

**Appendix 2-6 –  
Everett and Tulalip Settlement**

16 September 2005

**Agreement for Settlement, Water Supply, and Water Delivery System Between The  
Tulalip Tribes of Washington and the City of Everett, Washington**

In consideration of the mutual covenants set forth herein, the undersigned Tulalip Tribes of Washington ("the Tribe") and the City of Everett ("the City") (collectively, "the Parties"), hereby agree to the following terms and conditions of this Agreement for Settlement, Water Supply, and Water Delivery System (the "Agreement").

**A. Recitals**

1. This Agreement arises from the following context upon which it depends for its true construction.
2. In November 2001, the Tribe formally notified the City that it was prepared to bring a legal action against the City seeking compensation based upon the Tribe's assertion that the construction and operation of the City's diversion dams on the Sultan River had damaged the Tribe's treaty-reserved right to take fish at its usual and accustomed grounds and stations for the period from 1916 to 1960, hereinafter the "Claim." The Claim was one of several disputes concerning fisheries and water resources that existed between the Tribe and the City and which significantly strained the relations between our respective communities.
3. The prospect for continued conflict caused the Tribe and the City to reflect and to search for a better way. The Tribe and the City came together and expressed their views and deeply held beliefs. The City and the Tribe listened to each other closely and decided to embark on a collaborative process of problem solving and healing.
4. Since that time, the Tribe and the City have engaged in a process of mediation and mutual education concerning the culture, history, needs and aspirations of our respective communities. Through this process, the elected leaders of the Tribe and the City have settled past differences and explored new opportunities for future cooperation while building a broader foundation of mutual respect and friendship between our communities.
5. The first manifestation of this new approach to problem solving came on September 17, 2003, when at a public ceremony, the Tribe and the City jointly adopted the Governmental Alliance Agreement. The Governmental Alliance Agreement memorialized the intent of the Tribe and the City to work together to serve the mutual interests of our respective communities and to resolve our differences, old and new. The Governmental Alliance Agreement provides a broad framework for communication, problem solving, and cooperation on any issues affecting both the City and the Tribe. The Governmental Alliance envisions that the City and the Tribe will share information regarding our future development plans and projects in a timely

manner that facilitates cooperative and mutually beneficial approaches to regional development.

6. The second manifestation of the new relationship between the City and the Tribe was a comprehensive February 2004 Final Agreement settling disputes concerning the City's Shoreline Master Program and future development of the City's riverfront properties. This agreement balances prudent development with prudent environmental safeguards and enhancements.

7. The third manifestation of the improved relationship between the Tribe and the City was our joint, cooperative resolution of the City's proposed change of point of diversion and use of water rights acquired by the City from Public Utility District #1 of Snohomish County (commonly referred to as the "Beverley Park" and "P.U.D." water rights). This served as a successful pilot project exploring our capacity to solve issues that previously would have been litigated as a matter of course in a consensual way, with information-sharing and informal negotiations.

8. The fourth manifestation of our improved relationship is this Agreement between the Tribe and the City. The Tribe expressed an interest in resolving its Claim by working with the City toward a comprehensive agreement that secures a needed and reliable water supply for the Tribe and its future generations. The City is willing to resolve the Claim in this manner.

9. At first, the Parties anticipated that the Claim would be evaluated on the basis of our respective investigation of the underlying facts of the fisheries biology and economics, as well as on an assessment of guiding legal principles. Much progress was made in this effort, but upon reaching the point of trying to assign a value to the alleged loss, the Tribe determined, after much work by each side, that the loss it experienced was of such a nature – both profound and culturally-based – that it could not be valued meaningfully in traditional terms. The Tribe has therefore proposed that the Claim be resolved by a cooperative effort that links the futures of both communities through a joint water project. This would simultaneously resolve the Claim and address directly the Tribe's expressed need for water, and allow the City to address those questions and fulfill the current and future inventory of water supply that is reflected in the City's Comprehensive Water Plan.

10. The Parties recognize that they each have a unique relationship to the relicensing of the Jackson Hydroelectric Project ("the Jackson Project"). The Tribe has an interest in fisheries affected by the Jackson Project, and thus, has standing under its Treaty and the Federal Power Act to participate in the Federal Energy Regulatory Commission ("FERC") relicensing process. The City is a co-licensee of the Jackson Project and hence is directly involved in the FERC relicensing process. The City also has a contractual relationship with Public Utility District No. 1 of Snohomish County ("the P.U.D.") in regard to the operation and relicensing of the Jackson Project. The Parties also recognize that because the Jackson Project is the source of the City's water

supply, there is a direct relationship between the City's ability to supply water and the operation of the Jackson Project.

11. The Parties also recognize that the Tribe, the City of Marysville, and the P.U.D. are parties to that agreement dated 10 January 1991 entitled the North Snohomish County Regional Water Supply Joint Operating Agreement (JOA), and that the Tribe, the City, the City of Marysville, and the P.U.D. are parties to that agreement dated 15 October 1991 and entitled Everett and JOA Participants Water Supply Contract. Both the Tribe and the City intend to comply with their respective obligations under those contracts while entering into and implementing the subject agreement, and will use the North Snohomish County Coordinated Water System Plan (1991) as guidance, a management tool and the basis for cooperative effort as described in Section I, Paragraph 1 of that document.

12. The City recognizes the Tribe's comprehensive conservation efforts. The Tribe and the City are aware of the need for conservation measures and have implemented conservation programs.

Now, therefore, for the mutual benefits to be derived, the Parties agree as follows.

## **B. Water Supply**

1. The City agrees to divert, treat and deliver water to the Tribe under the terms described in this Agreement. The terms of this Agreement concerning water supply will be embodied in a Water Delivery Contract (hereinafter, "the Contract"). The Contract will be for a term of fifty (50) years, to be automatically renewed for an additional fifty (50) years unless (a) the Parties agree mutually not to renew the water contract, or (b) the City fails to substantially succeed in the water application referred to in Paragraph F. 5 below. In the latter case, the Contract would be renewable on the mutual consent of the Parties. A mutual agreement not to renew the Contract for an additional fifty (50) years shall be made by the Parties at least five (5) years before the expiration of the term of the initial Contract. The amount of water to be delivered by the City to the Tribe will be determined according to a curve showing projected Tribal water demand over the term of the Contract (the "time/demand analysis"). That time/demand analysis is to be provided by the Tribe within 75 days after the execution of this Agreement, after consultation with the City and mutual agreement on the appropriateness of the methodology and assumptions used therein. The time for delivery of the time/demand analysis can be extended by mutual agreement of the Parties. The Tribe may amend this time/demand analysis after negotiation and with mutual agreement of the Parties. The maximum amount of water to be delivered by the City to the Tribe under this Agreement, however, will in no case exceed 30 million gallons per day ("MGD") average annual rate, or 36 MGD during peak periods.

2. On a monthly basis, the City will bill the Tribe for water delivery and treatment, and the Tribe will timely pay these bills. Rates, as is the case for all other

participants in the City's water distribution system, shall be established by ordinance of the City of Everett, as may be amended.

3. Notwithstanding any other provision in this Agreement, The Tribe reserves the right to use an amount of water up to an amount identified in the time/demand analysis described in Paragraph B.1 above for on reservation in-stream flow augmentation.

### **C. Water Delivery System**

1. In order to deliver water as agreed in paragraph B.1, the City and the Tribe will, subject to the financing discussed in Part D below, plan, permit, design, engineer and construct a thirty-six-inch (36-inch) transmission pipeline (or other transmission line consistent with American Water Works Standards that will deliver 30 MGD average annual rate or 36 MGD peak to the point of delivery consistent with an agreed-upon set of plans and specifications and any associated planning activity (hereinafter, "the Project"), so long as such other transmission line does not significantly increase the overall cost of the Project so as to jeopardize third-party funding for the Project). The Tribe and the City will manage the construction through a Joint Board, see RCW 39.34.030 (4) (a), that will develop a comprehensive mechanism mutually agreed upon by the Parties which will address, among other things, financial management, project budgeting, construction management, bidding, insurance issues, liability issues, payment schedules, and claims issues. The delivery pipeline will be constructed along the route described and shown as "Alternative 1" in Appendix A.

2. The City shall assume exclusive responsibility for the ownership, control, and maintenance of the pipeline described in paragraph C.1, as indicated in Appendix A. The City may, at its sole discretion, use the Project in its jurisdiction to provide water for other demands so long as such use does not interfere with delivery to the Tribe of the amount of water specified in the Tribe's time/demand analysis, as may be amended, and so long as any third party receiving such water pays its proportionate share of the full cost of the Project. Use of the line to meet Tribal demands under its time/demand analysis during the duration of this Agreement, shall have first priority over all other uses of the line.

3. The Tribe shall assume exclusive responsibility for the ownership, control, and maintenance of the Project, as indicated in Appendix A.

4. The Parties agree that progress toward certain benchmark events in the preparation and construction of the Project should be met by agreed dates as set forth in Appendix B. The Parties may amend these benchmark events and dates in writing as appropriate and necessary in order to accommodate funding, environmental review, permitting and other pre-construction or construction delays. The Parties will review these benchmarks events and dates at least once every six months to determine whether or not any adjustments need to be made. The Parties shall act in good faith and exercise best

efforts to accomplish tasks within the timeframes set forth in Appendix B and to arrive at mutually-acceptable amended events and dates as necessary or desirable.

#### **D. Financing of the Water Delivery System**

1. As the initial component of the Project financing, the City and the Tribe each agree to place five million dollars (\$5,000,000) in an account at a mutually agreed upon bank (the "Account") according to the following schedule: \$1,000,000.00 each by 1 March 2006; \$1,200,000.00 each by 1 March 2007; and \$2,800,000.00 each by 1 March 2008. However, the parties may make any of these payments or all of them in advance of the dates set forth here.

2. The arrangement governing the handling and distribution of funds in the Account shall require compliance with the State-law requirements governing the City of Everett's financial investments and shall require mutual consent of the Tribe and the City for withdrawal and expenditure of all funds.

3. The remainder of financing for the Project is to be sought from third parties. All sums obtained from third-party financing shall be deposited in the Account and will be subject to the terms described in Paragraph D.2 above. To that end, the Parties agree to seek financing from all reasonably available potential sources, including but not limited to the Federal Government, Washington state and regional governments, and private sources. The City and the Tribe agree to cooperate to the greatest extent practicable in obtaining financing. Each Party shall designate one contact person responsible for making financing requests on behalf of this Project and for coordinating with the other Party in fund-raising efforts. As of the date of this Agreement's execution, the City's contact person shall be Larry Crawford, Chief Administrative Assistant, City of Everett, and the Tribe's contact person shall be Terry Williams, Director, Tulalip Natural Resources Department. Each Party agrees to bear its own expenses associated with raising funds. The Parties may begin raising funds immediately upon execution of this Agreement.

4. With mutual consent, the Parties may commence design and construction of the Project prior to full funding of the Project with funds from the Account.

#### **E. Use of Water Delivered To The Tribe**

1. After the water has passed the point of delivery and has entered the Tribe's portion of the pipeline, the Tribe may, at its sole discretion, use the water delivered by the City for any purpose allowed under applicable law in the Tribal Service Area, now existing or as may be amended in the future. The Tribe shall have sole discretion over resale to Tribal enterprises and other users within the Tribal Service Area.

## **F. Water Rights**

1. The Tribe currently contemplates that during the term of this Agreement or any renewal thereof it may seek either to adjudicate its federally reserved water rights or to establish those rights through a legislatively authorized process. However, for the term of this Agreement and any renewal thereof, the Tribe agrees that notwithstanding the federally reserved water rights that may be so established, and notwithstanding the quantification and date of priority of any such rights, it will not make a call or otherwise interrupt the usage of the City's water rights, as those rights are currently established under Washington law and set forth in the City of Everett Comprehensive Water Plan (2000), Section 7, Tables 7-1, 7-2, 7-3 and pages 7-1 through 7-17 and the sheet labeled "Water Rights Supplement," Appendix C hereto, and as may result from the prosecution of the water right application referred to in Paragraph F. 5 below.

2. The City agrees that for the term of this Agreement and any renewal thereof, it will not seek legally to initiate a water rights adjudication, or any other process to determine water rights, adversely to the Tribe's claims for federally-reserved water rights, agrees that should the Tribe or a third-party initiate such an adjudication or other process to determine water rights, it shall be free to preserve its rights vis-à-vis the Tribe, but further agrees that for the duration of this Agreement and any renewal thereof, should there be a determination of the Tribe's claimed water rights, the City will not act to void or otherwise modify this Agreement on that basis.

3. Nothing in this Agreement modifies or otherwise affects in any way the Tribe's claim to federally-reserved water rights.

4. Nothing in this Agreement modifies or affects in any way the City's defenses to any Tribal claim to federally-reserved water rights.

5. The Tribe agrees that, as part of the consideration it will give for the City's execution and implementation of this Agreement, it will provide written support, in the form attached as Appendix D, of the City's pending application for the permitting of a 200 cfs water right (water right application No. 13219, dated 15 December 1954). Should that water right application not be successful, the Tribe agrees that it will provide similar written support for whatever subsequent application for the same 200 cfs water right the City prepares in an effort to address the shortcomings of its rejected original application for a 200 cfs water right.

6. Neither this Agreement nor any of its appendices or terms, nor the pipeline and water consumption resulting from this Agreement's execution and successful implementation shall be used as evidence in any proceeding, judicial, legislative or administrative, concerning the nature, scope, size or priority of any Tribal federal reserved right nor shall this Agreement or its terms be used in any such proceeding to show the physical source of the water to fulfill any such entitlement, nor

be used in any such proceeding to show the City's agreement or acquiescence to the Tribe's assertions concerning the foregoing issues.

7. In the event there is no new federal license for the Jackson Project or if operation of the Jackson Project terminates for any reason the City agrees that it will support any effort by the Tribe to achieve the continuation of the minimum in-stream flows in the Sultan River as set forth in paragraph 2 of the Agreements Section of the Uncontested Offer of Settlement – Joint Agencies, dated March 24, 1982.

#### **G. Release of Tribal Claim**

1. The Tribe agrees that upon execution of this Agreement, it will also execute and place into escrow with Frontier Bank, Trust Department, 2825 Colby Avenue in Everett, Washington, a full and complete release, in the form attached hereto as Appendix E, of the Claim it threatened to bring against the City or any iteration of the Claim it could have brought against the City for the construction, maintenance or operation of the City's diversion dams and other water system structures in the Sultan River Basin for the period 1916-1960.

2. Upon full funding for the Project and the completion of the construction and start up of the Project, the release described in Paragraph G.1 shall become immediately effective and shall be withdrawn from escrow by the Parties and given into the exclusive custody and control of the City. For purposes of this Agreement, "full funding" shall be defined as receipt and deposit into the Account, and/or irrevocably committed in grants or loans, of all those funds the Parties have identified in good faith as necessary for the completion of the construction and start-up of the Project, as such funding needs are set forth in Appendix F.

#### **H. Jackson Project**

1. The Tribe and the City agree to work in good faith consultation to resolve issues pertaining to the current relicensing of the Jackson Project.

#### **I. Authority To Execute**

1. The Tribe and the City represent that their respective signers of this Agreement are fully and properly authorized to execute it under controlling law, and outside legal counsel for the Tribe and for the City shall upon execution of this Agreement deliver to the Parties legal opinions so stating.

#### **J. No Necessity for, and Waiver of, Federal Approval**

1. On execution of this Agreement, outside legal counsel for the Tribe shall provide the City with a legal opinion stating that this Agreement can be executed and will be fully effective as to the Tribe notwithstanding an absence of express federal approval for its execution.

2. The Tribe hereby waives any and all rights it might have possessed to assert that federal approval of this Agreement is prerequisite to its legal effectiveness and enforceability.

**K. General Governmental Dispute Resolution Process**

1. As a component of the process described in Part A. above, the City and the Tribe agree to appoint regularly as a part of our respective governmental administrations Tribal-City liaisons who are to serve as the initial points of contact between the Parties when either wishes to consult with the other regarding public policy, legal questions, or other such matters of concern to either.

2. The policy-makers of the Parties (i.e., the Tulalip Board and the Everett Mayor/City Council) agree to meet annually to identify and discuss matters of concern. The primary purpose of such meeting is to address concerns before they rise to the level of a dispute

3. Should a dispute arise between the Parties concerning any matter other than this Agreement (those particular Agreement-related disputes are addressed below in Paragraphs O.1-4), the Parties agree that they will first consult in good faith to try to resolve the dispute. The method for the consultation could be accomplished in a number of ways depending upon the underlying issue, including, but not limited to, communications between the Mayor of the City and the Chairman of the Tribe, communications between the Tribal-City liaisons described in Paragraph K.1 above, by meetings between the policy-makers of the Parties described in Paragraph K.2 above, or communications between other Tribal or City staff. Should that initial consultation not succeed, the Parties agree that, upon demand by either Party, they will engage in mediation in a mutually-agreed manner in an attempt to resolve the dispute. If either Party files suit in any judicial or administrative forum in connection with the dispute, the Parties will engage at the earliest practicable time in a mediation process in an attempt to resolve the dispute. If the forum has an established mediation process, the Parties may elect to use that process. If the forum does not have an established mediation process, the Parties will engage a mutually-acceptable mediator to assist them in resolving the dispute pursuant to a set of rules to be agreed by the Parties.

**L. Effective Date**

1. This Agreement will be effective on the date when it has become fully and effectively executed by both Parties.

**M. Execution**

1. This Agreement can be executed in separate, duplicate originals.

## **N. Termination**

1. Either Party may terminate this Agreement if reasonable progress is not made toward meeting the benchmark dates discussed in Paragraph C.4 and if the Parties, after consultation, cannot agree in good faith on amended dates.

2. If this Agreement is terminated, any funds expended by the City from the escrow account described in Paragraph D.1 above for planning, permitting, design, engineering, and construction of the Project shall be credited toward any damages a court may award by judgment in the Tribe's treaty-based fishing rights claim arising from the City's diversion dams on the Sultan River.

3. Should this Agreement be terminated and the Tribe choose to litigate its fisheries damage claim, neither this Agreement nor any of its parts may be used by either Party as an admission against interest or as evidence tending to prove or disprove any element of a Party's claims or defenses.

4. Nothing in this Agreement affects in any way the Tribe's Treaty-based right to take fish nor its assertions concerning the implications for that right of the City's diversion dams on the Sultan River.

5. Nothing in this Agreement affects in any way the City's defenses to any claim the Tribe might bring against the City for damages to its fishing interests based on the impacts of the City's Sultan River diversion dams.

## **O. Enforcement of This Agreement**

1. The Parties agree that prior to seeking enforcement of this Agreement in any court they will first consult and attempt to solve their dispute consensually or, if mutually agreed, through the aid of a mediator or mediators chosen in the fashion described in Paragraph K.2 above. Only upon exhaustion of this consensual problem solving process may either Party have recourse to judicial relief, and then only on the terms described immediately below in Paragraphs O. 2, O.3, and O.4.

2. Upon execution of this Agreement, the Tribe will file a lawsuit in the United States District Court for the Western District of Washington. Simultaneously, the Parties will file a Motion for Entry of Consent Judgment, in the form of Appendix G. hereto, which seeks a final judgment based on the terms of settlement reached in this Agreement, and seeks the U.S. District Court's continuing jurisdiction to enforce the terms of this Agreement. The Tribe has also executed a limited waiver of sovereign immunity, in the form of Appendix H hereto, waiving its immunity in that suit relating to interpretation, enforcement or breach of this Agreement as embodied in the Consent Judgment.

3. The Tribe hereby waives and forever relinquishes any rights it may have to recourse to, or to require the City to exhaust, Tribal Court remedies that might otherwise be available for actions concerning this Agreement's interpretation, enforcement or breach.

4. In any judicial action concerning the interpretation, enforcement or breach of this Agreement, federal and Washington State law shall apply, as their respective constitutional priorities may dictate. The Tribe's Constitution, Ordinances, Board Resolutions, or Tribal Court decisions shall govern as to the authority of the Tribal signers to enter this Agreement.

5. The Tribe and the City further agree that should any third-party attempt to challenge legally the efficacy and enforceability of this Agreement, the Tribe and the City shall use good faith efforts jointly to act to defend this Agreement in whatever forum that legal challenge is raised.

**P. No Impact on Other Contracts**

1. Nothing in this Agreement shall impair the existing water supply contracts of either Party, nor shall anything in this Agreement alter the duties of each under those contracts.

**DATED: 16 September 2005**

The Tulalip Tribes of Washington

By: Stanley G. Jones Sr

Stanley G. Jones, Sr.  
Chairman, Board of Directors

Attest: Marie Zackuse

Marie Zackuse  
Secretary, Board of Directors

City of Everett

By: Ray Stephanson

Ray Stephanson  
Mayor, City of Everett

Attest: Sharon Marks

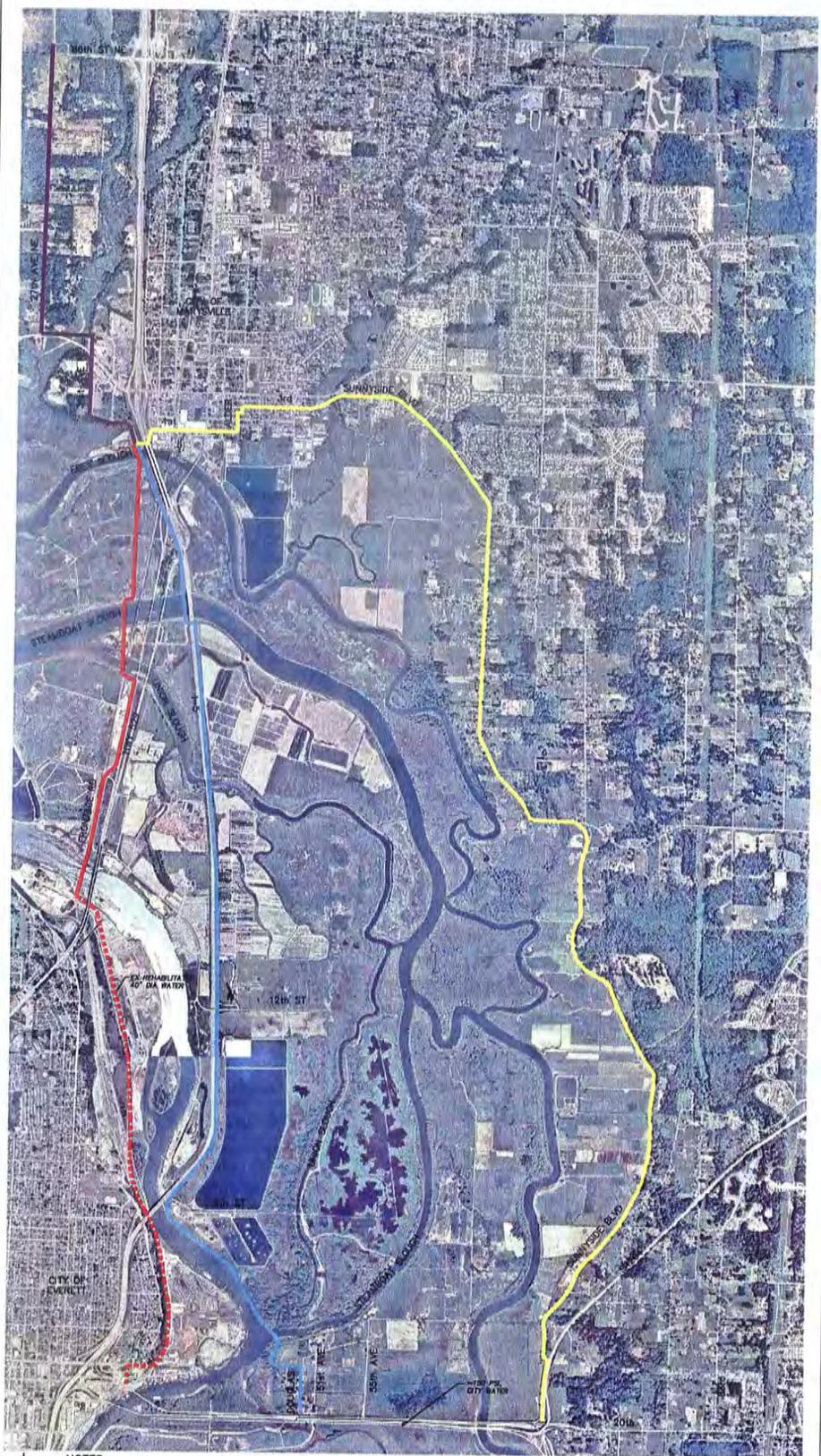
Sharon Marks  
Clerk, City of Everett

Approved as to Form: Jennifer Harvey Weddle

Jennifer Harvey Weddle  
Attorney for The Tulalip Tribes of Washington

Approved as to Form: James Iles

James Iles  
City Attorney, City of Everett



**NOTES:**

1. ACTUAL PIPELINE LOCATION MAY VARY WITHIN THE GENERAL ALIGNMENT CORRIDOR DEPENDING UPON PERMITTING, DESIGN, AND CONSTRUCTION CHALLENGES THAT ARE ENCOUNTERED DURING IMPLEMENTATION OF THE PROJECT.
2. THE PIPELINE OWNERSHIP BOUNDARY BETWEEN BOTH PARTIES SHALL BE AT THE MASTER METER. THE LOCATION OF THE MASTER METER IS CURRENTLY ANTICIPATED TO BE SOUTH OF UNION SLUUGH; HOWEVER, IT IS UNDERSTOOD THAT THE ACTUAL LOCATION OF THE MASTER METER MAY BE MODIFIED TO ADDRESS PERMITTING, DESIGN, AND CONSTRUCTION CONSTRAINTS AS AGREED TO BY BOTH PARTIES.
3. THE CITY SHALL ASSUME EXCLUSIVE RESPONSIBILITY FOR THE CONTROL AND MAINTENANCE OF THE PIPELINE WITHIN ITS OWNERSHIP AS INDICATED IN NOTE 2 OF THIS APPENDIX A. THE TRIBE SHALL ASSUME EXCLUSIVE RESPONSIBILITY FOR THE CONTROL AND MAINTENANCE OF THE PIPELINE WITHIN ITS OWNERSHIP AS INDICATED IN NOTE 2 OF THIS APPENDIX A.

- ALTERNATIVE 1 - HEVCO TO 88th & 27th AVE
- ALTERNATIVE 2 - SUNNYSIDE & 20th TO 88th & 27th AVE
- ALTERNATIVE 3 - DOUGLAS & 20th TO 88th & 27th AVE
- COMMON ALIGNMENT BETWEEN ALL ALTERNATIVES

**Appendix A  
Water Transmission  
Route Review**

**The Tulalip Tribes  
36 Inch Water Transmission Main & 10 Million Gallon Regional Water Reservoir  
Implementation Schedule**

ID	Description	Start	Finish	Cost @ Year Expended (in Millions of \$'s)
1	Tulalip Tribes 36 Inch Water Transmission Main and 10 Million Gallon Regional Reservoir(s) Improvements Schedule - Estimated Project Costs Planning Report	Tue 11/1/05	Wed 12/29/10	\$89.05
2	Pre-design 30%-60% of Design - Complete Sufficient Level of Design to Allow Environmental Document To Be Completed	Tue 11/1/05	Mon 3/20/06	\$0.15
3	Permitting / Environmental Process EAJEIS/BA - Meet Federal, State, and Local Permitting and Environmental Documentation Requirements	Tue 3/21/06	Fri 12/29/06	\$2.40
4	Final Design - Complete Remaining Design Requirements Including Final Plans, Specifications, and Estimates.	Mon 10/9/06	Wed 10/8/08	\$1.87
5	Construction - Bidding, Construction, Construction Observation, and Administration	Mon 6/18/07	Wed 12/31/08	\$3.74
6		Thu 1/1/09	Wed 12/29/10	\$60.89



Project: Water Transmission Main & R  
Date: Thu 9/8/05

Legend:  
 Task: [Solid Bar]  
 Split: [Dashed Bar]  
 Progress: [Hatched Bar]  
 Milestone: [Diamond]  
 Summary: [Thick Bar]  
 Project Summary: [Thick Bar with Arrow]  
 External Tasks: [Thin Bar]  
 External Milestone: [Thin Bar with Diamond]  
 Deadline: [Thin Bar with Arrow]

## FUNDING BENCHMARKS

Scoping--D.C. w/lobbyist & Legislative Staff.	October/November 2005
Submit Funding Package for Pre-design & Permitting (\$1,800,000--80% of \$2,250,000)	March 2006
Submit Funding Package for Final Design & Construction (\$36,000,000--80% of \$43,500,000)	March 2007

**Everett Surface Water Rights (Sultan Watershed)**

Certificate Number	Priority Date	Qi (cfs)	Qa (AF/year)	Source	Point of Diversion (TRS)
352-A	9/14/1917	20		Sultan River	T29N/R08E/S33
1790-A	7/13/1924	50		Sultan River	T29N/R08E/S33
460-A	2/14/1929	110		Sultan River	T29N/R08E/S32
S1-00727C	11/29/1929	200	144,000 <sup>(1)</sup>	Sultan River	T29N/R08E/S29
1791-A	11/22/1940	15	9,360 <sup>(2)</sup>	Chaplain Creek	T28N/R08E/S06

**Everett Storage Rights (Sultan Watershed)**

Certificate Number	Priority Date	Qi (cfs)	Qa (AF/year)	Source	Dam TRS
2463 <sup>(3)</sup>	2/14/1929	N/A	13,200	Source	T28N/R07E/S6

**Snohomish River Regional Water Authority (Snohomish River)**

Certificate Number	Priority Date	Qi (cfs)	Qa (AF/year)	Source	Point of Diversion (TRS)
10617	8/20/1951	56	27,219.5	Snohomish River	T28N/R7E/S4

(1) Total Qa for certificates 352-A, 1790-A, 460-A and S1-00727C is 144,000 AF/year.

(2) Qa is not specified on certificate.

(3) Storage for certificates 352-A, 460-A and 1790-A.

**Everett Groundwater Rights WRIA 7 and 8**

Certificate Number	Priority Date	Qi (cfs)	Qa (AF/year)	Source	Point of Withdrawal (TRS)
552-D	1/1/1923	20	63	Groundwater	T28N/R4E/S13 & S14
553-D	5/29/1936	300	94	Groundwater	T28N/R4E/S13 & S14
550-D	10/1/1943	300	275	Groundwater	T28N/R5E/S7
554-D	1/1/1944	300	94	Groundwater	T28N/R4E/S13 & S14
594	8/4/1947	250	200	Groundwater	T28N/R5E/S7
2186-A	12/23/1953	750	800	Groundwater	T28N/R4E/S13 & S14
2579-A	8/16/1955	475	760	Groundwater	T28N/R4E/S13 & S14
2811-A	4/23/1956	585	936	Groundwater	T28N/R4E/S13 & S14
3358-A	9/2/1958	350	600	Groundwater	T28N/R4E/S13 & S14

Groundwater rights 552-D, 553-D, 2186-A, 2579-A, 2811-A and 3358-A were recently changed by the Department of Ecology for Everett. The water rights are municipal and are being used for irrigation at two golf courses. 550-D and 594 remain inactive, although legitimate water rights.

**Snohomish PUD Shared Surface Water Rights (Sultan Watershed Power)**

Certificate Number	Priority Date	Qi (cfs)	Qa (AF/year)	Source	Dam TRS
S1-23398C	6/15/1979	1500	506,800	Sultan River	T29N/R9E/S29

**Snohomish PUD Shared Storage Rights (Sultan Watershed)**

Certificate Number	Priority Date	Qi (cfs)	Qa (AF/year)	Source	Dam TRS
7096	5/3/1946	N/A	113,700	Sultan River	T29N/R9E/S29
R1-23397C	6/15/1979	N/A	153,260	Sultan River	T29N/R9E/S29

**City of Everett Pending Applications**

Certificate Number	Priority Date	Qi (cfs)	Qa (AF/year)	Source	TRS
S1-13219	12/15/1954	200		Sultan River	29.0N 09.0E 29
G1-28135*	6/3/2002	2100		Groundwater	28.0N 05.0E 30

\* used for supplementing surface water flows for restoration project

Mr. Jay Manning  
Director, Department of Ecology  
P.O. Box 47600  
Olympia, WA 98504-7600

Mr. Ken Slattery  
Water Resources Program Manager  
P.O. Box 47600  
Olympia, WA 98504-7600

**Re: City of Everett SW Application S1-13219**

Dear Mr. Manning and Mr. Slattery:

As you know, the Tulalip Tribes of Washington (the "Tribe") has been consulting with the City of Everett (Everett) to address the Tribe's water needs from available supply in the Sultan River.

In the course of our consultations, we have discussed Everett's pending surface water right application for 200 cfs from the Sultan River (S1-13219), and how this water right, if issued, could advance the water supply interests of both parties.

To this end, the Tribe has worked internally to identify its future water supply needs and sources, including for its on-Reservation fisheries, and has worked with Everett to assess how those needs may be met with Everett's assistance and how the Tribe's needs might affect Everett's respective existing supply and service area obligations. As a result of those efforts, we believe that Ecology's approval of the surface water right application offers the Tribe a significant opportunity to address its future supply needs, including for its on-Reservation fisheries, while preserving Everett's ability to ensure a reliable supply.

Accordingly, the Tribe supports Everett's pending application subject to the Jackson Hydroelectric Project licensing instream flow agreement in the Sultan River dated March 24, 1982. Nothing in this letter should be construed as prohibiting the Tribe from protecting its federally-reserved water rights or other treaty-protected rights, or from acquiring future water rights in the Sultan River or elsewhere.

Sincerely,



Stan Jones, Sr.  
Chairman, The Tulalip Tribes of Washington

cc: Jeannie Summerhays  
Dan Swenson

Addresses for the cc:

Jeannie Summerhays  
Water Resources Supervisor  
Department of Ecology NWRO  
3190-160<sup>th</sup> Avenue S.E.  
Bellevue, WA 98008-1542

Dan Swenson  
Water Resources Supervisor  
Department of Ecology NWRO  
3190-160<sup>th</sup> Avenue S.E.  
Bellevue, WA 98008-1542

## RELEASE

Except for those obligations and rights created by or arising out of the Settlement Agreement dated September 16, 2005, the Tulalip Tribes of Washington ("Tribe") hereby release and discharge the City of Everett, Washington ("City") and its elected and appointed officials and employees from any and all rights, demands, actions, causes of action, suits, liabilities, damages, costs, attorneys' fees or any other expenses whatsoever, of whatever kind or nature, in law, equity or otherwise, which the Tribe may have against the City arising out of claims for the construction, maintenance or operation of the City's diversion dams or other water system structures in the Sultan River Basin for the period 1916-1960 which were brought or which could have been brought in *Tulalip Tribes vs. City of Everett*, United States District Court for the Western District of Washington.

**Tulalip Tribes of Washington**

**By:** \_\_\_\_\_

**Stanley Jones, Sr.**

**Chairman**

Summary Costs				Total Project Costs In Millions of Dollars
Transmission Main (36 inch Diameter) Everett to Quil Ceda Village and Location of Regional Reservoir Location (Approximately 9500 Feet West of 27th) - Regional Reservoir Not Included				
Date: 09/09/05				
Description	Year / Implemented	Transmission Main Costs (in Millions of \$'s) from (Weyco - Everett) to (88th Street / 27th Ave. Quil Ceda Village)	Transmission Main and Reservoir Cost (in Millions of \$'s) from (West of 27th Ave.) to Location of Regional Water Reservoir(s) - Regional Water Reservoir(s) Not Included	Total Project Costs In Millions of Dollars
Planning Report	2006	\$0.15		\$0.15
Pre-Design @ 4% of Construction Less Everett Improvements	2007/2008	\$1.30	\$0.19	\$1.49
Permitting / Environmental Process @ 3% of Construction Costs	2007/2008	\$1.02	\$0.15	\$1.17
Final Design @ 6% of Construction Costs	2009/2010	\$2.04	\$0.29	\$2.33
Construction	2009/2010			
Construction Total	2009/2010	\$35.99	\$5.29	\$41.28
Construction Observation @ 10% of Construction	2009/2010	\$3.49	\$0.53	\$4.02
Administration @ 3% of Construction	2009/2010	\$1.05	\$0.16	\$1.21
Sales Tax @ 2% of Construction		\$0.70		\$0.70
Everett Improvements		\$4.65		\$4.65
Total Construction		\$45.88	\$5.98	\$51.86
Total Project Costs		\$50.39	\$6.61	\$57.00

Tulalip Transmission Line (36 inch Diameter) From 27th Ave to Location of Regional Reservoir (West 9500 feet) - Regional Reservoir is Not Included			
Date: 9/09/05			
Item Description	Quantity	Units	Unit Cost 04 Cost
Mobilization @ 10%	10 %		\$ 450,000.00
Temporary Erosion Control	5,000 LF		\$ 2.00 \$ 10,000.00
Traffic Control - Rural	5,000 LF		\$ 5.00 \$ 25,000.00
Dewatering - Lowland	4,000 LF		\$ 60.00 \$ 240,000.00
Dewatering - Sidehill/Upland	2,000 LF		\$ 40.00 \$ 80,000.00
Pipeline in Improved Roadway Location	5,000 LF		\$ 285.00 \$ 1,425,000.00
Pipeline in Unimproved Area Location	4,500 LF		\$ 250.00 \$ 1,125,000.00
ARV and Chamber	3 EA		\$ 8,000.00 \$ 24,000.00
Valves (every 4,000 feet)	2 EA		\$ 14,000.00 \$ 28,000.00
Subtotal			\$ 3,407,000.00
Contingencies @ 30%			\$ 1,022,100.00
<b>Total Construction Cost</b>			<b>\$ 4,429,100.00</b>
Engineering, Permitting, Administration, (26%)			\$ 1,151,566.00
See Note 1			\$ 5,580,666.00
<b>Project Cost</b>			<b>\$ 5,580,666.00</b>

Note 1: Pre-design 4%, Permitting / Environmental 3%, Design 6%, Construction Observation 10%, Administration 3%

Inflated Cost Estimate	Cost in Millions	Year / Implemented	Rate of Escalation	Cost (in Millions) Year Implemented @ 3% per year
Pre-Design @ 4% of Construction	\$ 0.18	2006	1.0609	\$ 0.19
Permitting / Environmental Process @ 3% of Construction Costs	\$ 0.13	2007/2008	1.093	\$ 0.15
Final Design @ 6% of Construction Costs	\$ 0.27	2007/2008	1.093	\$ 0.29
<b>Construction Total</b>	<b>\$ 4.43</b>	<b>2009/2010</b>	<b>1.194</b>	<b>\$ 5.29</b>
Construction Observation @ 10% of Construction	\$ 0.44	2009/2010	1.194	\$ 0.53
Administration @ 3% of Construction	\$ 0.13	2009/2010	1.194	\$ 0.16
<b>Total Construction</b>	<b>\$ 5.00</b>			<b>\$ 5.98</b>
<b>Total Project Costs</b>	<b>\$ 5.58</b>			<b>\$ 6.60</b>

Alternative 1 - Weyco Connection (City of Everett) to 88th St / 27th Ave. (Quil Ceda Village) 36 - Inch Diameter Pipeline						City of Everett recommended costs based on 10% Mobilization	
Item Description	Quantity	Units	Unit Cost In 2004 Dollars	Cost		10% Mob	
Mobilization @5%	5	%		\$ 1,070,000.00		\$ 2,139,010.00	
Temporary Erosion Control	18,100	LF	\$ 2.00	\$ 36,200.00		\$ 36,200.00	
Traffic Control - City	27,300	LF	\$ 10.00	\$ 273,000.00		\$ 273,000.00	
Traffic Control - Rural	4,740	LF	\$ 5.00	\$ 23,700.00		\$ 23,700.00	
Dewatering - Lowland	13,650	LF	\$ 60.00	\$ 819,000.00		\$ 819,000.00	
Dewatering - Sidehill/Upland	8,370	LF	\$ 40.00	\$ 334,800.00		\$ 334,800.00	
Pipeline in Improved Roadway Location	18,040	LF	\$ 285.00	\$ 5,141,400.00		\$ 5,141,400.00	
Pipeline w/Directional Drill (two 30-Inch-diam. HDPE)	6,900	LF	\$ 2,000.00	\$ 13,800,000.00		\$ 13,800,000.00	
ARV and Chamber	8	EA	\$ 8,000.00	\$ 64,000.00		\$ 64,000.00	
Valves (every 4,000 feet)	7	EA	\$ 14,000.00	\$ 98,000.00		\$ 98,000.00	
Booster Pump Station	1	LS	\$ 800,000.00	\$ 800,000.00		\$ 800,000.00	
<b>Total Alternative 1 Pipeline</b>				<b>\$ 22,460,100.00</b>		<b>\$ 23,529,110.00</b>	
Contingencies @ 30%				\$ 6,738,030.00		\$ 7,058,733.00	
<b>Total Construction Cost Less Everett Improvements</b>				<b>\$ 29,198,130.00</b>		<b>\$ 30,587,843.00</b>	
Engineering, Permitting, Administration, and Sales Tax (28%) See Note 1				\$ 8,175,476.40		\$ 8,564,596.04	
<b>Project Cost Less Everett Improvements</b>				<b>\$ 37,373,606.40</b>		<b>\$ 39,152,439.04</b>	
<b>Everett Improvements</b>							
Weyco Line Rehabilitation (Complete)				\$ 3,645,000.00		\$ 3,645,000.00	
Intertie to City of Everett's Water Supply (Est. at 06 Project Costs)				\$ 1,000,000.00		\$ 1,000,000.00	
<b>Total Everett Improvements</b>				<b>\$ 4,645,000.00</b>		<b>\$ 4,645,000.00</b>	
<b>Total Project Costs</b>				<b>\$ 42,018,606.40</b>		<b>\$ 43,797,439.04</b>	

Note 1: Pre-design 4%, Permitting / Environmental 3%, Design 6%, Construction Observation 10%, Administration 3%, Sales Tax 2%. (9% Sales Tax applied to 25% of project outside Tribal Reservation boundary) for a total of 28%

Inflated Cost Estimate	Cost in Millions	Year / Implemented	Rate of Escalation	Cost (in Millions) Year Implemented @ 3% per year	Cost in Millions (10% Mob)	Rate of Escalation	Cost (in Millions) Year Implemented @ 3% per year
Planning Report	\$ 0.15	2005	1.03	\$ 0.15	\$ 0.15	1.03	\$ 0.15
Pre-Design @ 4% of Construction Less Everett Improvements	\$ 1.17	2006	1.0609	\$ 1.24	\$ 1.22	1.0609	\$ 1.30
Permitting / Environmental Process @ 3% of Construction Costs	\$ 0.25	2007/2008	1.093	\$ 0.27	\$ 0.92	1.093	\$ 1.02
Final Design @ 6% of Construction Costs	\$ 2.24	2007/2008	1.093	\$ 2.45	\$ 1.84	1.093	\$ 2.04
Construction				\$ -			
<b>Construction Total</b>	<b>\$ 29.20</b>	<b>2009/2010</b>	<b>1.194</b>	<b>\$ 34.86</b>	<b>\$ 30.59</b>	<b>1.1593</b>	<b>\$ 35.99</b>
Construction Observation @ 10% of Construction	\$ 2.92	2009/2010	1.194	\$ 3.49	\$ 3.06	1.194	\$ 3.49
Administration @ 3% of Construction	\$ 0.88	2009/2010	1.194	\$ 1.05	\$ 0.92	1.194	\$ 1.05
Sales Tax @ 2% of Construction	\$ 0.58	2009/2010	1.194	\$ 0.70	\$ 0.61	1.194	\$ 0.70
Everett Improvements	\$ 4.65	2005/2006	1	\$ 4.65	\$ 4.65	1	\$ 4.65
<b>Total Construction</b>	<b>\$ 38.23</b>			<b>\$ 44.74</b>	<b>\$ 39.83</b>		<b>\$ 45.88</b>
<b>Total Project Costs</b>	<b>\$ 42.03</b>			<b>\$ 48.85</b>	<b>\$ 43.96</b>		<b>\$ 50.39</b>

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Everett, WA 98201  
14 (425) 257-7000

15 UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON

16 TULALIP TRIBES OF WASHINGTON, )  
17 )

18 Plaintiff,

19 v. )

20 CITY OF EVERETT, Washington, )

21 Defendant. )  
22 )  
23 )

No.

**JOINT MOTION FOR ENTRY OF  
CONSENT JUDGMENT**

24 Plaintiff Tulalip Tribes of Washington ("Tulalip Tribes") and Defendant City of  
25 Everett, Washington ("City of Everett"), by and through their respective counsel of  
26 record, respectfully request this Court enter the attached Consent Judgment to resolve  
27 those claims which have been brought in this action pursuant to the terms of a

1 Settlement Agreement entered into between the parties. As grounds therefore, the  
2 parties state to the Court as follows:

3 1. This action was filed by the Tulalip Tribes on September 19, 2005. The  
4 Court has jurisdiction of the case pursuant to 28 U.S.C. § 1331 in that this case arises  
5 under the Constitution, laws or treaties of the United States; and pursuant to 28 U.S.C.  
6 §1362 in that this action is brought by a federally-recognized Indian Tribe.

7 2. Defendant City of Everett is a Washington Municipal Corporation and the  
8 claims asserted arose in this judicial district. Venue, therefore, is proper in this judicial  
9 district pursuant to 28 U.S.C. § 1391(b), (c).

10 3. The Tulalip Tribes notified the City of Everett of a claim in November,  
11 2001 pursuant to R.C.W. § 4.96.020. A series of meetings was held over the course of  
12 the next year in which the parties exchanged information relating to the claim. After  
13 the information exchange, the parties agreed to participate in a mediation process in an  
14 attempt to resolve the claim. A Mediation Agreement was signed in March 2003 and a  
15 professional mediator, John Bickerman, was hired to assist the parties.

16 4. Over the course of the last four years, the parties have been able to  
17 resolve through the mediation process several disputes, including disputes that were the  
18 subject of various court actions.

19 5. The subject of this litigation is a specific claim that is extremely complex,  
20 of long standing duration, and interconnected with other matters that are of significant  
21 interest to both parties. Accordingly, negotiations took a substantial amount of time as  
22 various proposals and concepts were discussed, modified, supplemented and agreed  
23 upon.

24 6. During the entire mediation process the parties have been represented by  
25 numerous in-house counsel and outside counsel with expertise regarding the subject  
26 matters of discussion. Arms length negotiations took place between negotiation teams  
27

1 established by the parties and at times the Board of Directors of the Tulalip Tribes met  
2 in face-to-face meetings with the Mayor of the City of Everett and members of the City  
3 Council.

4 7. As a result of almost four years of continuous meetings, negotiations, and  
5 discussions, and thousands of hours of attorney and staff time devoted to this matter,  
6 the parties reached a settlement of the claim in the Complaint filed in this case and  
7 other matters all as set forth in a Settlement Agreement attached as Exhibit A.

8 8. The Settlement Agreement has been approved by the Board of Directors of  
9 the Tulalip Tribes and the Everett City Council.

10 9. The Settlement Agreement provides that upon its execution the parties  
11 will proceed with this litigation and seek a final judgment based on the terms of the  
12 settlement reached between the parties with the Court retaining continuing jurisdiction  
13 of the action to enforce the terms of the Settlement Agreement.

14 10. The Settlement Agreement contains a detailed process for resolution of  
15 disputes in order to avoid expensive and time-consuming litigation. Nevertheless, the  
16 Parties request that, if a dispute arises that cannot be so resolved, this Court to retain  
17 continuing jurisdiction of this case to enforce the terms of its Consent Judgment.

18 11. Outside counsel for both parties have been involved in similar disputes involving  
19 fish damage claims brought by Tribes against third parties where federal district courts  
20 in Idaho have entered a Judgment incorporating the terms of the parties' Settlement  
21 Agreement and retaining jurisdiction to enforce the terms of that Consent Judgment.  
22 The parties to this action respectfully request that this Court take similar action.

23 12. Approval of a consent judgment is within the discretion of this Court. *See*  
24 *generally U.S. v. Gila Valley Irrigation Dist.*, 31 F.3d 1428, 1432 (9th Cir. 1994).

25 13. A proposed form of Judgment is attached.  
26  
27  
28





1 Pursuant to the Joint Motion to Approve and Enter Consent Judgment filed by  
2 the parties in this action and the Court being otherwise fully advised, and the parties  
3 being fully represented and advised by their respective counsel of record, it is hereby  
4 ORDERED, ADJUDGED AND DECREED as follows:

5 1. The Court has jurisdiction over the parties and has jurisdiction over the  
6 subject matter of this action under 28 U.S.C. 1331 and 28 U.S.C. 1362. Venue is proper  
7 in that the claim arose in this judicial district.

8 2. The Settlement Agreement dated September 16, 2005, attached to the  
9 parties' Joint Motion as Exhibit A, resolves all claims that have been made in this  
10 litigation and shall be made the Judgment in this action.

11 3. This Court will retain continuing jurisdiction to enforce this Consent  
12 Judgment for the term of the Settlement Agreement. The Court will, however,  
13 administratively close the file subject to reopening at the request of either party.

14 4. This Judgment shall be final and conclusive as between the parties; the  
15 disputed matter is fully resolved by the Settlement Agreement; the court's decision  
16 shall be final; and all rights of appeal are waived.

17 5. All claims in the Complaint not expressly decided herein have been  
18 resolved by the parties' settlement, without award of costs or attorneys fees to any  
19 party.

1  
2 AND, IT IS FURTHER ORDERED that the Clerk of the Court shall promptly enter a  
3 final judgment.

4 DATED this \_\_\_\_ day of \_\_\_\_\_, 2005.

5  
6 BY THE COURT:

7  
8 \_\_\_\_\_  
9 U.S. District Court Judge  
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**APPENDIX H  
TO SETTLEMENT AGREEMENT BETWEEN EVERETT AND TULALIP  
TRIBES**

**LIMITED WAIVER OF SOVEREIGN IMMUNITY**

In fulfillment of the obligations set forth in paragraph P.1 of that certain Settlement Agreement between The Tulalip Tribes of Washington and the City of Everett, Washington ("Everett"), dated September 16, 2005, the Tribe hereby waives its immunity from suit for the sole and limited purpose of allowing the City of Everett, Washington, to invoke the continuing jurisdiction of the United States District Court for the Western District of Washington for the interpretation, enforcement or breach of said Settlement Agreement constituting the Consent Judgment. Nothing in this waiver shall be construed as creating any rights whatsoever in any person not a party to this cause, or as waiving the Tribe's immunity from any other action, claim or suit whatsoever.

Executed this 16th day of September, 2005

TULALIP TRIBES OF WASHINGTON

  
\_\_\_\_\_

September 16, 2005

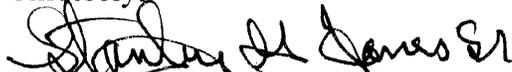
Hon. Ray Stephanson  
Mayor, City of Everett  
City Hall, 2930 Wetmore Ave, 10th Floor  
Everett, WA 98201

Dear Mr. Mayor:

This letter confirms our understanding that, in connection with that certain agreement entitled Agreement for Settlement, Water Supply, and Water Delivery System Between The Tulalip Tribes of Washington and the City of Everett, Washington (the "Agreement") dated September 16, 2005, we share a mutual understanding with respect to the potential jurisdictional issues presented by Appendix A.

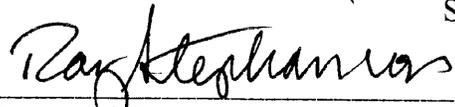
Specifically, it is currently contemplated that the pipeline ownership boundary between the Parties shall be at the Master Meter. The location of the Master Meter is anticipated to be south of Union Slough. It is agreed that the Master Meter shall be the demarcation line for ownership, control, maintenance and jurisdiction of the pipeline. Based upon the anticipated location of the Master Meter, it is assumed that the demarcation line will be outside Reservation boundaries and within the territorial jurisdiction of the City. Based upon that assumption, some time before the Project becomes operational, the Tribe and the City shall enter into a contractual arrangement whereby matters of ownership, control, maintenance and jurisdiction of the pipeline shall be reasonably resolved for that portion of the pipeline that lies outside of Reservation boundaries and within the territorial jurisdiction of the City. In reaching that contractual arrangement, our common objective is to provide a clear and efficient resolution that furthers our mutual goals in the pipeline project and avoids legal complication.

Sincerely,



Stanley G. Jones, Sr., Chairman

Agreed:



Ray Stephanson, Mayor, City of Everett

Date: September 16, 2005

16 September 2005

AGREEMENT BETWEEN THE TULALIP TRIBES OF WASHINGTON AND THE  
CITY OF EVERETT, WASHINGTON, CONCERNING THE HENRY M. JACKSON  
HYDROELECTRIC PROJECT, FERC NO. 2157

WHEREAS the Tulalip Tribes of Washington (“Tribe”) and the City of Everett, Washington (“City”) (together the “Parties”) on 15 July 2005 initialed the Agreement for Settlement, Water Supply, and Water Delivery System Between The Tulalip Tribes of Washington and the City of Everett, Washington (“the Agreement”), and by so doing agreed that although certain matters, as reflected in that document, remain to be prepared and agreed upon, the Agreement accurately reflects the mutual intent of the Parties regarding the matters set forth therein;

WHEREAS in Part H.1 of the Agreement it is stated that there shall be a side agreement between the Parties reflecting certain specified undertakings relating to the Jackson Project relicensing, that side agreement being one of the items that, on the initialing of the Agreement, remained to be prepared and agreed upon; and

WHEREAS this document is intended to be that side agreement to which reference is made in Part H.1 of the Agreement;

NOW THEREFORE, for the good and valid consideration set forth in the Agreement, and subject to all of the terms and conditions of the Agreement the Parties agree:

1. That in the current Jackson Project relicensing proceeding the Tribe will neither propose nor support any effort to introduce or reintroduce anadromous fish or bull trout above the City’s Diversion Dam located at or about River Mile 9.6; and,

2. That in the current Jackson Project relicensing proceeding, the Tribe will cooperate with the City in identifying and studying, among other things, non-flow measures designed to address habitat and other issues relating to the reconstitution or maintenance of river bars and side channels. After such review and study, the Tribe will recommend reasonable alternatives to address these issues.

**IN WITNESS WHEREOF**, the City of Everett and the Tulalip Tribes of Washington have executed this Agreement,

DATED: September 16, 2005

**TULALIP TRIBES OF WASHINGTON**

By: Stanley G. Jones Sr  
STANLEY G. JONES, SR.  
Tribal Chairman

**CITY OF EVERETT, WASHINGTON**

By: Ray Stephanson  
RAY STEPHANSON  
Mayor

ATTEST:

Marie M. Zackuse  
MARIE M. ZACKUSE  
Secretary

ATTEST:

Sharon Marks  
SHARON MARKS  
City Clerk

APPROVED AS TO FORM:

Jennifer H. Weddle  
JENNIFER H. WEDDLE  
Tribal Attorney

APPROVED AS TO FORM:

James D. Iles  
JAMES D. ILES  
City Attorney

September 16, 2005

Stanley G. Jones, Sr.  
Chairman, Board of Directors  
THE TULALIP TRIBES OF WASHINGTON  
6700 Totem Beach Road  
Tulalip, Washington 98271

Re: City of Everett Application for a 200 cfs State Water Right & Tribal  
Participation and Consultation

Dear Stan:

In Part F. 5. of the Agreement for Settlement, Water Supply, and Water Delivery System Between The Tulalip Tribes of Washington and the City of Everett, Washington (the "Agreement"), the Tribe agrees that it will provide written support for the City's pending application for a 200 cfs water right (water right application No. 13219, dated 15 December 1954). Appendix E. to the Agreement reflects this Tribal support, for which the City expresses its sincere appreciation.

The City is now writing to the Tribe to reaffirm its prior verbal commitment to consult with the Tribe on a government-to-government basis during the preparation of the documentation that the City will present to the Washington State Department of Ecology in support of its 200 cfs application. It is the City's intent that this governmental consultation will allow the Tribe to participate meaningfully in the preparation of those supporting papers.

We look forward very much to this consultation process, which the City views as an integral part of the greater effort reflected in the Agreement between us.

Very truly yours,

  
Mayor Ray Stephanson  
City of Everett

Michael Mirande  
206.903.0859  
mmirande@millerbateman.com

September 16, 2005

A. Reid Allison, III  
Office of the Reservation Attorney  
THE TULALIP TRIBES OF WASHINGTON  
6700 Toten Beach Road  
Tulalip, Washington 98271

Re: Agreement for Settlement, Water Supply, and Water Delivery System Between The  
Tulalip Tribes of Washington and the City of Everett, Washington

Dear Reid:

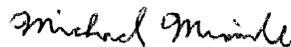
Pursuant to Part I. of the Agreement for Settlement, Water Supply, and Water Delivery System between The Tulalip Tribes of Washington and the City of Everett, Washington (the "Agreement"), we are writing to provide our opinion that the City's execution of the document is properly authorized under controlling law.

I have served as counsel for the City of Everett during the negotiation of the Agreement. I have reviewed the Agreement and controlling Washington law, with particular attention to Article 4.14 of the City of Everett Charter, as amended in 11/05/96.

The opinion I express here is given on the date of this letter and is based on the facts and law as I understand them at this time, and I assume no obligation to update this opinion in the light of subsequent developments. This opinion is given solely for the benefit of The Tulalip Tribes of Washington and may not be relied upon by any other person or entity.

Given the forgoing, it is my opinion that Mayor Ray Stephanson of the City of Everett is properly authorized under controlling law to execute the Agreement.

Very truly yours,



Michael Mirande  
Miller Bateman LLP

September 16, 2005

Jim Iles, Esq.  
City Attorney  
City of Everett  
2930 Wetmore Ave.  
Everett, WA 98201

Dear Jim:

Per the obligations set forth in Paragraph J.1 of the Agreement for Settlement, Water Supply, and Water Delivery System (the "Agreement") between the City of Everett (the "City") and the Tulalip Tribes of Washington (the "Tribe") dated September 16, 2005, we are providing our legal opinion that the Agreement can be executed and will be fully effective as to the Tribe notwithstanding an absence of express federal approval for its execution.

No approval by the Secretary of the Interior, or any other federal official, is necessary to make the Agreement fully effective as to the Tribe. The statutory basis for federal approval of certain contracts made by Indian tribes is contained in 25 U.S.C. § 81. The statute provides, in pertinent part:

§ 81. Contracts with Indian tribes or Indians

(a) In this section:

(1) The term "Indian lands" means lands the title to which is held by the United States in trust for an Indian tribe or lands the title to which is held by an Indian tribe subject to a restriction by the United States against alienation.

(2) The term "Indian tribe" has the meaning given that term in section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(e)).

(3) The term "Secretary" means the Secretary of the Interior.

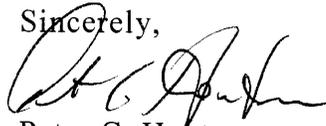
(b) No agreement or contract with an Indian tribe that encumbers Indian lands for a period of 7 or more years shall be valid unless that agreement or contract bears the approval of the Secretary of the Interior or a designee of the Secretary.

The purposes of the Agreement are: (1) to settle certain fish damage claims of the Tribe against the City, and (2) to contractually bind the City and the Tribe – in summary – to certain financial commitments, joint efforts for funding and development of a water delivery system, provision of water from the City to the Tribe, and to improved communications and pursuit of non-litigation resolutions to issues. Upon execution of the Agreement, the fish damage claims articulated by the Tribe are being filed in a Complaint before the United States District Court for the Western District of Washington, as required by Paragraph P.2 of the Agreement. The Complaint seeks damages to aboriginal and treaty-reserved fishing rights in connection with the City's construction, operation, and maintenance of diversion dams on the Sultan River at or about River Miles 9.0 and 9.6 during the time period of approximately 1916 to 1961. The Agreement provides for settlement and final resolution of said claims of the Tribe.

The United States is not a party to that litigation. The Agreement does not bind the United States to its terms or conditions or affect the Tribe's aboriginal or treaty-reserved rights or claims pursuant thereto that might be made by the United States on behalf of the Tribe. Indeed, the Agreement carefully articulates that any comment or impact on the viability, scope, or resolution of the Tribe's aboriginal or treaty-reserved rights is not intended by the City and the Tribe. *See* Agreement, Paragraphs F.3, F.4, F.6, O.2, O.4, and O.5.

Given the scope of the obligations in the Agreement, 25 U.S.C. § 81 does not apply to the Agreement. Section 81 only applies to contracts that encumber tribal lands for a period of seven years or more. 25 U.S.C. § 81(b). No such encumbrances are located in the Agreement. As a result, 25 U.S.C. § 81 does not limit or impair the ability of the Tribe to make or enter into the Agreement without obtaining the approval of the Secretary of the Interior or her designee.

Sincerely,



Peter C. Houtsma  
of Holland & Hart LLP



September 16, 2005

Jim Iles, Esq.  
City Attorney  
City of Everett  
2930 Wetmore Ave.  
Everett, WA 98201

Dear Jim:

Pursuant to Part I of the Agreement for Settlement, Water Supply, and Water Delivery System between The Tulalip Tribes of Washington and the City of Everett, Washington (the "Agreement"), we are writing to provide our opinion that the Tribe's execution of the document is properly authorized under controlling law.

I have served as counsel for the Tribe during the negotiation of the Agreement. I have reviewed the Agreement and controlling Tribal law, with particular attention to Art. VI § 1.A of the Constitution and Bylaws of The Tulalip Tribes of Washington and the Resolution of the Tulalip Board of Directors dated September 9, 2005 authorizing Chairman Stanley Jones, Sr. to execute the Agreement.

The opinion I express here is given on the date of this letter and is based on the facts and law as I understand them at this time, and I assume no obligation to update this opinion in the light of subsequent developments. This opinion is given solely for the benefit of the City and may not be relied upon by any other person or entity.

Given the forgoing, it is my opinion that Chairman Stan Jones, Sr. of The Tulalip Tribes of Washington is properly authorized under controlling law to execute the Agreement.

Sincerely,

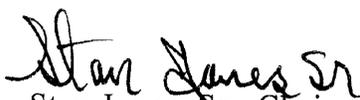
Peter C. Houtsma  
of Holland & Hart LLP

Mr. Tim Whitty  
Manager, Trust Department  
Frontier Bank  
2825 Colby Ave.  
Everett, WA 98201

Dear Mr. Whitty:

Pursuant to the terms of the Agreement for Settlement, Water Supply, and Water Delivery System Between The Tulalip Tribes of Washington ("Tribe") and the City of Everett, Washington ("City") dated September 16, 2005 (hereinafter the "Settlement Agreement"), we hereby enclose a Release that has been executed by Tribe and is to be held by you in escrow. Upon full funding of the Project and completion of the construction and start up of the Project, as defined in the Settlement Agreement, the Release is to be withdrawn from escrow and given to the exclusive custody and control of the City. Notification of such occurrence shall be provided to you in writing by a document signed jointly by the Tribe and the City. For your services as an escrow agent in connection with this matter, you agree to the following compensation: \$1,000.00, to be split equally between the City and Tribe for a total payment of \$500.00 each. By signing below, you agree to hold the Release until such written notification is provided.

Sincerely,

  
Stan Jones, Sr., Chairman  
The Tulalip Tribes of Washington

  
Ray Stephanson, Mayor  
City of Everett

**Agreed and Accepted:**

\_\_\_\_\_

**Dated:** \_\_\_\_\_

# *A Celebration of the Implementation of the Governmental Alliance*

*September 16, 2005*

*Witnessed by:*

*For the Tribe:*

*Stanley Jones Sr*  
*Stanley Jones, Sr., Tribal Chairman*

*Melvin Sheldon Jr.*  
*Melvin Sheldon, Jr., Vice Chairman*

*Marie Zackuse*  
*Marie Zackuse, Secretary*

*Chuck James*  
*Chuck James, Treasurer*

*Herman A. Williams Jr.*  
*Herman Williams, Jr.  
Board Member*

*Les Parks*  
*Les Parks, Board Member*

*Glen Gobin*  
*Glen Gobin, Board Member*

*For the City of Everett:*

*Ray Stephanson*  
*Ray Stephanson, Mayor of Everett*

*Marian Krell*  
*Marian Krell, Council President*

*Arlan Hatloe*  
*Arlan Hatloe, Council Vice President*

*Mark Olson*  
*Mark Olson, Council Member*

\_\_\_\_\_  
*Ron Gipson, Council Member*

*Drew Nielsen*  
*Drew Nielsen, Council Member*

*Brenda Stonecipher*  
*Brenda Stonecipher, Council Member*

\_\_\_\_\_  
*Bob Overstreet, Council Member*