

PERMIT FOR USE OF WELLS RESERVOIR AREA

Permit No.
Date Granted: _____

Granted to:
Address:

Permittee is granted nonexclusive permission by Public Utility District No. 1 of Douglas County, Washington, "The District," to use that Land described on Exhibit A ("the Land"), for those purposes described in Exhibit B and to place thereon the improvements ("the improvements"), shown on Exhibit C.

This permit is granted subject to and conditioned upon the following terms and conditions which Permittee promises to faithfully and fully observe and perform:

1. The Land. All use of the Land is at the Permittee's sole risk. By executing this agreement, Permittee warrants to the District that Permittee has thoroughly inspected the Land, that Permittee knows the condition of the Land, and that Permittee accepts the Land "AS IS," without any representation regarding the Land by the District other than what is explicitly set forth in this permit. Permittee agrees that the District shall have no obligation whatsoever to maintain the Land or to make any alterations to or repairs of the Land. This permit does not authorize Permittee to exclude the public from the Land shown on Exhibit A. The general public shall have access to the Land at all times. Enforcement of any rights to protect Permittee's rights or improvements or the use thereof shall be the sole and exclusive responsibility of the Permittee.

2. The Improvements. Prior to any construction, alteration, replacement or removal of the improvements or any other substantial activity by Permittee on the Land, notification of plans for the same shall be submitted in writing to the District by Permittee and no such work by Permittee shall be commenced without the District's prior written approval of the plans; provided, however, that in the event of an emergency requiring immediate action by Permittee for the protection of its improvements or other persons or property, Permittee may take such action upon such notice to the District as is reasonable under the circumstances, but in no case more than 24 hours after the emergency occurred. Any changes or revisions in the plans approved by the District shall also be subject to the District's prior approval. All work performed by Permittee upon the Land shall be in accordance with the plans submitted and approved by the District and shall be completed in a careful and workmanlike manner. The permitted improvements shall be clearly marked with the number of this permit. Permittee shall have sole and exclusive responsibility for maintaining any permitted improvements in good repair and condition. Nothing in this agreement shall be deemed to impose any duty or obligation upon the District to determine the adequacy or sufficiency of Permittee's plans and designs, and/or to ascertain whether Permittee's construction is in conformance with the plans and specifications approved by the District.

3. Inspection. The District, its officers, agents and employees reserve the right to enter the Land at any reasonable time for inspection or for any purpose in connection with District's operation, maintenance and utilization of the Wells Hydroelectric Project and the Wells Reservoir.

4. Responsibility for Land and Facilities.

A. Permittee shall maintain the Lands and improvements in good order and in a safe, neat and tidy condition free from debris and rubbish. Disposal of debris or rubbish of any kind shall be by removal or as otherwise approved by the District. There shall be no burning of anything below the Wells Project Boundary. No debris or rubbish of any kind shall be cast into the water.

B. The District shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the use and occupation of the Land or improvements or for damages to the property or injuries to the person of Permittee. Permittee shall have sole and exclusive responsibility for protection of the Land and improvements against damage or destruction by fire or any other causes. Permittee shall promptly pay to the District an amount sufficient to compensate the District for any loss sustained by the District by reason of damage to or destruction of Land or property incident to Permittee's use and occupation of the Land and Improvements.

C. Nothing in this agreement relating to approval of plans, inspections or the like shall impose any duty or obligation upon the District relating to repair, maintenance, review, inspection, condition of the Land or improvements, or any other such duty, nor shall it serve as the basis for any claim of ratification, estoppel, waiver or the like by or against the District.

D. No "Hazardous Material", as defined by either the United States Environmental Protection Agency, 40 C.F.R. part 302, or the Washington Hazardous Waste Management Act, RCW 70.105D, shall be stored on the Land. Permittee shall be solely responsible for the clean up and costs of clean up of any and all Hazardous Materials. Any spill shall be reported immediately to the proper governmental authorities and the District.

E. The Permittee shall provide the District annually, records of any farm chemicals used on the Land. Pursuant to state law, Permittee shall preserve all records for farm chemical applications for a minimum of seven years.

F. Any metal or other permanent survey markers or Wells Hydroelectric Project Boundary markers removed or damaged by the Permittee will be replaced by the District at Permittee's expense.

G. The Permittee shall not clear vegetation below the Wells Project Boundary except as described in Exhibit B, and as authorized by this permit. If Permittee

is authorized pursuant to Exhibit B attached hereto to conduct agricultural operations on the Land, Permittee acknowledges that the area below the Land is an important wildlife habitat area and will conduct any agricultural operations and activities on the Land in a manner which minimizes any disturbance to the surrounding habitat. Permittee shall conduct agricultural operations according to and within the standards of the horticultural industry and in accordance with good agricultural practices primarily in the Okanogan and Douglas County areas of Washington State.

5. Water Levels. Water levels may be constantly changing, e.g., during the Spring and Summer runoff, and during raising and lowering of the pool related to operation and maintenance of the Wells Hydroelectric Project. Water levels may rise and fall many feet above and below normal. In accepting this permit, Permittee accepts the risk of any effect or damage that any change in the level of the Wells Reservoir may have on the Land or on improvements located on the Land or in the reservoir, including but not limited to docks, pumps and other structures utilizing water of the pool. Permittee shall construct any irrigation pumps or other water pumps so that they are fully operational over the full range of the changing water levels of the reservoir, i.e., from the reservoir's lowest level to its highest level. As of the date of the execution of this permit, as measured at Wells Dam, the lowest level of the Wells Reservoir is 767 feet and the highest level is 781 feet. Permittee should also be aware that the US Army Corps of Engineers has the authority to require a maximum Wells Reservoir elevation of up to 791 feet for flood control purposes. The level of the reservoir at points other than Wells Dam is shown on the back water curve and on Exhibit G to the Wells Project. Permittee acknowledges that the District has made available to the Permittee for Permittee's inspection copies of the back water curve and Exhibit G appurtenant to the Land prior to Permittee's entry into this agreement. Any change in the water levels, for whatever reason, shall in no way subject the District to any liability of any nature whatsoever including, but not limited to, claims based upon negligence, claims for damage to pumps, claims resulting from an inability to pump water due to changed water levels, or claims for consequential damages.

6. No Interference. The use of the subject land or maintenance and operation of Permittee's improvements shall in no way interfere with the District's operation of the Wells Hydroelectric Project, and the District reserves the right to operate the project and the reservoir as it determines proper without regard to Permittee's use of the subject land or maintenance of Permittee's improvements, and without advance notice of operation which may affect the lands or improvements.

7. Compliance with Laws and Regulations. Permittee shall at times exercise its right herein in accordance with the requirements (as from time to time amended) of all applicable statutes, orders, rules and regulations of any public authority having jurisdiction, including the District's rules and regulations governing use of the Wells Dam Reservoir Area. It shall be the sole responsibility of the Permittee to secure all required and necessary permits from any local, municipal, county, state, or federal entity. Permittee acknowledges that Permittee has reviewed the District's rules prior to executing this permit. Permittee shall use the Land so its use does not interfere with, obstruct or in

any way impede the District's operation and maintenance of the Wells Hydroelectric Project. Permittee acknowledges that this permit is subject to the following:

- (a) All provisions of License No. 2149-152 issued to the District for the operation of the Wells Hydroelectric Project.
- (b) Rules and Regulations now in effect or subsequently adopted by the Federal Energy Regulatory Commission.
- (c) The District's Historic Properties Management Plan (HPMP).
- (d) Federal Endangered Species Act and all amendments thereto.
- (e) The Reasonable and Prudent Measures (RPMs) required by National Marine Fisheries Service (NMFS) which include:

1. Minimizing incidental take by adhering to all of the measures of the Wells Habitat Conservation Plan (HCP);

2. Minimizing incidental take when the unanticipated release of hazardous substances, toxics, excessive sediments, debris and other materials into the Columbia River by following the provisions of the Water Quality Management Plan (WQMP); and

3. Minimizing incidental take from in-water and near-water construction activities.

8. Notice of Incidental Take. The District hereby notifies all applicants for District permits to use or occupy Project lands or water that such use or occupancy may result in an incidental take of species listed as endangered or threatened under the Endangered Species Act, requiring advanced authorization from National Marine Fisheries Service or U.S. Fish and Wildlife Service. Affixing applicant's signature hereto stipulates that applicant has been formally notified of such requirement.

9. Process When Encountering Human Remains or Native American Cultural Items. In the event that human remains or Native American cultural items are encountered during ground disturbing activities, the Permittee will immediately cease work leaving all materials intact. The Permittee will immediately notify the District and secure the area until District personnel assume control of the site. District personnel will contact appropriate authorities, depending upon the site location and materials discovered, but at a minimum will contact the State Department of Archaeology and Historic Preservation (SHPO) and the Colville Confederated Tribes Tribal Historic Preservation Officer (THPO). All uses authorized by this permit will terminate until a treatment or protection plan is developed in concert with the SHPO and THPO. The Permittee agrees to accept all financial obligations associated with conducting any and all archaeological surveys and publishing the findings of any and all archaeological surveys to the satisfaction of the Washington State Department of Archaeology and Historic Preservation and the Confederated Tribes of the Colville Reservation if applicable.

10. Term and Termination. This permit may be terminated by the Permittee at any time by giving sixty days written notice. Termination shall be effective on the sixtieth day following mailing of the notice of termination. The District agrees that it shall not terminate this permit during the agreed term unless (a) it is so directed by the Federal Energy Regulatory Commission, or (b) Permittee fails to adhere to the terms of this permit, or (c) Permittee sells or transfers the property immediately adjacent to and above (above the Wells Hydroelectric Project Boundary) the Land, or (d) the permitted activity is not in compliance with applicable state or federal law. Sixty days written notice of termination shall be given by the District to the Permittee with termination being effective on the sixtieth day following mailing of the notice of termination by the District. On or before termination of this permit, regardless of how the permit is terminated, Permittee shall vacate the premises, remove the improvements of Permittee therefrom and leave the premises in good and neat condition. If Permittee fails or neglects to remove its improvements then at the option of the District, the improvements of Permittee shall either revert to the District without additional compensation, or the District may cause the improvements to be removed and the Land to be restored to its original condition at the sole expense of Permittee. No claim for damages against the District shall exist on account of the removal and restoration work. Termination of this agreement shall not release Permittee from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release Permittee from its obligation and liability to remove the improvements from the Land and restore the premises. The agreed term of this permit shall expire _____ (____) years after the date of issuance, subject to the covenants and conditions contained in this permit.

11. Hold Harmless. Permittee does hereby release, indemnify and promise to defend and save harmless the District from and against any and all liability, loss, damage, expense, actions and claims including costs and reasonable attorney's fees incurred by the District in defense thereof, asserting or arising directly or indirectly on account of or out of acts or omission of Permittee or Permittee's servants, agents, employees or others utilizing the Land and improvements or asserting or arising directly or indirectly on account of Permittee's breach of any obligation which Permittee assumed by terms of this permit; provided, however, this paragraph does not purport to indemnify the District against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the District.

12. Liability Insurance. The Permittee agrees that during the term of this permit that it will keep in force a liability insurance policy covering all its operations on the Land in an amount not less than the following:

Insurance Requirements

Applicant Type	Insurance
Single party docks/piers	\$1M
Joint use docks/piers	\$1M each or \$2M joint

Community docks/piers	\$4M
New permit w/out over water structure (residential)	\$500K
Residential and/or pipeline crossings in railroad ROW	\$1M
New permit with over water structure (residential)	\$500K
Agricultural or commercial in railroad ROW (new or transfer) and Non-Project lands	\$1M
Irrigation intake <1mgd	\$500K residential \$1M agricultural
Irrigation intake >1mgd	\$1M agricultural
Commercial recreation below Project Boundary	\$1M

The Permittee will provide the District a certificate of insurance evidencing such coverage annually.

13. No Transfer or Assignment. This permit is not transferable or assignable.

14. Other Rights. The District reserves all rights with respect to its property and the Land including, but not limited to, the right to grant licenses, easements and permits to others. This permit does not purport to grant any rights which may be granted by any entity other than the District for the Columbia River or any other associated streams and rivers whether they be navigable streams or not.

15. Attorney Fees and Venue. In any action, not limited to court action, brought to enforce any covenant of this permit, the substantially prevailing party shall be entitled to recover a reasonable sum for attorney fees and all other costs and expenses in connection with such action, which sum shall be included in any judgment or decree entered. The venue of any action brought to enforce any covenant of this permit shall be in the Superior Court of the State of Washington in and for the county of Douglas.

16. Entire Agreement. This is the entire agreement. There are no verbal understandings or agreements between the District and the Permittee other than those set forth in the permit.

PUBLIC UTILITY DISTRICT NO. 1 OF
DOUGLAS COUNTY, WASHINGTON

By _____
WILLIAM C. DOBBINS, General Manager

Example

We (I) have read this permit in its entirety and we (I) do hereby accept the above permit and agree to be bound by all of the terms and conditions thereof.

DATED this ____ day of _____, 20__

Permittee(s)

STATE OF WASHINGTON

ACKNOWLEDGMENT OF INDIVIDUAL

COUNTY OF _____

I, _____, A Notary Public in and for the State of Washington, aforesaid, do hereby certify that on this ____ day of _____, 20__, personally appeared before me _____ personally known to me to be the individual (s) described in and who executed the foregoing instrument, and acknowledged to me that _____, executed, signed and sealed the same as _____ free and voluntary act and deed for the uses and purposes therein expressed.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.

NOTARY PUBLIC in and for the State of Washington
Residing at _____
My Commission Expires _____

EXHIBIT A

TO TRACT ___ LAND USE PERMIT

Example

EXHIBIT B

TO TRACT __ LAND USE PERMIT

Permit No.
Permittee:

1. The Permittee shall have the right to use said Tract __ for the following uses:

Example

EXHIBIT C

Example