

XXXXXXXXXXXX
Governor



XXXXXXXXXXXX
Director

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Mail Stop PV-11 • Olympia, Washington 98504 • (206) 459-6000

85 MAY -2 P3:56

April 30, 1985

DEPARTMENT OF ECOLOGY
S.W. REGIONAL OFFICE

Mr. Nate Brookshier
City of Tacoma
Department of Public Utilities
Post Office Box 11007
Tacoma, WA 98411

Dear Mr. Brookshier:

This letter is in response to your request for Water Quality Certification for the Cushman Dam Hydroelectric Project (FERC No. 460).

Certification is hereby granted as required by Section 401 of the Federal Clean Water Act, provided the following minimum instream flows are continually available in the North Fork Skokomish River at a point 200 yards downstream from the base of the lower dam:

<u>MONTH</u>	<u>AMOUNT (cfs)</u>
January	33
February	70
March	70
April	70
May	70
June	70
July	70
August	70----- 30 incrementally from July 1 through July 31
September	30
October	65
November	39
December	33
	33

Please note that this certification does not exempt the project from compliance with other statutes and codes administered by state and local agencies. Failure to comply with the conditions described above may result in revocation of this water quality certification and issuance of civil penalties in accordance with the enforcement policies and guidelines of the Department of Ecology.

Sincerely,

Dennis L. Lundblad, Supervisor
Operations Management Division
Office of Operations and Enforcement

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BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

CITY OF TACOMA, DEPARTMENT
OF PUBLIC UTILITIES,

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 85-99

SETTLEMENT AGREEMENT

Come now the parties to this action, Department of Ecology, represented by Jay J. Manning, Assistant Attorney General, and City of Tacoma, represented by Assistant City Attorney Mark Bubenik. The parties have agreed to a settlement of this case according the following terms and conditions:

1. The City of Tacoma agrees to release provisional instream flows in the North Fork of the Skokomish River below its Cushman hydroelectric project. Said provisional flows will be at least 30 cfs plus periodic flushing flows to assist anadromous fish migration. The City agrees to construct any necessary modifications to Cushman Dam No. 2 to effect the release of water from middle to lower depths of the reservoir. (Instream flow water will not be released from the surface of the reservoir via

KENNETH O. EIKENBERRY, ATTORNEY GENERAL

Jay J. Manning

Assistant Attorney General

Attorney General's Office

Ecology Division, Mail Stop PV-1
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1 the spillway.) Such flows will be provided as soon as possible
2 by the City, while complying with applicable competitive bidding
3 laws, and after receiving permission from the Federal Energy
4 Regulatory Commission (FERC) to construct the necessary modifica-
5 tions, but in no case will such provisional flows be provided
6 later than June 30, 1987, unless agreed to in writing by the
7 parties hereto. Such provisional flows will be provided until a
8 new permanent flow regime is agreed to by the parties to the FERC
9 licensing proceeding or until the FERC imposes a new flow regime
10 as a part of the new license for the facility. Ecology agrees to
11 accept the minimum instream flow contained in such an agreement or
12 required by the FERC provided that such flow is sufficient to meet
13 Ecology's water quality standards. If the agreed-to or FERC-
14 imposed flow is not sufficient to meet the Department of Ecology's
15 water quality standards, Ecology reserves the right to appeal the
16 FERC license decision or to take whatever legal action it deems
17 necessary to ensure compliance with the state's water quality
18 laws.

19 2. Ecology agrees to rescind the water quality certification
20 dated April 30, 1985 issued by Ecology for the Cushman hydroelec-
21 tric project. The water quality certification will then be
22 reissued with the following language inserted into the certification:

23 The Department hereby agrees that the City of
24 Tacoma may operate its Cushman hydroelectric
25 facility with an interim provisional instream
26 flow in the North Fork of the Skokomish River

1 of at least 30 cfs with periodic flushing
2 flows until the FERC issues a license author-
3 izing operation of the facility. When such
4 license issues, the City will provide the
5 flows contained in the certification or,
6 alternatively, flows agreed to by all the
7 parties to the licensing proceeding before the
8 FERC or flows imposed by the FERC as a part of
9 the new license, provided that neither party
10 waives any rights to review the instream flows
11 imposed by FERC by appeal or to initiate any
12 independent action regarding state water
13 quality laws.

14 3. The water flow measuring site location shall be at the
15 Cushman No. 2 Dam. Water leakage at the Cushman No. 2 Dam, if
16 any, shall be counted as part of the agreed provisional flow
17 water quantity.

18 4. Until a permanent minimum instream flow is released, and
19 as long as the provisional minimum flow provided for herein is
20 maintained, Ecology agrees to waive any objection it may have to
21 the operation of the dam based on the violation of applicable
22 water quality standards for temperature, dissolved oxygen and
23 total dissolved gas. However, Ecology expressly reserves the
24 right to challenge operation of the dam when such a challenge is
25 based on something other than water quality violations. For
26 example, if Ecology should determine that the Cushman facility is
27 being operated in violation of the State's water resource laws,
this document would not in any way prohibit or obstruct Ecology
from taking appropriate legal action.

5. The City and the Department of Ecology agree not to make any representation or argument to the FERC that is inconsistent with this agreement.

DATED this ____ day of _____, 1986.

JAY J. MANNING
Assistant Attorney General

MARK L. BUBENIK
Assistant City Attorney
City of Tacoma

CLARK HABERMAN
Regional Manager
Department of Ecology

E. E. COATES
Director of Utilities
Department of Public Utilities,
City of Tacoma