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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

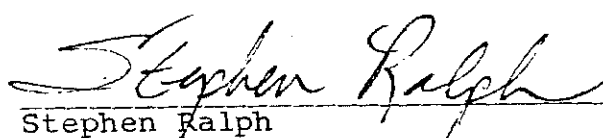
Crown Zellerbach Corporation)	
)	
Glines Canyon Dam)	Project No. 588
)	
Elwha Dam)	Project No. 2683
)	
)	

CERTIFICATE OF SERVICE
REQUEST FOR FILING

I hereby certify that I have this day served the attached LOWER ELWHA INDIAN TRIBE'S MOTION FOR INTERVENTION, CONSOLIDATION, A CONFERENCE, AND OTHER RELIEF by mailing the document, with first class postage affixed, to the persons shown on the attached service list in the absence of a current official service list.

I also certify that on the same date I mailed the original and 14 copies, with first class postage affixed, to Kenneth Plumb, as described in the Commission's rules, and hereby request that the same be filed.

Dated this 24th day of January, 1986,



 Stephen Ralph
 Fisheries Habitat Management Biologist
 Point No Point Treaty Council

In the Matter of Crown Zellerbach Corporation
Elwha Project No. 2683

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for an order requiring the applicant to supplement or resubmit its license applications;

for an order directing Commission Staff to prepare an environmental impact statement in both proceedings;

for an order denying any license and directing the orderly removal of both dams;

for an order convening a conference under Rule 601 and setting a hearing --the conference, prehearing proceedings and hearing to be held in Seattle or Port Angeles;

for an order staying all actions inconsistent with the above-requested relief.

INTEREST OF MOVANT

The Tribe is a federally recognized Indian tribe with a constitution and bylaws approved by the Secretary of the Interior. The Tribe's reservation, including a fish hatchery, community center, and various residences, is located at the mouth of the Elwha River, about four miles downstream from the lower of the two dams which are the subject of this proceeding. The Tribe holds treaty fishing rights to take up to one-half of the harvestable portion of anadromous fish runs returning to the Elwha River. See United States v. Washington, Civil No. 9213, (W.D. Wash.) Order of April 18, 1975; Washington v. Washington Com-

mercial Passenger Fishing Vessel Association., 443 U.S. 658 (1979). The treaty-protected fishing sites held by the Tribe include sites currently inundated by Elwha Dam and sites downstream from that dam which are adversely affected by sudden spillway releases.

As a member of the Point No Point Treaty Council, a federally supported fisheries management consortium made up of the four Tribes signatory to the Treaty of Point No Point, the Tribe brings considerable site-specific fisheries expertise to these proceedings. It has more practical experience concerning the harvest management of anadromous fish in the river and related marine areas than any other party. It has participated in, and contributed smolts to, the NPS/FWS studies which have recently been initiated. As a principal participant in the jurisdiction phase in No. 2683, the Tribe also has some expertise concerning the hydrology of the basin and the structural integrity of the Elwha Dam.

The Tribe, more than any other intervenor, has the greatest stake in the outcome of these proceedings. It has the highest unemployment and the lowest family incomes of any community in the area and is directly dependent upon Elwha fish stocks at a time when other fisheries in the area are severely depressed. The Commission is referred to the record in the jurisdiction portion of Docket 2683, which

contains considerably more detail concerning the effects of Applicant's activities on the Tribe and the public interest.

POSITION OF MOVANT

For almost three quarters of a century the Elwha Dam has cut off some of the most productive salmon and steelhead runs in the Puget Sound complex, threatened the safety of the Lower Elwha Indian Reservation, and contributed to the continued erosion of Reservation beaches and Ediz Hook. Glines Dam, built in more recent times, presents an additional barrier to anadromous fish passage, further obstructs downstream movement of sediments needed to replenish beaches along the Strait, and intrudes physically into Olympic National Park.

The benefit derived to justify imposition of these costs on the Tribe and the public is generation of a relatively small amount of electrical power which, because these costs have never been charged to the Crown Zellerbach Corporation, appears inexpensive. But it is not, in fact, "low cost" power and it can be replaced, at comparable or lower costs, from the regional surplus and new resources more compatible with Indian treaty rights and the public interest.

It is insupportable that the Elwha Tribe, a community with much lower family incomes and much higher unemployment than the surrounding non-Indian communities, must continue to pay the fisheries costs of Crown's power generation and insure the safety of the Elwha Dam with the lives and development

potential on its reservation. In the late 1970's the Tribe diverted what legal and engineering resources were available to it to proving, with the support of Staff, that this Commission has jurisdiction over the Elwha Dam and should order it made safe to withstand the probable maximum flood.

But in late October of this year, six years later, counsel for the Tribe received the October 15, 1985, Order Denying Appeal. From that order it appears that Crown still has not completed repairs to the satisfaction of this Commission and is still arguing about the magnitude of the flood the dam must withstand. While the Tribe is confident that these matters will be resolved, the order still causes some alarm. Another flood season is upon us.

At the same time, the Department of the Interior is seriously exploring fisheries restoration alternatives which will affect the livelihood of the Elwha Tribe to a much greater degree than they will any other segment of the public. These alternatives have the potential for partially reversing the fisheries damage caused by the dams. But they also have the potential, unless they are integrated into an overall fisheries management plan, of interfering with the harvest of runs returning to the tribal hatchery.

Under such circumstances it does not seem prudent for the Tribe to continue a relatively "low profile" with regard to the fate of these dams. It is therefore the position of the Lower Elwha Tribe, after careful consideration, that the

costs imposed on the Tribe and the public interest by these dams should not continue, that Elwha River anadromous fisheries should be fully restored, that the other downstream effects must be mitigated, and that the safety of the Elwha Dam should be resolved absolutely beyond question. It is, further, our position that these goals should be accomplished by:

1. An interim fisheries passage mitigation program, consistent with a comprehensive hatchery-natural management regime, which will begin to build up natural stocks in above-dam habitat.

2. The phaseout and removal of both Elwha and Glines dams consistent with a fisheries restoration schedule, after completion of engineering studies designed to prevent adverse impacts downstream, and supported by federal planning to replace the power generated from these dams.

The two dams are assumed to be faits accompli, structures which must remain undisturbed because of their age. But the Elwha Tribe was using the river long before these dams were thought of, has paid heavily for their presence over the last 75 years, and is entitled to consideration of a much older status quo guaranteed --but so far not protected-- by federal treaty.

ARGUMENT

I. THE TRIBE SHOULD BE GRANTED LATE INTERVENTION IN NO. 588.

There is no question that the Tribe would have been allowed to intervene before the deadline set in the original application for the Glines Canyon proceeding. The project directly affects the Tribe. But it does not appear that the Tribe did intervene by that deadline and the question is whether the time limitation for intervention should be waived. There is ample justification for doing so.

The notice of application in the Glines Canyon proceeding, No. 588, was published in the early 1970's. At that time the Elwha Tribe did not have sufficient resources to cover intervention in two separate proceedings. What resources the Tribe was able to marshal were directed toward proving jurisdiction in No. 2683, Elwha Dam, and getting some resolution of the dam safety problem. But while the Glines Canyon proceedings have remained relatively inactive, the Tribe has not. Today the Tribe has a fisheries management program in place, including a habitat protection component designed to prevent or reverse damage to treaty fisheries resources.

At the time of the original Notice of Application, and for a number of years following, intervention in the licensing proceeding did not appear essential for protection of fisheries issues. Prior to the Ninth Circuit's ruling in Confederated Tribes and Bands of the Yakima Indian Nation v.

FERC, 746 F.2d 466, (9th Cir. 1984), cert. den. ___ U.S. ___, 105 S. Ct. 2358 (1985), it was routine to split off fisheries issues from other proceedings, following the Savannah River practice. See, e.g., Docket EL 78-36 (Skagit River). But after Confederated Tribes the Tribe need not, indeed must not, wait to protect its interest.

Recent developments highlight the need for Tribal intervention: The National Park and Fish and Wildlife Services have proposed instream mitigation for Elwha River anadromous runs. Such mitigation could adversely affect tribal harvest of established hatchery stocks on the river if it were not carried out under a management plan agreed-to by all affected fisheries agencies, including the Tribe. This new aspect of the Elwha River licensing proceeding comes long after the original Notice of Application and makes Tribal participation in both dockets critical.

Tribal intervention will not disrupt or delay these dockets because Tribal management of the river will be an integral component of upcoming proceedings relating to fisheries and those proceedings have not, as yet, formally commenced. Indeed, there has been little or no activity in either docket (other than dam safety issues) since the Commission's jurisdiction and safety orders. And the Tribe is already a party in No. 2683, in which all fisheries issues must, of necessity, be raised. There will be no prejudice to or burden upon existing parties because the Tribe's presence will add nothing to the legal obligations they are already

required to meet before licenses can be issued or denied. If there is concern that the participation of the Tribe will, in some way unrelated to Tribal interests, impose a burden, that concern can be dealt with in the context of a conference defining issues, contentions, etc.

II. PROJECTS NO. 588 AND 2683 SHOULD BE CONSOLIDATED.

A. Two dams which constitute interdependent parts of a single unit of development should be consolidated into one project.

Section 10 (a) of the Federal Power Act requires that licenses for hydroelectric projects be issued after consideration of their relationship to "a comprehensive plan for improving or developing a waterway" 16 U.S.C. Section 803 (a). "Project" is defined in Section 3 of the Act as a "complete unit of improvement or development, consisting of a power house, all water conduits, all dams ... all ... reservoirs ... [and] the primary transmission line or lines transmitting power therefrom to the point of junction with the distribution system" 16 U.S.C. Section 796 (11). The Commission has applied these sections in consolidating several segments of one project.

In Pacific Gas and Electric, Project No. 233 (Pit River), 2 F.P.C. 516, 525-6, (1941), the Commission refused to separately license a new dam which would use streamflow regulation from two existing dams upstream. It found that operations of all three would be integrated and considered the three dams to be one unit of development.

Similarly, in The California Oregon Power Co., Project No. 2082, 23 F.P.C. 59 (1960) the Commission adopted the presiding examiner's finding that several facilities were operated as a unit and thus were all parts of one project. In its syllabus the Commission summarize its approach to interrelated facilities:

As we have noted before, the concept of considering a particular watershed as a whole is the backbone of the licensing provisions of the Act. Where as here the proposed development and the existing developments have been and will continue to be operated as a unit ... and are best adapted to a comprehensive plan for the development of the watershed, and where as here no showing has been made which would justify the issuance of separate licenses with different terms and conditions, it is appropriate that the outstanding license be amended to include both the proposed and existing developments.

23 F.P.C. at 61.

More recently, again applying this concept, the Commission ordered that the applicant for three "projects" in one watershed coordinate fish and wildlife studies for all three in order to take "a comprehensive approach to development of these potential water power resources" Mason County PUD No. 3, Project Nos. 3942, 4089 and 4217 (South Fork Skokomish River), 17 FERC Para. 61,241 (1981).

B. The two Elwha River dams constitute one unit of development.

During the jurisdiction proceedings in the late 1970's regarding Project No. 2683, all intervenors, Commission Staff and the Administrative Law Judge, after investigating the factual circumstances of the two dams on the Elwha River, concluded that they constitute one unit of development.

Commission Staff took the position that the two dams should be treated and licensed as one project. This position supported Staff's argument that the Commission had jurisdiction over Elwha Dam even if the Elwha River was found not to be navigable for purposes of Federal Power Act jurisdiction. Since the Commission found that "... the Elwha River is navigable from a point above the dam to the mouth of the river ..." (March, 1979, Order at 1), the issue of single licensing became moot for jurisdictional purposes.

Interior took a position similar to that of Staff: "... FERC should treat these two hydroelectric facilities as one project." August 18, 1978, letter from DOI to FERC on Project No. 588, at 2. Both this letter and a later one commenting on Project No. 2683 (September 19, 1980, letter from DOI to FERC, at 2) give more detail as to why "there ... appears to be a solid technical basis for combining the two projects into one." Id.

Commission Staff focused on the hydraulic and electrical coordination of the two dams. They also pointed out the safety implications of coordinated operation. The Department of the Interior added consideration of the impacts of the dams on fishery resources. "[T]he two dams have decimated the fish populations in the Elwha River." August 18, 1978, letter at 1. Development of measures to redress the applicant's "deriv[ation] of substantial benefits from a public resource without accepting responsibility for main-

taining the fisheries within that resource" requires a unified approach to the two dams. Id. at 1-2.

In a report recently released by the Fish and Wildlife Service the two dams are once more dealt with as a unit. A Review of and Proposed Solution to the Problem of Migrant Salmonid Passage by the Elwha River Dams; Fish and Wildlife Service; January, 1985. Implementation of the proposed fish migration measures or other actions to redress the harm to the resource require consideration of the two dams as one project, with coordinated operation and maintenance.

Both dams are on one river. Both have one owner-operator. Both use a single transmission line. In his December, 1978, Initial Decision in No. 2683, at 8, the Administrative Law Judge found that "the record contains substantial, probative, and uncontroverted evidence showing that the Glines Dam and Elwha Dam are jointly operated and hydraulically and electrically coordinated."

This finding was made after hearing extensive evidence and making an inspection of the two dams in operation. The Commission should adopt it and consolidate the proceedings. Continuing to have separate dockets will consume unnecessary time and resources for the Commission and the parties. After doing so, it may also result in uncoordinated actions which will require further time and expense to implement.

III. THE COMMISSION SHOULD STAY ISSUANCE OF ANY LICENSE UNTIL FISHERIES ISSUES HAVE BEEN FULLY RESOLVED.

A. The Federal Power Act requires resolution of fisheries issues before a license can be granted.

Applications for a license under Section 4 (e) and for a relicense under Section 15 (a) of the Federal Power Act (16 U.S.C. Sections 797 (e) and 808 (a)) are pending in these two dockets. The courts have considered both sections of the Act as they relate to fisheries values. The Supreme Court has held that consideration of fish and wildlife resources is an integral part of the licensing process. Udall v. FPC, 387 U.S. 428 (1967). The FPC, now FERC, must consider the impacts of projects on fish and determine what methods are available to protect this resource, including refusal to issue a license for a particular project. Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608 (2d Cir 1965).

Recently, in Confederated Tribes and Bands of the Yakima Indian Nation v. FERC, supra, at 470-73, the court pointed out that relicensing is not merely license renewal; the relicensing proceeding is subject to all the existing laws which would be applicable to an application for a new license. This requirement includes the Act's provisions mandating consideration of fish and wildlife in the licensing process. See also Udall v. FPC, supra; Section 10 (a) of the Act, 16 U.S.C. Section 803 (a);

The key issue in Confederate Tribes was the timing of the required consideration of fish and wildlife issues in the relicensing proceeding. The court observed:

The law, then, is well defined: Prior to issuance of a new license, FERC must study the effect of a project on the fishery resource and consider possible mitigative measures FERC must consider fishery issues before, not after, issuance of a license. [Citing Udall and Scenic Hudson]

746 F.2d at 471. The requirement that fisheries issues be resolved before issuance of a license is strengthened by the Fish and Wildlife Coordination Act, 16 U.S.C. Section 661, et seq., and the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. Section 839b.

In the Elwha proceedings, the Commission has only begun to deal with fisheries issues. As the NPS-FWS study points out, "Despite the great loss of anadromous fish production that resulted from damming the Elwha River, the level of mitigation has been low." A Review of and Proposed Solution . . . , supra, at 1. Some work has been done by Interior to explore one alternative for passage mitigation, but this is only a first step in approaching a complex problem and does not come close to adequately analyzing the long-term impacts of the dams on fish or the implications of the suggested passage mitigation alternative.

B. The applicant should be required to supplement or resubmit its license applications.

Neither of the two pending applications complies with the

environmental report requirements of 18 CFR Section 4.51. For example, the Exhibit E on Glines Canyon must describe "any anticipated continuing impact on fish ... of continued operation of the project." 18 CFR Section 4.51 (f) (3) (iv). But Crown has made no attempt to do so, instead just describing discussions with the state fish agencies and studies concerning mitigation.

Crown is asking the Commission to take actions authorizing continued interference with a treaty and non-Indian fishery of unusual importance. But that certainly is not apparent from the sparse and uneven treatment given to fisheries issues in the applications. Those applications are deficient because the law has changed since they were submitted, because Crown simply chose to ignore existing regulations, or, incredibly, because Crown contends that its dams have no effect on the fish runs in the Elwha River. Whatever the reason, in the years that the applications have been pending the requirements with respect to fisheries exhibits have been much more strictly defined. The applications, to the extent that they are not patently deficient, are stale. They cannot be reactivated effectively. See Nebraska Public Power District, Project No. 2746, 10 FERC Para. 61,272 (1980).

C. A Single Environmental Impact Statement must be prepared for both dams.

The National Environmental Policy Act, 42 U.S.C. Section 4332, requires a detailed statement of impacts as well as

alternatives in a public disclosure process which must be completed prior to decisionmaking. It applies to "major Federal actions significantly affecting the quality of the human environment". Id. In its two applications, Crown sidesteps the "significant impact" question, stating that there will be little impact on "existing" ecologies, given that the environmental harm was done when the dams were built. In other words, the dams are "grandfathered" into the post-NEPA period. The Ninth Circuit rejected a similar argument in Confederated Tribes, supra, 746 F.2d at 475-76. The licensing of a potentially unsafe dam which, among other things, eliminates access to upriver habitat for major salmon and steelhead runs and prevents normal replenishment of eroded beaches is certainly a "major Federal action". The same is true of the relicensing of a second dam which also intrudes into a national park.

An environmental impact statement must be prepared by this Commission, especially on the fisheries issues, before any long-term licensing takes place. Scoping for such an impact statement will "flesh out" the issues, something that is not particularly difficult but which has not occurred to date, and will become part of a planned approach to this watershed. Until that duty is carried out in detail, it is premature to attempt to fully define the adverse effects of possible Commission actions.

Until a final statement is available this Commission will not be able to make a reasoned decision on a complete

record. In order to adequately inform such a decision it will be necessary to gather more information on fisheries and other impacts and alternatives than is presently available. Such information is essential to a "reasoned choice", the costs of gathering it will not be "exorbitant", and the process should be commenced. 40 CFR Section 1502.22; See The Steamboaters v. FERC, 759 F.2d 1382 (9th Cir. 1985).

A part of the NEPA process which is especially significant here is the consideration of alternatives. Those range from removal of the dams to no change in the status quo. They include provision of power from other sources and a number of fisheries mitigation and enhancement choices. They have never been systematically evaluated.

To date, there has been no consultation, no scoping, and no publicity concerning any environmental assessment process. The Tribe is very concerned that the Commission may take irreversible action without adequate information.

D. The Commission must comply with the United States' legal obligations to the Elwha Tribe.

1. The Commission is legally obligated to protect Elwha Tribal fisheries.

The United States did not grant the Lower Elwha Tribe its treaty fishing rights in the Elwha River. The Tribe reserved them while ceding large areas of land, timber and other resources. See United States v. Winans, 198 U.S. 371,

381 (1905); Washington v. Washington State Commercial Passenger Fishing Vessel Association, 443 U.S. 658, 661-62 (1979) (Passenger Fishing Vessel). One important element bargained for by the Indians and given by the United States' treaty negotiators was an undertaking to protect the Indian fisheries. Id. at 667. The Indians were led "to rely heavily on the good faith of the United States to protect [their fishing rights]". Id. The principal United States negotiator, Isaac Stevens, said "This paper secures your fish". Id., n. 11.

This treaty obligation has been applied by the lower courts to circumstances other than the allocation of what fish are available between treaty and non-treaty users. For example, a United States agency may not construct a dam which will flood treaty fishing grounds. Confederated Tribes of the Umatilla Indian Reservation v. Alexander, 440 F. Supp. 553 (D. Or. 1977). The Elwha Dam floods a former village and fishing site at Indian Creek. December, 1978, Initial Decision in No. 2683 at 8. A sacred site related to a Klallam creation myth was also flooded. Materials supporting this allegation can be supplied after suitable confidentiality safeguards have been imposed.

2. This obligation to protect is governed by the fiduciary standards imposed on a trustee.

The Tribe's fishing rights are not simply one more beneficial use of the river to be balanced by this Commission

with power and other competing uses. The Tribe has a unique relationship with the United States. Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1, 16-17 (1831). Throughout our legal history the Supreme Court "has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people." Seminole Nation v. United States, 316 U.S. 286, 296 (1941). A tribe is "entitled to rely on the United States, its guardian, for needed protection of its interests." United States v. Creek Nation, 295 U.S. 103, 110 (1935). The trust relationship has always been a basic element of federal Indian law and has retained its vitality in modern times. See, e.g., Richard M. Nixon, 1970 Message to Congress on Indian Affairs, 116 Cong. Rec. 231, 234-5. The trust obligation is imposed on all federal agencies when they deal with Indian interests. Nance v. Environmental Protection Agency, 645 F.2d 701, 711 (9th Cir. 1981).

In the case of the Elwha River the United States has allowed private hydroelectric development to stop a treaty-guaranteed reservation fishery for 75 years. It has permitted exploitation of the river at the expense of the families who can least afford to underwrite it, increased the poverty of the Tribe by drastically reducing its principal economic resource, caused the depletion of reservation beaches, and forced the Tribe to live downstream from an unsafe dam. In trust terms the United States' inaction to date has been tantamount to allowing destruction of the trust corpus, the

reserved property the trustee is pledged to protect, while placing the beneficiary in actual peril.

Although the United States as trustee has some discretion to manage a trust asset, "spoliation is not management". Shoshone Tribe v. United States, 299 U.S. 476, 498 (1937).

--Fisheries issues are a long way from being resolved on the Elwha River.--

IV. THE COMMISSION SHOULD ISSUE AN ORDER DENYING LICENSES OR ISSUING ONLY LIMITED LICENSES FOR BOTH DAMS:

A. This Commission has no jurisdiction over the Glines Canyon Project.

The Federal Power Act demonstrates a fairly clear Congressional intent to exclude hydroelectric development from national parks. Section 3 (2) (16 U.S.C. Section 796 (2)) explicitly states that national parks are not be included in the "reservations" within which the Commission has jurisdiction to issue licenses under Section 4 (e) (16 U.S.C. Section 797 (e)). The Act of March 3, 1921 (16 U.S.C. Section 797a) is evidence of the same awareness by Congress that power generation and national parks are mutually inconsistent.

After creation of the Olympic National Park in 1938, the Commission was deprived of jurisdiction to license the Glines Canyon Project because it is located in that Park. The only reading of the Act that is consistent internally

and with the purposes of the national park system is one which precludes relicensing.

B. The public interest favors removal of the dams.

Even assuming jurisdiction, the Act requires the Commission to consider all resources in the Elwha basin before making a decision. Section 10 (a), 16 U.S.C. Section 803 (a); see Udall v. Federal Power Commission, 387 U.S. 428 (1967). The Elwha basin's anadromous fisheries potential far outweighs the small amount of power produced by hydroelectric development. Indeed, the relatively low gradient, which allowed historic fish runs to spawn far upstream, is the same feature which makes the stream less-than-ideal as a power resource.

Prior to 1910 and construction of Elwha Dam, the river was one of the major producers of salmon and steelhead in Western Washington. The size and abundance of fish were renowned throughout the region, the average size of coho and chinook exceeding all other stocks in the Puget Sound area.

In the years since construction of the dams local anadromous fisheries have experienced extreme declines. This, plus the already severe economic plight of the Elwha Tribe, make Elwha basin spawning and rearing habitat especially valuable. The watershed contains some of the largest areas of high quality --now inaccessible-- salmon and steelhead

habitat in the region. That habitat is located in a national park. A more perfect candidate for habitat restoration would be hard to find.

Set against these potential benefits is the generation of a small amount of electrical power, all consumed by Crown Zellerbach, from one dam located in a national park and one dam whose safety has been the subject of continuing controversy. That power, for which the Tribe pays a major share of the cost, can be replaced from the Bonneville Power Administration system. Most of the power consumed in the Port Angeles area already comes from the BPA and regional planners foresee a surplus into the next decade. Even if that surplus disappears in the 1990's, its availability now provides "breathing space" during which a less harmful replacement for the Elwha Dams can be found.

C. At most, only a limited license should issue.

The Tribe submits that the most reasonable course is denial by this Commission of any further authorization for these projects and a formal notice to the appropriate enforcement agency that the two Elwha River dams are in place in violation of federal law and should be abated without undue delay.

The only other reasonable alternative --one which the Tribe suggests for consideration but does not necessarily support at this time-- is a limited authorization for continued operation which also sets a schedule during which replace-

ment energy must be found, provides for engineering and hydrologic studies relating to dam removal, includes mandatory financing arrangements for those studies and for dam removal, orders removal by a specific date, and, in the interim, provides for fisheries mitigation.

V. THE COMMISSION SHOULD SCHEDULE A CONFERENCE AND HEARING.

The non-safety portions of these two dockets have moved forward in a somewhat haphazard fashion, without a great deal of communication between the Commission and the parties, and often with less-than-complete communication among the parties themselves. The result, to date, is an administrative record which will not support a decision in accordance with either the substantive or procedural elements of applicable law.

To remedy the situation, the Tribe requests that the Commission schedule a conference under Rule 601 (25 CFR Section 385.601) and ultimately a hearing under Rules 501 and following (25 CFR Section 385.501, et seq.). Because the Tribe has very limited resources, and because the majority of the participants are in the Puget Sound area, the conference and hearing should be located in Seattle or Port Angeles.

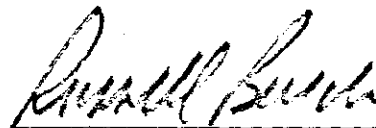
VI. CONCLUSION.

Two licenses are sought for one project, a project which has

destroyed most of the production potential of a major salmon and steelhead stream. The Commission has not, as yet, ordered the applicant to submit a legally sufficient application or commenced the NEPA process required by law. No license should issue until these deficiencies have been corrected and fisheries issues, among others, adequately resolved. In fact, no license should issue at all.

This proceeding should be put on a realistic schedule, all interested parties should be included, and a hearing should be set to fully explore all of the options available, including removal of the dams. At a minimum, further proceedings should result in full restoration of Elwha River anadromous fish runs and mitigation for the other harms these dams have caused.

Respectfully submitted this 20th day of January, 1986,



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