

PERMIT

FOR USE OF PUD LANDS / WATERS

THIS PERMIT AGREEMENT ("Permit"), made this 11TH day of October 2012, between PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, a municipal corporation, hereinafter called the District, and PIONEER WATER USERS ASSOCIATION, a Washington non-profit corporation, hereinafter called the Permittee.

RECITALS:

WHEREAS, under the authority of the District's operating license issued by the Federal Energy Regulatory Commission (FERC) for the Rock Island Hydroelectric Project No. 943 and FERC Order 140 FERC ¶ 62,215, the District has the responsibility to evaluate proposals and may, subject to appropriate conditions, grant permission for certain types of use and occupancy of project lands and/or waters; and

WHEREAS, Permittee has proposed the construction and maintenance of a water withdrawal facility located near the confluence of the Wenatchee and Columbia Rivers, on the north bank of the Wenatchee River consisting of a pump intake, fish screen and a 24-inch diameter pipeline on a portion of District owned land which Chelan County tax parcel number is 23-20-28-240-505, and located approximately as illustrated in Exhibit "A", attached hereto and by this reference made a part of this Permit.

WHEREAS, On September 21, 2012, FERC issued an *Order Modifying and Approving the Non-Project Use of Project Lands and Waters: Water Withdrawal Under Article 412(C)* subject to the terms and conditions ordered therein to the District pursuant to its application filed on behalf of the Permittee's use.

NOW, THEREFORE, in consideration of the benefits and obligations provided herein, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **USE OF PREMISES AND RESTRICTIONS.** Subject to FERC Order issued September 21, 2012, Project No. 943-117, the District, for and in consideration of the faithful observance and performance of all of the covenants and promises hereinafter set forth to be observed and performed by the Permittee, hereby permits the Permittee the non-exclusive use of a portion of the following described District land:

All that portion of Tract A as described under Auditor File Number 213358, Chelan County, Washington which lies between the Wenatchee River and a contour line at elevation Six Hundred Thirty-Four (634) feet above sea level, United States Geological

survey datum, which said contour or project boundary line as the same crosses in the Southeast Quarter of the Northwest Quarter of Sec. 23 Twn. 23 N, Rng. 20 E.W.M. ("Premises"),

That portion of the Premises permitted hereby ("Permitted Premises") is generally depicted on attached Exhibit "A", and is permitted solely for the purpose of construction, operation, repair and maintenance of a water withdrawal facility. Permittee shall, at Permittee's sole expense, obtain all agency permits and approvals and shall comply with all laws, rules, regulations and orders of all federal, state and municipal governments or departments having jurisdiction over the activity to be performed on the lands covered by this Permit.

No facilities or structures shall be constructed or maintained on the Premises except as specifically hereinafter agreed upon in writing. No facilities or structures shall be constructed or maintained on the Premises except in strict compliance with the FERC Order issued September 21, 2012, Project No. 943-117 copy of which is attached hereto as Exhibit "B" and incorporated herein by this reference.

If any Native American archaeological/cultural resources are found during the construction, operation and/or maintenance of the facilities the Permittee shall: (a) cease all activity at the construction site and (b) immediately notify the District in writing. Permittee will be solely responsible for any and all costs resulting from the discovery of any archaeological/cultural resources located within the Permit area.

2. **OPERATIONS OF DISTRICT LANDS.** The Permittee's use of the Premises shall not interfere in any way with the District's operations of Rock Island Dam or any of its ongoing license requirements or any subsequent License requirements. The District may cancel the Permit only pursuant to the terms hereof 1) for purposes related to the operation and management of the Districts Rock Island hydro project as determined necessary by the District in the District's sole discretion, 2) for Permittee's failure to comply with the terms of this Permit as determined by the District in the District's sole discretion, 3) for the reasons set forth in Section 6 hereof, or 4) in the event that the Permittee is no longer using the Premises. The District reserves the right, without compensation to the Permittee, to operate its Premises as it determines proper in its sole discretion without regard to Permittee's use of the Premises and without advance notice of operations which may affect the Premises or facilities.
3. **CONSERVATION MEASURES.** Permittee shall: (1) implement all applicable conservation measures described in the U.S. Army Corp of Engineers' 2008 Biological Assessment; and (2) report the extent of any downstream turbidity plume and any minor changes that may be made during project implementation to the U.S. Fish and Wildlife Service and National Marine Fisheries Service.
4. **MAINTENANCE OF LANDS.** Permittee shall maintain the Premises in a neat and tidy condition, free of debris and rubbish. Disposal of refuse, garbage, rubbish or waste of any kind shall be by removal or as otherwise directed by the District.

5. **COMPLIANCE WITH LAWS.** The Permittee agrees to maintain the Premises, subject to this Permit, in a safe condition and to observe all federal, state and local regulations pertaining to health, sanitation, use and maintenance of the Premises. **The District shall have no obligation to assist in the maintenance or restoration of the Premises and shall not be responsible for the safe condition of said Premises and improvements thereto.**
6. **PERMIT CANCELLATION.** This Permit shall be cancelable by the District on ninety (90) days written notice 1) to comply with a directive, order or determination by an appropriate federal, state or local agency having jurisdiction, including without limitation jurisdiction over the District's hydroelectric projects; or 2) a breach of any term or condition by Permittee set forth herein; or 3) failure to keep the water withdrawal facility maintained in good repair and condition. In the event of cancellation, Permittee shall, at Permittee's sole expense, remove all improvements and restore all Project Lands and Waters to the District's satisfaction. In the event that Permittee fails to comply with the obligations set out in this paragraph within sixty (60) days, the District may elect to take action and remove the improvements and restore the Project Lands and Waters at Permittee's sole expense.
7. **SURRENDER PREMISES.** Upon termination or cancellation of this Permit, Permittee shall quietly and peaceably yield, surrender and deliver up said Premises to the District and shall, at Permittee's sole cost and expense, remove therefrom any property owned by Permittee; and, in case of Permittee's failure so to do, the District shall have the right to remove the same at the cost and expense of the Permittee.
8. **NO RIGHTS AND ASSIGNMENT.** This Permit grants permissive rights to the Permittee only. This Permit is not an easement and does not create easement rights in the Premises. Nothing contained in this Permit creates, conveys, bargains, sells, warrants or transfers any interest in real property. This Permit shall not run with the land and does not inure to the benefit of the Party's successors and assigns. The Permittee shall not assign this Permit without the written permission of the District.
9. **ATTORNEY FEES.** In any action brought by the District to enforce any provisions in this Permit, the Permittee shall pay such sum as the court shall adjudge reasonable as attorney fees and costs if the District shall substantially prevail in said action.
10. **SUBORDINATION.** It is expressly understood and agreed that the rights of the Permittee under this Permit are subject to such use of the Premises by the District, without liability therefore, as it deems necessary in connection with the construction, operation and maintenance of its Hydroelectric Projects, and to the District's performance of the conditions of the license therefore issued by the Federal Energy Regulatory Commission, including amendments heretofore or hereafter made thereto or any reissuance of a license for said project.
11. **LIABILITY INSURANCE.** Permittee shall at all times during the term of this Permit, at Permittee's sole expense, keep in force the following insurance coverage:
 - a) General Liability insurance in the standard form covering the Premises and improvements placed thereon and insuring against liability occasioned by

accident or disaster in the amount of not less than \$1,000,000 with respect to any one accident or disaster;

- b) Include the District, as owner of the Premises, as an additional named insured on all public liability insurance which is required by the Permittee hereunder;
- c) Provide the District, within thirty (30) days of the date of this Permit, with a written certificate from the insurance carrier certifying compliance with the provisions of this paragraph.

The insurance coverage and benefits required herein shall not be deemed to limit Permittee's liability to the District or any third party. In the event that the minimum insurance limits specified herein are less than the maximum amount of insurance in effect for the Permittee at the time of claim or loss which arises from or is connected to Permittee's exercise of the rights and privileges granted by this Permit, Permittee affirmatively agrees that all insurance limits available to it will be extended to the District as an additional insured.

12. INDEMNIFICATION. All use of the Premises for use permitted herein shall be at the sole risk of the Permittee, and the District assumes no responsibility for loss or damage with respect thereto regardless of cause, and the Permittee agrees to indemnify the District and save it harmless against any and all claims, demands, expenses, costs and judgments arising from the loss of or damage to said Premises or improvements or injury to or death of any person or persons occurring directly or indirectly from Permittee or any third party's use and/or maintenance of the Premises and improvements during the term of this Permit. Permittee shall also be responsible for the payment of all fees, costs and expenses reasonably incurred by the District in defending itself against any claim or action heretofore specified.

13. COVENANT FOR QUIET USE. Nothing herein contained shall imply or import a covenant on the part of the District for quiet enjoyment, and the District shall have no obligation to intervene in any dispute between the Permittee and third parties who may trespass upon the Premises and improvements covered by the Permit. Nothing herein contained shall prevent the Permittee from exercising the exclusive rights of the Permittee under the Permit, including the exclusion of trespassers from the Premises.

14. ACCESS RIGHTS. Reserving to the District, its successors and assigns, the perpetual right at all times to enter upon its lands, to ingress to and egress from said lands for the purposes necessary in the operation and maintenance of said Premises.

15. UNAUTHORIZED ACTIVITIES. That all activities identified and authorized herein shall be consistent with the terms and conditions of this Permit; and that any activities not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this Permit which may result in the modification, suspension or revocation thereof.

16. PERIODIC INSPECTIONS. That the Permittee shall permit the District to make periodic inspections at any time deemed necessary in order to assure that the activities being performed under authority of this Permit are in accordance with the terms and conditions prescribed herein.

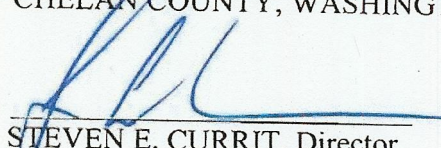
- 17. ENTIRE AGREEMENT.** This Permit contains the entire agreement between the Parties, and any executory agreement hereafter made shall be ineffective to change, modification or discharge, in whole or in part, unless such executory agreement is in writing and signed by the Party against whom enforcement of the change, modification or discharge is sought.
- 18. APPLICABLE LAW - VENUE.** This Permit shall be governed by the laws of the State of Washington. Any court of competent jurisdiction in Chelan County, Washington, shall be the proper venue for any and all suits brought to enforce the terms and conditions of this Permit.
- 19. NOTICES.** Any notice required to be given by either Party to the other pursuant to the provisions of this Permit or any law, present or future, shall be in writing and shall be deemed to have been duly given or sent if either delivered personally or deposited in the United States mail, postage prepaid, registered or certified, return receipt requested, addressed as follows:

District: Public Utility District No. 1 of Chelan County
Real Estate Services Department
Attention Tim Larson
327 North Wenatchee Avenue
Wenatchee, WA 98801
509-663-8121
tim.larson@chelanpud.org

Permittee: Pioneer Water Users Association
Attention Dan Jaspers – Manager
2817 School Street
Wenatchee, WA 98801
509-662-1005
ddjaspers@hotmail.com

PUBLIC UTILITY DISTRICT NO. 1
OF CHELAN COUNTY, WASHINGTON

PIONEER WATER USERS ASSOCIATION

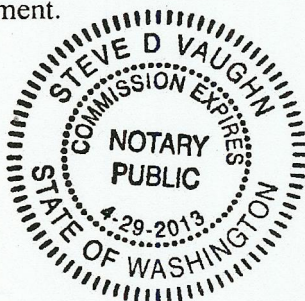
By: 
STEVEN E. CURRIT, Director
Shared Services Division

By: 

By: _____

State of WASHINGTON)
) ss.
County of CHELAN)

I certify that I know or have satisfactory evidence that STEVEN E. CURRIT signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Director, Shared Services Division of PUBLIC UTILITY DISTRICT NO. 1 OF CHELAN COUNTY, WASHINGTON, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



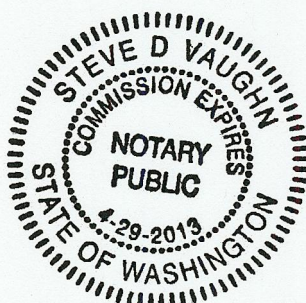
Dated: 10/11/2012
Signature: [Signature]
Notary Public

My appointment expires: 4-29-2013

State of WASHINGTON)
) ss.
County of CHELAN)

I certify that I know or have satisfactory evidence that DAN JASPERS is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the MANAGER of PIONEER WATER USERS ASSOCIATION to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED this 11TH day of OCTOBER 2012.



Signature [Signature]
STEVE D. VAUGHN, Notary Public

My Appointment Expires 4-29-2013

EXHIBIT "A"
THIS DRAWING IS FOR INFORMATIONAL PURPOSES ONLY
AND IS NOT A SURVEY.

