

**FIRST AMENDMENT TO BOUNDARY HYDROELECTRIC PROJECT
RELICENSING SETTLEMENT AGREEMENT
FERC PROJECT NO. 2144**

AMONG

SEATTLE CITY LIGHT

BUREAU OF INDIAN AFFAIRS

NATIONAL PARK SERVICE

UNITED STATES FISH AND WILDLIFE SERVICE

UNITED STATES DEPARTMENT OF AGRICULTURE FOREST SERVICE

WASHINGTON DEPARTMENT OF FISH AND WILDLIFE

WASHINGTON DEPARTMENT OF ECOLOGY

KALISPEL TRIBE

PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON

AMERICAN WHITEWATER

SELKIRK CONSERVATION ALLIANCE

 **2026**

FIRST AMENDMENT TO BOUNDARY HYDROELECTRIC PROJECT RELICENSING SETTLEMENT AGREEMENT

Table of Contents

	Page
1. Parties.....	1
2. Recitals.....	1
3. General Provisions.....	2
3.1 Effective Date of First Amendment.....	2
3.2 Offer of Settlement	2
3.3 Effectiveness of Settlement Agreement.....	2
4. Scope of First Amendment	3
4.1 Purpose.....	3
4.2 Unmodified Provisions of the Settlement Agreement	3
4.3 Modified Provisions of the Settlement Agreement.....	4
5. List of First Amendment Exhibits and Attachments.....	7
5.1 First Amendment Exhibits	7
5.2 Attachments	7

First Amendment to Boundary Hydroelectric Project Relicensing Settlement Agreement

1. Parties

1.1 This First Amendment to Boundary Hydroelectric Project Relicensing Settlement Agreement (“First Amendment to Settlement Agreement” or “First Amendment”) is entered into this [REDACTED] day of [REDACTED], 2026, between and among Seattle City Light (“SCL”), the Bureau of Indian Affairs (“BIA”), the National Park Service (“NPS”), the US Fish and Wildlife Service (“USFWS”), the US Forest Service (“USFS”), the Kalispel Tribe (“Tribe”), the Washington State Department of Fish and Wildlife (“WDFW”), the Washington State Department of Ecology (“Ecology”), the Public Utility District No. 1 of Pend Oreille County, Washington (“PUD”), the Selkirk Conservation Alliance (“SCA”), and American Whitewater (collectively, the “Parties”).¹

1.2 This First Amendment is binding on and shall inure to the benefit of the Parties and their successors and assigns only.

2. Recitals

WHEREAS,

2.1 The Boundary Hydroelectric Project, FERC No. 2144 (the “Project” or “Boundary Project”) is owned and operated by the City of Seattle, Seattle City Light Department (“SCL”).

2.2 In March 2010, the Parties entered into the Boundary Hydroelectric Project Relicensing Settlement Agreement (the “Settlement Agreement”). The Settlement Agreement included Proposed License Articles that were included as Exhibit 1.

2.3 The Federal Energy Regulatory Commission (“FERC”) approved the Settlement Agreement in its Order Issuing New License, 142 FERC ¶ 62,231 (issued March 20, 2013) (the “License” or “License Order”).

2.4 The Parties intend that all provisions of the Settlement Agreement remain in full force and effect except as expressly amended by this First Amendment.

2.5 SCL engaged and collaborated with interested parties to a) discuss the potential amendment of certain provisions of the License that relate to certain habitat projects, Project-related entrainment mortality, and the conservation hatchery; and b) discuss a potential off-license Interlocal Agreement that would address related matters.

¹ On March 31, 2025, The Lands Council notified SCL that it was withdrawing from the Boundary Hydroelectric Project Relicensing Settlement Agreement, and therefore, will not be taking any position on the First Amendment.

2.6 The Parties believe that the License should be amended in a manner consistent with the Revised Proposed License Articles set forth in Exhibit 1 hereto, the USFS revised Section 4(e) Terms & Conditions set forth in Exhibit 2 hereto, and the USFWS revised recommendations and fishway prescriptions set forth in Exhibit 3 hereto.

2.7 The Parties agree that the Reduction of Project Related Entrainment Mortality program (License Order Appendix E, at Proposed License Article 9 (C), Fish and Aquatic Management Plan (“FAMP”) Section 5.3, and related requirements in the License and appendices) should be replaced with provisions contained in Article 9 (C) of the Revised Proposed License Articles set forth in Exhibit 1 hereto.

2.8 Certain Parties have agreed to the terms of an off-license Interlocal Agreement, included as Attachment 1 hereto. Although the Interlocal Agreement is binding on only a subset of the First Amendment’s Parties, the Parties recognize that the First Amendment is dependent on the execution of the off-license Interlocal Agreement.

2.9 The Parties believe that the revisions to the Settlement Agreement and the Revised Proposed License Articles contained in this First Amendment, together with the provisions of the off-license Interlocal Agreement, will substantially improve conditions for native salmonids in the Pend Oreille basin of interest to the Parties.

TERMS OF AGREEMENT RELATING TO FIRST AMENDMENT

The Parties hereby agree as follows:

3. General Provisions

3.1 Effective Date of First Amendment

This First Amendment shall become effective upon its execution by all Parties.

3.2 Offer of Settlement

Within 15 days of the Effective Date, SCL shall, on behalf of the Parties, file an Offer of Settlement with FERC pursuant to Rule 602 of FERC’s Rules of Practice and Procedure, 18 C.F.R. § 385.602. This filing shall consist of an executed copy of this First Amendment, including the First Amendment Exhibits and Attachments, and a Joint Explanatory Statement. The Joint Explanatory Statement shall request that FERC: (a) approve the Offer of Settlement; and (b) issue an order amending the License for the Boundary Project that incorporates—without modification—the Revised Proposed License Articles set forth in First Amendment Exhibit 1.

3.3 Effectiveness of Settlement Agreement

All provisions of the Settlement Agreement shall remain in full force and effect except as expressly modified by this First Amendment.

4. Scope of First Amendment

4.1 Purpose

The Parties have entered into this First Amendment for the purpose of addressing information and circumstances that arose since the Settlement Agreement became effective and FERC issued the License. This First Amendment also resolves among the Parties issues that have or could have been raised by the Parties in connection with SCL’s application to amend the provisions of the License that are the subject of this First Amendment. Pursuant to the Parties’ obligations and authorities under the Federal Power Act (“FPA”) and subject to the reservations of authorities included in the Settlement Agreement, the Settlement Agreement, as amended by this First Amendment (including Attachment 1), establishes SCL’s obligations for the protection, mitigation and enhancement (“PM&E”) of resources affected by the Project. Additional SCL commitments are set forth in the off-license Interlocal Agreement that is included as Attachment 1 to this First Amendment. Each Party intends that the Settlement Agreement, as amended by this First Amendment (including Attachment 1) is consistent with and satisfies its currently applicable statutory and regulatory rights and responsibilities under the FPA and other applicable law. Each Party intends further that the Settlement Agreement, as amended by this First Amendment (including Attachment 1), sufficiently addresses Project effects or satisfies the FPA and other applicable law with respect to the Project. The Parties agree that this First Amendment (including Attachment 1) is fair and reasonable, and consistent with the standards under the FPA. The Parties further agree that the Settlement Agreement, as amended by this First Amendment (including Attachment 1), provides sufficient PM&E measures for FERC to find a balance of beneficial uses and that the settlement is in the public interest as required under Section 10 of the FPA.

4.2 Unmodified Provisions of the Settlement Agreement

This First Amendment makes no revisions to the following sections of the Settlement Agreement that shall remain in full effect.

- Sections 1 through 3
- Section 5
- Sections 6.1 and 6.2.1
- Sections 6.2.3 and 6.3
- Sections 7.1.1 through 7.1.3
- Section 7.2.2.2
- Sections 7.3.2, 7.3.4, and 7.3.5
- Sections 7.4 through 7.15.4
- Sections 8.1 through 8.3.5
- Section 9
- Section 10
- Section 11
- Section 12

4.3 Modified Provisions of the Settlement Agreement

The following provisions of the Settlement Agreement are modified by this First Amendment:

- Section 4
- Section 6.2.2
- Sections 7.2, 7.2.1, 7.2.2, 7.2.2.1, 7.2.2.3, and 7.2.3
- Sections 7.3.1, 7.3.3, and 7.3.6
- Adding new Section 7.16
- Adding new Section 8.4

An illustration of the modifications to the Settlement Agreement by this First Amendment is provided as Attachment 2 for reference purposes only. The modifications to the Settlement Agreement are as follows:

Section 4 of the Settlement Agreement is revised to add the following definitions:

“First Amendment” means the First Amendment to the Boundary Hydroelectric Project Relicensing Settlement Agreement, entered into on [REDACTED], 2026, and its Exhibits and Attachments.

“License Amendment Proceeding” means the proceeding and all related proceedings before FERC to approve the Offer of Settlement associated with the First Amendment and to issue an order amending the license for the Boundary Project that incorporates, without modification, the Revised Proposed License Articles set forth in First Amendment Exhibit 1.

“Revised Proposed License Articles” means the provisions set forth in First Amendment Exhibit 1 that the Parties will request that FERC include, without modification, in the license for the Boundary Project, replacing certain Proposed License Articles already included in the license.

Section 4 of the Settlement Agreement is revised so that the definition of “Settlement Agreement” reads as follows:

“Settlement Agreement” or “Agreement” means the entirety of this Settlement Agreement document and its Settlement Exhibits, Appendices and Attachments 1 and 2 (the Mill Pond Interlocal Agreement and the Cold Water Release MOA), as amended by the First Amendment. Settlement Attachments 1 and 2 and First Amendment Attachment 1 are included for FERC’s informational purposes.

Section 6 of the Settlement Agreement is revised to read as follows:

6.2.2 Each Party reserves any authority it may have pursuant to the FPA in the event that: (a) the First Amendment is not filed with FERC; (b) the Party withdraws from this Agreement pursuant to the procedures set forth in Section 10.1; or (c) the Settlement Agreement is terminated pursuant to Section 10.3. Any other Party reserves the right to contest the existence and/or exercise of any such authority.

Section 7 of the Settlement Agreement is revised to read as follows:

7.2 Support Adoption of License Terms and Conditions

In the License Amendment Proceeding and all related proceedings in which they participate, all Parties shall support, as appropriate, incorporation of the Revised Proposed License Articles into the amended license issued by FERC.

7.2.1 Recommendations under Sections 10(a) and 10(j) and Comments Filed in the Context of the License Amendment Proceeding

Recommendations under FPA Sections 10(a) and 10(j) shall not contain or recommend a Material Modification. Any comments or responses to comments filed in the context of the License Amendment Proceeding shall not request a Material Modification.

7.2.2 Mandatory Terms and Conditions that Contain Material Modifications

7.2.2.1 If any of the Mandatory Terms and Conditions contain a Material Modification of this Settlement Agreement, the Settlement Agreement shall be deemed modified to conform to the Mandatory Terms and Conditions unless a Party provides Notice to the other Parties that it objects and initiates dispute resolution under Section 9 of the Settlement Agreement within 30 days after the term or condition is filed with FERC. Dispute resolution will consider modifications to the Settlement Agreement or amendment of the Mandatory Term or Condition. If the USFS submits Section 4(e) conditions to FERC that are in all material respects consistent with the revised amended preliminary Section 4(e) conditions, attached to the First Amendment as First Amendment Exhibit 2, the Parties agree that those Section 4(e) conditions will not be considered to contain a Material Modification. If the DOI submits Section 18 prescriptions to FERC that are in the form of First Amendment Exhibit 3, Proposed License Article 9 (B) (Upstream Fish Passage) and Revised Proposed License Article 9 (C) (Reduction of Project Related Entrainment Mortality) (contained in First Amendment Exhibit 1) or that generally reserve DOI's authorities consistent with the definition of Material Modification above, the Parties agree that those final Section 18 prescriptions will not be considered to contain a Material Modification.

7.2.2.3 Except as provided in Section 7.5.2 or if this settlement is terminated pursuant to Section 10 of the Settlement Agreement, if any of the final Mandatory Terms and Conditions contain a Material Modification after a final and non-appealable administrative or judicial decision, this Settlement Agreement shall be deemed modified to conform to that decision.

7.2.3 Proceedings under the Energy Policy Act of 2005

Regarding any of the Mandatory Terms and Conditions filed with FERC in the License Amendment Proceeding that do not contain a Material Modification of this Settlement Agreement, each Party waives any right it may have to request an agency trial-type hearing on issues of material fact under Sections 4(e) and 18 of the FPA and to propose alternatives under Section 33 of the FPA. Under the foregoing circumstances, the Parties shall not support any trial-type hearing requested by any non-Party and will support USFS and DOI, as appropriate, if a trial-type hearing is requested by any non-Party. If a non-Party requests a trial-type hearing, the Parties may intervene to support the Mandatory Terms and Conditions, and USFS and DOI shall use good faith efforts to defend its challenged Mandatory Terms and Conditions.

Notwithstanding the above, regarding any of the Mandatory Terms and Conditions filed with FERC in the License Amendment Proceeding that do contain a Material Modification of this Settlement Agreement, each Party reserves any rights to challenge the Mandatory Terms and Conditions or request an agency trial-type hearing on issues of material fact under Sections 4(e) and 18 of the FPA and to propose alternatives under Section 33 of the FPA.

7.3 ESA Consultation

7.3.1 Notwithstanding Section 5.1 hereof, the Parties recognize that FERC will consult and may confer with USFWS pursuant to Section 7 of the ESA on issuance of an amended license. USFWS anticipates that this Settlement Agreement, including the measures in First Amendment Exhibit 3, will be adequate to: (a) avoid a jeopardy finding for species presently listed as threatened or endangered; (b) avoid a finding of destruction or adverse modification of designated or proposed critical habitat for species presently listed as threatened or endangered; and (c) minimize incidental take of species presently listed as threatened or endangered. USFWS shall use reasonable efforts to exercise its authority under the ESA in a manner that allows this Agreement to be fulfilled. By signing the First Amendment, however, USFWS is not making a pre-decisional determination of the outcome of any consultation and expressly reserves the right to take such future actions as may be necessary to meet its obligations under the ESA.

7.3.3 Nothing in this Settlement Agreement limits or waives the authority of USFWS to take whatever action it deems necessary if FERC modifies the Revised Proposed License Articles in a manner causing effects to listed species or critical habitat not previously analyzed, or fails to adopt as License conditions the terms and conditions in the Incidental Take Statements.

7.3.6 Unless this Settlement Agreement is terminated pursuant to Section 10 herein, if any BiOp would require a Material Modification of this Settlement Agreement after a final and non-appealable administrative or judicial decision, this Settlement Agreement shall be deemed modified to conform to that decision.

Section 7 of the Settlement Agreement is revised to add the following provision:

7.16 Second Species Fund and Production of Fish for Regional Benefit

SCL shall undertake to provide funding for the Second Species Fund (“SSF”) and to produce fish for the benefit of the Region as set forth in the Interlocal Agreement for Creation of the Second Species Fund and Provision of Regional Fishery Benefits (“Interlocal Agreement”) included as First Amendment Attachment 1. Termination of the Interlocal Agreement per the terms of the Interlocal Agreement Section 7(b) or 7(c) may constitute grounds for termination of this Settlement Agreement or for USFWS’ exercise of its reserved Section 18 authority.

Section 8 of the Settlement Agreement is revised to add the following provision:

8.4 Conflict Between Revised Proposed License Articles and Fish and Aquatics Management Plan

To the extent a conflict arises between the terms of the Revised Proposed License Articles and the Fish and Aquatics Management Plan (“FAMP”), the Revised Proposed License Articles take

precedence and the FAMP shall be interpreted in a manner that is consistent with the Revised Proposed License Articles.

5. List of First Amendment Exhibits and Attachments

5.1 First Amendment Exhibits

Exhibit 1: Revised Proposed License Articles

Articles 1 – 8: NOT REVISED

Article 9: Fish and Aquatic Resources (REVISED WHERE NOTED)

9 (A) Mainstem Fish Community and Aquatic Habitat Measures
(REVISED)

9 (B) Upstream Fish Passage

9 (C) Reduction of Project Related Entrainment Mortality (REVISED)

9 (D) Tributary Non-native Trout Suppression and Eradication

9 (E) Tributary Fish Community and Aquatic Habitat Measures
(REVISED)

9 (F) Mill Pond Dam Site Monitoring and Maintenance

9 (G) Native Salmonid Conservation Program (REVISED)

9 (H) Recreational Fish Stocking Program

9 (I) Fund for Habitat Improvements in Tributaries to Sullivan Lake

Article 10: NOT REVISED

Exhibit 2: USFS draft Section 4(e) Terms & Conditions (REVISED)

Exhibit 3: USFWS draft Fishway Prescriptions (REVISED)

5.2 Attachments

Attachment 1: Interlocal Agreement for Creation of the Second Species Fund and Provision of Regional Fishery Benefits

Attachment 2: Illustration of Revisions to 2010 Settlement Agreement

Attachment 3: Illustration of Revisions to Exhibit E of 2013 License Order, Proposed License Articles

IN WITNESS WHEREOF the Parties have executed this First Amendment as of the date last signed below.

SEATTLE CITY LIGHT

Date_____

By_____
NAME_____
TITLE_____

U.S. FOREST SERVICE

Date_____

By_____
NAME_____
TITLE_____

U.S. FISH AND WILDLIFE SERVICE

Date_____

By_____
NAME_____
TITLE_____

BUREAU OF INDIAN AFFAIRS

Date_____

By_____
NAME_____
TITLE_____

NATIONAL PARK SERVICE

Date_____

By_____
NAME_____
TITLE_____

WASHINGTON DEPARTMENT OF FISH
AND WILDLIFE

Date_____

By_____

NAME_____

TITLE_____

WASHINGTON DEPARTMENT OF
ECOLOGY

Date_____

By_____

NAME_____

TITLE_____

PEND OREILLE PUBLIC UTILITY
DISTRICT

Date_____

By_____

NAME_____

TITLE_____

KALISPEL TRIBE

Date_____

By_____
NAME_____
TITLE_____

SELKIRK CONSERVATION ALLIANCE

Date_____

By_____
NAME_____
TITLE_____

AMERICAN WHITEWATER

Date _____

By _____

NAME _____

TITLE _____