

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

)	Project No. 2058
)	(Cabinet Gorge)
Avista Corporation)	
)	Project No. 2075
)	(Noxon Rapids)

CLARK FORK SETTLEMENT AGREEMENT

INTRODUCTION AND PURPOSE

A. This Settlement Agreement, dated as of January 1, 1999, ("Agreement") is made and entered into pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission") (18 CFR §385.602) by and between the following entities who shall hereinafter be referred to as a "Party" and collectively as "Parties": Avista Corporation ("Avista"); the United States Fish and Wildlife Service ("USFWS"); the United States Department of Agriculture, Forest Service ("USFS"); the Confederated Salish and Kootenai Tribes; the Kalispel Tribe; the Kootenai Tribe of Idaho; the Coeur d'Alene Tribe; Trout

Unlimited; the Noxon-Cabinet Shoreline Coalition; the Idaho Division of Environmental Quality (“IDEQ”); the Idaho Department of Fish and Game (“IDFG”); the Idaho Department of Parks and Recreation; the Montana Department of Environmental Quality (“MDEQ”); the Montana Department of Fish, Wildlife and Parks; the Montana Department of Natural Resources and Conservation; the Green Mountain Conservation District; the Montana State Historic Preservation Officer; the Idaho State Historic Preservation Officer; Sanders County, Montana; the Montana B.A.S.S. Federation; the Cabinet Resource Group; Idaho Rivers United; the Rock Creek Alliance; the Elk Creek Watershed Council; the Lake Pend Oreille Idaho Club; the Tri-State Implementation Council, and the Alliance for the Wild Rockies.

B. This Agreement sets forth the agreement of the Parties with regard to the environmental, cultural, public recreation, fishery, wildlife, operational and related measures (hereinafter “Protection, Mitigation and Enhancement Measures,” or “PM&Es”) which Avista will undertake in consultation with the other Parties pending issuance of a new FERC license and during the term of the new FERC license for Avista’s Cabinet Gorge Project (FERC No. 2058) and Noxon Rapids Project (FERC

No. 2075) (hereinafter "Cabinet Gorge," "Noxon Rapids," and, collectively, "Clark Fork Projects" or "Projects"). This Agreement also establishes the obligations of the Parties to support this Agreement before FERC and to support the issuance of a new license for the Clark Fork Projects which is consistent with the terms of this Agreement.

AGREEMENT

EFFECTIVE DATE AND TERM

1. This Agreement shall become effective and binding on March 1, 1999, and shall continue for the term of the new license to be issued by FERC for the Clark Fork Projects plus the term of any annual license which may be issued upon expiration of the new license and shall be binding upon the successors and assigns of the Parties.

GENERAL AGREEMENTS AND UNDERSTANDINGS OF THE PARTIES

New License Should Conform to Settlement

2. The Parties agree that FERC should issue a new license to Avista which is consistent with this Agreement and which contains conditions that properly reflect the PM&Es described in and made a part of this Agreement which Avista has agreed to

undertake and implement pending issuance of a new license, including the term of any annual licenses, and during the term of the new license. The Parties further agree that with respect to matters covered by this Agreement, FERC should not include in the new license additional or supplemental conditions except as otherwise provided or contemplated in this Agreement or except as may be necessary to enable FERC to ascertain and monitor Avista's compliance with the conditions of the new license and its regulations under the Federal Power Act ("FPA"). The Parties understand that before it may issue a new license, FERC must comply with a number of statutory requirements including Section 4(h)(11)(A)(ii) of the Northwest Power Act.

Term of License

3. In recognition of Avista's significant obligations under this Agreement, of the fact that it sought and obtained the acceleration of the termination date of the Noxon Rapids license, the fact it has committed to commence implementation of this Agreement two years prior to license expiration, and of the adaptive management component of this Agreement, the Parties agree that the term of the new license for the Clark Fork Projects should be for 45 years.

Rehearing and Judicial Review

4. The provisions of this Agreement are not severable and this Agreement is made with the understanding that each term is in consideration and support of every other term and is a necessary part of the entire Agreement. In the event that FERC issues a new license with modifications or issues a new license with terms or conditions that are materially inconsistent with the Agreement, the Agreement shall, except as provided in Paragraph 5, be considered modified to conform to the terms of the new license unless any of the Parties advises the other Parties in writing, within 30 days after the issuance of such license, of its objection to the modification, change or condition. The Parties shall then immediately commence negotiations for a period not to exceed 90 days to resolve the issue(s) and modify the Agreement as needed. If agreement cannot be reached within the 90 day period or any extended period to which the negotiating Parties may agree, an objecting Party other than Avista may, by notice to all the other Parties, either withdraw from the Agreement or elect not to be bound by the modification, change or condition except to the extent the Party is otherwise subject to the jurisdiction of the FERC with respect to that modification,

change or condition. The foregoing shall not preclude any Party from seeking rehearing or judicial review with respect to the modification, change or condition and the time period within which the parties must attempt to negotiate a resolution of the issue(s) may, at the option of the objecting Party, be tolled pending the disposition of the rehearing request and, if applicable, a petition for judicial review.

Conditions Omitted by FERC

5. In the event that FERC issues a new license that omits any conditions of this Agreement or reduces any of Avista's obligations under this Agreement, Avista agrees that it will nonetheless be bound by all such conditions and that such conditions will be enforceable in a court of competent jurisdiction by and against any of the Parties. The Parties agree, however, that nothing in this Agreement is intended to be construed as a waiver by any agency or sovereign of any immunity from suit which it may otherwise have.

Funding Suspension

6. Avista agrees that prior to the issuance of a new FERC license, it will not suspend or terminate its funding and implementation of this Agreement if another Party

exercises the withdrawal rights provided by this Agreement and withdraws from this Agreement, unless Avista reasonably determines that the withdrawal of that Party could adversely affect the likelihood of the acceptance of this Agreement by FERC as part of the order issuing a new license.

Reopeners

7. The Parties agree that they will not invoke or rely upon any reopener clause contained in the new license for the purpose of seeking changes to or otherwise seek to modify this Agreement or the new license with respect to any matter covered by this Agreement unless that Party determines that new information reasonably demonstrates that applicable provisions of this Agreement are inconsistent with the public interest and affords the Management Committee, to be established under Paragraph 26 of this Agreement, at least 90 days to consider the new information and that Party's position. Said Party shall not be required to comply with this 90 day notice provision if it believes an emergency situation exists, or as necessary to comply with the Endangered Species Act ("ESA"). Notwithstanding the provisions of this paragraph, the Parties agree that USFWS may seek reopening of the new license as

necessary to comply with the ESA and implementing regulations, or pursuant to its authority under Section 18 of the FPA as set forth in Paragraph 17 of this Agreement, and the parties agree that FERC should reserve authority to reopen the license in such circumstances.

Cooperate in Studies

8. The Parties agree to cooperate in conducting studies and monitoring activities to be implemented pursuant to this Agreement and in providing reasonable assistance in any approval or permitting process that may be required for implementation of this Agreement; provided that any Parties who are governmental agencies are not by this commitment compromising or relinquishing any legal authority they may have in those situations where they may be the permitting agency.

Establishes No Precedents

9. The Parties understand and agree that this Agreement establishes no principles or precedents with regard to any issue addressed herein or with regard to any Party's participation in the next relicensing proceeding and that none of the Parties to this Agreement will cite either this Agreement or its approval by FERC as establishing

any principles or precedents except with respect to the matters to which the Parties have herein agreed. The Parties further understand and agree that no Party to this Agreement shall be deemed to have approved, accepted, agreed to or otherwise consented to any operation, management, valuation or other principle underlying any of the matters herein, except as expressly provided herein.

Agency Environmental Statements

10. Nothing in this Agreement shall be construed to predetermine the outcome of any analysis under environmental assessments or statements or decisions based on those assessments or statements which must be undertaken by any of the state or federal agencies which are Parties to this Agreement. In addition, nothing in this Agreement shall preclude the IDFG from exercising its full prerogatives under the NEPA process, including scoping, alternative development, the effects of alternatives, and records of decisions.

Successors and Assigns

11. This Agreement shall be binding upon the Parties and their successors and assigns and any successor licensee shall assume and be responsible for the same

funding obligations of Avista established by this Agreement including obligations with respect to interest on carry-over funds. No change in the status of any Party shall in any way alter any Party's interests, rights, or obligations under this Agreement. No interest, right or obligation under this Agreement shall be transferred or assigned by any Party hereto without the approval of the Management Committee to be established under Paragraph 26 of this Agreement. Nothing herein shall affect the right of Avista to transfer its existing licenses or its new license including any interest in these Projects nor the right of any Party to oppose any license transfer.

Liability of Parties

12. By entering into this Agreement, the Parties other than Avista have not accepted any legal liability for the operation of the Clark Fork Projects.

Relates to Specific Matters

13. The provisions of this Agreement are intended to relate only to the specific matters set forth or referred to herein, and no party waives any claim, right or authority which it may otherwise have with respect to any matters not expressly provided for or referred to herein. To the extent a federal, state or tribal governmental

Party has not expressly waived the exercise of its authorities and rights in this Agreement, it fully retains such authorities and rights with respect to this and other proceedings.

Responsibilities Under Existing Laws

14. Nothing in this Agreement shall be construed to relieve the parties of their responsibilities under any applicable law or to diminish the authority of any government or governmental agency over the Clark Fork Projects, including but not limited to authority under any provisions of the FPA.

SEPARATE AGENCY STATUTORY RESPONSIBILITIES

Section 10(j)

15. The state and federal fish and wildlife agency Parties represent that the measures which Avista would be required to implement under this Agreement would adequately and equitably protect, mitigate damages to, and enhance fish and wildlife, including related spawning grounds and habitat, within the meaning of § 10(j) of the FPA. Such agencies represent that they are not aware of any reason at this time which would require that they submit any recommended § 10(j) condition(s) to FERC which

would be inconsistent with or additive to the obligations of Avista under this Agreement. Should, for whatever reason, any recommended § 10(j) condition(s) be materially inconsistent with the terms of this Agreement, any Party may withdraw from this Agreement.

Montana Major Facility Siting Act

16. The Parties understand that MDEQ is required by State law (Montana Major Facility Siting Act, Title 75, Ch. 20, MCA) to intervene in FERC proceedings involving facilities in the State of Montana and to make recommendations to FERC on behalf of the state. By executing this agreement, MDEQ represents that with the exception of an issue relating to the exercise of Avista's water rights at Noxon Rapids it is not aware of any reason at this time which would require that it submit any recommendation(s) to FERC which would be inconsistent with or additive to this Agreement. Should, for whatever reason, MDEQ make any recommendation(s) to FERC which are materially inconsistent with or additive to the terms of this Agreement, any Party may withdraw from this Agreement.

Section 18

17. USFWS represents that, because of this Agreement and the measures Avista would be required to implement thereunder, neither the Secretary of the Department of the Interior, the USFWS nor any delegate thereof will prescribe the construction of any fishway(s) for the Clark Fork Projects pursuant to § 18 of the FPA, 16 U.S.C. § 811, as a condition of a new license, provided that the FERC includes in the new license a full reservation of the Secretary's authority, pursuant to § 18 of the FPA, to prescribe upstream and downstream fishways after the new license for the Clark Fork Projects is issued, said authority to be used at the Secretary's discretion. The USFWS hereby reserves the Secretary's authority pursuant to § 18 of the FPA to prescribe upstream and downstream fishways after the issuance of new licenses. The USFWS further agrees, however, that no such use of that reserved authority shall be made as long as the fishery related PM&Es set forth in this Agreement are implemented by Avista with diligence and good faith and continue to show a reasonable likelihood of adequately increasing the target populations, as determined by the Secretary following consideration of any relevant information provided by Avista or other Parties. The Parties agree that any fishways ordered by FERC shall be paid

for in full by Avista independent of and in addition to the funding commitments otherwise specified in this Agreement or in the attached PM&Es, except as provided in paragraph VI(d) of Appendix C of the PM&Es.

Section 4(e)

18. The Parties agree that nothing in this Agreement is intended to diminish the management authority of the USFS over any National Forest System lands and nothing in this Agreement is intended to waive this authority or to imply that National Forest management decisions will be made or influenced by the actions and recommendations of the committees established by this Agreement. USFS does represent that, given the measures Avista is required to implement under this Agreement, including Avista's commitment to spend operation and maintenance dollars as estimated by USFS for their recreation facilities within the project, as described in the Recreation Resource Management Plan (Appendix H), it is presently unaware of any reason which would require it to submit any mandatory conditions for the Clark Fork Projects pursuant to Section 4(e) of the FPA which would be materially inconsistent with the terms of this Agreement. Should USFS, for whatever reason,

submit mandatory Section 4(e) conditions to FERC which are materially inconsistent with this Agreement, any Party may withdraw from this Agreement. USFS agrees that should it determine that any of the Section 4(e) conditions it intends to submit may be materially inconsistent with this Agreement, it will so advise the Management Committee (to be established under Paragraph 26 of this Agreement) and attempt to afford the Committee 90 days to discuss and consider such conditions.

Endangered Species Act

19. USFWS and the other Parties recognize that it will be necessary for FERC, pursuant to § 7(a) of the ESA, to engage in formal consultation with the USFWS regarding certain listed species and the habitat of such species before it may issue a new license for the Clark Fork Projects. The Parties further recognize that in the course of such consultation USFWS has an obligation under that statute to determine whether the relicensing of the Clark Fork Projects is likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat and, if so, to propose to FERC those

“reasonable and prudent” alternatives which USFWS believes would not violate the ESA and can be taken by FERC or Avista. By its execution of this Agreement USFWS is not waiving its authorities, rights or obligations under the ESA. The USFWS does believe at this time that the terms of this Agreement are consistent with the conservation of listed species. If, for whatever reason, the USFWS, following formal consultation, does submit to FERC reasonable and prudent alternatives which would be materially inconsistent with or additive to the terms of this Agreement, any Party may withdraw from this Agreement. If USFWS determines that any of the reasonable and prudent alternatives they propose would be materially inconsistent with this Agreement, they will afford the Management Committee (to be established under Paragraph 26 of this Agreement) 90 days to discuss and consider such alternatives.

Water Quality Certifications

20. If either IDEQ or MDEQ issues Section 401 water quality certification(s) for the Clark Fork Projects that is materially inconsistent with or additive to the terms of this Agreement, any Party can withdraw from its participation in this Agreement by providing written notice thereof to the other Parties within 30 days from the date of

issuance of any such certification(s) or, in the event any Party seeks judicial review, 30 days from the date of any final court decision. If either IDEQ or MDEQ issues water quality certification(s) that is consistent with the provisions of this Agreement, the Parties agree not to contest these certifications in any forum. Avista will distribute to the Parties copies of any 401 certifications which are issued, including copies of any draft or tentative certifications that may be issued by the agencies for comment. If either IDEQ or MDEQ determines that any provisions of a 401 certification that it proposes to issue will be materially inconsistent with the terms of this Agreement, it will make reasonable efforts to provide the Management Committee an opportunity to discuss and consider those provisions.

PROTECTION, MITIGATION, AND ENHANCEMENT MEASURES

PM&Es

21. The parties agree that FERC should issue new licenses for the Clark Fork Projects with conditions which provide for the implementation by Avista of the PM&Es described below. The Parties further agree that the Funding Table attached hereto as Appendix U summarizes Avista's monetary obligations in connection with the implementation of the PM&Es. In the event of any inconsistency between any of the PM&Es and the Funding Table, the PM&Es shall control.

(a) For the purpose of offsetting the power peaking and reservoir operational impacts of the Cabinet Gorge and Noxon Rapids Projects to native salmonid species, Avista shall fund and implement the Idaho Tributary Habitat Acquisition and Fishery Enhancement Program PM&E which is attached hereto as Appendix A.

(b) For the purpose of offsetting the power peaking and reservoir operational impacts of the Cabinet Gorge and Noxon Rapids Projects to native salmonid species and recreational fisheries, Avista shall fund and implement the

Montana Tributary Habitat Acquisition and Recreational Fishery Enhancement Program PM&E which is attached hereto as Appendix B.

(c) For the purpose of meeting the goal of increasing the viability of native salmonid populations by providing fish passage between tributaries upstream of Cabinet Gorge, Noxon Rapids and Lake Pend Oreille, Avista shall fund and implement a fish passage program in accordance with the terms of the Fish Passage/Native Salmonid Restoration Plan PM&E which is attached hereto as Appendix C.

(d) For the purpose of meeting the goal of increasing the viability of bull trout populations by reducing poaching, accidental harvest, and habitat loss, Avista shall fund and implement an education and enforcement program in accordance with the terms of the Bull Trout Protection and Public Education Project PM&E which is attached hereto as Appendix D.

(e) For the purpose of assisting local landowner groups to protect and improve lower Clark Fork River and Lake Pend Oreille tributary watersheds with the expectation that native salmonid and recreational fisheries, water quality and wildlife habitats will be benefited, Avista will fund watershed councils in accordance with the

Watershed Council Program PM&E attached hereto as Appendix E.

(f) For the purpose of meeting the goal of maintaining and improving water quality in the vicinity of the Projects, Avista shall fund and implement the Water Resources Program PM&E which is attached hereto as Appendix F and which includes the following measures: (1) systemic, long term monitoring of nutrients and metals which enter, are retained in and which pass the Projects; (2) the monitoring of Noxon reservoir stratification and the evaluation of nutrients and heavy metals; (3) evaluation of tissues from aquatic organisms for the presence of heavy metals and other substances; (4) developing plans for monitoring maintenance, construction, and emergency activities associated with the Projects and protecting water quality from the impacts thereof; and (5) the implementation of gas supersaturation monitoring, control and mitigation plans.

(g) For the purpose of ensuring that Project lands can reasonably satisfy a variety of competing resource demands and for the purpose of ensuring the implementation of a land classification system, a land and reservoir use permitting system, and appropriate monitoring and enforcement mechanisms, Avista shall fund

and implement the Land Use Management Plan PM&E which is attached hereto as Appendix G.

(h) For the purpose of maintaining and managing appropriate recreational facilities at the Projects and developing new recreational facilities in the vicinity of the Projects to effectively meet recreation demand during the term of the new licenses, Avista shall fund and implement a public recreation plan in accordance with the terms of the Recreation Resource Management Plan PM&E attached hereto as Appendix H.

(i) For the purpose of protecting important aesthetic resources on Project lands, Avista shall fund and implement the Aesthetic Management Plan PM&E which is attached hereto as Appendix I.

(j) For the purpose of providing organization and presentation of the various wildlife, botanical, and wetland PM&E measures within a single, comprehensive management plan, Avista shall fund and implement the Wildlife, Botanical and Wetland Management Plan PM&E which is attached hereto as Appendix J.

(k) For the purpose of promoting enhancement of wildlife, botanical and wetland resources in the vicinity of Project lands, Avista shall fund and implement the Wildlife Habitat Acquisition, Enhancement and Management Program PM&E which is attached hereto as Appendix K.

(l) For the purpose of protecting Black Cottonwood habitats on Avista property surrounding the reservoirs, Avista shall fund and implement the Black Cottonwood Habitat Program PM&E which is attached hereto as Appendix L.

(m) For the purpose of protecting and enhancing wetland areas within the Project boundary, Avista shall fund and implement the Wetlands Enhancement Program PM&E which is attached hereto as Appendix M.

(n) For the purpose of protecting and enhancing the habitat of bald eagles, peregrine falcons and common loons on Project lands and waters, Avista shall fund and implement the Bald Eagle, Peregrine Falcon and Common Loon Plan PM&Es which are attached hereto as Appendix N.

(o) For the purpose of protecting and enhancing wildlife habitat associated with the Clark Fork River Delta and surrounding area and controlling

erosion, Avista shall fund and implement the Clark Fork Delta Habitat and Erosion Control Program PM&E which is attached hereto as Appendix O.

(p) For the purpose of protecting and managing certain forest wildlife habitats on Project lands, Avista shall fund and implement the Forest Habitat Program PM&E which is attached hereto as Appendix P.

(q) For the purpose of protecting and enhancing certain island wildlife habitats within the Project reservoirs, Avista shall fund and implement the Reservoir Island Habitat Program PM&E attached hereto as Appendix Q.

(r) For the purpose of protecting and enhancing eligible historic and prehistoric resources on Project lands, Avista shall fund and implement the Clark Fork Heritage Resource Program and the Clark Fork Heritage Resources Management Program as agreed to in the Programmatic Agreement. The Programmatic Agreement and the Clark Fork Heritage Resource Program are attached hereto as Appendix R.

(s) For the purpose of designing and implementing effective erosion-control measures to protect important resource values on lands affected by Project induced erosion, Avista shall fund and implement the Erosion Fund and Shoreline

Stabilization Guidelines Program PM&E which is attached hereto as Appendix S.

(t) For the purpose of mitigating for the impacts of Project operations, Avista shall operate the Projects in accordance with the terms and conditions of the Project Operating Limits Plan PM&E which is attached hereto as Appendix T.

Annual Plans and Budgets

22. In the case of any PM&Es which provide for the expenditure of funds for measures and programs as agreed upon from time to time by the Management Committee, Avista will file each year or at such other times as FERC finds appropriate: (1) a plan which shows the amounts of money proposed to be spent or contributed including the purposes for which the expenditures are to be made and (2) a subsequent statement showing the amounts actually spent or contributed during the relevant period of time. Such plans and statements will be submitted to the Management Committee for approval prior to being submitted to FERC.

Inflation/Deflation Index - Interest Rate

23. In the case of any PM&E which establishes a fund or an amount of money to be made available by Avista on an annual basis, the amount of the funds to be made

available during the second Avista fiscal year (January 1 through December 31) year after this Agreement becomes effective, or on such other anniversary date as the Management Committee may establish for administrative convenience, and each year thereafter, be adjusted by calculating the percentage change of the Gross Domestic Product-Implicit Price Deflator (“GDP-IPD”) as reported by the Bureau of Economic Analysis, Department of Commerce, over the most recent four quarters for which the Department has reported the GDP-IPD, and adjusting the funding for that year by this percentage change. In the event that applicable funds, as described in the Funding Summary Table (Appendix U) to be made available on an annual basis by Avista are not spent or used in that year, the amount of any unexpended funds carried forward shall, at the end of the year in question and each year thereafter, be increased by the yield in percent per year, compounded daily, on U.S. Treasury securities at a constant maturity of one year, as reported in the Federal Reserve Statistical Release H-15 (Daily Update on Selected Interest Rates for January 1) or the most recent reporting date prior to January 1, of the given year.

Accounting

24. Avista shall commence the funding and implementation of the PM&Es on March 1, 1999. Within six months of the effective date of the new license, Avista, in consultation with the Management Committee, shall cause an appropriate accounting to be made and, in consultation with the Management Committee, shall determine and inform the FERC and all Parties of the amounts spent by Avista prior to the issuance of the new license pursuant to this Agreement and of Avista's remaining funding obligations under each PM&E during the term of the new license.

Land Protection

25. Whenever Avista acquires lands or interests in lands ("PM&E lands") for the purpose of implementing any of the PM&Es, it shall at the time such PM&E lands are acquired, take such actions as may be necessary and appropriate in the circumstances to insure that such PM&E lands are protected in perpetuity from uses which are inconsistent with the purposes for which such PM&E lands are being acquired. Prior to being placed in perpetual protection and in order to allow time to insure PM&E lands are meeting desired goals, the lands will be held by Avista for a period of not more than ten years subject to a restrictive covenant that would require

Management Committee approval for the disposition of those lands. It is understood that in most cases FERC policies will require Avista to include such PM&E lands in the Project boundary and it is further understood that nothing in this Agreement shall be construed either to modify that FERC license obligation of Avista or to prevent the Management Committee in appropriate cases from deferring or not requiring perpetual protection of any PM&E lands which the Committee determines may have a greater value consistent with the purposes of the relevant PM&E, in subsequent land conveyances. In the event Avista should sell or convey the Projects to another entity, it shall also convey to that entity its interest in any PM&E lands located outside the Project boundary and take appropriate measures to insure that such entity will assume the same obligations with respect to those lands as Avista has under this Agreement. The Parties agree that the Management Committee should consider and to the extent practicable implement the land acquisition and protection guidelines reflected in the Land Acquisition Policies Statement attached as Appendix V.

MANAGEMENT COMMITTEE

Authority

26. There is hereby established a Management Committee which shall be composed of one representative from each of the Parties. The Management Committee shall have the authority, subject to such FERC approvals as may be necessary in appropriate cases, to: (1) approve plans developed by Avista and/or the appropriate technical committee for the implementation of PM&Es, including the related funding; (2) approve modifications of the PM&Es; (3) oversee the implementation of all PM&Es by Avista and the appropriate committees; (4) establish such committees as it deems necessary for the purpose of implementing this Agreement and the attached PM&Es and determining, as appropriate, the size, membership and procedures of such committees, including those of any of the committees identified specifically in this Agreement or in the attached PM&Es; (5) establish appropriate procedures for conducting its activities, including procedures for proxy voting, and holding meetings by teleconferencing methods; (6) permit additional entities to execute this Agreement and thereby become Parties and, as appropriate, permitting the addition of such new

entities as Parties on terms different from those of the original signatories to this Agreement; (7) resolve all disputes regarding implementation of approved PM&Es and all disputes brought to it for resolution by any of the Parties or committees; and (8) following the issuance of the new license and subject to the approval of the FERC, amend this Agreement and any of the PM&Es, in accordance with the voting provisions set forth in this Agreement.

Avista License Responsibilities

27. Notwithstanding any of the provisions of the foregoing Paragraph, the Parties intend and agree that Avista will be responsible for license compliance and for the implementation of the PM&Es, including the costs of permits or applicable environmental analyses within the respective PM&E implementation budgets, pursuant to the terms of this Agreement and the terms of its new license and shall be and remain responsible regardless of the Management Committee's inability to resolve any implementation plan issue in a timely manner. In seeking FERC approval of an

implementation plan in such circumstances Avista shall inform FERC of the issues which the Management Committee or the appropriate technical committee was unable to resolve and shall fairly disclose to FERC the positions of the various members of the Management Committee on the pertinent issues.

Public Notice and Voting

28. The Management Committee shall meet at least twice each year. The meetings of the Management Committee shall be open to the public and Avista shall provide reasonable notice of the meetings of the Management Committee and the technical advisory committees in local newspapers and by mailings to an interested party list. The Management Committee shall endeavor to conduct its business by consensus. For decisions on which consensus among all Parties cannot be attained and a vote is necessary, the States of Idaho and Montana shall for purposes of compliance with item (2) below have one vote apiece. In the event a vote of the Management Committee should become necessary on any matter, decisions of the Management Committee shall be by: (1) Majority vote of the members present and voting at a duly called meeting of the Management Committee at which a quorum is present and (2)

unanimity of (i) the USFS, (ii) USFWS, (iii) the State of Idaho, (iv) the State of Montana, and (v) Avista. The aforementioned Parties shall make reasonable efforts to participate in the discussions held by the Management Committee on any issue upon which there may be the need for a vote. When an issue before the Management Committee involves a decision to spend funds which are within the funding amounts Avista is committed to spend under the terms of the applicable PM&Es (as distinguished from decisions involving PM&Es which contain funding estimates), consensus by Avista is not required. A quorum for meetings of the Management Committee shall be seven Parties and must include at least two of the federal agency Parties, at least one agency Party from each of the States of Idaho and Montana and Avista. The state agency Parties will be responsible for determining the representative or agency Party that will represent the state in any determination of the Management Committee under item (2) of this Paragraph. As used in this Paragraph the term “present” shall also include any Party or Parties participating in a meeting by teleconference.

Dispute Resolution

29. Any dispute that arises in the implementation of this Agreement and any of its PM&Es, or in any committees formed under this Agreement, shall, in the first instance, be the subject of informal negotiations among the parties to the Agreement. A party or parties may refer a dispute to the Management Committee, along with a written statement outlining the dispute and proposed resolution. The Management Committee shall meet and by majority vote, determine whether the resolution is acceptable. During this informal dispute resolution period, any party may request the FERC Director of the Office of Hydropower Licensing, or the Director's Designee, to participate in the negotiations to assist in resolving the dispute. If no resolution is reached during the informal process, the disputing party or parties shall have thirty days following the Management Committee decision to refer the dispute to FERC for expedited dispute resolution. All disputes taken to FERC under this section shall be governed by FERC's Rules of Practice and Procedures, 18 C.F.R. Part 385. The proposed resolution and the Management Committee decision, and all supporting documents, may be submitted to the FERC. If a disputing party does not refer a

dispute to the FERC within the thirty day time period, the Management Committee resolution will become binding on all parties.

Administrative and Clerical Support

30. Avista will provide reasonable administrative, clerical and support facilities for the Management Committee and TACs. Avista will be responsible for preparing proposed agendas, minutes of all committee meetings, for distributing minutes from prior meetings to the members in advance of upcoming meetings, and for the management and preservation of data and studies including the provision of reasonable public access to such data and studies. Avista will keep the Management Committee reasonably informed of the status of its license compliance filings and, in the event that any such filing is disputed by any Party, Avista shall notify all Parties of the dispute and make copies of its filing available to the Parties.

Annual Report

31. Within one year of the issuance of a Commission order approving this Agreement and issuing a new license, and annually each year thereafter during the term

of the new license, Avista shall prepare and file with FERC a detailed report on the activities of the Management Committee and other committees and on the implementation of the PM&E measures during the previous year. Such report shall identify all revisions made to approved PM&Es during the previous year and all new PM&Es implemented during the previous year. Avista will prepare the annual reports in consultation with the members of the Management Committees and will provide such members with at least thirty (30) days in which to comment on a draft of the report prior to filing a final version with the Commission.

TECHNICAL ADVISORY COMMITTEES

WRTAC and TRTAC

32. Initially, the Management Committee shall have two technical advisory subcommittees. The first shall be known as the Water Resources Technical Advisory Committee ("WRTAC"). The second will be known as the Terrestrial Resources Technical Advisory Committee ("TRTAC"). The WRTAC shall have responsibility for fishery resources, water quality, and water quantity. The TRTAC shall have responsibility for wildlife, botanical resources, wetlands, land use, recreation, and

aesthetics. Avista shall consult with the TACs in developing appropriate implementation plans for the PM&Es and related funding recommendations.

Membership

33. The WRTAC and the TRTAC shall unless later modified by the Management Committee, consist of one representative from each of the Parties. Within sixty (60) days of the effective date of this Agreement and annually each year thereafter during the terms of the new licenses for the Clark Fork Projects, each of the Parties shall provide written notice to the Management Committee of the identity of its representatives on the WRTAC and TRTAC. Notwithstanding the above, any Party may choose not to participate in the WRTAC and/or the TRTAC during any year, in which case it should so indicate in the written notice(s) referenced above. In order to ensure continuity and stability in the membership of the TACs, the Parties will attempt to designate representatives for three (3) year terms.

Procedures

34. The TACs shall, unless and until modified by the Management Committee, establish the procedures for conducting their activities, including those necessary for developing and submitting to the Management Committee implementation plans for PM&Es and related funding recommendations.

Relationship of Committees to Federal Agencies

35. The Parties agree that the Management Committee, the TACs and any other groups or committees identified in this Agreement are established to ensure Avista's implementation of the PM&Es. If a decision by any committee or group established by this Agreement involves a recommendation for action by a federal agency which is a Party to this Agreement, it is understood that that agency will consider the recommendation in the same manner as it would consider recommendations and information from any other person or group and that the agency may seek additional public comments on the matter as part of its normal administrative process.

CULTURAL RESOURCES MANAGEMENT GROUP

Programmatic Agreement

36. The Parties recognize and acknowledge the special role of the Cultural Resources Management Group ("CRMG") in overseeing the protection, enhancement and mitigation of cultural resources. The composition, procedures, and protocols for the CRMG are described in the Programmatic Agreement and Clark Fork Heritage Resource Program ("CFHRP") attached hereto as Appendix R. The Parties agree that they will comply with the provisions of the CFHRP and that the TACs and other committees will consult with the CRMG on any PM&Es that are likely to directly or indirectly affect cultural properties and will advise the Management Committee of the comments of the CRMG related to cultural properties when submitting recommendations for PM&Es to that Committee. The CRMG may submit written comments to the Management Committee on PM&Es recommended to that Committee by the TACs at the time those recommendations are submitted to the Management Committee. Within one year of the effective date of this Agreement, the Management Committee shall adopt protocols for determining those PM&Es and related activities

which are likely to directly or indirectly affect cultural properties.

MISCELLANEOUS

Force Majeure

37. No Party shall be liable for failure to perform or for delay in performance due to any cause beyond its reasonable control. This may include, but is not limited to, fire, flood, strike or other labor disruption, Act of God or riot. The Party whose performance is affected by a force majeure will make all reasonable efforts to promptly resume performance. The Party affected by a force majeure event shall notify the other Parties by telephone, fax or e-mail, as soon as it is reasonably possible and practical to do so of the circumstances of the event which it believes constitutes a force majeure event.

Estimating Decommissioning Costs

38. Avista agrees that in the event FERC makes any material changes to its current policy regarding decommissioning costs during the first 35 years of its new license, Avista will consult with the Management Committee and thereafter undertake such steps as may be reasonable and consistent with those policy changes to estimate the remaining useful life of the Projects and the cost of decommissioning the Projects or a portion of the Projects.

Costs

39. No PM&E funds shall be used to reimburse any Party for its costs of participating in the work of the committees established under this Agreement or for costs incurred in defending this Agreement from any non-Party challenge. No Party shall be required to bear the costs incurred by any other Party in implementing or defending this Agreement or any of the PM&Es established or to be established under this Agreement from any non-party challenge. Nothing in this Agreement, however, shall be construed to prohibit any Party from reimbursing any other Party for its own out-of-pocket costs of attending meetings of any committee established under this Agreement.

Rock Creek Mine

40. Avista shall give timely notice to the Parties in the event that it receives a request for access across project lands for the purpose of installing any outfall or discharge facility in connection with the development of the proposed Rock Creek mine.

Aboriginal and/or Federally Reserved Water Rights

41. Nothing in this Agreement is intended in any way to affect, diminish, impair, or predetermine any aboriginal and/or federally reserved or state law based water rights, if any, the signatory tribes or federal agencies may have in the Clark Fork River and its tributaries.

EXPENDITURE OF AGENCY FUNDS

Federal Agencies

42. Nothing in this Agreement shall be construed as binding the USFWS or the USFS to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this Agreement for the fiscal year, or to involve the USFWS or USFS in any contract or other obligation for the future expenditure of money in excess of such appropriations or allocations.

State Agencies

43. Nothing in this Agreement shall be construed as binding any state agency that is a Party to this Agreement to expend in any one fiscal year any sum in excess of appropriations made by its state legislature or administratively allocated for the

purpose of this Agreement for the fiscal year, or to involve any such state agency in any contract or other obligation for the future expenditure of money in excess of such appropriations or allocations.

Execution

44. This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument and as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto but having attached to it one or more signature pages. Each signatory to this Agreement hereby certifies that (1) he or she is authorized to execute this Agreement and legally bind the Party he or she represents and (2) the Party he or she represents will be fully bound by the terms hereof.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates indicated below.*

**CONFEDERATED SALISH AND
KOOTENAI TRIBES**

By_____

KALISPEL TRIBE

By_____

KOOTENAI TRIBE OF IDAHO

By_____

THE COEUR d'ALENE TRIBE

By_____

AVISTA CORPORATION

By_____

*Original signatures are on file at Avista Corporation's Hydro Licensing and Safety Department.

**UNITED STATES FISH AND WILDLIFE
SERVICE**

By _____

**UNITED STATES DEPARTMENT OF
AGRICULTURE, FOREST SERVICE**

By _____

**IDAHO DIVISION OF
ENVIRONMENTAL QUALITY**

By _____

**IDAHO DEPARTMENT OF FISH AND
GAME**

By _____

**IDAHO DEPARTMENT OF PARKS AND
RECREATION**

By _____

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

By _____

MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

By _____

MONTANA DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

By _____

MONTANA STATE HISTORIC PRESERVATION OFFICER

By _____

IDAHO STATE HISTORIC PRESERVATION OFFICER

By _____

SANDERS COUNTY, MONTANA

By_____

MONTANA B.A.S.S. FEDERATION

By_____

TROUT UNLIMITED

By_____

**NOXON-CABINET SHORELINE
COALITION**

By_____

**GREEN MOUNTAIN CONSERVATION
DISTRICT**

By_____

CABINET RESOURCE GROUP

By_____

IDAHO RIVERS UNITED

By_____

ROCK CREEK ALLIANCE

By_____

ELK CREEK WATERSHED COUNCIL

By_____

LAKE PEND OREILLE IDAHO CLUB

By_____

**TRI-STATE IMPLEMENTATION
COUNCIL**

By_____

ALLIANCE FOR THE WILD ROCKIES

By_____

Attachments