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Via E-Filing

April 16, 2021

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: Willamette Falls Hydroelectric Project, FERC Project No. 2233
Application for Authorization to Grant Perpetual Cultural Practices Easement for
Non-Project Use of Project Lands**

Dear Secretary Bose:

Portland General Electric Company ("PGE"), licensee for the Willamette Falls Hydroelectric Project, FERC Project No. 2233 (the "Project"), is pleased to file for approval by the Federal Energy Regulatory Commission ("Commission" or "FERC") the enclosed Application for Authorization to Grant Perpetual Cultural Practices Easement for Non-Project Use of Project Lands ("Application"). If approved by the Commission, this Application will facilitate access to certain areas of Project lands for Native American tribes for traditional cultural practice purposes; specifically, for the ceremonial harvest of salmon, steelhead, and lamprey.

Pursuant to Article 412 of the Project's license,¹ PGE may, after prior notice to the Commission, grant easements or rights-of-way across Project lands for certain non-Project uses that are consistent with the purposes of protecting and enhancing the scenic, recreational, and environmental values of the Project. While PGE believes that the Perpetual Cultural Practice Easement ("PCPE") proposed in the Application is consistent with Project purposes, it does not believe that the easement contemplated in the PCPE can be granted unilaterally by PGE under Article 412.

For this reason, and as detailed in the Application, PGE seeks authorization from the Commission for PGE to grant the PCPE to any requesting federally recognized Native American tribe, including the Confederated Tribes of the Grand Ronde Community of Oregon ("Grand Ronde"); Confederated Tribes of Siletz Indians ("Siletz Tribe"); Confederated Tribes of the Umatilla Indian Reservation ("CTUIR"); Confederated Tribes of the Warm Springs Reservation of Oregon ("Warm Springs Tribes"); and Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") (collectively, "Tribes"). A draft form of the PCPE is attached to the Application in Attachment A.

¹ *Portland Gen. Elec. Co.*, 113 FERC ¶ 62,186 (2005).

Background

PGE recognizes and respects the deep cultural connection that the Tribes have to the land, waters, flora, and fauna at Willamette Falls since time immemorial. PGE understands the Tribes view ceremonial fishing and lamprey gathering activities as vital and essential cultural practices. PGE seeks to accommodate and support these practices by allowing Tribes to access a portion of Project lands in accordance with the PCPE.

Consultation with the Tribes

Granting access to the Tribes to allow ceremonial fishing and lamprey gathering within the Project boundary has been a topic of discussion among PGE and the Tribes for several years. PGE has met with the various Tribes on numerous occasions. An outcome of the consultation has been to enhance PGE's understanding of the Tribes' objectives and the feasibility of allowing access for the traditional cultural practices consistent with Project license requirements. As described in the Application, further consultation with the Tribes as well as the Oregon State Historic Preservation Officer will be conducted as part of PGE's proposed study to evaluate effects, if any, of this non-Project use on historic properties that are listed or eligible for listing on the National Register of Historic Places.

Consistency with PGE's FERC License

The proposed non-Project use is consistent with PGE's FERC license. Not only will it allow PGE to continue to perform necessary operations and maintenance at the Project, but it also will not interfere with the Project's other purposes of protecting and enhancing the environmental, scenic, recreational, and other values of the Project. In addition, the proposed non-Project use is consistent with the license's emphasis on providing interpretative and educational opportunities related to, among other things, the Native American significance of Willamette Falls.² Providing access to allow the Tribes to conduct ceremonial fishing and lamprey gathering activities will promote this important cultural practice to the benefit of the Tribes and the general public in recognition of the deep connection that the Tribes have to Willamette Falls.

Request for Designation as Non-Federal Representative

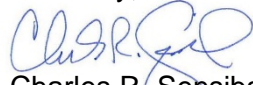
Finally, in conjunction with this filing, PGE is requesting that the Commission designate PGE as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 106 of the National Historic Preservation Act and the implementing regulations at 36 C.F.R. § 800.2(c)(4), and, as may be needed, under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402, § 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and the implementing regulations at 500 C.F.R. § 600.920.

PGE appreciates the efforts of the Tribes in pursuing the traditional tribal cultural practices of ceremonial fishing and lamprey gathering at the Project and looks forward to working with the Tribes following the Commission's approval of this Application.

² *Id.* at P 25.

Should you have any questions about the enclosed Application or any of the supporting materials provided, please do not hesitate to contact me at 202.274.2850 or charles.censiba@troutman.com.

Sincerely,



Charles R. Sensiba

Counsel for Portland General Electric Company

Enclosure

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

Portland General Electric Company)

Project No. 2233-____

**APPLICATION FOR AUTHORIZATION TO GRANT
PERPETUAL CULTURAL PRACTICES EASEMENTS
FOR NON-PROJECT USE OF PROJECT LANDS**

Portland General Electric Company (“PGE”), licensee for the Willamette Falls Hydroelectric Project, FERC Project No. 2233 (“Project”), hereby seeks approval from the Federal Energy Regulatory Commission (“FERC” or “Commission”) to grant a Perpetual Cultural Practices Easement¹ (“PCPE”) on lands within the Project boundary, for non-project use of Project lands, as described in this application (“Application”).

Certain federally recognized Indian tribes, including the Confederated Tribes of the Grand Ronde Community of Oregon (“Grand Ronde”); Confederated Tribes of Siletz Indians (“Siletz Tribe”); Confederated Tribes of the Umatilla Indian Reservation (“CTUIR”); Confederated Tribes of the Warm Springs Reservation of Oregon (“Warm Springs Tribes”); and Confederated Tribes and Bands of the Yakama Nation (“Yakama Nation”) (collectively, “Tribes”) propose to acquire easement rights to access certain locations within the Project for traditional cultural practice purposes; specifically, to

¹ As a possible alternative to the PCPE, PGE may elect to authorize the activities described in the PCPE through a different instrument (e.g., Deed Restrictions and/or Restrictive Covenants), provided such other instrument does not expand the nature or extent of the rights granted to the Tribes and includes substantially similar restrictions and protections for the Project and public health and safety. This Application seeks approval for PGE to grant the rights described in the draft PCPE, whether through an easement or other instrument.

harvest lamprey, salmon, and steelhead. PGE requests Commission approval for PGE to grant the Tribes a PCPE for these purposes within defined areas at the Project.

Federally recognized tribes will have the opportunity to obtain the access rights described in the PCPE. The PCPE will grant the rights to access designated areas within the Project boundary to harvest lamprey, salmon and steelhead, deploy removable fishing platforms, and to conduct associated required geotechnical and engineering tasks, in accordance with cultural preferences of each respective tribe so long as the tribe enters into and satisfies the obligations of the PCPE. A draft form of the PCPE is attached to this Application in Attachment A.

PGE has concluded that granting the PCPE to federally recognized tribes for the purposes described herein is not among the types of activities under the standard Use and Occupancy article, Article 412, of the Project license that PGE may grant without prior Commission approval.² Accordingly, PGE submits this Application for Commission authorization for PGE to grant PCPEs as described herein and as generally set forth in the attached draft PCPE.

I. DESCRIPTION OF PROPOSED PCPE

A. Background

The Tribes view ceremonial fishing and lamprey gathering activities as vital and essential cultural practices.³ They have sought to gain access to a portion of the property

² *Portland Gen. Elec. Co.*, 113 FERC ¶ 62,186 (2005).

³ See, e.g., Hunn, Eugene S., *Nch'i Wana "The Big River": Mid-Columbia Indians and Their Land*. University of Washington Press, Seattle, 1990; Jacobs, Melville, *Clackamas Chinook Texts II*. Indiana University Research Center in Anthropology, Folklore, and Linguistics, Publication 11, Bloomington, Indiana, 1959; Townsend, John Kirk, *Narrative of a Journey Across the Rocky Mountains, to the Columbia River, and a Visit to the Sandwich Island, Chili, &c., with a Scientific Appendix*. Oregon State University Press, Corvallis, Oregon, 1999; Thornton, Jesse, *Oregon and California in 1828*. Harper Bros., New York, 1864; Walker, Deward E., Jr., *Mutual Cross-utilization of Economic Resources in the Plateau: An Example*

within the Project boundary to engage in these traditional tribal cultural practices. PGE recognizes and respects the deep cultural connection that the Tribes have had to the land, waters, flora, and fauna at Willamette Falls since time immemorial and proposes to accommodate the Tribes' request by allowing federally recognized tribes to access designated areas within the Project property under the PCPE. The general area of the Project within which PGE proposes to grant the PCPE appears in Attachment B.⁴

Discussions and activities concerning access to Project lands for traditional cultural practice purposes have been ongoing for many years. Various Tribes have continued to conduct lamprey harvesting at Willamette Falls as they have historically done. In 2016, the Oregon Fish & Wildlife Commission authorized the Grand Ronde to conduct ceremonial fishing of hatchery spring Chinook salmon and hatchery summer steelhead at the base of Willamette Falls below the Project's T.W. Sullivan development located on the west (West Linn) side of the Willamette River using traditional methods but such authorization was silent on the issue of access to lands within the Project boundary.⁵ In 2018, the ceremonial fishing was initially authorized by the Oregon Department of Fish and Wildlife ("ODFW") for May 1 through July 31.⁶ In August of 2018, the Oregon Department of State Lands ("DSL") issued Waterway Registration APP0059537-RG ("Registration") to the Grand Ronde which purported to allow erection

from Aboriginal Nez Perce Fishing Practices. Laboratory of Anthropology Report of Investigations No. 41, Washington State University, Pullman, Washington, 1967.

⁴ A graphic description of the Easement Area is also included in PCPE Exhibit D-1.

⁵ See Ceremonial Salmon and Steelhead Harvest at Willamette Falls, Oregon Administrative Rule 635-041-0610, adopted April 22, 2016. This Administrative Rule is included herein as Attachment C.

⁶ For information on ODFW's recent regulation of ceremonial lamprey, salmon and steelhead harvesting at Willamette Falls, see generally ODFW and Tribal Partnerships in 2018, Oregon Department of Fish and Wildlife, December 2018, and ODFW and Tribal Partnerships in 2019, Oregon Department of Fish and Wildlife, December 2019, www.oregonlegislature.gov > cis > GovToGovReports.

of a fishing platform in a designated area at the base of Willamette Falls.⁷ PGE believes that the Registration is invalid because DSL issued the Registration with respect to property owned by PGE, not the state. The Registration was timely appealed (based on objections filed by PGE, Siletz Tribe, CTUIR, Warm Springs Tribes, and Yakama Nation) and remains under administrative appeal as of the filing of this Application.

In October 2018, the Grand Ronde deployed a 100 square foot fishing platform at the base of Willamette Falls.⁸ Notably, no federal or state permits were obtained as part of the effort other than a Ceremonial Harvest Permit issued by ODFW in 2018 and approval of the Registration by DSL in August 2018. In addition, no access right was obtained from PGE, and PGE notified the Grand Ronde of a trespass promptly thereafter. As required by the DSL Registration, the Grand Ronde's platform was removable, though the platform's footings that were installed are permanent, and the platform was deployed temporarily. ODFW extended the Grand Ronde harvest permit term from July 31, 2018 to October 31, 2018 to facilitate ceremonial dip net fishing from the platform after the platform was deployed.⁹ Members of the Grand Ronde fished from the platform for several days before dismantling the platform and removing it from the Willamette River.¹⁰

⁷ The waterway structure registration, Registration APP0059537-RG, issued by DSL is included herein as Attachment E.

⁸ *The Oregonian*, "Grand Ronde win right to keep Willamette Falls fishing scaffold" (Dec. 10, 2018), available at <https://www.oregonlive.com/business/2018/12/grand-ronde-win-right-to-keep-willamette-falls-fishing-scaffold.html>.

⁹ ODFW and Tribal Partnerships in 2018, Oregon Department of Fish and Wildlife, December 2018, [www.oregonlegislature.gov](http://www.oregonlegislature.gov/cis/GovToGovReports) > cis > GovToGovReports.

¹⁰ *The Oregonian*, "Grand Ronde win right to keep Willamette Falls fishing scaffold" (Dec. 10, 2018), available at <https://www.oregonlive.com/business/2018/12/grand-ronde-win-right-to-keep-willamette-falls-fishing-scaffold.html>.

In 2019, the Grand Ronde again temporarily deployed a platform under a Ceremonial Harvest Permit issued by ODFW authorizing the harvest of up to 15 hatchery spring Chinook salmon or hatchery summer steelhead from March 15 through July 31, and two hatchery spring Chinook salmon and three hatchery summer steelhead were harvested.¹¹

Since the Grand Ronde's initial deployment of its fishing platform in 2018, PGE has been in discussions with all the Tribes—the Grand Ronde as well as the Siletz Tribe, CTUIR, Warm Springs Tribes, and Yakama Nation—about providing some form of written property interest granted by PGE (ultimately culminating in the PCPE concept) to access designated areas within the Project boundary to deploy temporary fishing platforms and to harvest salmon, steelhead, and lamprey at Willamette Falls. As a result of those discussions, PGE is filing this Application to provide federally recognized tribes the opportunity to sign an identical counterpart copy of the PCPE and, upon execution of the PCPE, proceed in accordance with each tribe's cultural preferences so long as the PCPE obligations are satisfied.

B. Access for Harvesting Lamprey, Salmon and Steelhead Under the Proposed PCPE

As proposed, the PCPE will allow each federally recognized tribe executing the PCPE identical non-exclusive access to lands within a designated area of the Project boundary to conduct ceremonial fishing of hatchery spring Chinook salmon and hatchery summer steelhead (and to deploy a temporary platform for such purposes if desired) and

¹¹ See ODFW and Tribal Partnerships in 2019, Oregon Department of Fish and Wildlife, December 2019, www.oregonlegislature.gov/cis/GovToGovReports.

to access designated areas for the purpose of gathering lamprey.¹² Specifically, as stated in Exhibit C of the draft PCPE, “Cultural Practices,” the PCPE grants:

non-exclusive access to and use of the Easement Area for the following uses and purposes and for no other: (1) to harvest Pacific Lamprey and those cultural practices reasonably connected therewith; (2) to harvest Salmon and Steelhead and those cultural practices reasonably connected therewith; (3) to conduct engineering and geotechnical exploration and other related activities for the purpose of evaluating the proposed construction of a platform for harvesting Salmon and Steelhead; and (4) to construct, operate, and temporarily maintain and use a single removable fishing platform (scaffold) within the Easement Area. Footings may be permanent, but the platform apparatus must be readily removable, constructed out of nonconductive insulating materials and/or covered with non-conductive coating, and mounted to the rock/soil using nonconductive insulating mounts and/or inserting nonconductive insulators between the fishing platform and the mounts.¹³

Under the PCPE, “all construction by Non-Members within the Easement Area . . . shall be promptly . . . performed in accordance with all applicable statutes, laws and regulations” and “all Contractors shall obtain specific access permits from” PGE in the locations covered by the PCPE.¹⁴ This will help ensure that PGE is kept abreast of the tribes’ planned construction activities within the designated PCPE areas.

The tribes’ fishing platforms will be deployed at agreed-upon locations near Willamette Falls within certain areas of the Project boundary (hereafter, “Platform Area”) and lamprey gathering will be conducted at agreed upon locations on the Oregon City side of Willamette Falls within certain areas of the Project boundary (hereafter, “Lamprey Area”). A map depicting the general locations of the Platform Area and

¹² PCPE ¶ 3.

¹³ *Id.*, Exhibit C.

¹⁴ *Id.*, Exhibit F.

Lamprey Area (together, the “Easement Area”) within the Project boundary is included as Attachment B.

C. Tribal, Federal and State Treaties, Laws and Regulations

Importantly, while the PCPE will grant tribes access to the Easement Area and will require that the proposed non-Project use under the PCPE is consistent with PGE’s license (as described in Section II, below), the actual harvesting of lamprey, salmon and steelhead will be subject to tribal, federal, and state treaties, laws and regulations, as applicable, which are outside the scope of this Application.¹⁵ The draft PCPE expressly provides: “This Easement is intended solely to provide each Grantee with access to a specific portion of the PGE Property (identified in Section 3 below) to enable the Grantee to exercise the traditional tribal cultural practices specified herein.”¹⁶ The draft PCPE further states:

Reserved Tribal & State’s Rights. Nothing in this Easement is intended to nor shall it create, abrogate, diminish, waive, or otherwise alter any right of any Grantee, including but not limited to, any rights reserved or established by or in any treaty, executive order, statute, rule, caselaw, common law or otherwise. Further, nothing in this Easement is intended to nor shall it create, expand, abrogate, diminish, waive, or otherwise alter the responsibilities of the United States toward any Grantee under any federal treaty, executive order, statute, or otherwise. Nothing in this Easement is intended to nor shall it create expand, abrogate, diminish, waive, or otherwise alter the State of Oregon's jurisdiction as it may exist under law over the flora, fauna, lands, or beds and banks of the Willamette River.¹⁷

Thus, the proposed non-Project use will solely authorize access to the Easement Area for the harvest of salmon and steelhead (and to erect a temporary platform for such

¹⁵ PGE hereby expressly disclaims any intent to convey rights to take any fish or lamprey, which are matters of state, federal and/or tribal laws and treaties.

¹⁶ PCPE ¶ 2.

¹⁷ *Id.*, ¶ 2.1.

purposes if desired) and access for lamprey gathering. But the PCPE will not authorize the harvest/gathering activities themselves.

II. THE PROPOSED NON-PROJECT USE AND PGE’S FERC LICENSE

The proposed non-Project use is consistent with PGE’s FERC license. As expressly set forth in the draft PCPE, nothing in the PCPE “shall serve to waive, modify or interfere with any right or obligation under the FERC License,”¹⁸ and consistent with Commission requirements under *Linweave, Inc.*,¹⁹ PGE will retain the full ability to comply with its license and all Commission requirements.²⁰ As described below, this includes performing operations and maintenance at the Project. In addition, safety, cultural resources, and other Project resources and values will be protected under the PCPE.

A. PGE’s Project Operations and Maintenance

In accordance with PGE’s license, the harvesting of lamprey, salmon and steelhead, as well as deploying removable fishing platforms and conducting associated geotechnical and engineering tasks, for which access is granted under the PCPE, will not interfere with Project operations and maintenance. The draft PCPE states:

Notwithstanding any other provision contained herein, Grantor, its successors, and assigns, shall have the right to perform any and all acts required by the conditions of the FERC License, Commission orders, Commission delegated staff orders or directives, or the Commission’s

¹⁸ *Id.*, ¶ 2.2

¹⁹ 23 FERC ¶ 61,391 (1983); *see also Re Fieldcrest Cannon, Inc.*, 55 FERC ¶ 61,096, at p. 61,292 (1991) (explaining that *Linweave* requires that, before the Commission approves a transfer of project property, it must ensure that the licensee holds and controls all property interests necessary for it to accomplish project purposes and comply with all obligations of the FERC-issued license).

²⁰ PCPE ¶ 2.2.

regulations in effect from time to time, at any time, without the prior approval of any Grantee or Member.²¹

When PGE performs maintenance at the Project, access to the Easement Area may be restricted for limited periods of time to conduct the maintenance activities.²² The draft PCPE specifically states, for example, that PGE “reserves the right to impose additional temporary measures as Grantor deems reasonably necessary to protect life, property, or to address its maintenance, operational, safety, and security concerns related to” the Project.²³ However, PGE will make all efforts to minimize maintenance activities that interfere with the tribes’ use of the Easement Area under the PCPE and, as provided for in the draft PCPE, will provide notice of any restriction or suspension of access for operations and maintenance purposes.²⁴

B. Safety Associated with the Proposed Non-Project Use

The access permitted under the PCPE will be conducted in accordance with the safety requirements provided for in the draft PCPE and as required by PGE’s FERC license and all other applicable law and regulations. As stated in the draft PCPE, “the use of the Easement Area shall not endanger health,”²⁵ and “[a]ny rights granted by Grantor under this Easement are subject and subordinate to . . . applicable FERC regulations and Grantor’s continuing right to construct, operate, maintain, replace, and secure the PGE Facilities.”²⁶

²¹ *Id.*

²² PCPE ¶ 14.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*, ¶ 3.1.

²⁶ *Id.*, ¶ 3.4.

Further, Exhibit F of the draft PCPE includes the following safety requirements:

In no event shall any Grantee allow or engage in any unconstrained access in waters immediately below Dam spillways/structures except when conducting lamprey harvests during the months of June and July each year and then provided water levels are low and Grantor is not conducting any activity on or upriver from the dam which may endanger those conducting lamprey harvests. For the purposes of this Easement the term “unconstrained” means: (i) that there is no physical barrier between individuals and Dam structures to prevent entrainment in flows over or through the Dam structures, or (ii) in the direct path of any controlled or uncontrolled release of waters to areas below the Dam. Examples of unconstrained access include access to areas affected by failure of the Obermeyer weirs resulting in unplanned/uncontrolled spill from the lagoon or flashboard failure with sudden release of water to otherwise dewatered areas around base of the falls.²⁷

PGE recognizes the importance of tribes’ ceremonial fishing and lamprey gathering activities and wishes to accommodate their desire to have reasonable access to engage in these traditional tribal cultural practices at the Project. However, PGE also recognizes that the Easement Area, including the proposed Fishing Platform Area at the base of Willamette Falls, is in an inherently dangerous location. Though PGE will provide access as described in the PCPE, PGE in no way guarantees the safety of the Easement Area for the activities authorized by the PCPE.²⁸ As the draft PCPE makes clear, tribes executing the PCPE will be required to monitor conditions in the Easement Area and restrict and suspend access as necessary to protect their health and safety within the Easement Area.²⁹ As an added measure, the draft PCPE provides that PGE may “temporarily restrict or suspend access to the Easement Area at its sole and absolute

²⁷ *Id.*, Exhibit F.

²⁸ *See, e.g., Va. Elec. & Power Co.*, 126 FERC ¶ 62,020 (2009) (restricting public fishing access in the project tailrace at the base of the dam, finding that providing for public safety outweighs providing access for anglers to the most turbulent waters of the tailrace).

²⁹ PCPE ¶ 12.2.

discretion to reduce the risk of harm to the tribes and to protect public health and safety.”³⁰ Tribes signing the PCPE are aware of the dangers associated with the proposed non-Project use and, as such, maintaining and promoting safety will be of paramount importance in undertaking the ceremonial activities for which the PCPE will grant access.

C. Cultural Resources Protection

1. PGE’s Consultation with the Tribes

Granting access to tribes to allow ceremonial fishing and lamprey gathering within the Project boundary has been a topic of discussion for several years. PGE has met with the various Tribes on numerous occasions. An outcome of the consultation has been to enhance PGE’s understanding of the Tribes’ objectives in conducting the fishing and lamprey gathering activities and the feasibility of allowing access for the activities consistent with Project license requirements. As a result, PGE is filing this Application with the Commission.

2. Proposed Cultural Resources Study

While the draft PCPE expressly requires tribes executing the PCPE to consider the effect of their actions on previously documented cultural sites within the Easement Area, therefore avoiding impacts on previously recorded sites (including archaeological sites, petroglyphs, historical scatters and a traditional cultural property),³¹ PGE understands that the Commission has separate responsibilities under section 106 of the National Historic Preservation Act to consider the effect of this Application on properties that are listed or eligible for listing on the National Register of Historic Places

³⁰ *Id.*

³¹ *Id.*, Exhibit F.

(“NRHP”).³² PGE operates and maintains the Project consistent with the Project’s Historic Properties Management Plan (“HPMP”) as required by Article 409 of the license.³³ To satisfy requirements under section 106 and Article 409, PGE proposes to conduct a study to evaluate the effects of this non-Project use on historic properties that are listed or eligible for listing on the NRHP. The study will provide for consulting with the Oregon State Historic Preservation Officer (“SHPO”) and the Tribes. A draft of the study plan prepared by PGE’s expert cultural resources consultant is included as Attachment F, and the draft study plan will be provided to the SHPO and interested tribes for review and comment. The study report, in turn, will be prepared in consultation with the SHPO and interested tribes (and in accordance with the study plan) and will be filed with the Commission.

III. CONSISTENCY WITH, AND PROTECTION OF, ENVIRONMENTAL AND OTHER PROJECT VALUES

In accordance with Article 412 of the license, and as reflected in the draft PCPE, PGE has thoroughly analyzed the proposed non-Project use. In light of this analysis, and in consideration of FERC’s license requirements, PGE has determined that the proposed non-Project use is consistent with the purposes of protecting and enhancing the environmental, scenic, recreational, and other values of the Project.

Based on an examination of existing conditions and the non-Project use as proposed, there are no significant environmental issues associated with granting the

³² See 54 U.S.C. § 306108.

³³ See *Portland Gen. Elec. Co.*, 113 FERC ¶62,186, at P 74 (2005). On December 23, 2004, the Oregon SHPO and the Commission’s Office of Energy Projects executed a Programmatic Agreement for managing historic properties that may be affected by the relicensing and continued operation of the Project. Article 409 of the license requires the licensee to implement the agreement, including but not limited to the associated HPMP for the Project.

PCPE. As a starting point, lamprey gathering will result in no significant environmental impacts beyond those associated with bank fishing and other typical recreation uses of the Project which have been ongoing for millennia.

Moreover, as described in Section I.A, above, and the draft PCPE, the harvesting of lamprey, as well as salmon and steelhead, likely will be limited in nature. In some instances, the harvest may be subject to restrictions such as those addressing harvest seasons and catch allotments. Lamprey harvest regulations, for example, provide for an annual season of June 1 through July 31.³⁴ Ceremonial salmon and steelhead fishing regulations applicable to the Grand Ronde allow a maximum take of fifteen hatchery salmon or steelhead.³⁵ In addition, when ODFW permitted the Grand Ronde to fish hatchery spring Chinook salmon and/or hatchery summer steelhead at the base of Willamette Falls in 2018, that ceremonial fishing was initially authorized for three months—from May 1 through July 31, 2018—and only extended until October 31, 2018 to allow use of the Grand Ronde’s new fishing platform. In 2019, that timeframe was March 15 through July 31,³⁶ and for the Grand Ronde, it is likely that a four-month or similar seasonal limitation on ceremonial harvesting would be imposed going forward. Although some Tribes have noted that state fishing and harvest limits are inapplicable to them, carefully managed sustainable harvest is in the interests of these Tribes and PGE understands, accordingly, that the nature of ceremonial take by these Tribes would likely

³⁴ See OAR 635-017-0090 Pacific Lamprey Harvest. A copy of the regulation is included herein as Attachment D.

³⁵ See Ceremonial Salmon and Steelhead Harvest at Willamette Falls, Oregon Administrative Rule 635-041-0610 (2018). A copy of the regulation is included herein as Attachment C.

³⁶ See ODFW and Tribal Partnerships in 2019, Oregon Department of Fish and Wildlife, December 2019, www.oregonlegislature.gov/cis/GovToGovReports.

also be of a limited nature.³⁷ Given the understood limited nature of the future ceremonial harvesting of lamprey, salmon and steelhead, any environmental impacts under the PCPE would be negligible.

A review of existing environmental information on the Project, including the Easement Area, further substantiates PGE's determination that there are no known environmental impacts associated with the proposed non-Project use. In 2004, as part of the relicensing process for the Project, Commission staff issued a final environmental assessment ("FEA") and biological assessment ("BA") for the Project.³⁸ As indicated in the license issued in 2005, the BA determined that relicensing the Project with recommended measures is not likely to adversely affect endangered species (UWR Chinook salmon, UWR steelhead, bald eagle, LCR Chinook salmon, and LCR steelhead).³⁹

The U.S. Department of the Interior concurred with the determination that the proposed action is not likely to adversely affect bald eagles.⁴⁰ On June 27, 2005, National Marine Fisheries Service ("NMFS") issued its biological and conference opinions ("BO") on relicensing the Project, which found that relicensing the Project with staff's recommended measures would not likely jeopardize the continued existence of UWR Chinook salmon, UWR steelhead, LCR Chinook salmon, LCR steelhead, and LCR

³⁷ There is significant legal disagreement among interested Tribes regarding fishing rights. PGE has no authority to grant fishing rights, nor can it adjudicate these disagreements.

³⁸ See *Portland Gen. Elec. Co.*, 113 FERC ¶ 62,186, at P 66 (2005).

³⁹ *Id.*

⁴⁰ *Id.* Since the Commission relicensed the Project in 2005, bald eagles have been de-listed under the Endangered Species Act.

coho.⁴¹ NMFS's BO includes an incidental take statement with four reasonable and prudent measures to minimize take of the listed salmon and steelhead: (1) avoid or minimize construction activities that have adverse effects to aquatic systems; (2) monitor and report effectiveness of construction activities; (3) avoid or minimize the frequency of salvage of stranded fish below Willamette Falls; and (4) avoid or minimize fish handling during monitoring and evaluation.⁴² In the 2004 FEA, FERC staff concluded that issuance of the new license would not constitute a major federal action significantly affecting the quality of the human environment.⁴³

Similarly, in 2007, FERC issued an environmental assessment ("EA")⁴⁴ evaluating PGE's proposal to amend its license to increase the height of temporary flashboards on the concrete dam along the crest of Willamette Falls.⁴⁵ The increased height would allow PGE to maintain the water elevation at a higher level, resulting in changed conditions in the same general location as the Easement Area identified in this Application.⁴⁶ Upon examination of the proposed amendment, the EA concludes that the proposal would have no effect on federally listed species or habitats, wetlands, cultural resources, or land use, and only negligible to minor impacts on geology and soil

⁴¹ *Id.* at P 67. LCR coho were listed after FERC staff issued the BA.

⁴² *Id.* at P 68.

⁴³ Final Environmental Assessment (October 2004) at 11.

⁴⁴ Environmental Assessment (October 2007).

⁴⁵ *Portland Gen. Elec. Co.*, 121 FERC ¶ 62,071, at P 1 (2007).

⁴⁶ *Id.* at P 4.

resources, water resources, fisheries resources, terrestrial resources, aesthetic resources, and recreation.⁴⁷ FERC approved the amendment application.⁴⁸

Moreover, as the 2004 FEA and the 2005 license requirements, as well as the 2007 EA indicate, the vast majority of environmental issues at the Project concern the passage of fish and lamprey. Fish and lamprey passage at the Project will not be impacted by the proposed non-Project use.

As demonstrated by the above, the limited nature of the ceremonial harvesting for which the PCPE will grant access, as well as the findings of the FEA and BO as incorporated into PGE's license, and the findings of the 2007 EA incorporated into 2007 license amendment, provide strong support for the finding that there will be no significant environmental impacts associated with the proposed non-Project use.

Furthermore, the proposed non-Project use will not interfere with the Project's other purposes, for the rights granted under the PCPE are expressly subject and subordinate to all FERC regulations and PGE's continuing right to operate, maintain, and secure the Project,⁴⁹ and will not negatively impact Project-sponsored recreation activities. Rather, the proposed non-Project use is consistent with the license's emphasis on providing interpretative and education opportunities related to, among other things, the Native American significance of Willamette Falls.⁵⁰ Providing access to allow federally recognized tribes to conduct ceremonial fishing and lamprey gathering activities

⁴⁷ *Id.* at P 20.

⁴⁸ *Id.* at P 27.

⁴⁹ PCPE ¶ 3.4 ("Any rights granted by Grantor under this Easement are subject and subordinate to ... the rights and requirements of ... applicable Oregon Public Utility Commission ("OPUC") regulations, and applicable FERC regulations and Grantor's continuing right to construct, operate, maintain, replace, and secure the PGE Facilities.").

⁵⁰ *See Portland Gen. Elec. Co.*, 113 FERC ¶ 62,186, at P 25 (2005).

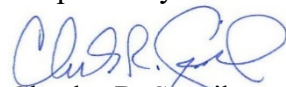
will promote this important cultural practice to the benefit of tribes and the general public in recognition of the deep connection that tribes have to the land, waters, flora, and fauna at Willamette Falls.

Finally, as evidenced by the draft PCPE provided in Attachment A, the PCPE will require that the activities for which it authorizes access will occur in a manner that will protect Project values. PGE has therefore concluded that the ceremonial harvesting of lamprey, salmon and steelhead as described herein would not adversely affect the environmental, scenic, recreational, and other values of the Project in accordance with Article 412 of the Project license.

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, PGE requests Commission approval of this Application to grant the PCPE to federally recognized Indian tribes, allowing access to harvest lamprey, salmon and steelhead and to deploy removable fishing platforms in accordance with cultural preferences within the Project boundary. The proposed non-Project use will comply with the Project license and is consistent with the purposes of protecting and enhancing the environmental, scenic, recreational, and other values of the Project.

Respectfully submitted,



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*Counsel to Portland General Electric
Company*

DATED: April 16, 2021

ATTACHMENT A

Draft Perpetual Cultural Practices Easement

**PERPETUAL CULTURAL PRACTICES EASEMENT
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After Recording Please Return To:

Portland General Electric Company
Attn: Mark Lindley
121 SW Salmon Street, 1WTC1302
Portland, Oregon 97204-9951

Forward All Tax Statements To:

No Change

(Space above this line for Recorder's use.)

PERPETUAL CULTURAL PRACTICES EASEMENT

PORTLAND GENERAL ELECTRIC COMPANY, an Oregon corporation, 121 SW Salmon Street, Portland, Oregon 97204 ("Grantor" or "PGE") hereby grants and conveys to each of the Grantees identified below (collectively "Grantees", and collectively with Grantor, the "Parties"), a nonexclusive easement upon and across the property described herein, subject to and conditioned upon the terms and conditions contained herein.

RECITALS

A. Grantor owns that certain property commonly known as Moore's Island in West Linn, Oregon (the "Moore's Island Property"), Assessor Parcel Nos. 22E31 00702 and 22E31 00700 situated in Clackamas County, Oregon, as further in described in that certain Deed recorded September 23, 1930, in Volume 209, Page 1, in the Official Records of Clackamas County. Grantor also owns that certain property commonly known as Abernethy Island in Oregon City, Oregon (the "Abernethy Island Property"), Assessor Parcel No. 22E31 00600 and situated in Clackamas County, Oregon, as further described in that certain Deed recorded June 27, 2000, as Document Number 2000-041748 in the Official Records of Clackamas County. The Moore's Island Property and the Abernethy Island Property are further described on the attached *Exhibit "A"* and graphically depicted on the attached *Exhibit "A-1"* (cumulatively the "PGE Property").

B. Grantor owns and operates the Willamette Falls Hydroelectric Project which includes the Sullivan Generating Facility, substation and related structures for the generation, transmission, distribution and sale of electricity (the "PGE Facilities") primarily on the Moore's Island Property. The PGE Facilities include a dam spanning and encompassing portions of Willamette Falls (the "Dam") and which extends across portions of the PGE Property (both the Moore's Island Property and the Abernethy Island Property) as well as property owned by the State of Oregon.

C. Grantor's operations and the PGE Facilities are subject to that certain license granted to Grantor by the Federal Energy Regulatory Commission ("FERC") with respect to the Willamette Falls Hydroelectric Project ("Project No. 2233") dated November 30, 2005, as amended, extended, reissued, or replaced (the "FERC License"), which license includes the geographic area depicted on the attached *Exhibit "A-1"*. Specified portions of the property interests of Grantor subject to this Easement are subject to the FERC License.

D. Grantor recognizes and respects the deep cultural connection Pacific Northwest Native American Tribes ("Tribes") have to the land, waters, flora, and fauna at Willamette Falls since time immemorial.

E. Grantees desire to use a portion of the PGE Property to engage in traditional tribal cultural practices and Grantor desires to accommodate such needs by allowing Grantees to use such specified portion or portions of the PGE Property, subject to the terms and conditions set forth herein.

NOW, THEREFORE, for valuable consideration, the current receipt, reasonable equivalence, and

sufficiency of which are hereby acknowledged by each of the Parties, the Parties each agree as follows:

TERMS, CONDITIONS, AND COVENANTS

1. **Identification of Grantees.** Grantor intends that the following identified Tribes will each have the opportunity to become a Grantee under this Easement: **CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON** ("Grande Ronde"); **CONFEDERATED TRIBES OF SILETZ INDIANS** ("Siletz Tribe"); **CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION** ("CTUIR"); **CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON** ("Warm Springs Tribes"); **CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION** ("Yakama Nation"); and (each a "Grantee").

1.1 **Conditions Precedent.** Any individual Grantee's rights and Grantor's obligations to any individual Grantee pursuant to this Easement are subject to and conditioned upon Grantor's receipt of a properly executed counterpart copy of this Easement suitable for recording in Clackamas County with respect to each such Grantee (which counterpart copy shall include a properly executed counterpart copy of the Ratification & Assumption Agreement attached as *Exhibit "B"* hereto). Notwithstanding anything to the contrary contained herein, no person or entity, including without limitation the Grantees identified above, shall acquire any rights under this Easement or with respect to the PGE Property in general, or have standing to exercise any right granted hereunder or pursuant hereto unless and until such counterpart copy is recorded with Clackamas County by Grantor. The date of each such recording by Grantor shall constitute the "Grantee Effective Date" with regard to each respective Grantee's Easement. Grantor shall not have any obligation to accept or record any counterpart copy of this Easement or to grant any right to access or use of the PGE Property after the ____ day of _____, 202__.

Grantee Initials: _____

2. **Purpose and Effect of Easement.** This Easement is intended solely to provide each Grantees with access to a specific portion of the PGE Property (identified in Section 3 below) to enable the Grantees to exercise the traditional tribal cultural practices specified herein.

2.1 **Reserved Tribal & State's Rights.** Nothing in this Easement is intended to nor shall it create, abrogate, diminish, waive, or otherwise alter any right of any Grantee, including but not limited to, any rights reserved or established by or in any treaty, executive order, statute, rule, caselaw, common law or otherwise. Further, nothing in this Easement is intended to nor shall it create, expand, abrogate, diminish, waive, or otherwise alter the responsibilities of the United States toward any Grantee under any federal treaty, executive order, statute, or otherwise. Nothing in this Easement is intended to nor shall it create expand, abrogate, diminish, waive, or otherwise alter the State of Oregon's jurisdiction as it may exist under law over the flora, fauna, lands, or beds and banks of the Willamette River.

2.2 **Status of FERC License.** Nothing contained in this Easement shall serve to waive, modify or interfere with any right or obligation under the FERC License. Notwithstanding any other provision contained herein, Grantor, its successors, and assigns, shall have the right to perform any and all acts required by the conditions of the FERC License, Commission orders, Commission delegated staff orders or directives, or the Commission's regulations in effect from time to time, at any time, without the prior approval of any Grantee or Member.

3. **Grant of Easement; Grantee's Rights.** Subject to the satisfaction of the conditions set forth in Section 1 above, each Grantee shall have the perpetual nonexclusive right to enter upon the Easement Area defined below for the limited purpose of exercising the cultural practices specified in *Exhibit "C"* hereto and for no other use or purpose. No Grantee is acquiring any interest in or right to use any other property interest of Grantor. The portion of the PGE Property subject to this Easement is legally described on the attached *Exhibit "D"* and graphically depicted on the attached *Exhibit "D-1"* (the "Easement Area").

3.1 **Exercise of Grantee's Rights.** Each Grantee, and each of its Members, shall make reasonable and good faith efforts to coordinate with each other Grantee with respect to access to the Easement Area. Notwithstanding that Grantees may be subject to different Grantee Effective Dates, the rights of all Grantees are of equal priority as if the rights granted hereunder were granted to all Grantees simultaneously.

Notwithstanding the terms of this Easement, the use of the Easement Area shall not endanger health, create a nuisance, or otherwise be incompatible with the safety, security, integrity or efficient operation of the PGE Facilities or with overall Project No. 2233 recreational use, and construction, operation, and maintenance of structures or facilities on Easement Area will occur in a manner that will protect the scenic, recreational, and environmental values of Project No. 2233.

Grantee Initials: _____

3.2 Modification of Grantee's Rights. No amendment of a material term or condition of this Easement shall be effective unless set forth in a writing executed by Grantor and all Grantees and recorded with Clackamas County.

3.3 Members. The rights granted each Grantee hereunder shall extend only to the members of such Grantee ("Members") and no others. Grantee shall be solely responsible for determining who constitutes its Members at its sole discretion, but each Grantee remains solely responsible and liable for the acts or omissions of its Members related to this Easement. Each Grantee and its Members shall, in each instance, promptly take such actions as are necessary and appropriate to promptly and strictly abide by the terms and conditions of this Easement.

3.4 Subordination. Any rights granted by Grantor under this Easement are subject and subordinate to all instruments and interests, if any, affecting the PGE Property and/or Easement Area (recorded or unrecorded), the rights of and requirements of third parties, applicable Oregon Public Utility Commission ("OPUC") regulations, and applicable FERC regulations and Grantor's continuing right to construct, operate, maintain, replace, and secure the PGE Facilities. Notwithstanding any rights granted under this Easement, Grantor expressly retains all rights regarding compliance with all agency rules and regulations and to manage and operate the PGE Facilities, PGE Property and Easement Area in accordance with the FERC License and in accordance with the orders, rules and regulations of the OPUC and FERC.

4. Easement Costs & Expenses. Each respective Grantee shall bear the entire cost and expense incurred with respect to the activities of such Grantee and those of its Members on or associated with this Easement and the Easement Area. Grantor shall have no obligation to reimburse or otherwise pay any Grantee or other person for any assistance, participation, cooperation or any other activities pursuant to or associated with this Easement.

5. Access. For each Grantee and its Members, access under this Easement is expressly and strictly limited to the Easement Area and such access does not include ingress or egress across, over, under or through any other real property of Grantor or any affiliate of Grantor.

6. Grantor's Use. Nothing contained herein shall limit or encumber any right or property interest of Grantor with respect to those portions of the PGE Property which do not include the Easement Area. Grantor shall have and retain the right to access and use the Easement Area for all purposes including the right of Grantor to grant to third parties any such rights to use the subject property and Grantor's right to convey or further encumber all or any portion of such property provided that such use shall not materially and continuously interfere with the exercise by a Grantee of such Grantee's rights under this Easement. No right of Grantor shall lapse or be waived in the event Grantor fails to use the Easement Area, or any portion thereof, on a continuous basis. No Grantee or any of its Members shall interfere with or impair any right or property interest of Grantor. In the event of any conflict between the rights or property interests of Grantor and the rights of any Grantee, the rights of such Grantee shall be subordinate to those of Grantor.

7. Grantee's Acceptance of Easement Area. Each Grantee, on behalf of itself and its Members, accepts the PGE Property, the PGE Facilities, and the Easement Area "AS IS" in the condition existing as such of Grantee's execution hereof with no improvement, alteration, remediation, or other work required to be performed by Grantor. Grantor has not made any promise to alter or remodel, repair, remediate, or improve the PGE Property or the Easement Area, or any portion thereof, in any fashion and Grantor is not obligated to provide any utility service to any Grantee, any Member, or the Easement Area for the benefit of anyone other than Grantor. No representation, express or implied, respecting any matter or thing relating to this Easement, including, without limitation, the condition of the PGE Property, or the Easement

Area, or the safety, security, or suitability regarding the actual or intended use thereof by any Grantee or any Member, has been made to any Grantee, Member, person or entity by or on behalf of Grantor other than as may be expressly contained herein. THIS EASEMENT IS GRANTED BY GRANTOR AND ACCEPTED BY EACH GRANTEE ON BEHALF OF ITSELF AND ITS MEMBERS WITHOUT WARRANTY OR COVENANT OF TITLE OR QUIET ENJOYMENT.

ALL WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY DISCLAIMED BY GRANTOR, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, HABITABILITY, OR THAT THE SUBJECT PROPERTY OR ANY PORTION THEREOF IS SAFE OR SUITABLE FOR THE ACTUAL OR INTENDED PURPOSES OF ANY GRANTEE OR ANY MEMBER. GRANTOR MAKES NO, AND SPECIFICALLY NEGATES AND DISCLAIMS ANY, WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER WHATSOEVER, EXPRESS OR IMPLIED, ORAL OR WRITTEN, AS TO, CONCERNING OR WITH RESPECT TO THE CONDITION OF THE SUBJECT PROPERTY OR ANY PORTION THEREOF.

Grantee Initials: _____

8. Use of Easement Area. Each Grantee covenants and agrees that, in the conduct of any and all of its activities and operations and those of its Members hereunder, such Grantee and its Members will strictly comply with the additional conditions set forth in *Exhibit "F"* hereto, as well as all applicable laws.

9. Safety. Grantee acknowledges that safety is of paramount importance and, as identified in Section 12.2, below, there are a range of Hazardous Conditions associated with or potentially impacting the Easement Area that pose risks of injury or even death. The exercise of the rights granted under this Easement to each Grantee (and by extension to each such Grantee's Members) shall be conducted in a manner which does not pose any additional safety risk to PGE personnel or invitees and, shall be subject to the Assumption of Risk as provided in Section 12 and Additional Measures in Section 14.

10. Security Measures. Grantor may, but shall have no obligation, to provide or adopt security measures regarding any portion of the PGE Property and/or the Easement Area or to prevent third parties from accessing the Easement Area. For purposes of this Easement, "security" shall mean actions or measures to prevent unauthorized access or use by persons to PGE Property or PGE Facilities. Each Grantee and its Members shall promptly and strictly comply with all security measures or actions Grantor deems reasonably necessary and/or those of any federal, state, or local government.

11. Insurance. In conjunction with the delivery of their respective Ratification & Assumption Agreement to Grantor, and annually thereafter, each Grantee shall provide to Grantor proof of, and continuously maintain, comprehensive broad-form commercial general liability insurance against claims and liability for personal injury, death, or property damage arising from the use, occupancy, disuse or condition of the Easement Area, improvements or adjoining areas or ways, or from any other cause, as required on the attached *Exhibit "G"* hereto with a combined single limit not less than set forth in such *Exhibit "G"* and in any event in an amount sufficient to cover any claim or liability which may result from any obligation of such Grantee pursuant to or in any way associated with this Easement written in a form and coverage amounts acceptable to Grantor, with Grantor and Grantor's affiliates, directors, officers, employees and agents, named as additional insureds. Such insurance shall provide that Grantor shall be given at least thirty (30) days' notice prior to any cancellation, non-renewal, or modification.

12. Assumption of Risk.

12.1 Assumption of Risk. Each Grantee understands and agrees that, notwithstanding any safety practices, protocols, or procedures maintained or exercised by Grantor and/or each Grantee, including without limitation those requirements set forth in *Exhibit "F"* hereto or subsequently issued by Grantor, any activity of any Grantee or its Members could, under certain circumstances (which can change or occur instantaneously and without warning), constitute ultra-hazardous activities. Each Grantee, on behalf of itself and its Members assumes the sole risk of loss, damage, or injury, including death, which may result from the use of or presence upon the Easement Area by such Grantee and/or its Members. Any damage to the PGE Property, the Easement Area, any PGE Facilities, operations, or property, caused by, or resulting from the use of or presence upon the Easement Area by any Grantee and/or its Members shall be the sole responsibility of such Grantee and, at its sole option and discretion, Grantor may repair any such damage to

the PGE Property, the Easement Area, or to the PGE Facilities, or any portion thereof, and the responsible Grantee shall reimburse Grantor for the costs of such repair, actually and reasonably incurred, within thirty (30) days of receipt of any invoice for same. Grantor will not be liable for any damage to the property, facilities or any equipment of any Grantee and/or any Member or any injury to persons as a result of the presence, security, or operation of any PGE Facilities, or that might occur during operation, maintenance, reconstruction, or future construction of PGE Facilities, unless solely resulting from Grantor's gross negligence or willful misconduct.

12.2 Hazardous Conditions. Each Grantee acknowledges that portions of Project No. 2233, PGE Property and the Easement Area are located within the channel of the Willamette River and/or the Willamette Falls basin which creates potential exposure to hazardous conditions including, but not limited to: high or fast water events or conditions; PGE Facilities or Easement maintenance; PGE plant trips/emergency shutdowns; ground faults; repair or improvement of the PGE Facilities; adjustment of water levels; flashboard failure; activities of third parties, as well as other unpredictable events such as weather, snow melt, unusual runoff, debris, and the like. Each Grantee shall actively monitor conditions potentially affecting the safety, security and use of the Easement Area and shall, in good faith, promptly take such action as is necessary to adequately warn (without the assumption of any additional duty or liability associated with the content or method of delivery of such warning) Grantor, Grantee's Members, and other Grantees, and to restrict or suspend access to the Easement Area by Grantee and Grantee's Members as necessary or appropriate to reduce the risk of harm to any Grantee or any Member, the PGE Facilities or operations, and/or Grantor's personnel, and to protect public health and safety. Grantor has no obligation hereunder to monitor conditions potentially affecting use of the Easement Area pursuant to this Easement or provide warning of dangerous conditions. Grantor reserves the right, without assuming any duty or liability to any person or entity, to temporarily restrict or suspend access to the Easement Area at its sole and absolute discretion to reduce the risk of harm to any Grantee and/or any Members, to protect life, property, or to address its operational, safety, security, and efficiency concerns related to the PGE Property, the Easement Area, and/or the integrity and operation of the PGE Facilities, and /or Grantor's personnel, or to protect public health and safety until such time as the condition(s) that caused the temporary restriction or suspended access has abated.

12.3 Electrical Hazards. *EACH GRANTEE, ON BEHALF OF ITSELF AND ITS MEMBERS ACKNOWLEDGES THAT DUE TO THE PROXIMITY OF THE EASEMENT AREA TO THE PGE FACILITIES DEATH OR SERIOUS INJURY MAY OCCUR.* Each Grantee and Member shall strictly comply with the minimum requirements set forth in *Exhibit "E"* hereto. Each Grantee acknowledges and agrees that such measures may not be sufficient to protect persons and property in any specific circumstance. Each Grantee and each Member assumes the sole risk of loss, damage, or injury, including death, which may result from the use of or presence upon the Easement Area by such Grantee, its Members or any other person. Each Grantee further acknowledges that metallic structures or equipment which come into contact with any forms of electrically conducting environments (i.e., environments containing enough ions to conduct electricity such as soil/rock and water) will corrode and deteriorate at an accelerated pace. Each Grantee shall be solely responsible for determining, implementing, monitoring, and maintaining all means of safety, grounding and cathodic protection with respect to any activities its Members, structures, equipment, or property located on or near the Easement Area by or on behalf of such Grantee or its Members and shall indemnify, defend, and hold the Grantor Indemnitees harmless therefrom and all claims arising from or in any way related to electrical hazards or cathodic protection.

Grantee Initials: _____

13. Grantor's Continuing Rights. Each Grantee's rights and those of its Members pursuant hereto shall at all times be subject and subordinate to Grantor's rights to access, secure, maintain, and operate the PGE Facilities and access and use the PGE Property and Easement Area for any and all company purposes of Grantor, as well as the reasonable operational needs/efficiency, safety, and security efficiency concerns of Grantor as Grantor may impose from time to time pursuant to Section 14. Each Grantee hereby irrevocably and unconditionally waives any right to initiate, prosecute or maintain any action or proceeding seeking any remedy at law or in equity with respect to this Easement, including without limitation, equitable or injunctive relief, that would limit or impair any right granted or reserved to PGE hereunder in any fashion.

13.1 Prudent Utility Practices. Each Grantee, acknowledges and agrees that neither Grantor, nor any of the Grantor Indemnitees, shall have any liability to any Grantee or their respective Members, and no Grantee or its Members shall have any recourse against Grantor, or any of the Grantor Indemnitees, resulting from or in any way associated with any action or failure to act where Grantor's discretion is exercised in accordance with Prudent Utility Practices. For the purposes of this Easement, Prudent Utility Practices shall mean those practices, methods, equipment, specifications, security, standards of safety, and performance in the electric energy generation and utility industry in the Western United States (the "Industry"), as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgment and in light of the facts actually known to the utility at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices generally accepted; (ii) are in accordance with generally accepted standards of safety, security, performance, dependability, efficiency, and economy of the Industry; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the Industry; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at reasonable cost consistent with reliability, safety, security and expediency. The foregoing shall not establish any duty or standard of care on the part of Grantor.

14. Additional Measures: Safety, Security, and Operational Concerns. In addition to measures addressed in this Easement regarding safety, security, maintenance, and operational efficiency of PGE Facilities, Grantor reserves the right to impose additional temporary measures as Grantor deems reasonably necessary to protect life, property, or to address its maintenance, operational, safety, and security concerns related to the PGE Property, and/or the integrity and efficient operation of the PGE Facilities or Project No. 2233. Grantor will impose such additional requirements and limitations in good faith for such duration as is reasonably necessary until the safety, security or operational condition or concern has abated or resolved. Grantor shall give each Grantee reasonable advance written notice of any temporary restriction or suspension of access to the Easement Area, except that in the event of an emergency, Grantor may temporarily restrict or suspend access to the Easement Area without notice to any Grantee provided that Grantor uses commercially reasonable efforts to provide notice appropriate under the circumstances, which shall include without limitation e-mail or website posting, and in any event subsequently notifies Grantee as soon as reasonably practicable thereafter. Grantor shall use commercially reasonable efforts to minimize the duration of any temporary restriction or suspension of access resulting from Grantor's operations.

15. Indemnification. Each Grantee, on behalf of itself and its Members (including, without limitation, minor children), hereby releases the Grantor Indemnitees, and each of them, and shall assume all risk of loss, damage, or injuries of any kind, including death, which may result from the presence on and/or use of the PGE Property or the Easement Area by such Grantee and/or its Members (including, without limitation, damage or liability resulting from the operation of the PGE Facilities such as plant trips/emergency shutdowns, ground faults, fluctuations in water flow, debris being released or flashboard failure, and the like) and shall, to the fullest extent of the law, indemnify, defend (with counsel selected by Grantor at such indemnifying party's expense), save, and hold harmless Grantor and Grantor's affiliates and their respective directors, officers, agents, servants, contractors, and employees (collectively the "Grantor Indemnitees") from all claims, debts, lawsuits, injuries, damages, penalties, judgments, awards, losses, liabilities, interests, attorney's fees (including attorney's fees on appeal or review), costs, and expenses of whatever kind and nature arising out of or in any way related to any breach of this Easement by any Grantee or its Members and any other persons on the PGE Property and/or the Easement Area with the permission of such Grantee or its Members (whether in violation of this Easement or not), and/or the use, presence upon, and/or occupancy of the PGE Property or the Easement Area by such Grantee and/or its Members or non-Member invitees, and for which any of the indemnitors or the Grantor Indemnitees may or shall be liable, including but not limited to personal injury, wrongful death, or property damage (except for personal injury, wrongful death, or property damage caused solely by the gross negligence or willful misconduct of Grantor, its agents or employees; and such indemnity shall apply regardless of such Grantee's knowledge, or lack thereof, of the acts or omissions of any of its Members or invitees, whether in violation of this Easement or not. Each indemnitor

shall, upon the request of Grantor and at such indemnitor's sole expense defend (with counsel selected by Grantor at such indemnitor's expense) any action, suit, or proceeding of any kind arising under this Easement. In addition, each indemnitor shall reimburse and pay Grantor for any loss, damages, or expenses of any kind, including attorney's fees and costs incurred by Grantor under this Section.

Grantee Initials: _____

16. Retained Property Interests. No Grantee, Member, or any other person shall, by this Easement, prior conduct, the passage of time, or any other basis, obtain any right, title or interest in any of the real property interests of Grantor, save and except those rights specifically granted by this Easement. As part consideration for this Easement, each Grantee, on behalf of itself and its Members, unconditionally and irrevocably waives, disclaims, and relinquishes any right or cause of action against Grantor, or Grantor's predecessor's, successors and assigns, based upon or in any way associated with the concept (whether statutory, common law, or otherwise) of adverse possession, prescriptive rights, or the like, with respect to Grantor's Property, or any portion thereof, and further agrees that no such right(s) will accrue in the future.

Grantee Initials: _____

17. Default. Time is of the essence with respect to every term, condition, obligation, and provision contained in this Easement. Each Grantee and its Members shall strictly perform and comply with all terms, conditions, and provisions set forth in this Easement in a timely manner, and promptly notify Grantor in writing upon learning of the occurrence of any event which constitutes a breach of any obligation under this Easement. Grantor shall only be deemed to be in default under the terms of this Easement in the event Grantor shall fail to observe, keep or perform any covenant or agreement that is not observed, kept or performed by Grantor within thirty (30) calendar days after the receipt by Grantor of written notice from a Grantee of such failure, which notice shall specifically set out the failure and any alleged damages accruing therefrom. Grantor shall not be considered in default so long as Grantor commences to cure the failure in a diligent manner and Grantor shall thereafter be allowed such additional time as reasonably necessary to correct the failure. Default by Grantor as to any Grantee shall not constitute a default as to any other Grantee unless and until such other Grantee complies with this Section 17.

18. Remedies. Subject to each Grantee's limited waiver of sovereign immunity in Section 21 below, and notwithstanding anything to the contrary contained herein, Grantor shall have the right to enforce this Easement by any legal or equitable proceedings available under applicable law. UNDER NO CIRCUMSTANCES SHALL GRANTOR'S OBLIGATIONS OR CUMULATIVE LIABILITY UNDER OR WITH RESPECT TO THIS EASEMENT AS TO ANY GRANTEE EXCEED THE AMOUNT OF PROCEEDS PAID BY INSURANCE CARRIER(S) UNDER INSURANCE POLICIES LISTED IN EXHIBIT H WHERE GRANTOR IS AN "ADDITIONAL INSURED" AND SUCH INSURANCE PROCEEDS SHALL BE THE SOLE SOURCE OF SATISFACTION OF ANY PGE OBLIGATION OR LIABILITY WITH RESPECT TO THIS EASEMENT. GRANTOR SHALL NOT BE LIABLE TO ANY GRANTEE, ANY MEMBER, OR TO ANY THIRD PARTY IN CONNECTION WITH THIS EASEMENT OR ANY ACTIVITY ON OR ABOUT THE PROPERTY OR THE EASEMENT AREA FOR ANY DIRECT DAMAGES IN EXCESS OF THE FOREGOING LIMITATION, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, ARISING OUT OF, IN CONNECTION WITH OR AS A RESULT OF THIS EASEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, WARRANTY OR ANY OTHER THEORY IN LAW OR IN EQUITY. The rights given to Grantor under this Easement are cumulative and shall be in addition and supplemental to all other rights or remedies that Grantor may have under this Agreement, under laws then in force, or in equity. Any action against Grantor (whether for breach of contract or strict liability or tort claim) by or on behalf of any Grantee must be commenced within one year after the cause of action has accrued. Subject to each Grantee's limited waiver of sovereign immunity in Section 21 below and the other provisions in this Section 18, and notwithstanding anything to the contrary contained herein, each Grantee shall have the right to enforce this Easement by any legal or equitable proceedings available under applicable law. To the extent any dispute arises among the Grantees with regard to the exercise of rights under this Easement, no Grantee shall include Grantor as a party to any action or proceeding based on its status as landowner or the Grantor under this Easement. Grantor shall not be party to any such action or proceeding unless Grantor decides in its sole discretion to join the action or proceeding.

Grantee Initials: _____

19. Waiver of Jury Trial. Grantor and each Grantee hereby knowingly, voluntarily, intentionally, and irrevocably waive any right each may have to a trial by jury in respect of any action, proceeding or counterclaim based on this Easement, or arising out of; under or in connection with this Easement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any Party hereto.

Grantee Initials: _____

20. Dispute Resolution. Except to the extent that FERC or another agency with jurisdiction of a particular issue has a procedure that precludes implementation of this Section 20, the resolution of any dispute initiated by any Grantee relating to or arising from this Easement or activities arising from or relating to this Easement, including activities prohibited by this Easement shall, at the request of any Party, be subject to dispute resolution pursuant to this Section 20. The Parties agree to devote such time, resources, and attention to dispute resolution as are needed and as can be reasonably provided to attempt to resolve the dispute at the earliest time possible, and each Party shall cooperate in good faith to promptly schedule, attend, and participate in the dispute resolution. Each Party shall implement promptly all final agreements reached, consistent with its applicable statutory and regulatory responsibilities. Notwithstanding the foregoing, this Section shall not apply to actions or proceedings by and among Grantees or their respective Members which do not involve Grantor or Grantor's rights pursuant to this Easement.

20.1 General Procedures. A Party claiming a dispute shall give notice of the dispute within thirty (30) days of the Party's actual knowledge of the act, event, or omission that gives rise to the dispute. At a minimum and in any dispute subject to these procedures, the Parties shall hold at least one informal meeting within thirty (30) days after notice to attempt to resolve the disputed issue(s). The Parties may by unanimous agreement of the parties to the dispute attempt to resolve the dispute using a neutral mediator unanimously selected by the disputing Parties within fifteen (15) days after notice by a Party that the informal meetings did not resolve the dispute. The mediator shall mediate the dispute during the next sixty (60) days after its selection. Any of these time periods may be reasonably extended or shortened by agreement of the Parties to the dispute, or as necessary to conform to the procedure of an agency or court with jurisdiction over the dispute. Unless otherwise agreed among the Parties to the dispute, each Party shall bear its costs for its own participation in the dispute resolution. If the Parties are unable to resolve a dispute as provided in this Section, the matter in dispute may be referred to the Circuit Court for the State of Oregon sitting in Clackamas County, Oregon, and no other, and in no instance shall any tribal court take jurisdiction of any such suit, action or proceeding.

Grantee Initials: _____

21. Limited Waiver of Sovereign Immunity. Each Grantee acknowledges that Grantor would not enter into this Easement but for such Grantee's limited waiver of its sovereign immunity. As part consideration for this Easement, each Grantee expressly, unequivocally and irrevocably waives its sovereign immunity (including that of such Grantee's tribal officials acting within the scope of their official capacities) solely in any action or proceeding involving Grantor to carry out or enforce this Easement; to suspend, prevent or limit access to the PGE Property and/or the Easement Area; or to seek damages hereunder which is brought by Grantor or any Grantee in the courts of the State of Oregon or the federal courts of the United States. This waiver is a limited waiver of sovereign immunity as to such action and as to tribal, state, or federal court jurisdiction and does not extend to matters or jurisdiction beyond this Easement or unrelated to this Easement. Each Grantee further waives any jurisdiction of any tribal courts or any other tribal regulatory or enforcement body or bodies in any action brought by Grantor, any Grantee, or any Member with respect to the PGE Property, the Easement Area, this Easement, or to carry out, enforce or seek equitable remedies and/or damages arising out this Easement. Notwithstanding the foregoing, this limited waiver of sovereign immunity shall not extend to actions or proceedings by and among Grantees or their respective Members which do not involve Grantor or Grantor's rights pursuant to this Easement.

Grantee Initials: _____

22. Governing Law, Jurisdiction and Venue. This Easement shall be governed, construed, applied, and enforced in accordance with the laws of the State of Oregon without giving effect to any choice or conflict of law provision or rule or treaty right. Any suit, action or proceeding initiated by Grantor or any

Grantee relating to or arising from the rights of Grantor or the Grantees, individually and collectively, under this Easement, including activities prohibited by this Easement, shall take place in the Circuit Court for the State of Oregon siting in Clackamas County, Oregon, and no other, and in no instance shall any state or tribal court take jurisdiction of any such suit, action or proceeding. Notwithstanding the foregoing, the jurisdiction of the Circuit Court for the State of Oregon siting in Clackamas County, Oregon, shall not extend to actions or proceedings by and among Grantees or their respective Members which do not involve Grantor or Grantor's rights pursuant to this Easement.

Grantee Initials: _____

23. Failure to Perform Due to Force Majeure. Grantor shall not be liable to any Grantee for breach of this Easement as a result of or failure to perform or for delay in performance of any provision of this Easement if such performance is delayed or prevented by force majeure. The term "force majeure" means any cause reasonably beyond Grantor's commercially reasonable control, whether of the kind specifically enumerated or otherwise, whether unforeseen, foreseen, foreseeable, or unforeseeable, and regardless of the fault or negligence of Grantor. Force majeure may include, but is not limited to, natural events; labor or civil disruption; governmental or quasi-governmental orders, restraints, expropriation or delays; breakdown or failure of any portion of the PGE Facilities; orders of any court, authority, or agency having jurisdiction over Grantor's actions (including without limitation FERC, OPUC, and the like); incidence of disease or other illness that reaches outbreak, epidemic, or pandemic proportions (expressly including the novel coronavirus SARS-CoV-2 RNA ("COVID-19") and any of the foregoing events caused as a result of COVID-19); delay in issuance of any required approval, permit or license; or commercially unreasonable cost or risk to Grantor. Grantor shall notify the Grantees in writing within ten (10) business days, or otherwise as soon as reasonably practicable, after Grantor determines that an event constitutes force majeure. Such notice shall identify the event causing the delay or anticipated delay, estimate the anticipated length of delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of the measures. Grantor shall employ commercially reasonable efforts to promptly resume performance of Grantor's obligations pursuant to this Easement and, when able, to resume performance of its obligations. Each Grantee acknowledges and agrees that, as of such Grantee's Effective Date, COVID-19 is an ongoing event, and any delays in the performance of Grantor's obligations caused by COVID-19 will qualify as an event of force majeure hereunder.

24. Notice. Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Easement to be served on or received by any Party to the other shall be in writing (including via email).

24.1 Notice to Grantor. Notice to Grantor shall be made to the following individuals via email (and copied by US Mail) or to such other address as a Party shall hereafter designate in writing to another Party in accordance with the foregoing procedures:

PGE Director of Dam Safety & Renewable Energy
121 SW Salmon Street 1WTC1302, Portland, OR 97204-9951
Phone: (503) 464-8879
Email: nick.loos@pgn.com

With copies concurrently delivered to:

Principal, PGE Real Estate Strategy, Acquisitions & Dispositions
121 SW Salmon Street 1WTC1302, Portland, OR 97204-9951
Phone: 503-464-8102
Email: mark.lindley@pgn.com

PGE Willamette Falls Biological and Licensing Manager
33831 SE Faraday Road, Estacada, OR 97023
Phone: 503-630-8234
Email: tim.shibahara@pgn.com

PGE Archaeologist

121 SW Salmon Street 3WTC0403, Portland, OR 97204
Phone: 503-464-8657
Email: mini.sharma-ogle@pgn.com

PGE General Counsel
121 SW Salmon Street 1WTC1715, Portland, OR 97204
Phone: 503-464-8860
Email: richard.george@pgn.com

24.2 Notice to Grantee. Notices to any Grantee shall be delivered to such Grantee by email (and copied by US Mail) at the contact address(es) set forth in such Grantee's Ratification & Assumption Agreement.

25. Necessary Documents. Each Grantee shall at the request of Grantor promptly provide any documentation or information reasonably requested by Grantor and execute, acknowledge and deliver any and all documents and instruments reasonably necessary to complete, support, or document this Easement and to give full effect to this Easement, including without limitation documents necessary for compliance with the laws and Regulations of FERC and OPUC.

26. Waiver. In no event shall Grantor or Grantees be deemed to have waived any rights under this Easement unless and until such waiver is given in writing and signed by Grantor or Grantee.

27. No Offer. Presentation of an unexecuted copy of this Easement shall not be deemed an offer or an acceptance to contract and this Easement will have no effect with respect to any Grantee unless and until it has been fully executed and mutually delivered by the Parties and recorded by Grantor; each as provided in Section 1 of this Easement.

28. No Third-Party Beneficiaries. Nothing in this Easement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise, to third parties unless such third persons are expressly described as intended to be beneficiaries of its terms. This Easement shall not create any right or interest in any individual Member, the public, or any member of the public, as a third-party beneficiary of this Easement and shall not authorize any non-Party to maintain a suit at law or equity pursuant to this Easement.

29. Compliance with Laws, Regulations, and other Legal Requirements. In exercising the rights and privileges granted by this Easement, each Grantee shall promptly comply with all laws, regulations, and other requirements that apply to the Easement Area, to the extent they do not conflict with federal law, regulation, or policy. Each Grantee and its Members shall strictly observe and promptly comply with all governmental or quasi-governmental orders with respect to public activities, gatherings and events, and social/physical distancing. No Grantee or Member shall engage in any activity prohibited by Executive Order or inconsistent with guidance provided by the Oregon Health Authority.

30. Miscellaneous Provisions. The parties hereto each agree that the Recitals are true and correct and incorporated herein by this reference. All provisions of this Easement have been negotiated at arm's length and each Party has had the opportunity to have legal counsel review and approve the form and content of this Easement. This Easement shall not be construed for or against any party by reason of its authorship or alleged authorship. This Easement shall not be deemed or construed to create or establish any relationship of partnership or joint venture or similar relationship or arrangement between Grantor and any Grantee or Member. Effective on each Grantee's Effective Date, any prior lease, sublease, permit, license, acquiescence or the like, if any, held by such Grantee and/or its Members with respect to all or any portion of the PGE Property and/or the Easement Area, is terminated and superseded in its entirety by this Easement; provided, however, this Easement shall not operate to waive, release, or relieve any Grantee or Member from any obligation to Grantor or to any third party to the extent such obligation accrued prior to such Grantee's Effective Date. No Grantee or Member shall, either voluntarily or by operation of law, transfer or assign all or any part of its rights hereunder in any fashion, license or sublet the Easement Area or any portion thereof, or encumber or pledge all or any portion of this Easement or any rights hereunder, without Grantor's express prior written consent in each instance, which consent may be withheld or issued subject to conditions, in Grantor's sole and absolute discretion. Any obligation or undertaking by a Grantee not to do any act or thing is taken to include an obligation or undertaking not to permit or suffer the doing of the act or thing. This Easement may be

executed in counterparts, and such counterparts together shall constitute but one original of the Easement. Each counterpart shall be equally admissible in evidence, and each original shall fully bind each Party who has executed it. The provisions of this Easement are severable, and if one or more provisions are determined to be unenforceable, in full or in part, by a court of competent jurisdiction, the validity of the remaining provisions, including any partially unenforceable provisions, to the extent enforceable, shall not be affected in any respect whatsoever. The Grantees who have satisfied the conditions of Section 1 hereof and Grantor are the only parties to this Easement and are the only parties entitled to enforce its terms. The risk of loss, release and indemnity obligations of each Grantee, the right of Grantor to enforce its remedies hereunder, as well as all provisions of this Easement which contemplate performance after the expiration, termination, or revocation of the this Easement shall survive and remain enforceable, and shall apply equally to all parents, subsidiaries, affiliates, successors and assigns of Grantor. Grantor, exclusively, shall record this Easement. Subject to Section 2.1 hereof, each Grantee and Grantor hereby agree that all prior written and oral agreements, understandings and/or practices between Grantor and such Grantee relative to the Easement and the use of the subject property are superseded by this instrument. This instrument, along with any exhibits and attachments or other documents affixed hereto or referred to herein, constitute the entire and exclusive agreement between each Grantee and Grantor relative to the Easement. This Easement is made on the understanding that each term is in consideration and support of every other term, and each term is a necessary part of the entire agreement.

The terms of this Easement shall constitute covenants running with the land and shall bind the property described herein and be binding upon and inure to the benefit of parties hereto and their respective successors and assigns. The Easement is an in-gross easement and is not appurtenant to any particular property of any Grantee.

[SIGNATURE PAGES & NOTARY ACKNOWLEDGMENTS TO FOLLOW]

IN WITNESS WHEREOF, Grantor has caused this Easement to be executed effective as of the
____ day of _____, 202__.

GRANTOR:

PORTLAND GENERAL ELECTRIC COMPANY,
an Oregon corporation

By: _____

Printed Name: _____

Title: _____

STATE OF OREGON _____)
_____) ss.
County of _____)

This instrument was acknowledged before me on the ____ day of _____, 202__, by
_____ as the _____ and authorized representative of *PORTLAND
GENERAL ELECTRIC COMPANY*, an Oregon corporation ("Grantor") who personally appeared before me
and acknowledged the foregoing instrument to be their voluntary act and deed.

Notary Public for Oregon
My Commission Expires: _____

IN WITNESS WHEREOF, the undersigned Grantee has caused this Easement to be executed this ____ day of _____, 202__.

GRANTEE:

CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

By: _____

Name: _____

Title: _____

STATE OF OREGON _____)
) ss.
County of _____)

This instrument was acknowledged before me on the ____ day of _____, 202__, by _____ as the _____ and authorized representative of **CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION** ("Grantee") who personally appeared before me and acknowledged the foregoing instrument to be his or her voluntary act and deed.

Notary Public for Oregon
My Commission Expires: _____

IN WITNESS WHEREOF, the undersigned Grantee has caused this Easement to be executed this ____ day of _____, 202__.

GRANTEE:

CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON

By: _____

Name: _____

Title: _____

STATE OF OREGON _____)
) ss.
County of _____)

This instrument was acknowledged before me on the ____ day of _____, 202__, by _____ as the _____ and authorized representative of **CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON** ("Grantee") who personally appeared before me and acknowledged the foregoing instrument to be his or her voluntary act and deed.

Notary Public for Oregon
My Commission Expires: _____

IN WITNESS WHEREOF, the undersigned Grantee has caused this Easement to be executed this ____ day of _____, 202__.

GRANTEE:

CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION

By: _____

Name: _____

Title: _____

STATE OF OREGON _____)
) ss.
County of _____)

This instrument was acknowledged before me on the ____ day of _____, 202__, by _____ as the _____ and authorized representative of **CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION** ("Grantee") who personally appeared before me and acknowledged the foregoing instrument to be his or her voluntary act and deed.

Notary Public for Oregon
My Commission Expires: _____

EXHIBIT "A"
LEGAL DESCRIPTION OF PGE PROPERTY

The Moore's Island Property, Assessor Parcel Nos. 22E31 00702 and 22E31 00700, situated in Clackamas County, Oregon, as further in described in that certain Deed recorded September 23, 1930, in Volume 209, Page 1, in the Official Records of Clackamas County.

The Abernethy Island Property, Assessor Parcel No. 22E31 00600, situated in Clackamas County, Oregon, as further described in that certain Deed recorded June 27, 2000, as Document Number 2000-041748 in the Official Records of Clackamas County.

[TO BE FURTHER EXPANDED AND THEN REFINED BY SURVEY PRIOR TO GRANT]

**EXHIBIT A-1
GRAPHIC DEPICTION OF PGE PROPERTY**

[TO BE COMPLETED FOLLOWING DETERMINATION OF LEGAL DESCRIPTION PRIOR TO GRANT]

DRAFT

EXHIBIT "B"
GRANTEE RATIFICATION & ASSUMPTION AGREEMENT

RATIFICATION & ASSUMPTION AGREEMENT

FOR VALUABLE CONSIDERATION, the current receipt, reasonable equivalence, and sufficiency of which are hereby acknowledged by the undersigned Grantee, such Grantee hereby ratifies, reaffirms, confirms and acknowledges all of its covenants, representations, warranties, agreements, and obligations under, and all of the terms and conditions of, that certain Perpetual Cultural Practices Easement granted by Portland General Electric Company, an Oregon corporation, dated the ____ day of _____, 202__ with respect to the Easement Area described therein (the "Easement"), and agrees to be bound thereby and perform thereunder in strict compliance with the terms and conditions set forth therein.

1. Grantee hereby expressly acknowledges Grantee's understanding of and agreement with the entire Easement, including without limitation each of those specific Sections of the Easement which call for Grantee's Initials (e.g., Section 1, *Identification of Grantees*; Section 3, *Grant of Easement*; Section 7, *Grantee's Acceptance of Easement Area*; Section 12, *Assumption of Risk*; Section 13, *Grantor's Continuing Rights*; Section 15, *Indemnification*; Section 16, *Retained Property Interests*; Section 18, *Remedies*; Section 19, *Waiver of Jury Trial*; Section 20, *Dispute Resolution*; Section 21, *Limited Waiver of Sovereign Immunity*; Section 22, *Governing Law, Jurisdiction and Venue*; and the like).

2. **Notice.** Notices to Grantee for the purposes of Section 24 of the Easement shall be delivered to Grantee by e-mail (and copied by US Mail) at the following contact address(es) or to such other address as a Party shall hereafter designate in writing to another Party in accordance with the foregoing procedures:

Phone: _____
Email: _____

Phone: _____
Email: _____

3. **Authority.** Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and has the authority and capacity to legally bind the Party he or she represents, and that such Party shall be fully bound by the terms hereof upon such signature without any further act, approval, or authorization by such Party.

4. **Governing Law; Venue.** This Ratification & Assumption Agreement shall be governed, construed, applied, and enforced in accordance with Section 21 and Section 22 of the Easement.

5. **Interpretation.** Capitalized terms not defined herein shall have the same meaning as set forth in the Easement. References herein to the Easement shall include this Agreement and all prior amendments to such agreements, if any, except where the context otherwise requires.

6. **Controlling Agreement.** In the event of any conflict between any other part of the Easement and this Agreement, the terms and conditions of the Easement shall control.

7. **Entire Agreement.** The recitals are true and correct and incorporated herein by this reference. This instrument, along with any exhibits and attachments or other documents affixed hereto or referred to herein, constitute the entire and exclusive agreement between Grantee and Grantor relative to the content hereof. All prior written and oral agreements, understandings and/or practices relative to the content hereof are

superseded by this instrument and shall remain subject to the operation and effect of any and all instruments and matters of record or in fact. Except as may be otherwise provided in this Agreement, the Easement shall each remain unmodified and in full force and effect.

The parties hereto have executed this Agreement as of the ____ day of _____, 202____. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns. Grantee will not, at any time in the future, repudiate this Ratification and Assumption Agreement. Grantee shall not record this Agreement.

[SIGNATURE PAGES & NOTARY ACKNOWLEDGMENTS TO FOLLOW]

GRANTEE:

By: _____

Name: _____

Title: _____

STATE OF OREGON _____)
) ss.
County of _____)

This instrument was acknowledged before me on the _____ day of _____, 202__, by _____ as the _____ and authorized representative of _____ ("Grantee") who personally appeared before me and acknowledged the foregoing instrument to be his or her voluntary act and deed.

Notary Public for Oregon
My Commission Expires: _____

GRANTOR:

PORTLAND GENERAL ELECTRIC COMPANY,
an Oregon corporation

By: _____

Printed Name: _____

Title: _____

STATE OF OREGON _____)
) ss.
County of _____)

This instrument was acknowledged before me on the _____ day of _____, 202__, by _____ as the _____ and authorized representative of *PORTLAND GENERAL ELECTRIC COMPANY*, an Oregon corporation ("Grantor") who personally appeared before me and acknowledged the foregoing instrument to be their voluntary act and deed.

Notary Public for Oregon
My Commission Expires: _____

EXHIBIT "C"
CULTURAL PRACTICES

Pursuant to the terms and conditions of the Easement, the "cultural practices" include the non-exclusive access to and use of the Easement Area for the following uses and purposes and for no other: (1) to harvest Pacific Lamprey and those cultural practices reasonably connected therewith; (2) to harvest Salmon and Steelhead and those cultural practices reasonably connected therewith; (3) to conduct engineering and geotechnical exploration and other related activities for the purpose of evaluating the proposed construction of a platform for harvesting Salmon and Steelhead; and (4) to construct, operate, and temporarily maintain and use a single removable fishing platform (scaffold) within the Easement Area. Footings may be permanent, but the platform apparatus must be readily removable, constructed out of nonconductive insulating materials and/or covered with non-conductive coating, and mounted to the rock/soil using nonconductive insulating mounts and/or inserting nonconductive insulators between the fishing platform and the mounts. No other rights, uses, or construction, other than as outlined above in this Exhibit "C" are authorized within the Easement Area.

EXHIBIT "D"
LEGAL DESCRIPTION OF EASEMENT AREA

[TO BE DETERMINED BY SURVEY PRIOR TO GRANT]

DRAFT

EXHIBIT "D-1"
GRAPHIC DEPICTION OF EASEMENT AREA

[TO BE DETERMINED BY SURVEY PRIOR TO GRANT]

DRAFT

EXHIBIT "E"

ELECTRICAL HAZARDS

Grantor experienced a ground fault in 2001 that electrocuted several fish in the Willamette River at the PGE Facilities. Since that time Grantor has been investigating the situation and conducting testing and analysis regarding electrical touch potential at and around Willamette Falls. Preliminary results of that investigation indicate that there is a potential for an electrical shock hazard to humans in the Easement Area when there is a fault to the transmission and distribution system.

Each Grantee and its Members shall strictly comply with the following minimum requirements with the acknowledgment, understanding, and agreement that compliance does not guarantee safe operation and may not be sufficient to protect persons and property in any specific circumstance:

Ground Fault Safety Mitigation ~

Grantee shall establish and maintain a Ground Fault Protection and Safety Mitigation Plan sufficient to protect Grantee and its Members from electrical hazards with respect to all activities of such persons on or at the Easement Area. Such Plan shall comply with the standards and requirements set forth by The Institute of Electrical and Electronics Engineers, Inc. IEEE80, *IEEE Guide for Safety in AC Substation Grounding*, the National Electric Safety Code, and the Occupational Safety & Health Administration, each as applicable.

At a minimum, each Grantee and its Members shall employ the following protective actions:

- Constructing removable fishing platforms out of nonconductive insulating materials and/or covering the fishing platforms with non-conductive coating;
- Mounting fishing platforms to the rock/soil using nonconductive insulating mounts and/or inserting nonconductive insulators between the fishing platform and the mounts;
- Using fishing equipment such as dip nets made out of nonconductive insulating materials;
- Wearing nonconductive gloves and shoes with soles made out of nonconductive insulating materials; and
- No activities shall be conducted within fifty (50) feet of any PGE Facilities (regardless of location), including without limitation, power lines. For avoidance of doubt, Grantees shall comply with the protective actions specified herein and may not use poles for dipping nets or other related activities that exceed thirty-one (31) feet in length.

No Warranty of Accuracy or Completeness ~

Grantor is under no duty to, but may from time to time, provide Grantees with notice or information regarding potential hazards and/or dangerous conditions. Although Grantor believes that the information is reliable and relevant for the purpose of evaluation by Grantees, Grantor is not assuming any duty with respect to and makes no representation or warranty as to the accuracy or completeness of the information to any Grantee. Each Grantee, acknowledges and agrees that neither Grantor, nor any of the Grantor Indemnitees, shall have any liability to any Grantee or their respective Members, and no Grantee or its Members shall have any recourse against Grantor, or any of the Grantor Indemnitees, or other representatives, resulting from or in any way associated with reliance on or use of the information.

EXHIBIT "F"
ADDITIONAL USE RELATED CONDITIONS

Safety. In no event shall any Grantee allow or engage in any unconstrained access in waters immediately below Dam spillways/structures except when conducting lamprey harvests during the months of June and July each year and then provided water levels are low and Grantor is not conducting any activity on or upriver from the dam which may endanger those conducting lamprey harvests. For the purposes of this Easement the term "unconstrained" means: (i) that there is no physical barrier between individuals and Dam structures to prevent entrainment in flows over or through the Dam structures, or (ii) in the direct path of any controlled or uncontrolled release of waters to areas below the Dam. Examples of unconstrained access include access to areas affected by failure of the Obermeyer weirs resulting in unplanned/uncontrolled spill from the lagoon or flashboard failure with sudden release of water to otherwise dewatered areas around base of the falls.

Property. Each Grantee and its Members shall protect all survey monuments found within or adjacent to the Easement Area. If any such survey monuments are damaged or disturbed, such Grantee shall promptly notify Grantor. No Grantee nor any Member may do or permit anything to be done in or about the PGE Property or the Easement Area or bring or keep anything therein that will in any way increase the existing rate of or affect any fire, hazard, or other insurance upon the PGE Facilities, the PGE Property, the Easement Area, or any of its contents or cause cancellation of any insurance policy covering the PGE Facilities, the PGE Property, the Easement Area, or any part thereof or any of its contents.

Grantee Duties. Each Grantee shall, at such Grantee's expense and risk, install and maintain on the Easement Area: (i) such safety, security, and evacuation route and instruction signage as FERC or Grantor may require; (ii) lockable access to all of such Grantee's improvements accessible only by such Grantee, Grantor, and first responders; (iii); a twenty-four (24) hour surveillance monitoring system accessible by such Grantee, Grantor, and law enforcement; (iv) such audible/visible warning devices as FERC or Grantor may require to warn of excessive flows caused by natural occurrence, from a Dam safety system, plant trip/emergency shutdown, or structure failure allowing uncontrolled release of water into areas not otherwise in the flow path; and (v) provide at least two individuals trained in swift-water rescue on site at the Easement Area during any use or access thereof. In addition to the foregoing, each Grantee shall, at such Grantee's expense and risk, promptly remove all improvements and property during periods of non-use.

Unmanned Vehicles. No Grantee nor any of its Members shall operate any unmanned vehicles or aircraft of any type (e.g., drones, or the like) over any PGE Property except for the Easement Area, or within Fifty (50 Feet) of any PGE Facilities (regardless of location), including without limitation, power lines.

Contractors. Each Grantee hereby represents, covenants and warrants that all construction by Non-Members within the Easement Area, if any is permitted under this Easement, shall be promptly performed in a workmanlike manner; in accordance with all applicable statutes, laws, and regulations; and that all contractors of every tier shall at all times carry workers' compensation insurance in compliance with the laws of the State of Oregon. All Contractors shall obtain specific access permits from Grantor under terms and conditions Grantor deems reasonably necessary to address safety, security and operational efficiency of the PGE Facilities.

No Liens. PGE shall not have any liability or responsibility with respect to any obligations for labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which is provided to Grantee and/or related to Grantee's personal property with respect to the Easement Area. No Grantee shall suffer or permit any liens to attach to all or any part of the Easement Area, PGE Property, or any interest of Grantee in the Easement Area by reason of any tax and/or of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to, such Grantee, any of such Grantee's contractors or anyone occupying or holding an interest of such Grantee in all or any part of the Easement Area through or under such Grantee.

Cultural Resources. Grantee, at Grantee's sole risk and expense, shall have an archaeological monitor present during any ground disturbance in the Easement Area and will strictly comply with protocol established by the State Historic Preservation Office and/or Grantor in any instance when an inadvertent discovery of a cultural or historical resource is made. Grantee shall prepare and deliver to Grantor an inadvertent discovery

procedure for Grantor's review and approval, no less than three (3) business days prior to any work in the Easement Area. Grantee shall promptly provide Grantor with any monitoring reports prepared by the archaeological monitor required to be present during ground disturbing activities. Grantee shall also notify Grantor (503-464-BONE) within two (2) hours of any inadvertent discovery of a cultural resource or unintended ground disturbance within the Easement Area. Protective and mitigation measures specified by Grantor shall be the responsibility of the Grantee. Grantee will give due consideration to the effect of the actions of Grantee and its Members on previously documented cultural sites, if any, within the Easement area. As such, all impacts should be avoided on previously documented sites, which include without limitation archaeological sites, petroglyphs, historical scatters, and a traditional cultural property.

Regulatory Requirements. This Easement and Grantee's proposed use of the Easement Area is conditioned upon the approval of FERC as a "non-project use of project lands", upon terms and conditions acceptable to Grantor. Grantee will fully support Grantor's application and shall not interfere with the process and shall allow Grantor to control all communication with FERC. Unless Grantor specifically grants prior written consent to do so in each instance, Grantee shall not commence any work unless and until such time as Grantor receives FERC approval on terms and conditions acceptable to Grantor.

EXHIBIT "G"
INSURANCE REQUIREMENTS

1. Acceptable Insurers. All insurance required herein must be obtained from insurers duly authorized to do business in Oregon and which maintain a minimum financial strength rating of "A-VIII" by the A. M. Best Key Rating Guide.
2. Required Insurance and Minimum Limits. During the term of this Agreement, Grantee must maintain, at its sole expense, the following insurance coverage:
 - A. Workers' Compensation and Employer's Liability Insurance
 - i. Scope. Workers' Compensation and Employer's Liability to cover claims under applicable State or Federal workers' compensation laws. Coverage must include Employer's Liability to cover claims for injury, disease or death of employees which, for any reason, may not fall within the provisions of the applicable workers' compensation law.
 - ii. Minimum Required Limit.

Workers' Compensation:	Statutory
Employer's Liability:	\$2,000,000 each accident, bodily injury by accident
	\$2,000,000 each employee, bodily injury by disease
	\$2,000,000 policy limit, bodily injury by disease
 - iii. Navigable Waters. If any Activities under this Agreement involves work in, over or alongside any navigable waters, then Grantee's workers' compensation coverage must cover liability under U.S. Longshoremen and Harbor Workers' Compensation Act, The Jones Act, Maritime Employers Liability and any other coverage required under Federal or State laws pertaining to workers in, over or alongside navigable waters.
 - iv. Waiver of Subrogation. To the fullest extent permitted by law, Grantee shall cause its insurer to waive all rights to recover any payments made from Grantor, its affiliates, and their respective officers, directors, agents and employees.
 - B. Commercial General Liability Insurance
 - i. Scope. Commercial General Liability Insurance written on an occurrence form and must cover liability arising from premises, operations, independent Grantees, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). If any Activities under this Agreement involves Grantee exercising care, custody or control of PGE property, then Grantee must endorse its Commercial General Liability coverage to remove any exclusionary language relative to property damage in Grantee's care, custody or control, or maintain Property, Inland Marine or other bailee insurance to cover damage to Grantor's property in the care, custody or control of Grantee.
 - ii. Minimum Required Limit. \$2,000,000 Each Occurrence
 - iii. Waiver of Subrogation. To the fullest extent permitted by law, Grantee shall cause its insurer to waive all rights to recover any payments made from Grantor, its affiliates, and their respective officers, directors, agents and employees.
 - iv. Additional Insured. To the fullest extent permitted by law, the insurance must include Grantor, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance afforded to or self-insurance maintained by such additional insured. There must not be

any endorsement or modification of this insurance to make it excess over any other insurance available to such additional insured.

C. Automobile Liability Insurance

i. Scope. Automobile Liability insurance to cover liability arising out of any auto (including owned, hired, and non-owned autos) used in connection with any Activity under this Agreement.

ii. Minimum Required Limit. \$2,000,000 Each Accident

iii. Pollution. If Grantee is transporting chemicals, hazardous materials, or similar pollutants, then the Automobile Liability Insurance must include pollution liability coverage at least as broad as the coverage provided under the ISO endorsement CA 99 48 "Pollution Liability—Broadened Coverage For Covered Autos".

iv. Waiver of Subrogation. To the fullest extent permitted by law, Grantee shall cause its insurer to waive all rights to recover any payments made from Grantor, its affiliates, and their respective officers, directors, agents and employees.

v. Additional Insured. To the fullest extent permitted by law, the insurance must include Grantor, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance afforded to or self-insurance maintained by such additional insured. There must not be any endorsement or modification of the insurance to make it excess over any other insurance available to such additional insured.

D. Pollution Legal Liability

i. Scope. If any of the Activities under this Agreement involves cleanup, removal, storage, or otherwise handling of hazardous or toxic chemicals, materials, substances, or any other pollutants, Grantee shall provide at its expense Pollution Legal Liability Insurance appropriate to cover such activities against the risk of bodily injury and property damage. Such policy must be endorsed to specifically provide coverage for Activities performed under this Agreement and must extend to all Subcontractors engaged in cleanup, removal, storage, or otherwise handling of hazardous or toxic chemicals, materials, substances, or any other pollutants.

ii. Minimum Required Limit. \$2,000,000 Per Claim

iii. Additional Insured. To the fullest extent permitted by law, the insurance must include Grantor, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance afforded to or self-insurance maintained by such additional insured. There must not be any endorsement or modification of the insurance to make it excess over any other insurance available to such additional insured.

iv. Waiver of Subrogation. To the fullest extent permitted by law, Grantee shall cause its insurer to waive all rights to recover any payments made from Grantor, its affiliates, and their respective officers, directors, agents and employees.

E. Unmanned Aircraft Systems Liability

i. Scope: PRIOR TO USING AN UNMANNED AIRCRAFT SYSTEM OF ANY KIND IN PERFORMING THE ACTIVITIES UNDER THIS AGREEMENT, GRANTEE SHALL NOTIFY Grantor AND OBTAIN ITS PRIOR WRITTEN CONSENT. If an Unmanned Aircraft System is to be used in performing the Activities under this Agreement,

Unmanned Aircraft Systems Liability insurance coverage appropriate to cover such activities against the risk of bodily injury, trespass, invasion of privacy and property damage.

- ii. Minimum Required Limit: \$5,000,000 Each Occurrence
- iii. Additional Insured. To the fullest extent permitted by law, the insurance must include Grantor, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance afforded to or self-insurance maintained by such additional insured. There must not be any endorsement or modification of the insurance to make it excess over any other insurance available to such additional insured.

F. Aircraft Liability

i. Scope: **PRIOR TO USING AN AIRCRAFT OF ANY KIND IN PERFORMING THE ACTIVITIES UNDER THIS AGREEMENT, GRANTEE SHALL NOTIFY Grantor AND OBTAIN ITS PRIOR WRITTEN CONSENT.** If an aircraft is to be used in performing the Activities under this Agreement, Aircraft Liability insurance covering fixed wing and rotorcraft aircraft whether owned, hired or non-owned.

- ii. Minimum Required Limit: \$10,000,000 Each Occurrence
- iii. Additional Insured. To the fullest extent permitted by law, the insurance must include Grantor, its affiliates, and their respective officers, directors, agents and employees as additional insureds. This insurance must apply as primary insurance without any contribution from any other insurance afforded to or self-insurance maintained by such additional insured. There must not be any endorsement or modification of the insurance to make it excess over any other insurance available to such additional insured.

- 3. Excess or Umbrella Insurance. The required minimum limits may be met through any combination of primary and excess insurance policies.
- 4. Certificates of Insurance. Prior to commencement of any Activities under this Agreement, and annually thereafter, Grantee must furnish Grantor with a Certificate of Insurance evidencing compliance with these requirements. Without penalty or default, Grantor has the right, but not the obligation, to prohibit commencement of any Activities until such Certificate of Insurance or other evidence satisfactory to Grantor is received and approved by Grantor. The Certificate of Insurance must list as the certificate holder:

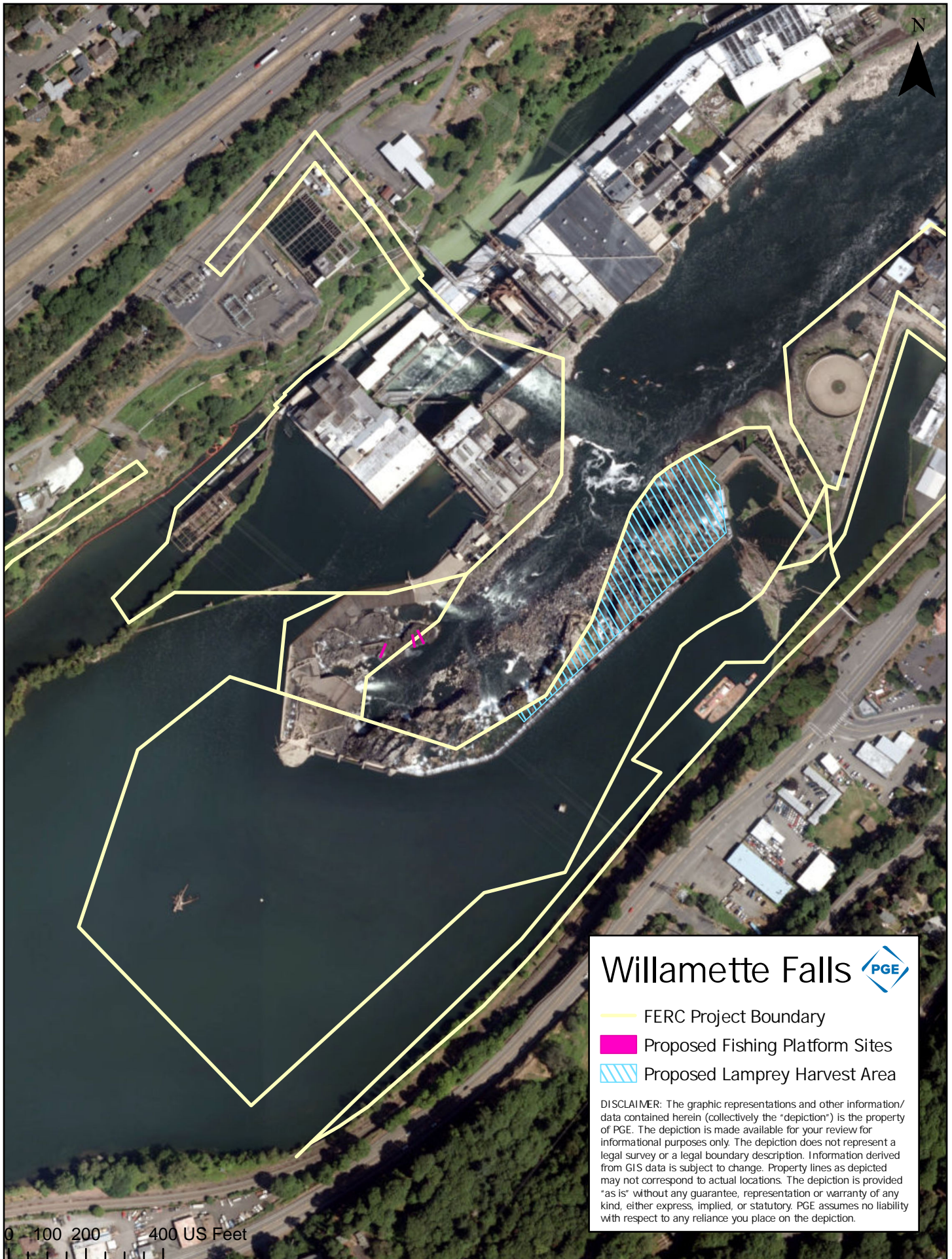
Portland General Electric Company
Insurance and Claims Risk Management
121 SW Salmon Street, 1WTC1304
Portland, OR 97204-9951

- 5. No Waiver. Grantor's failure to demand the Certificate of Insurance or to identify a deficiency from the Certificate of Insurance or other evidence provided will not be deemed a waiver of Grantor's rights or Grantee's obligations. Furthermore, these insurance requirements must not be construed in any manner as waiving, restricting or limiting Grantor's rights or Grantee's obligations under this Agreement.
- 6. Notice of Cancellation. No insurance policy may be canceled, not renewed, or materially modified unless Grantee or insurer(s) provide at least thirty (30) days prior written notice to Grantor.




7. Failure to Maintain Required Insurance. If at any time during the term of this Agreement Grantees fails to maintain any required insurance, Grantor may, at its sole discretion, suspend the Activities and/or exercise any of Grantor's rights under the Easement until such time as Grantee has reinstated the required insurance and delivered proof thereof to Grantor.
8. Grantee Responsible for Deductibles or Retentions. With respect to any insurance required herein, Grantee must bear all costs of all deductibles or Self-Insured Retentions.
9. No Representation of Coverage Adequacy. Grantor does not represent that coverage and limits required herein will be adequate to protect Grantee. Grantee remains responsible for any liability not paid by insurance.
10. Grantee's Property. Grantee is responsible for any loss or damage to its property, however caused, and any insurance covering such property will be at Grantees expense and Grantee shall cause its insurer to waive all rights to recover any payments made from Grantor, its affiliates, and their respective officers, directors, agents and employees.
11. No Violation of Insurance Policies. Grantee must not knowingly violate or knowingly permit any violation of any warranties, representations, declarations or conditions contained in the policies of insurance.
12. No Claims. As of the execution date of this Agreement, Grantee is not aware of any claims or potential claims which have been made, filed or threatened against any of the insurance required herein.
13. Other Insurance. If there is any material change to the nature or scope of the Activities under this Agreement, Grantor may require Grantee to obtain and maintain additional insurance.
14. Primary Insurance. The insurance required of Grantee under this Exhibit shall be primary and may not seek contribution from any insurance or self-insurance maintained by Grantor.

ATTACHMENT B

Easement Area



Willamette Falls

-  FERC Project Boundary
-  Proposed Fishing Platform Sites
-  Proposed Lamprey Harvest Area

DISCLAIMER: The graphic representations and other information/data contained herein (collectively the "depiction") is the property of PGE. The depiction is made available for your review for informational purposes only. The depiction does not represent a legal survey or a legal boundary description. Information derived from GIS data is subject to change. Property lines as depicted may not correspond to actual locations. The depiction is provided "as is" without any guarantee, representation or warranty of any kind, either express, implied, or statutory. PGE assumes no liability with respect to any reliance you place on the depiction.

ATTACHMENT C
Administrative Rule 635-041-0610

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Department of Fish and Wildlife

Chapter 635

Division 41

COLUMBIA RIVER SYSTEM TREATY INDIAN FISHERIES

635-041-0610

Ceremonial Salmon and Steelhead Harvest at Willamette Falls

(1) Members of the Grand Ronde Community of Oregon (Tribe, for purposes of this rule) may harvest hatchery salmon and hatchery steelhead (salmonids, for the purposes of this rule) at Willamette Falls for ceremonial purposes, in accordance with these rules.

(2) The Director shall annually authorize the Ceremonial Salmonid Harvest by issuance of a Ceremonial Harvest Permit upon written request from the Tribe.

(3) Upon issuance of the Ceremonial Harvest Permit, the Director shall also issue up to 15 Ceremonial Harvest Tags (tags) to the Tribe. The tags shall:

(a) Be provided to the Tribe and may be used only by enrolled and authorized members of the Tribe under such terms and conditions as the Tribe may specify, consistent with the Ceremonial Harvest Permit.

(b) Authorize the harvest of one salmonid per tag, up to the maximum harvest of 15 salmonids per calendar year authorized by the Ceremonial Harvest Permit.

(c) Require fishing pursuant to these rules to:

(A) Be in an area upstream of an imaginary line across the main channel of the Willamette River between the northeast corner of the farthest downstream building on Moores Island (commonly referred to as Mill A grinder room) and the southwest corner of the concrete structure on Black Point.

(B) Occur from the shore or from a single platform erected by the Tribe within the designated fishing area described in sub-section (A) above. The platform will be constructed at a location mutually agreed upon between the Director and the Tribe, but no closer than 75 feet of any fishway entrance.

(C) Be by dip net only. "Dip net" means a net with a mesh size no larger than five inches (measured from the inside of one vertical knot to the outside of the opposite vertical knot), attached to a hoop no larger than four feet in diameter and attached directly to a handle; dip nets shall be attended at all times.

(D) Occur from one hour before sunrise until one hour after sunset.

(d) Be carried in the field by Tribal Ceremonial Fishers along with Tribal identification and a Tribal hunting and fishing license. Tribal Ceremonial Fishers shall present these items to Department employees or law enforcement officers and permit the inspection of tribal catch and gear upon request. Tribal fishers designated to harvest salmon using Ceremonial Harvest Tags shall not be required to possess other State of Oregon licenses or Combined Angling Tags.

(e) Include such other conditions and limitations as the Director considers necessary, after consultation with the Tribe, to facilitate orderly prosecution of this or other fisheries or to protect fishery resources at the site.

(4) An authorized Tribal representative will provide at least two business days advanced written notification to the Oregon State Police and to the Director or the Director's designee prior to each ceremonial salmon fishing occasion conducted pursuant to these rules and any time the Tribe will be accessing the fishing platform for maintenance, inspection, viewing, or other non-fishing purposes. The notice must include the name of individuals who will be accessing the platform or designated as Tribal Ceremonial Fishers and the names of any helpers who will be assisting or transporting fish. Helpers may not fish, are not required to be Tribal members, and need not possess the documentation required under section (3)(d) above.

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- (5) Each salmonid harvested shall be validated or tagged immediately upon landing with the Ceremonial Harvest Tag in accordance with requirements specified in the Ceremonial Harvest Permit. The Tag shall remain with the harvested fish at all times while in the field and during transit to the location of the tribal ceremony.
- (6) Captured non-target fish must be immediately released back to the water unharmed.
- (7) All harvest of salmonids by the Tribe pursuant to the Ceremonial Harvest Permit shall be reported to the Department within 30 days following the end date of the season specified in the permit. The harvest report shall include, at minimum, the number of fish harvested by species and the number of unmarked salmon and steelhead released.
- (8) Salmon harvested under an authorized Ceremonial Harvest Permit may only be used by the Tribe or Tribal members for ceremonial and cultural purposes designated by the Tribe. Salmon and steelhead and parts thereof may not be bartered or sold.
- (9) Authorization of this ceremonial harvest does not create, convey or imply any additional tribal legal or treaty entitlement, nor does it modify any existing agreement, treaty, or court decree.

Statutory/Other Authority: ORS 497.075, 496.138, 506.036, 506.109, 506.119 & 506.129

Statutes/Other Implemented: ORS 506.109, 506.129 & 508.111

History:

DFW 34-2016, f. & cert. ef. 4-25-16

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ATTACHMENT D

Administrative Rule 635-017-0090

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Department of Fish and Wildlife

Chapter 635

Division 17

WILLAMETTE ZONE SPORT ANGLING REGULATIONS

635-017-0090

Inclusions and Modifications

(1) The **2020 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2020 Oregon Sport Fishing Regulations**.

(2) Beginning February 1, 2017, the use of barbed hooks is allowed when angling for salmon, steelhead, or trout in Willamette River downstream of Willamette Falls (including Multnomah Channel and Gilbert River) and in lower Clackamas River upstream to Highway 99E Bridge.

(3) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

Statutory/Other Authority: ORS 496.138, ORS 496.146, ORS 497.121 & ORS 506.119

Statutes/Other Implemented: ORS 496.004, ORS 496.009, ORS 496.162 & ORS 506.129

History:

[DFW 40-2020, temporary amend filed 04/07/2020, effective 04/16/2020 through 05/15/2020](#)

[DFW 175-2019, amend filed 12/12/2019, effective 01/01/2020](#)

[DFW 69-2019, temporary amend filed 06/06/2019, effective 06/07/2019 through 08/31/2019](#)

[DFW 49-2019, temporary amend filed 04/25/2019, effective 09/01/2019 through 09/30/2019](#)

[DFW 48-2019, temporary amend filed 04/25/2019, effective 05/01/2019 through 08/31/2019](#)

[DFW 37-2019, temporary amend filed 04/04/2019, effective 09/01/2019 through 09/30/2019](#)

[DFW 36-2019, temporary amend filed 04/04/2019, effective 04/16/2019 through 08/31/2019](#)

[DFW 26-2019, temporary amend filed 03/01/2019, effective 04/01/2019 through 08/31/2019](#)

[DFW 25-2019, temporary amend filed 03/01/2019, effective 03/04/2019 through 03/31/2019](#)

[DFW 10-2019, temporary amend filed 01/30/2019, effective 02/01/2019 through 03/31/2019](#)

[DFW 152-2018, amend filed 09/28/2018, effective 01/01/2019](#)

[DFW 57-2018, temporary amend filed 05/18/2018, effective 05/22/2018 through 10/02/2018](#)

[DFW 40-2018, temporary amend filed 04/06/2018, effective 04/16/2018 through 10/02/2018](#)

[DFW 109-2017, f. 8-9-17, cert. ef. 1-1-18](#)

[DFW 80-2017\(Temp\), f. & cert. ef. 6-27-17 thru 12-4-17](#)

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FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997, f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997, f. & cert. ef. 4-10-97; FWC 31-1997, f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; Administrative correction, 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02, cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02; Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction, 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction, 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; DFW 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; DFW 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; DFW 124-2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 9-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 8-15-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 74-2009(Temp), f. 6-25-09, cert. ef. 6-30-09 thru 7-2-09; Administrative correction, 7-21-09; DFW 103-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; DFW 118-2009(Temp), f. & cert. ef. 9-28-09 thru 12-31-09; DFW 123-2009(Temp), f. & cert. ef. 10-5-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 61-2010, f. & cert. ef. 5-14-10; DFW 62-2010(Temp), f. 5-14-10, cert. ef. 5-22-10 thru 11-17-10; DFW 84-2010(Temp), f. 6-17-10, cert. ef. 6-18-10 thru 10-31-10; DFW 94-2010(Temp), f. & cert. ef. 7-1-10 thru 10-31-10; DFW 96-2010(Temp), f. 7-7-10, cert. ef. 7-8-10 thru 10-31-10; DFW 123-2010(Temp), f. 8-26-10, cert. ef. 9-1-10 thru 12-31-10; DFW 134-2010(Temp), f. 9-22-10, cert. ef. 9-23-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 158-2011(Temp), f. 12-14-11, cert. ef. 1-1-12 thru 4-30-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 21-2012, f. & cert. ef. 3-12-12; DFW 89-2012(Temp), f. 7-17-12, cert. ef. 7-26-12 thru 8-31-12; DFW 99-2012(Temp), f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 67-2013(Temp), f. 7-3-13, cert. ef. 7-11-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 62-2014(Temp), f. & cert. ef. 6-10-14 thru 10-31-14; DFW 70-2014(Temp), f. & cert. ef. 6-13-14 thru 6-30-14; DFW 73-2014(Temp), f. 6-20-14, cert. ef. 6-23-14 thru 10-31-14; DFW 141-2014(Temp), f. 9-25-14, cert. ef. 9-26-14 thru 12-31-14; DFW 150-2014(Temp), f. 10-14-14, cert. ef. 10-15-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 49-2015(Temp), f. & cert. ef. 5-27-15 thru 11-22-15; DFW 66-2015(Temp), f. 6-10-15, cert. ef. 6-12-15 thru 11-22-15; DFW 88-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 12-31-15; DFW 120-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 12-31-15; DFW 152-2015(Temp), f. 11-6-15, cert. ef. 11-17-15 thru 12-31-15; DFW 154-2015(Temp), f. 11-12-15, cert. ef. 11-23-15 thru 12-31-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16; DFW 24-2016(Temp), f. 3-30-16, cert. ef. 4-1-16 thru 9-27-16; DFW 30-2016(Temp), f. & cert. ef. 4-8-16 thru 9-30-16; DFW 67-2016(Temp), f. & cert. ef. 6-9-16 thru 9-30-16; DFW 76-2016(Temp), f. 6-15-16, cert. ef. 6-16-16 thru 9-30-16; DFW 105-2016, f. & cert. ef. 8-10-16; DFW 153-2016, f. 12-28-16, cert. ef. 1-1-17; DFW 4-2017, f. & cert. ef. 1-25-17; DFW 44-2017(Temp), f. 4-19-17, cert. ef. 4-24-17 thru 9-30-17; DFW 51-2017(Temp), f. & cert. ef. 4-25-17 thru 9-30-17; DFW 52-2017(Temp), f. 4-27-17, cert. ef. 5-1-17 thru 10-27-17; DFW 55-2017(Temp), f. 5-4-17, cert. ef. 5-8-17 thru 11-

3-17; DFW 56-2017(Temp), f. 5-10-17, cert. ef. 5-13-17 thru 6-15-17; DFW 63-2017(Temp), f. 5-26-17, cert. ef. 6-1-17 thru 7-31-17; DFW 68-2017(Temp), f. 6-7-17, cert. ef. 6-8-17 thru 12-4-17; DFW 69-2017(Temp), f. & cert. ef. 6-8-17 thru 12-4-17

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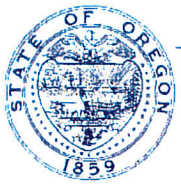
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Phone: 503-373-0701 • Fax: 503-378-4118 • reference.archives@oregon.gov

ATTACHMENT E

Oregon Department of State Lands Approval for Waterway Structure Registration



Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

State Land Board

August 31, 2018

SN410/APP0059537-RG

CONFEDERATED TRIBES OF GRAND RONDE

9615 GRAND RONDE RD

GRAND RONDE, OR 97347

Kate Brown

Governor

REGISTRATION

APP0059537-RG

Dennis Richardson

Secretary of State

The Department of State Lands ("Department" or "DSL") hereby authorizes and approves the Registration for the Confederated Tribes of Grand Ronde ("CTGR" or "Holder") to construct, operate, maintain and use a fishing platform, located at one of three identified potential locations each with individual footings (collectively referred to as "Structure"), at Willamette Falls, in Clackamas County (T2S, R2E, Section 31). See the attached figure showing the three locations. The Holder is authorized to use this Structure for a ceremonial harvest of salmonids as allowed under OAR 635-041-0610 (referred to as the "Use"). No other structures or uses are allowed under this Registration. This Registration is valid from August 31, 2018 until August 30, 2023, as further described in the terms and conditions listed below.

Tobias Read

State Treasurer

Under OAR 141-082-0330 (3), Holder will be required to notify the Department of any of the following changes:

- a) Change in the location or size of a registered structure ninety (90) calendar days prior to such change.
- b) Change in ownership of a registered structure or use as a result of a sale or conveyance within ninety (90) calendar days of the transfer of ownership.
- c) Change in ownership by operation of the law resulting from a bankruptcy, foreclosure, estate settlement, or the like within thirty (30) calendar days of the final settlement or decision. Failure to notify the Department of a change in the location, size, or the ownership of a registered structure or use within the time provided will result in the automatic termination of the registration.

Holder is authorized to install footings at any time after the date of issuance of this Registration. Holder is authorized to maintain a fishing platform at a single location only during the period for which the Holder is authorized to harvest salmonids under its Oregon Department of Fish and Wildlife (ODFW) Ceremonial Harvest Permit. Holder must remove the fishing platform each year on or before the date that the ODFW Ceremonial Harvest Permit expires.

Holder agrees to allow and not unreasonably interfere with legal lamprey harvest that occurs in the area. If legal lamprey harvest location changes over the time period of this registration, or if the Holder's Use or Structure otherwise interferes with any legal lamprey harvest in the area, the Department may amend or terminate this Registration.

Holder agrees that the Structure shall be constructed, installed and maintained in a manner that minimizes the visual and environmental impact of the Structure. Specifically, the materials will include wood, fiber reinforced decking, and metal (galvanized steel and aluminum), and the structure shall be natural in color in order to blend into the existing landscape. The Structure shall not contain any signage or symbols without prior written approval of the Department. The Holder will keep the Structure clean and in good condition.

Holder agrees to work in good faith with upland owners to ensure that Holder's Structure and Use do not interfere with any upland owners' use, including Portland General Electric. Holder further agrees that to the extent any federal regulation or license imposes a legal obligation on Holder, Holder will ensure Holder's Use or Structures will comply with all federal regulations and licenses that apply to Holder's Use or Structures, including the terms of any Federal Energy Regulatory Commission license that impose a legal obligation on Holder.

If any archaeological resources, artifacts or human remains are encountered during construction, all construction activity must immediately cease. Holder must contact the State Historic Preservation Office at 503-986-0674. Holder understands that it may be contacted by a Tribal representative if it is determined by an affected Tribe that the project could affect Tribal cultural or archeological resources.

The Holder agrees to defend, indemnify and hold the State harmless from and against all claims, demands, actions, suits, judgment, losses, damages, penalties, fines, costs, and expenses (including expert witness fees and costs and attorney's fees in an administrative proceeding, at trial, or on appeal) arising from or attributable, in whole or in part, to the Registration or any operations conducted or allowed by the Holder on the lands in use. "State" means the State of Oregon and its boards, commissions, agencies, officers, employees, contractors, and agents.

This Registration must be renewed every five (5) years. The Department will notify Holder to renew the Registration prior to the expiration date of the Registration.

The Department may modify the conditions of this Registration, or terminate this Registration, if during the term of the Registration the Department determines that the Structure or Use unreasonably interferes with any person's legal right to use the waterway for fishing, navigation, commerce, and recreation, or if the Department determines that the Structure or Use does not comply with applicable local, state, or federal law or regulation or any of the conditions of this Registration.

Sincerely,

STATE:

The State of Oregon, acting by and through the
Oregon State Land Board and the Department of
State Lands
775 Summer ST NE, STE 100
Salem, OR 97301-1279

Bill Green Deputy Director
Authorized Signature/Title

8/31/2018
Date

GRANTEE:

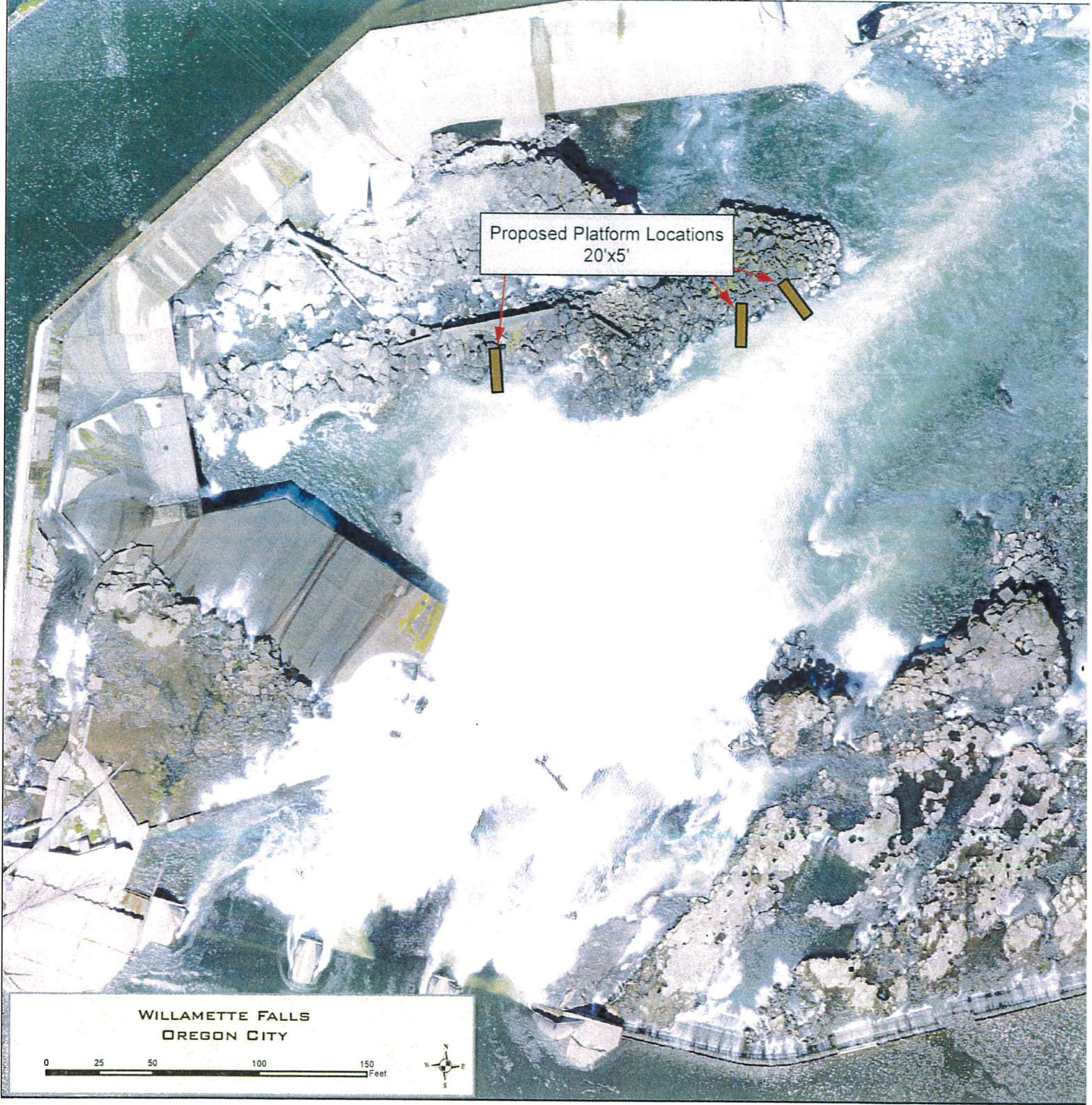
Confederated Tribes of Grand Ronde

9615 Grand Ronde Rd
Grand Ronde, OR 97347

Phil Turner
Signature/Title

General Manager 8-31-18
Date

Enclosure: Figure showing platform locations.



ATTACHMENT F
Draft Cultural Resources Study Plan

A ^ L ^ G ^ O ^ N ^ Q ^ U ^ I ^ N CONSULTANTS, INC.

Study Plan: Documentation of Effects to the Willamette Falls TCP in Clackamas County, Oregon

Prepared for



Portland General Electric Company
121 SW Salmon St.
Portland, OR 97204

Prepared by

Mario Battaglia, M.A.

Assistant Project Manager and Ethnographer

Rebecca Hawkins, M.A.

Project Manager and Sr. Archaeologist

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A handwritten signature in black ink that reads "Rebecca A. Hawkins".

Rebecca Hawkins, Vice President
April 16, 2021



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STUDY PLAN

Documentation of Effects at the Willamette Falls TCP in Clackamas County, Oregon

1.0 Background and Introduction

Willamette Falls, located in Clackamas County, Oregon, has been an important traditional cultural area to many Tribes for centuries. Ethnographic accounts and historic records indicate that the Willamette Falls area was an important place deeply connected to the lifeways of the American Indian populations in the area. The Falls itself served as a major fishery and regional trading center. Archaeological data conforms with the available ethnographic information, indicating both a dense concentration of settlements and associated burial areas around the Falls that continued into late precontact times.

In 1889, the Willamette Falls Electric Company (later renamed Portland General Electric Company, or PGE) made history by producing the world's first long-distance transmission of electricity. Today, PGE continues to own land at the Falls and manages the Willamette Falls Hydroelectric Project (Project), Federal Energy Regulatory Commission (FERC) Project No. 2233.

In 2003, PGE prepared a Historic Properties Management Plan (HPMP) to guide the protection and treatment of historic properties associated with the Project during the term of the new license (PGE 2003). As part of the relicensing process, PGE contracted with Archaeological Investigations Northwest (AINW) to conduct a study to identify and evaluate Traditional Cultural Properties (TCPs) associated with the Project's Area of Potential Effects (APE) at Willamette Falls (AINW 2003). The study, completed in 2003, identified Willamette Falls as a TCP eligible for listing in the National Register of Historic Places (NRHP), based on guidance provided in *National Register Bulletin 38* (Parker and King 1990). In the TCP study, Tribes expressed a desire to retain access to Willamette Falls in order to fish for salmon and catch Pacific lamprey.

Currently, PGE is working to provide an easement at Willamette Falls to provide access to the Falls for multiple federally-recognized Tribes. This action, a non-Project use of Project lands, constitutes a federal undertaking and is subject to review by FERC. PGE contracted with Algonquin Consultants, Inc. (Algonquin) to conduct an ethnographic study (Study) to determine if the easement providing access to the Falls for multiple federally-recognized Tribes (undertaking) creates adverse effects on the Willamette Falls TCP.

1.1 Overview of Federal Laws and Regulations

Federal agencies are required to comply with applicable federal laws, regulations, and policies pertaining to historic properties, including the National Historic Preservation Act (NHPA) of 1966, as amended (NHPA)¹. Section 106 of the NHPA (Section 106)² directs federal agencies to take into account the effects of their undertakings on historic properties and to afford the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment. The regulations implementing Section 106 (36 Code of Federal Regulations [C.F.R.] Part 800) define "historic properties" as any pre-contact or historic period district, site, building, structure, or individual object included in or eligible for inclusion in the NRHP. This includes artifacts, records, and remains that are related to and located within historic properties, as well as TCPs that meet the

¹ 54 U.S.C. § 300101 et seq.

² 54 U.S.C. § 306108

National Register eligibility criteria. The implementing regulations for Section 106 are intended to accommodate historic preservation concerns with the needs of federal undertakings through a process of consultation among agency officials, federally recognized American Indian Tribes, State Historic Preservation Officers (SHPOs), and other parties, including the public, as appropriate.

Ultimately, responsibility for cultural resources management rests with the lead federal agency's requirements to implement the NHPA. For undertakings within the Willamette Falls Project area, this responsibility rests with FERC as the licensing agency for lands within the Project boundary, in coordination with Oregon SHPO, Tribes, and local entities responsible for lands outside the Project boundary but within the Project APE. Because the responsibility for historic properties is shared, and because both PGE and nearby Tribes conduct activities potentially affecting historic properties, close coordination among all parties is important to help facilitate more sensitive and effective management.

1.2 Traditional Cultural Properties

National Register Bulletin 38: Guidelines for Evaluating and Documenting Traditional Cultural Properties (Parker and King 1998) outlines ways to identify and describe a TCP. TCPs are properties of traditional religious and cultural importance to an American Indian Tribe that meet the National Register eligibility criteria (36 C.F.R. § 800.16(l)(1)). TCPs may be eligible for inclusion in the NRHP because of their association with cultural practices or beliefs of a living community that are: (1) rooted in that community's history and (2) important in maintaining the continuing cultural identity of the community (Parker and King 1998:1). TCPs draw upon a community's traditions, defined as the:

...beliefs, customs, and practices of a living community of people that have been passed down through the generations, usually orally or through practice. The traditional cultural significance of a historic property, then, is significance derived from the role the property plays in a community's historically rooted beliefs, customs, and practices (Parker and King 1998:2).

The 2003 AINW study determined that Willamette Falls met the definition of a TCP and identified it as eligible for listing in the National Register. The Willamette Falls TCP continues to be an important cultural place for many Tribes.

1.3 PGE's HPMP

To help facilitate decision-making, PGE's HPMP guides the protection and treatment of historic properties associated with the Project during the term of the new license. The HPMP serves as a "management tool to facilitate responsible stewardship of historic properties in the Project area – those eligible for listing in the National Register of Historic Places (NRHP) and protected under Section 106 of the National Historic Preservation Act (NHPA) and other federal and Tribal regulations" (PGE 2003:iv). The Study will work to conform to the letter and the spirit of the guidance outlined in the HPMP during all Study tasks, in coordination with PGE.

2.0 Study Plan Elements

2.1 Study Goal and Tasks

The goal of the Study is to provide information that will help PGE and FERC reach conclusions as to whether the undertaking creates adverse effects on the Willamette Falls TCP, an important cultural place for multiple Tribes. To meet this goal, the Study will undertake the following tasks:

- Coordinate with the following Tribes to determine the appropriate means of communication to document each Tribe's position on the effects of the undertaking: (1) Confederated Tribes of the Umatilla Indian Reservation (Umatilla or CTUIR), (2) Confederated Tribes and Bands of the Yakama Nation (Yakama), (3) Confederated Tribes of the Warm Springs Reservation of Oregon (Warm Springs), (4) Confederated Tribes of Siletz Indians (Siletz), (5) Confederated Tribes of the Grand Ronde (Grand Ronde), and (6) Nez Perce Tribe. A letter introducing the Study will be provided by Algonquin to PGE. The letter will inform Tribal contacts (e.g., THPOs, cultural resource programs, and/or leadership) about the Study. PGE will subsequently send the letter to the six listed Tribes. The Tribes will also be given an opportunity to review and comment on the Study Plan before further work begins.
- Document each of the six Tribe's position on the effects of the undertaking through ethnographic interviews, consultation, and supporting research, following guidance provided in *National Register Bulletin 38* (Parker and King 1990);
- Analyze and summarize the findings pertaining to three (3) petroglyph (rock art) sites to provide a recommendation of effect;
- Compile the collected information into a findings report summarizing the results of the ethnographic study. The report will present the statements and viewpoints of each Tribe as it pertains to the effects of the undertaking. The report will include results of Tribal interviews, information gathered in coordination with Tribes, results of the petroglyph assessment, and other relevant information that will help PGE and FERC reach conclusions as to whether an easement providing access for multiple federally-recognized Tribes creates adverse effects on the Willamette Falls TCP. This report will be provided first as a Draft for Tribal comment, then for PGE comment, and then as a Final document.

2.2 Narrative Timeline of Tasks

Algonquin will conduct the study over a 180-day (approx. 6-month) timeline, implementing the following tasks to best complete the two (2) deliverables (introductory letter and findings report):

Task 1: Introductory Letter - Algonquin will coordinate with PGE to prepare a letter to inform Tribal leadership about the Study. Algonquin will draft this letter for PGE review. The following Tribes will be sent letters by PGE: (1) Grand Ronde, (2) Nez Perce Tribe, (3) Siletz, (4) Umatilla, (5) Warm Springs, and (6) Yakama. These six Tribes have a previously identified interest in the Willamette Falls TCP.

Task 2: Tribal Review of the Study Plan - After sending out the Introductory Letter to the six Tribes, Algonquin will coordinate with PGE to send out the Study Plan for review and comment by the six participating Tribes. This will occur one week after the Introductory Letter has been sent. The Tribes will be given a 30-day (1-month) review period to comment on the Study Plan.

Task 3: Address Tribal Comments to Study Plan - After the 30-day (1-month) review period, Algonquin will coordinate with each Tribe to address any comments, as needed, to satisfy Tribal concerns and any requested changes to the Study Plan, before conducting the other Study tasks. The coordination to address Tribal comments to the Study Plan with each of the six Tribes will occur over a two-week period.

Task 4: Tribal Outreach, Meetings, and Interviews - Once Algonquin addresses all comments from the Tribes' 30-day (1-month) review period, Algonquin will conduct outreach to Tribes via their Tribal Historic Preservation Office, Tribal cultural resource program, and/or leadership, whichever is most appropriate, as determined in talks with PGE and during initial Tribal outreach. Over the next 45 days (approx. 1.5 months), Algonquin will coordinate with each of the six Tribes to ascertain whether or not the undertaking is regarded as having adverse effects upon the Willamette Falls TCP, what any adverse effects are, and the nature of any adverse effects. As necessary, Algonquin will coordinate with each of the six Tribes to conduct or help facilitate up to, but no more than, two (2) ethnographic interviews with knowledgeable elders, traditional cultural practitioners, and/or experts who can help characterize the effects of the undertaking from the Tribes' perspectives. Honoraria will be provided for these interviews along with an allocation of funds for tribal staff time, both for the meetings and for the interview coordination and facilitation. Algonquin will follow the directive of each Tribe and carefully coordinate with identified Tribal point people to ensure that the Tribe's perspective is fully documented in the findings report, as articulated during the meetings and/or interviews. Any interviews conducted as part of the process will be fully transcribed to inform the final report, in coordination with the Tribes, but may remain confidential.

Task 5: Rock Art (Petroglyph) Assessments – During this same 45-day (1.5-month) period, Algonquin will analyze and summarize findings found in previous Site Condition Monitoring Report(s) completed by Willamette Cultural Resources Associates, and other contractors, who have regularly monitored three (3) petroglyph sites associated with the Willamette Falls TCP. These three previously recorded petroglyph sites are: (1) 35CL236 (Black Point Petroglyph Site), (2) 35CL418 (Moore's Island Petroglyph Site), and (3) a modern site. Site 35CL236 consists of many petroglyph panels across six distinct rock faces. Site 35CL418 consists of two petroglyph elements on a single rock face. The sites were last monitored in 2018 by Heritage Research Associates, Inc. So far, previous evaluations and site visits have determined that current Project operations have not affected the physical integrity of the petroglyph sites (PGE 2020). The analysis of effect for these petroglyph sites will be informed by the previous site monitoring and assessment reports in combination with tribal interviews and information provided during Tribal meetings so as to identify the full range of known and anticipated possible effects. Site visits to these sites may not be necessary for an analysis of effect which will be largely informed through the previous Site Condition Monitoring Reports and tribal interviews and meetings.

Task 6: Compilation of Draft Findings Report - A brief literature review will be included to background the Study and further contextualize each Tribe's findings related to the undertaking. The Tribal outreach, background research, interviews (as necessary), ethnographic consultation with each Tribe, and analysis of previous reporting on the petroglyph sites will conclude after a ca. 45-day (approx. 1.5-month) period. The results of these activities will be described in a draft report of findings that outlines and details what we understand to be the perspective of each Tribe as it pertains to the undertaking. At this time (approx. 3.5 months or 100 days after the contract award), the draft document will be submitted to Algonquin Project Lead Dr. Thomas F. King, co-author of *National Register Bulletin 38* and a leading expert in cultural resources management,

who will provide expert review on the final compilation of the draft report. He will also provide an overall analysis of findings. Dr. King will finalize his review and analysis of findings within two weeks of receipt of the draft or approximately 4 months after the contract award date.

Task 7: Tribal Review of the Draft Findings Report - Upon the completion of Dr. King's analysis of findings, the draft findings report will be submitted to each of the six participating Tribes for a 30-day (1-month) review and comment period.

Task 8: Address Tribal Comments to the Draft Findings Report - After the 30-day (1-month) Tribal review period, Algonquin will coordinate with each Tribe, as needed, to address Tribal comments, concerns, and recommended changes to the draft findings report. This coordination with Tribes to address comments and concerns will occur over a 15-day (approx. 2-week) period.

Task 9: PGE Review of the Draft Findings Report - Once all comments from the Tribal review are addressed, Algonquin will submit the report to PGE for review. PGE will have 15 days (approx. 2 weeks) to provide comments on the draft findings report before returning it to Algonquin.

Task 10: Final Report Submission - Algonquin will address all edits and comments from PGE over the next 15 days (approx. 2 weeks). Once all of PGE's edits are addressed and the report finalized, Algonquin will submit the final findings report to PGE within 180 days (approx. 6 months) after the contract award date. This submission will be the final task and deliverable; no other tasks are a part of this Study.

2.3 Timeline of Tasks (Gantt Chart)

The Gantt Chart (Figure 1) below summarizes the Study Plan tasks that will occur over the 180-day period, displayed in terms of a duration of weeks for a total of 25 weeks (approx. 6 months). Tracking of tasks will be done on a weekly basis beginning in week 1, as indicated.

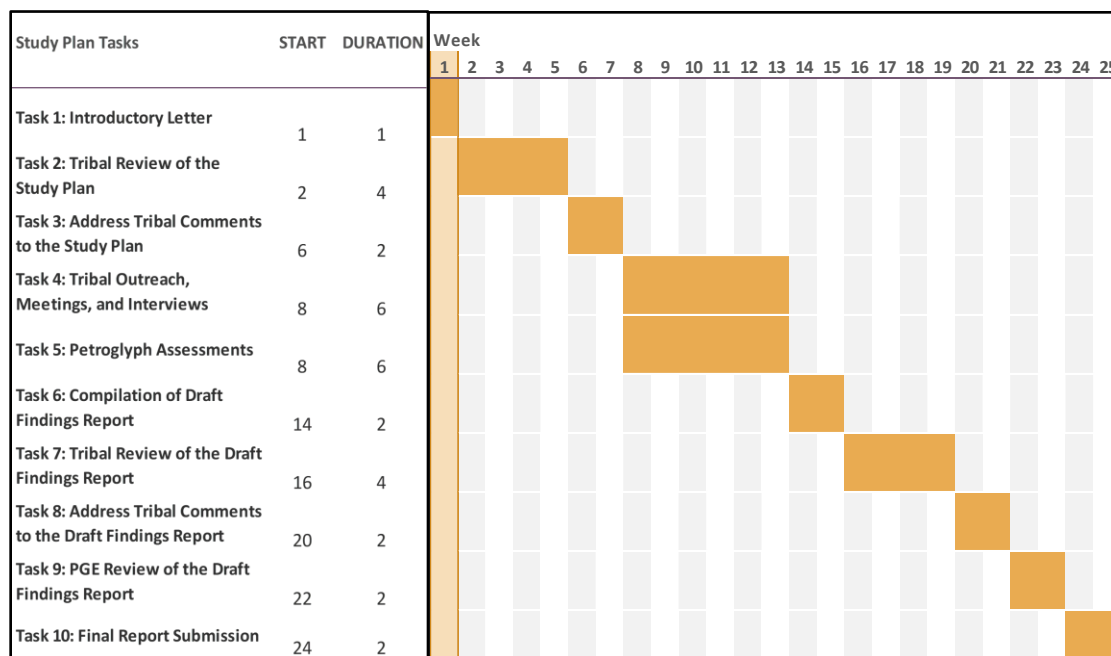


Figure 1. Gantt Chart displaying the study timeline, occurring over a 180-day (approx. 25-week) period.

2.4 Study Area

The Study Area includes the Willamette Falls TCP and its immediate environs, incorporating the three (3) associated petroglyph sites, as well as Tribally-identified resources that contribute to the overall significance and integrity of the TCP, as defined by each of the participating Tribes. The Study will be narrowly focused on the undertaking and its effects upon the Willamette Falls TCP, although it may include aspects of the TCP that are more remote, dependent upon the effects identified by each participating Tribe.

2.5 Use of Qualified Personnel

All participants of the study meet the Secretary of the Interior's Professional Qualification Standards (48 Federal Register [F.R.] 44738-44739, Sept. 1983) and the qualification requirements for issuance of a permit under ARPA as described at 43 C.F.R. § 7.8(a). The Study team will include a Study Lead possessing robust cultural resource management experience, a qualified ethnographer with robust ethnographic project experience in the Northwest and experience collaborating with Tribes in the area, and an archaeologist with the requisite experience and qualifications to accurately synthesize reporting on the petroglyph sites to determine effects.

2.6 Confidentiality

The Study may uncover information identified or provided by Tribes as confidential or protected under Executive Order 13007. If any Tribe identifies such information as sensitive and confidential, the information may be summarized or redacted, depending upon the wishes of the Tribe. This will be done in coordination with the Tribe and with PGE, if and as necessary.

2.7 Consistency with Generally Accepted Ethnographic Practice

The proposed methods for this Study are consistent with accepted ethnographic methods and practices. The overall approach is informed by guiding literature, particularly *National Register Bulletin* 38, whose coauthor (Thomas F. King) is Study Lead on this project. The Study will allow for the appropriate documentation of effects for the undertaking.

2.8 Level of Effort and Cost

The level of effort and cost for the Study is consistent with similarly scoped ethnographic work in the region.

3.0 Study Plan Summary

The overarching Study goal and tasks are a well-integrated approach, designed to convey the perspectives of the participating Tribes to help PGE and FERC determine if the proposed easement authorizing access for multiple federally-recognized Tribes causes adverse effects to the Willamette Falls TCP. The Study serves as a means to coordinate and consult with participating Tribes to best identify the effects the undertaking may have upon the TCP and document their concerns. The Study is designed to coordinate closely with Tribes throughout the process in a spirit of collaboration. Open, frequent, and ongoing communication during this Study are therefore crucial components of this work.

4.0 References Cited

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2003 Historic Properties Management Plan, Portland General Electric Company, Willamette Falls Hydroelectric Project, FERC No. 2233. Prepared by and on file at Portland General Electric Company, Portland, Oregon.

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