XXXXXXXXXXXX
Governor

XXXXXXXXXXXXX
Director

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

'85 MAY -2 P3:56

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

S.W. REGIONAL OFFICE

April 30, 1985

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:

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

:h Plumb, FERC
E. Carrier, FERC

ACCEPTANCE OF SERVICE

CLERK'S STAMP

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

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

2. Ecology agrees to rescind the water quality certification dated April 30, 1985 issued by Ecology for the Cushman hydroelectric project. The water quality certification will then be reissued with the following language inserted into the certification:

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

S. F. No. 9928-A—OS—5-70.

of at least 30 cfs with periodic flushing flows until the FERC issues a license authorizing operation of the facility. When such license issues, the City will provide the flows contained in the certification or, alternatively, flows agreed to by all the parties to the licensing proceeding before the FERC or flows imposed by the FERC as a part of the new license, provided that neither party waives any rights to review the instream flows imposed by FERC by appeal or to initiate any independent action regarding state water quality laws.

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

4. Until a permanent minimum instream flow is released, and as long as the provisional minimum flow provided for herein is maintained, Ecology agrees to waive any objection it may have to the operation of the dam based on the violation of applicable water quality standards for temperature, dissolved oxygen and total dissolved gas. However, Ecology expressly reserves the right to challenge operation of the dam when such a challenge is based on something other than water quality violations. For example, if Ecology should determine that the Cushman facility is 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.

S. F. No. 9928-A—OS—5-70.

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

S. F. No. 9928-A—OS—5-70.