foundation staff. Staff then makes recommendations to the Foundation Board for action. The Foundation requires all projects to submit written reports within one year of receipt of the grant award describing work conducted under the grant, thereby providing an accountability mechanism over funds awarded. Annual audits by the certified public accounting firm Maze and Associates are posted on the Foundation's website [www.rosefdn.org](http://www.rosefdn.org).

I hope this provides you with the information you require. Please do not hesitate to contact me with any questions, or for additional information at (510) 658-0702 or [tlittle@rosefdn.org](mailto:tlittle@rosefdn.org).

Sincerely,



Tim Little, Executive Director