

**Oregon Department of Environmental Quality**  
**Clean Water Act § 401 Water Quality Certification Conditions**  
**for the City of Albany, Oregon Hydroelectric Project**  
**Licensed as FERC No. P-11509; Proposed Conduit Exemption P-15342**  
**Calapooia River, Linn County, Oregon**

**APRIL 8, 2026**

Upon Federal Energy Regulatory Commission (FERC) issuance of a conduit exemption authorizing continued operation of the Albany, Oregon Hydroelectric Project (Project) at Vine Street (P-15342) and its approval of the surrender of the existing license of P-11509, the City of Albany (Albany) must comply with the following § 401 Certification conditions as established by the Oregon Department of Environmental Quality (DEQ).

**1. Project Operations**

Throughout the duration of the conduit exemption, Albany will operate the Project consistent with its described operations in the Application for Exemption for Small Conduit Hydroelectric Facility (application) and all of the requirements identified in Exhibit A to the Memorandum of Agreement (MOA) (attached hereto as Attachment A), which is incorporated herein by reference in its entirety. To the extent that any conflict exists between Albany's application and the MOA, the MOA shall control.

The MOA provides the complete details of requirements for implementation of each of the following conditions:

- a. Albany will continue to operate and maintain the previously constructed vertical plate juvenile fish screen and bypass facility at the Albany-Santiam Canal (Canal) intake as described in Exhibit A.
- b. Albany will continue to operate and maintain the previously constructed river right bank fishway at the diversion dam as provided in Exhibit A.
- c. Albany will continue to operate and maintain the previously constructed river left bank fishway at the diversion dam as provided in Exhibit A.
- d. Albany shall submit any modification proposed for any of the fish passage structures or operations for review and approval by Oregon Department of Fish and Wildlife (ODFW), National Marine Fisheries Service (NMFS) and US Fish and Wildlife Service (USFWS).
- e. Albany will cease diversion of water into the Canal for hydropower generation purposes when such diversion would cause flow in the South

Santiam River to fall below 1100 cubic feet per second as measured at the U.S. Geological Survey (USGS) stream gage at the Waterloo Station and provided in Exhibit A.

- f. Albany will continue to monitor South Santiam River flows at the Waterloo Station and maintain records of compliance with the required flow limitation described in Exhibit A.
- g. Albany will evenly ramp diversion flows during start-up and shut-down of the facilities that are the subject of the conduit exemption over the course of one hour for the protection of aquatic resources below the Albany-Santiam canal intake as provided in Exhibit A.
- h. Albany will continue to provide diversion flows to Marks and Hospital Sloughs and submit an annual report summary to the Governmental Parties as provided in Exhibit A.
- i. Following FERC's issuance of the conduit exemption, by January 31 and by January 31 of each year thereafter, Albany will provide an annual report to the Governmental Parties (ODFW, NMFS, USFWS, and DEQ) that summarizes the mitigation and monitoring activities and discusses any deviations from the requirements listed in Exhibit A that occurred during the prior calendar year.
- j. Albany agrees to perform reasonably diligent inspections of facilities described in Exhibit A. Albany shall take action as described in the MOA to respond to situations in which fish or wildlife are being killed, harmed or endangered by any of the facilities described in Exhibit A.
- k. Albany is required to meet with the Parties (ODFW, NMFS, USFWS, Confederated Tribes of the Grand Ronde of Oregon, and DEQ) in each of the succeeding 5 years to discuss implementation of the Environmental Measures of the MOA.

## **2. Turbidity**

Albany shall provide notice to DEQ at least two business days in advance of restarting the turbine after any pause longer than 365 days and Albany shall implement visual water quality monitoring upon resumption of hydropower generation at any time hydropower generation has been continuously paused for more than 365 days. The visual water quality monitoring must, at a minimum, include the following measures:

- a) Upon planned restart of turbine operation, the City shall begin visual monitoring no more than two (2) hours prior to restart to capture baseline/background

WATER QUALITY CERTIFICATION

Albany Hydro P-11509/P-15342

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conditions; immediately at turbine restart (at the zero hour); and every 2 hours thereafter for the first 8-hours of start-up according to the monitoring details in Table 1.

- b) Visual monitoring shall be conducted by an official staff or designated representative with demonstrable experience in water quality monitoring.
- c) Photographic documentation shall be obtained at a suitable vantage point for the discharge area in the Calapooia River, such as the SW Bryant Way bridge.

<b>Table 1 - VISUAL TURBIDITY MONITORING</b>		
<b>Establish monitoring point and collect initial baseline visual data no more than 2 hours prior to turbine restart</b>		
<b>Monitoring Result</b>	<b>Action</b>	<b>Next Steps</b>
No plume observed	Continue to monitor every 2 hours	Continue to monitor every 2 hours for a total of 4 observations over 8 hours.
Plume observed	Implement BMPs & continue to monitor every 2 hours	Consult with DEQ staff for action required to address any visible turbidity plume more than 4 continuous hours in duration

- d) Record all turbidity monitoring data collected, which must include: the location, date, time, and photograph for each observation.
- e) Prepare a narrative report discussing monitoring, actions taken, and the effectiveness of the actions. The narrative must also include documentation of any maintenance of the turbine that has been conducted consistent with the amount of time the turbine has been out of operation; maintenance shall be completed before the turbine returns to operation after any period of 365 days or more.
- f) If turbidity monitoring at the discharge point cannot be conducted due to dry conditions in the Calapooia River, the Applicant must provide photo documentation with a date and time stamp.
- g) Submit all notifications and turbidity monitoring records at the end of monitoring event to [401certifications@deq.oregon.gov](mailto:401certifications@deq.oregon.gov). Include the FERC project number in the email subject line.

### **3. Temperature**

As part of DEQ's Temperature Total Maximum Daily Load (TMDL) for the Willamette River Subbasins, Albany is named as a Designated Management Agency with responsibility to prepare a TMDL Implementation Plan associated with continued operations at the Lebanon Dam. Albany must develop and submit an approvable Implementation Plan to DEQ according to the applicable timelines and maintain compliance with the conditions of the Implementation Plan.

### **4. Protection of Beneficial Uses; Compliance with other Requirements of State Law**

Protection of beneficial uses and compliance with other requirements of state law shall be met through implementation of the conditions of the MOA. Throughout the duration of the time Albany is authorized to operate a hydropower project, regardless of whether hydropower is generated, Albany must adhere to and implement each of the Environmental Measures identified in the MOA.

### **5. Adaptive Management**

If DEQ determines available monitoring data indicates the project is causing or contributing to a violation of any water quality criteria, including but not limited to biocriteria, dissolved oxygen, pH, turbidity, or TDG, Albany shall develop and propose measures to address the violation as part of a water quality adaptive management plan.

- a. If DEQ determines monitoring data indicates that the project is causing or contributing to a violation of pH, DO, TDG or other water quality criteria, then within 120 days of DEQ notifying Albany of this exceedance, the City shall submit to DEQ a proposed adaptive management plan to address compliance with applicable criteria and allocations.
- b. Following DEQ approval, Albany shall implement the plan in accordance with the approved plan terms and schedule, including any modifications made to the plan by DEQ as a condition of its approval.
- c. If DEQ determines additional monitoring demonstrates that the project does not cause or contribute to violation of water quality criteria, the DEQ may allow Albany to cease monitoring for a period of time.

### **6. Spill Prevention Control and Countermeasures Plan**

Albany must implement and maintain at all times a current Spill Prevention Control and Countermeasures Plan. In the event of a spill or release or threatened spill or release to waters of the state, Albany must immediately

implement the plan and notify Oregon Emergency Response System (OERS) at 1-800-452-0311. If Albany becomes aware that the project may be causing a water quality violation due to spills or releases that results in distressed or dying fish, Albany must immediately:

- a. Cease operations of the hydropower project;
- b. Take appropriate corrective measures to prevent environmental damage;
- c. Collect water samples; and
- d. immediately notify DEQ, ODFW, and OERS.
- e. Albany shall manage work and staging areas in a manner that prevents the introduction of sediment, wastes, or hazardous materials into waters of the state in accordance with an Erosion and Sediment Control Plan.

## 7. General Conditions

- a. § 401 Certification Modification: Without limiting DEQ's discretion to take other actions in accordance with OAR Chapter 340, Division 48, and, as applicable, 33 USC 1341, DEQ may modify the Certification to add, delete, or modify Certification conditions as necessary and feasible to address:
  - i. Adverse or potentially adverse project effects on water quality or designated beneficial uses that did not exist or were not reasonably apparent when this Certification was issued;
  - ii. TMDLs;
  - iii. Changes in water quality standards;
  - iv. Any failure of Certification conditions to protect water quality or designated beneficial uses when the Certification was issued; or
  - v. Any change in the project or its operations that was not contemplated by this Certification that might adversely affect water quality or designated beneficial uses.
- b. Other Federal Permits: Upon applying for any federal license or permit authorizing a discharge to waters of the United States other than the new FERC license, Albany must provide written notice of such application and of any proposed changes or new activity requested to be authorized under the application since issuance of this § 401 Certification. DEQ will notify Albany and the applicable federal agency either that: (1) this § 401 Certification is sufficient for purposes of the federal license or permit; or (2) in light of new information related to the activity requested to be authorized under the application that may result in water quality impacts, there is no longer reasonable assurance of the activity's compliance with state water quality standards. In the latter event, DEQ will consider the new

information, solicit and consider public and agency comment as required by law, and issue a 401 certification determination for purposes of the federal license or permit.

- c. Project Changes: Albany must notify DEQ of any change in ownership or to the project, including changes to project structures, construction, operations, and flows. Albany must obtain DEQ review and approval before undertaking any such changes to the project that might affect water quality.
- d. Project Repair or Maintenance: Albany must obtain DEQ review and approval before undertaking project repair, rehabilitation, or maintenance activities that might affect water quality. DEQ may, at City of Albany's request, approve specified repair and maintenance activities on a periodic or ongoing basis.
- e. Project Inspection: Albany must allow DEQ such access as necessary to inspect the project area and project records required by this Certification at reasonable times as necessary to monitor compliance with § 401 certification conditions.
- f. Posting of § 401 Certification: Albany must post a copy of these certification conditions in a prominent location in the Vine Street Powerhouse.
- g. Water Quality Standards Compliance: Notwithstanding the conditions of this certification, no wastes will be discharged and no activities will be conducted which will violate state water quality standards.

# **Attachment A – Memorandum of Agreement**

**MEMORANDUM OF AGREEMENT**

**FOR THE CITY OF ALBANY EXEMPTION FOR SMALL CONDUIT  
HYDROELECTRIC FACILITY**

**AMONG**

**CITY OF ALBANY, OREGON**

**UNITED STATES FISH AND WILDLIFE SERVICE  
NATIONAL MARINE FISHERIES SERVICE**

**OREGON DEPARTMENT OF FISH AND WILDLIFE**

**OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY**

**CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF  
OREGON**

This Memorandum of Agreement including attached Exhibit A incorporated in and made a part of this Memorandum of Agreement (referred to collectively as the "Agreement") is made by and among the City of Albany, Oregon, a municipal corporation of the State of Oregon ("Albany"), United States Fish and Wildlife Service ("USFWS"), National Marine Fisheries Service ("NMFS"), Oregon Department of Fish and Wildlife ("ODFW"), Oregon Department of Environmental Quality ("ODEQ"), and the Confederated Tribes of the Grand Ronde Community of Oregon ("CTGR"), each of which, once having signed this Agreement, are referred to individually as a "Party" and collectively as the "Parties." USFWS, NMFS, ODFW and ODEQ (but not Albany or CTGR who are also governmental entities) may be referred to collectively as the "Governmental Parties." USFWS and NMFS may be referred to as the "Federal Governmental Parties." ODFW and ODEQ may be referred to collectively as the "State Governmental Parties."

**RECITALS**

A. The Federal Energy Regulatory Commission ("FERC") issued Albany a Minor Hydropower Production License, Project Number 11509-000, dated October 23, 1998 (85 FERC ¶ 62,046) ("License"). Albany owns and operates the Minor Hydropower Production Facility ("Project") pursuant to the License.

B. Albany intends to submit to FERC an Application to Surrender License for the Project and an Application for Exemption for Small Conduit Hydroelectric Facility (referred to collectively as the “Applications”). In addition, Albany intends to submit to ODEQ an application for Clean Water Act Section 401 certification for the Applications. Albany’s Application to Surrender License is contingent on FERC’s approval of its Application for Exemption for Small Conduit Hydroelectric Facility, and the Governmental Parties’ agreement herein is based upon that understanding.

C. The Parties desire Albany, and Albany intends, to continue to implement certain environmental measures if FERC issues an order accepting surrender of license and the License is terminated, and FERC issues Albany an order granting a small conduit hydroelectric facility exemption. These environmental measures are described in Exhibit A to this Agreement and referred to herein as “Environmental Measures.”

D. Albany and the Governmental Parties and CTGR have agreed to support both Applications subject to Albany’s commitment to implement certain environmental measures pursuant to this Agreement and to submit Applications that include its obligations to carry out the Environmental Measures.

NOW, THEREFORE, in consideration of their mutual covenants in this Agreement, the Parties agree:

## **SECTION 1. PURPOSE AND EFFECT OF THIS AGREEMENT**

### **1.1 Purpose of Agreement.**

The Parties have entered this Agreement for the purpose of resolving all issues that have or could have been raised by the Parties in connection with the Applications, specifically issuance of a FERC order accepting surrender of the License (“Surrender Order”) and a FERC order granting an exemption for small conduit hydroelectric facilities (“Conduit Order”) (referred to collectively as “the Orders”), and in connection with Albany’s operation of certain facilities pursuant to a Conduit Order. Pursuant to the Parties’ various statutory and regulatory authorities, including the federal government’s tribal trust responsibilities, this Agreement establishes Albany’s commitment to implement the Environmental Measures described in Exhibit A under this Agreement if FERC approves both Applications; provided further that the Parties understand and agree that in no event within these proceedings will Albany accept surrender of the License if FERC does not grant its request for a conduit exemption. Except as specifically provided below, each of the Parties agree that Albany’s performance of its commitments under this Agreement will be consistent with and is intended to fulfill Albany’s existing statutory and regulatory obligations relative to the FERC proceedings. Nothing in this Agreement shall preclude Albany from seeking in the future surrender of its existing License should the conduit exemption not be granted or from seeking termination of the conduit exemption if granted.

### **1.2 Limitations.**

This Agreement establishes no principle or precedent with regard to any issue addressed in this Agreement, or with regard to any Party’s participation, in any other pending or future FERC proceeding. By entering this Agreement, no Party shall be deemed to have made any admission or waived any contention of fact or law that it did make or could have made in any FERC proceeding relating to issuance of the Surrender Order or the Conduit Order. This Agreement shall not be offered

in evidence or cited as precedent by any Party to this Agreement in any mediation, arbitration, litigation or other administrative or adjudicative proceeding, except in a proceeding to establish the existence of, or to enforce, or to implement this Agreement or to define the action for which a governmental authorization is requested. This Section 1.2 shall survive any termination of this Agreement and will continue to apply to any Party that withdraws from this Agreement pursuant to Section 6 of this Agreement.

### **1.3 Representations Regarding Consistency and Compliance with Statutory Obligations.**

Except as specifically provided by this Agreement, the Governmental Parties represent that each believes as of the Effective Date that implementation of the Environmental Measures described in Exhibit A of this Agreement satisfy the federal and state requirements of Albany for the surrender of the License and continued operation and maintenance of certain facilities under the contemplated Conduit Order. Except as specifically provided by this Agreement, the Governmental Parties also each represent that as of the Effective Date that their individual statutory and other legal obligations and authorities are, or can be, met through implementation of this Agreement and development of any recommendations, conditions, prescriptions, determinations and certifications consistent with this Agreement that are submitted to FERC as part of the proceedings initiated by Albany's submittal of the Applications.

### **1.4 Reservation of Rights; No Predetermination**

Nothing in this Agreement is intended or shall be construed to affect or limit any Governmental Party from complying with its obligations under applicable laws and regulations, or from considering and responding to comments received in any environmental review or regulatory process related to the Applications. This Agreement will not predetermine the outcome of any environmental or administrative review or appeal process related to the Applications.

### **1.5 Reserved Tribal Rights.**

Nothing in this Agreement creates, expands, diminishes, impairs, predetermines or otherwise affects any right of the CTGR reserved or established by or in any treaty, executive order or statute. Further, nothing in this Agreement is intended to nor shall it create, expand, abrogate, diminish or otherwise alter the responsibilities and obligations of the United States, including FERC, toward the CTGR under any federal trust obligation, federal treaty, executive order or statute. The facilities that are the subject of the application for the Conduit Order are not located upon tribal reservation land.

### **1.6 Extent of Agency Authority.**

Nothing in this Agreement expands or diminishes any existing authority or regulatory jurisdiction under applicable federal or state law or regulation. The Parties recognize that each Governmental Party has separate and distinct statutory authorities and that no agency is deemed, by virtue of concurrent approvals, to be sharing its statutory authority with any other agency or to be conceding that the approval of any other agency is required for exercise of the first agency's authority.

## **SECTION 2. COMMITMENTS OF ALBANY**

### **2.1 Obligations After Effective Date.**

Albany will submit to FERC Applications consistent with the drafts of the Applications provided to the Governmental Parties and CTGR, attached hereto as Exhibit B, which without limiting the generality of the foregoing, includes Albany's commitment to implement the Environmental Measures described in Exhibit A of this Agreement. In addition, Albany agrees to submit to the ODEQ an application for Clean Water Act Section 401 certification required for FERC issuance of the Conduit Order.

### **2.2 Obligations After Issuance of the Orders.**

Following FERC's issuance of the Orders, Albany will continue to implement the following Environmental Measures as specifically described in Exhibit A which are summarized in Sections 2.2.1 through 2.2.9:

#### **2.2.1 Fish Screen.**

Albany will continue to operate and maintain the previously constructed vertical plate juvenile fish screen and bypass facility at the Canal intake as provided in Section A of Exhibit A.

#### **2.2.2 Right Bank Fishway.**

Albany will continue to operate and maintain the previously constructed river right bank fishway at the diversion dam as provided in Section B of Exhibit A.

#### **2.2.3 Left Bank Fishway.**

Albany will continue to operate and maintain the previously constructed river left bank fishway at the diversion dam as provided in Section C of Exhibit A.

#### **2.2.4 Fishway Modifications.**

Should Albany propose to modify any of the fish passage structures or operations described in Sections 2.2.1, 2.2.2 or 2.2.3 above (whether proposed by Albany or by another entity), Albany shall submit such modifications including design drawings for review and approval by ODFW, NMFS, and USFWS. Albany will provide at least 90 days for ODFW, NMFS and USFWS to review and approve, and will not modify the fishway structure or operations without such approval. Any disputes shall be addressed by the dispute resolution provisions in Section 5 of this Agreement.

#### **2.2.5 Flow Limitations.**

Albany will cease diversion of water into the Canal for hydropower generation purposes when such diversion would cause flow in the South Santiam River to fall below 1,100 cubic feet per second as measured at the United States Geologic Survey stream gage at the Waterloo Station as provided in Section D of Exhibit A.

### **2.2.6 Flow Monitoring.**

Albany will continue to monitor South Santiam River flows at the Waterloo Station and maintain records of compliance with the required flow limitation described in Section 2.2.5 as provided in Section E of Exhibit A.

### **2.2.7 Flow Diversion Ramping.**

Albany will evenly ramp diversion flows during start-up and shut down of the facilities that are the subject of the Conduit Order over the course of one hour for the protection of aquatic resources below the Albany-Santiam canal intake as provided in Section F of Exhibit A.

### **2.2.8 Slough Diversions.**

Albany will continue to provide diversion flows to Marks and Hospital Sloughs and submit an annual report summary to the Governmental Parties as provided in Section G of Exhibit A.

### **2.2.9 Annual Reports.**

Following FERC's issuance of the Orders, by January 31 and by January 31 of each year thereafter, Albany will provide an annual report to the Governmental Parties that summarizes the mitigation and monitoring activities and discusses any deviations from the requirements listed in Exhibit A that occurred during the prior calendar year.

### **2.2.10 Fish and Wildlife Emergencies.**

Albany agrees to perform reasonably diligent inspections of facilities described in Exhibit A to this Agreement. Following FERC's issuance of the Orders, if at any time, unanticipated circumstances or emergency situations arise in which fish or wildlife are being killed, harmed, or endangered by any of the facilities described in Exhibit A to this Agreement, Albany shall immediately after becoming reasonably aware of such circumstances take appropriate action to prevent further loss. Albany shall, within 24 hours of Albany becoming reasonably aware of such circumstances, notify the nearest ODFW office and comply with the measures required by ODFW to prevent additional injury or mortality. Albany shall notify the Governmental Parties as soon as possible, but no later than ten (10) calendar days after each occurrence, and inform the Governmental Parties as to the nature of the occurrence and the measures taken. Subject to the dispute resolution provisions in Section 5 of this Agreement, ODFW, in coordination with the other Governmental Parties, may modify or add to these terms and conditions at any time for the protection of fish and wildlife and their habitats.

2.2.10.A Consistent with the Parties obligations in this subsection 2.2.10, Parties understand and agree that ODFW will submit the following clauses to FERC for its inclusion in the Conduit Order pursuant to Section 30(c) of the Federal Power Act, which all Parties agree are to be interpreted and applied consistent with this subsection 2.2.10.A of this Agreement:

1. If at any time, unanticipated circumstances or emergency situation arise in which fish or wildlife are being killed, harmed, or endangered by any of the project facilities, the exemptee shall, within 24 hours, notify the nearest ODFW office and comply with the measures required by ODFW to prevent additional injury or mortality. The exemptee

shall notify the Commission as soon as possible, but no later than 10 days after each occurrence, and inform the Commission as to the nature of the occurrence and the measures taken.

2. ODFW may modify or add to these terms and conditions at any time for the protection of fish and wildlife and their habitats.
3. The U.S Fish and Wildlife Service may modify or add to these terms and conditions at any time for the protection of fish or wildlife listed as threatened or endangered under the Endangered Species Act, or their designated critical habitat. The U.S. Fish and Wildlife Service may modify or add to these terms and conditions for the protection of any other fish or wildlife and their habitat if the exemptee has withdrawn from the memorandum of agreement titled “For the City of Albany Exemption for Small Conduit Hydroelectric Facility” entered into by exemptee, the U.S. Fish and Wildlife Service, and other parties effective [insert effective date of MOA], and the exemptee’s withdrawal is for reasons other than an unresolved dispute under that agreement regarding an action by the U.S. Fish and Wildlife Service.

### **SECTION 3. COMMITMENTS OF THE PARTIES**

#### **3.1 Actions Consistent with the Agreement.**

Subject to Section 3.2 below, the Parties agree to not take any action inconsistent with this Agreement and to use reasonable efforts to support, in all FERC proceedings in which the Parties participate, regulatory actions consistent with this Agreement. For purposes of this Agreement, the term “Inconsistent” means any action, recommendation, comment, request, or determination that materially, either individually or cumulatively, conflicts with, adds to, omits portions of, or prevents implementation of, the commitments made in this Agreement.

#### **3.2 New Information.**

Subject to the dispute resolution provisions in Section 5 of this Agreement, a Party may take any action including but not limited to filing in any FERC proceeding relating to the facilities that are the subject of the Conduit Order or of this Agreement, a recommendation, comment, request or determination that may be Inconsistent with this Agreement, provided: (a) that any such action, recommendation, comment, request or determination must be based on New Material Information, and (b) prior to taking the action or making the filing, the Party planning to take the action or file any such recommendation, condition, request or determination has provided the other Parties with notice as provided in Section 8.11 of this Agreement, and, if reasonably possible, the opportunity to give notice to initiate and to complete dispute resolution under Section 5 of this Agreement. For purposes of this Agreement, “New Material Information” means information relevant to environmental effects, including without limitation effects on fish species or other water quality effects, which was not known and could not have reasonably been known on the Effective Date of this Agreement.

## **SECTION 4. COORDINATION AND ACCESS**

### **4.1 Cooperation.**

The Parties agree to cooperate in implementing this Agreement. In addition to any periodic reporting obligations included in this Agreement, Albany will provide the Parties with copies of all public filings made to all regulatory agencies regarding implementation of the measures required under this Agreement.

### **4.2 Inspection and Notice.**

Albany will permit the Parties, at any reasonable time, access to, through and across the lands and works for the purpose of inspecting the powerhouse and tailrace as well as facilities described in Exhibit A to this Agreement and records pertaining to the implementation of the Environmental Measures or operation of the facilities addressed in this Agreement. Albany will allow such inspections only after the Party requesting the inspection provides Albany reasonable notice of such inspection and agrees to follow Albany's applicable safety and security procedures when engaged in such inspection.

## **SECTION 5. DISPUTE RESOLUTION**

### **5.1 General.**

The Parties intend that disputes under this Agreement be resolved as expeditiously and informally as possible. Each Party shall cooperate in good faith promptly to schedule, attend and participate in the dispute resolution procedures. The Parties agree to devote such time, resources and attention to the dispute resolution procedures as are needed to attempt to resolve the dispute at the earliest possible time. Each Party shall implement promptly all final agreements reached through the dispute resolution procedures, consistent with the Party's applicable statutory and regulatory responsibilities.

### **5.2 Dispute Resolution Procedures.**

A Party claiming a dispute shall give notice of the dispute within twenty (20) calendar days of the Party's actual knowledge of the dispute, act, event or omission that gives rise to the dispute as provided in Section 8.11 of this Agreement. The Party claiming a dispute shall convene a minimum of one (1) meeting within twenty (20) calendar days after such notice to attempt to resolve the dispute. If within fifteen (15) calendar days after the meeting, a Party notifies the other Parties that such informal meeting failed to resolve the dispute, the Parties may agree to attempt to resolve the dispute using a neutral mediator. The neutral mediator will be selected by the Parties participating in the mediation. The mediator shall mediate the dispute in accordance with the instructions and schedule provided by the Parties. Any of the time periods may be reasonably extended or shortened by agreement of the Parties, or as necessary to conform to the procedure of an agency or court with jurisdiction over the dispute. Unless otherwise agreed among the Parties, each Party shall bear its costs for its own participation in the dispute resolution. In all cases, the Parties shall proceed expeditiously to allow each Party to meet any regulatory, statutory or judicial deadline regarding the subject matter of the dispute.

### **5.3 Compliance with Applicable Law During Dispute.**

Nothing in this Section 5 shall limit or restrict a Party's ability to comply with applicable law during the dispute resolution process. Further, nothing in the Section 5 shall affect or limit the rights reserved by the Governmental Parties in Section 1.4 of this Agreement.

### **5.4 Enforcement After Dispute Resolution.**

If dispute resolution is unsuccessful, any Party may seek specific performance of this Agreement by any other Party in a court of competent jurisdiction, or, to the extent allowed by applicable law, any other remedy. No Party, however, shall be liable in damages for any breach of this Agreement.

## **SECTION 6. WITHDRAWAL FROM AGREEMENT**

### **6.1 Withdrawal of Party from Agreement.**

A Party may withdraw from this Agreement only as expressly provided in this Section 6. A Party may withdraw from this Agreement only if another Party has taken an action materially Inconsistent with this Agreement and the perceived inconsistency was not resolved after pursuing dispute resolution pursuant to Section 5 of this Agreement. A Party intending to withdraw as allowed by this Section 6 must provide sixty (60) days' advance written notice of its intent to withdraw and the reasons therefore. In addition, when a Party ceases to exist and has no successors or assigns, it will be deemed to have withdrawn from this Agreement, but such withdrawal will not give any other Party the right to withdraw.

### **6.2 Continuity After Withdrawal.**

The withdrawal of a Party other than Albany does not terminate this Agreement for the remaining Parties or give any other Party the right to withdraw. However, if one of the Governmental Parties withdraws from this Agreement, any other Party may elect to withdraw without initiating dispute resolution after providing notice within 60 days of the withdrawal of the Governmental Party. The withdrawal of Albany under Section 6 of this Agreement will terminate this Agreement.

## **SECTION 7. TERM AND TERMINATION**

### **7.1 Effective Date.**

This Agreement shall become effective upon execution of this Agreement by all Parties ("Effective Date").

### **7.2 Term; Five-Year Meetings.**

This Agreement will remain in full force and effect from the Effective Date until terminated as provided in this Agreement. Albany will meet with the Parties in each of the succeeding five (5) year-period to discuss implementation of this Agreement.

### **7.3 Termination.**

This Agreement shall terminate by its own terms if FERC denies either of Albany's application for the Surrender Order for the License or application for the Conduit Order for continued operation of the Project as a small conduit hydroelectric facility, or if Albany refuses to accept either the Surrender Order or the Conduit Order. This Agreement also may be terminated by unanimous written agreement among the Parties, by withdrawal of Albany, or by FERC termination of the conduit exemption provided in the Conduit Order.

## **SECTION 8. GENERAL PROVISIONS**

### **8.1 Entire Agreement; Joint Drafting.**

This Agreement, together with Exhibit A attached hereto and made a part hereof, is the entire agreement of the Parties with regard to the facilities and operation thereof that are the subject of this Agreement and the facilities and operation thereof that will be subject of the Conduit Order, if issued by FERC and accepted by Albany. This Agreement is made on the understanding that each term is in consideration and support of every other term, and that each term is a necessary part of the entire Agreement. This Agreement has been jointly drafted by the Parties and shall not be construed against any Party on account that it was the drafter hereof.

### **8.2 Amendments.**

This Agreement may be amended by unanimous written consent of the Parties. Any Party may request all other Parties to commence negotiations for a period of up to ninety (90) calendar days to amend this Agreement in whole or in part, and Parties shall carry out such negotiations consistent with their obligations set forth in Section 5 above.

### **8.3 Signatory Authority.**

Each signatory to this Agreement certifies that he or she is authorized to execute this Agreement and to bind the Party he or she represents legally to the extent allowed under relevant authority, and each Party represents that such Party will be fully bound by the terms hereof upon signature without any further act, approval or authorization by such Party.

### **8.4 No Third-Party Beneficiaries.**

Without limiting the applicability of rights granted to the public pursuant to applicable law, this Agreement does not create any right or interest in the public, or any member of the public, as a third-party beneficiary of this Agreement, and does not authorize any non-Party to maintain a suit at law or in equity pursuant to this Agreement. The duties, obligations and responsibilities of the Parties with respect to third parties will remain as imposed under applicable law.

### **8.5 Successors, Transferees and Assigns.**

This Agreement will apply to and be binding on the Parties and their successors, transferees and assigns to the extent allowed by law. Upon completion of a succession, transfer or assignment and notice provided to all Parties pursuant to Section 8.11 of this Agreement, the initial Party will no

longer be a Party to this Agreement. No change in ownership of the facilities that are the subject of this Agreement will in any way modify or otherwise affect any other Party's interests, rights, responsibilities or commitments under this Agreement. A transferring or assigning Party will provide notice to the other Parties at least sixty (60) calendar days before completing such transfer or assignment.

#### **8.6 Failure to Perform or Delay Due to Force Majeure.**

No Party will be liable to any other Party for breach of this Agreement as a result of a failure to perform or for a delay in performance of any provision of this Agreement if such performance is delayed or prevented by Force Majeure. The term "Force Majeure" means any cause reasonably beyond the performing Party's reasonable control which could not be avoided with the exercise of due care, whether unforeseen, foreseen, foreseeable or unforeseeable, and which occurs without the fault or negligence of the Party whose performance is affected by Force Majeure. Increased cost for performance of any action required by this Agreement will not be deemed to constitute Force Majeure. The Party whose performance is affected by Force Majeure will notify the other Parties in writing within seven (7) calendar days after becoming aware of any event that such performing Party contends constitutes Force Majeure. Such notice will identify the event causing the delay or anticipated delay, estimate the anticipated length of the delay, state the measures taken or to be taken to minimize the delay, and estimate the timetable for implementation of the measures. The performing Party will make reasonable efforts to resume performance of this Agreement promptly and, when able, to resume performance of its commitments and give the other Parties written notice to that effect.

#### **8.7 No Consent to Jurisdiction; Agreement Not to Assert a Party is a Necessary and Indispensable Party.**

By executing this Agreement, no Party is consenting to the jurisdiction of any state, federal or tribal court; provided however that in any dispute involving this Agreement no Party may assert that the failure to join a Party, and the inability to join that Party due to federal, state, or tribal sovereign immunity, as applicable, prevents judicial determination of the rights of a Party or enforcement of this Agreement under a theory that such Party is a necessary and indispensable party.

#### **8.8 No Partnership.**

Nothing in this Agreement will be construed to constitute the Parties as principal and agent, employer and employee, partners, joint venturers, co-owners, or otherwise as participants in a joint undertaking. No Party has the right or authority to assume or to create any obligation or responsibility for or on behalf of another Party except as specifically provided in this Agreement.

#### **8.9 Responsibility for Costs.**

Albany will be solely responsible for payment of costs of actions required of Albany by this Agreement. Albany has no obligation to reimburse or otherwise to pay any other Party for its assistance, participation, oversight or cooperation in any activities pursuant to this Agreement, or relating to the Surrender Order or Conduit Order.

## **8.10 Availability of Funds.**

### **8.10.1 Federal Governmental Parties.**

Implementation of this Agreement for a Federal Governmental Party is subject to the requirements of the Anti-Deficiency Act, 31 USC 1341-1519, and the availability of appropriated funds. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation or expenditure of any money from the U.S. Treasury. The Parties acknowledge that the Federal Governmental Parties are not required under this Agreement to perform any action pursuant to this Agreement which would necessitate expending any federal agency's appropriated funds unless and until an authorized official of each such agency affirmatively acts to commit such expenditures, as evidenced in writing.

### **8.10.2 State Governmental Parties.**

The Parties understand and agree that any obligation of any State Governmental Party to make any payment or expend any funds under this Agreement attributable to commitments performed under this Agreement is contingent upon the State Governmental Parties receiving from the Oregon Legislative Assembly (including but not limited to its Emergency Board) appropriations, limitations or other expenditure authority sufficient to allow the State Governmental Parties, in the exercise of their reasonable administrative discretion, to continue the commitments contemplated by this Agreement.

### **8.10.3 Confederated Tribes of the Grand Ronde Community of Oregon.**

Implementation of this Agreement for the CTGR is subject to the availability of authorized and appropriated funds. Nothing in this Agreement is intended or shall be construed to require the obligation, appropriation or expenditure of any money from the CTGR.

## **8.11 Notice.**

Any notice required by this Agreement shall be given in writing, shall be effective when actually received, and may be given by hand delivery, by e-mail, or by United States mail, first class postage prepaid, addressed to the Parties as follows:

**If to Albany:**  
City Manager  
City of Albany, Oregon  
P.O. Box 490  
Albany, Oregon 97321  
Chris.bailey@cityofalbany.net

**If to USFWS:**

Kessina Lee, State Supervisor  
Oregon Fish and Wildlife Office  
U.S. Fish and Wildlife Service  
2600 SE 98<sup>th</sup> Ave, #100  
Portland, Oregon 97266  
Kessina.Lee@fws.gov  
fwl ofwo@fws.gov

**If to NMFS:**

Dr. Kim Kratz, Assistant Regional Administrator  
Oregon/Washington Coastal Area Office, NOAA Fisheries West Coast Region  
1201 NE Lloyd Blvd, Suite 1100  
Portland, Oregon 97217  
kim.kratz@noaa.gov

**If to ODFW:**

John Zauner, Hydropower Program Lead  
Oregon Department of Fish and Wildlife  
4034 Fairview Industrial Drive SE  
Salem, Oregon 97302  
John.r.zauner@odfw.oregon.gov

John Cox, North Willamette Hydropower Coordinator  
Oregon Department of Fish and Wildlife  
17330 SE Evelyn Street  
Clackamas, Oregon 97015  
Jonathan.a.cox@odfw.oregon.gov

**If to ODEQ:**

Valerie Thompson, 401 Hydropower Program Coordinator  
Oregon Department of Environmental Quality  
700 NE Multnomah St., Ste. 600  
Portland, OR 97232  
Valerie.Thompson@deq.oregon.gov

**If to CTGR:**

Torey Wakeland, Interim Ceded Lands Program Manager  
Ceded Lands Division  
Confederated Tribes of the Grand Ronde Community of Oregon  
9615 Grand Ronde Road  
Grand Ronde, Oregon 97347  
Torey.Wakeland@grandronde.org

**8.12 Section References.**

Any reference to another section of this Agreement includes all subsections of the section referred to.

**8.13 Section Titles for Convenience Only.**

The titles for the sections and paragraphs of this Agreement are used only for convenience of reference and organization, and will not be used to modify, explain or interpret any of the provisions of this Agreement or the intentions of the Parties.

**8.14 Signing in Counterparts.**

This Agreement may be executed in any number of counterparts, and each executed counterpart will have the same force and effect as an original instrument as if all the signatory Parties to all of the counterparts had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures and may be attached to another counterpart of this Agreement identical in form having attached to it one or more signature pages.

**8.15 Waiver.**

Waiver by any Party of the strict performance of any term or covenant of this Agreement, or of any right under this Agreement, is not a continuing waiver, and must be in writing.

**8.16 Severability**

In case any one or more of the provisions contained in this Agreement shall be deemed invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

[END OF TEXT / SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF the Parties have entered into this Agreement as of the Effective Date defined in Section 7.1 above.

**CITY OF ALBANY**



12/7/2023

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Peter Troedsson  
City Manager, City of Albany

Date

IN WITNESS WHEREOF the Parties have entered into this Agreement as of the Effective Date defined in Section 7.1 above.

**OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY**

*Keith Andersen*

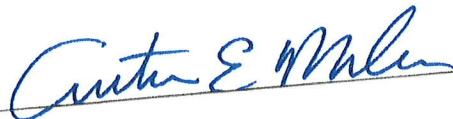
11/29/2023

\_\_\_\_\_  
Keith Andersen, Western Region Administrator  
Oregon Department of Environmental Quality

\_\_\_\_\_  
Date

IN WITNESS WHEREOF the Parties have entered into this Agreement as of the Effective Date defined in Section 7.1 above.

**OREGON DEPARTMENT OF FISH AND WILDLIFE**

  
\_\_\_\_\_

Curt Melcher, Director  
Oregon Department of Fish and Wildlife

11/21/23

Date

IN WITNESS WHEREOF the Parties have entered into this Agreement as of the Effective Date defined in Section 7.1 above.

**NATIONAL MARINE FISHERIES SERVICE**



11/8/2023

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Dr. Kim W. Kratz,  
Assistant Regional Administrator  
Oregon/Washington Coastal Office  
NOAA Fisheries West Coast Region

IN WITNESS WHEREOF the Parties have entered into this Agreement as of the Effective Date defined in Section 7.1 above.

**U.S. FISH AND WILDLIFE SERVICE**

**KESSINA LEE** Digitally signed by KESSINA LEE  
Date: 2024.01.18 14:55:10  
-08'00'

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Kessina Lee, State Supervisor  
Oregon Fish and Wildlife Office  
U.S. Fish & Wildlife Service

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Date



**The Confederated Tribes of the Grand Ronde Community of Oregon**

Cultural Resources Department  
Historic Preservation Office  
9615 Grand Ronde Road  
Grand Ronde, OR 97347-9712

Phone: (503) 879-2226  
Toll Free: 1-800-422-0232  
Fax: (503) 879-2126  
Email: [THPO@grandronde.org](mailto:THPO@grandronde.org)

December 12, 2023

City of Albany  
ATTN: Mark Yeager, Project Manager  
PO Box 490  
Albany, OR 97321

*Submitted via email to:*  
[Mark.Yeager@albanyoregon.gov](mailto:Mark.Yeager@albanyoregon.gov)

RE: City of Albany - FERC License Surrender and Small Conduit Exemption Memorandum of Agreement

Dear Mr. Yeager,

Thank you for contacting the Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde or Tribe) regarding the City of Albany's Federal Energy Regulatory Commission License Surrender and Small Conduit Exemption Memorandum of Agreement (MOA). Grand Ronde appreciates the opportunity to sign the MOA among the City of Albany, US Fish & Wildlife Service, National Marine Fisheries Service, Oregon Department of Fish and Wildlife and the Oregon Department of Environmental Quality.

Grand Ronde has participated in consultation for the applications and has reviewed the MOA. While the Tribe supports and concurs with the environmental measures and stipulations contained in the MOA, we have no enforcement authority or responsibility in the agreement, and have determined that our signature to the MOA is not required.

We request this letter be included in the MOA in lieu of a signature page for the Tribe.

If you have any questions please feel free to contact Cheryl Pouley at (503) 879-1667 or via email at [cheryl.pouley@grandronde.org](mailto:cheryl.pouley@grandronde.org).

*hayu masi* (many thanks),

Torey Wakeland  
Interim Ceded Lands Manager

Cheryl K. Pouley  
Cultural Protection Coordinator

## EXHIBIT A

This Exhibit A describes in detail City of Albany's ("Albany") obligations to implement certain environmental provisions previously established under a Minor Hydropower Production License, Project Number 11509-000, dated October 23, 1998 (85 FERC ¶ 62,046) ("License") even after the FERC grants a surrender of that License, the License is terminated, and the FERC authorizes operation of certain facilities under a small conduit hydroelectric facility exemption ("Conduit Order").

- A. Fish Screen.** Albany will continue to operate and maintain the previously constructed vertical plate juvenile fish screen and bypass facility at the Canal intake in accordance with the attached Article 411 Operational Compliance Monitoring Plan (Attachment 1) which will be used as a guide for future operation and maintenance activities related to the juvenile fish screen and bypass facility. Maintenance will include, at a minimum, routine physical inspection twice per week as well as continuous electronic monitoring of the trash rack, fish screens, screen cleaner, control system components and bypass pipe entrance. Maintenance will also include periodic removal of debris as necessary and all preventative maintenance prescribed by the equipment manufacturer for the screen cleaning mechanism and instrumentation.

To maintain the performance of the fish screens, velocity measurements will be taken on a minimum of 5-year intervals using flows into the canal of approximately 220 cfs. Normal and sweeping velocity measurements will be taken at the ¼ points on each screen panel (nine point measurement) and four inches from the screen face. Point velocity values will be normalized to reflect the total discharge as measured by the U.S. Geological Survey (USGS) canal gage just downstream of the headgates (14187600). In addition, measurements will be taken two feet downstream from the upstream end of the screen (potential area of reverse flow), and two feet from the bypass end of the screens (potential area of excessive velocity). Velocities will also be measured at the center of the bypass entrance, from floor to water surface at 2-inch intervals. Should there be any area along the screens where agency velocity criteria (0.4 fps) are exceeded at the maximum design canal flow (220 cfs), Albany will consult with National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (USFWS), and ODFW, collectively referred to as "fisheries agencies," regarding how to proceed.

The fisheries agencies will be invited to witness the testing of the fish screens. The results of the testing will be documented in a draft report which Albany will forward to the fisheries agencies. The fisheries agencies will have thirty (30) calendar days to review and provide comments on the draft report. Albany will then prepare a final report and will include responses to fishery agencies comments, a description of modifications, if any, to the fish screens that are proposed, and an explanation of how these modifications are expected to result in improved performance.

- B. Right Bank Fishway.** When river flows allow access, the right bank fishway will be physically inspected a minimum of twice per week for debris collection and general operation. As required, the fishway will be removed from service, cleaned and large debris that would impede fish passage will be removed. The cleaning operation will be done following

consultation with fisheries agencies as to timing of the cleaning so as not to interfere with fish passage. The right bank fishway will have its downstream entrance option (high flow or low flow) positioned seasonally following consultation with the fisheries agencies. Albany will follow the attached Article 411 Operational Monitoring Compliance Plan (Attachment 1) which will be used as a guide for all future operation and maintenance activities related to the right bank fishway.

Every five years, the right bank fishway will be hydraulically evaluated at two river flow rates, one between 600 and 1,000 cfs and the second between 7,000 and 8,000 cfs. Forebay and tailwater levels will be verified as will the water surface level in each fishway pool. Flow patterns in each pool will be observed and documented. Point velocity measurements will be made at the center of each orifice. Hydraulic performance of the attraction water system will also be evaluated. This evaluation will include observation of the function of the energy dissipation impact wall and baffles as well as the flow through the diffuser.

The fisheries agencies will be invited to witness the testing of the fishway. The results of the testing will be documented in a draft report which Albany will forward to the fisheries agencies. The fisheries agencies will have thirty (30) calendar days to review and provide comments on the draft report. Albany will then prepare a final report and will include responses to fisheries agencies comments, a description of modifications, if any, to the fishway that are proposed, and an explanation of how these modifications are expected to result in improved performance.

**C. Left Bank Fishway.** When river flows allow, the left bank fish ladder will be physically inspected a minimum of twice per week for debris collection and general operation. As required, the fish ladder will be removed from service, cleaned and large debris that would impede fish passage will be removed. The cleaning operation will be done following consultation with fisheries agencies as to timing of the cleaning so as not to interfere with fish passage. Albany will inspect the fish ladder during summertime low flow conditions and replace any flashboards that have been damaged. Albany will follow the attached Article 411 Operational Compliance Monitoring Plan (Attachment 1) which will be used as a guide for all future operation and maintenance activities related to the fish ladder.

Every five years, the fish ladder will be hydraulically evaluated at two river flow rates, one between 600 and 1,000 cfs and the second between 7,000 and 8,000 cfs. Forebay and tailwater levels will be verified as will the water surface level in each fishway pool. Flow patterns in each pool will be observed and documented. Point velocity measurements will be made at the center of each orifice near the left fishway wall.

The fisheries agencies will be invited to witness the testing of the fish ladder. The results of the testing will be documented in a draft report which Albany will forward to the fisheries agencies. The fisheries agencies will have thirty (30) calendar days to review and provide comments on the draft report. Albany will then prepare a final report and will include responses to fisheries agencies comments, a description of modifications, if any, to the fish ladder that are proposed, and an explanation of how these modifications are expected to result in improved performance.

**D. Flow Limitations.** Albany will cease diversion of water into the Canal for hydropower generation purposes when such diversion would cause the flow in the South Santiam River to fall below 1,100 cubic feet per second as measured at the USGS stream gage (No. 14187500) at the Waterloo station. This minimum flow may be temporarily modified if required by operation emergencies beyond control of Albany, and for short periods upon agreement between Albany and the fisheries agencies.

**E. Flow Monitoring.** Albany will continue to operate and maintain an Albany-installed level sensor housed in the same Waterloo station on the South Santiam River as the level sensor operated by the U.S. Army Corps of Engineers. The U.S. Geological Survey (USGS) maintains the recorder and radio relay system for USGS gage 14187500 at the Waterloo location. The signal from Albany's level sensor at Waterloo is conveyed to the Albany's Diversion Dam Control Building where it is logged and used to control diversions into the Canal as part of the Supervisory Control and Data Acquisition (SCADA) system. The USGS rating curve for Waterloo is used to compute flow as a function of recorded depth. USGS regularly updates the rating curve for this location.

Flows diverted into the Albany-Santiam Canal are continuously monitored and logged into the SCADA system using the USGS-maintained level sensor in the Canal at Headgate Road approximately 766 feet downstream of the Canal head gates (USGS gage No. 14187600). The SCADA system monitors and records data on at least a 15-minute interval basis. Albany will continue to operate and maintain the SCADA system responsible for logging all flow data in the South Santiam River and flow diversions into the Albany-Santiam Canal.

Albany will continue to follow the provisions and monitoring protocols contained within the attached 2011 Article 404 Operational Compliance Monitoring Plan (Attachment 2), and Albany will continue to provide annual reports to fisheries agencies, and in addition, provide such reports to DEQ.

**F. Flow Diversion Ramping.** During start-up and shut down of the generating facilities, Albany shall evenly ramp diversion flows in the Canal for hydroelectric operations over a 1-hour period for protection of aquatic resources in the South Santiam River below the Albany-Santiam Canal intake. Description of the control strategy to adjust flow in the Canal during hydroelectric operations is also contained in the attached 2011 Article 404 Operational Compliance Monitoring Plan (Attachment 2). To control diversions into the Canal and to maintain compliance with the minimum South Santiam River flow requirements, the SCADA system automatically and remotely modulates the individual slide gate positions on the Headgate Control Structure to adjust canal flow and to avoid rapid changes in flow diversions into the Canal. In response to an operator-initiated change in the amount of flow to be diverted into the Canal, the control system makes small, incremental changes in the opening and closing position of the headgates. These gate position adjustments occur approximately every ten minutes, and result in approximately 10-15 cfs flow increase or decrease at a time. After each of these intervals, the SCADA system logic checks the actual flow into the Canal using information from USGS gage 14187600 and compares it to the operator set point. Once the measured flow is within 5 cfs of the set point, no further adjustments will be made. Using the SCADA control logic, a diversion change of 125 cfs would require approximately 1.5 to 2 hours, easily meeting the 1-hour ramping requirement.

The ramping rate may be temporarily modified if required by operating emergencies beyond Albany's control or for short periods upon mutual agreement with the fisheries agencies.

**G. Slough Diversions.** Albany will provide and maintain flow diversions into Marks and Hospital Sloughs (Sloughs) as part of year-round operations. Albany proposes to continue its monitoring and documentation program for the two slough diversions as follows:

1. Inspections at least one time per week in wet season and two times per week in the low flow season at each diversion structure, Albany Gates, and CZ Gates
2. Routine inspection includes documenting flows at each diversion and at Albany Gates
3. Routine documentation includes noting SCADA levels recorded at Albany Gates on days structures are physically inspected
4. Documented diversion flows into the Sloughs are entered into a tracking database.

An annual summary report will be prepared and provided to the fisheries agencies by March 15 of the following year. The report will include tables of monthly minimum, average, and maximum diversion flows at Marks and Hospital Sloughs. The annual report will also include a brief narrative of maintenance activities or operational problems that may have occurred during the prior year.

**H. Slough Flows.** Albany will comply with the following:

1. A year-round target flow range of 4 – 12 cfs for Marks Slough shall be the flow range which demonstrates compliance.
2. A year-round target flow range of 4-12 cfs for Hospital Slough shall be the flow range which demonstrates compliance for any given month. However, reasonable efforts to achieve a seasonal variation of average monthly flows as listed below will be made:
  - a. January – March: 10 cfs
  - b. April: 6 cfs
  - c. May – October: 4 cfs minimum
  - d. November:  $\geq$  6 cfs
  - e. December: 10 cfs
3. A “flushing” flow of 120 cfs will be provided in Marks Slough.
4. A “flushing” flow of 25 cfs to up to 30 cfs will be provided in Hospital Slough. This flow may increase in the future if sufficient changes are made within the slough and to the diversion structure to safely allow a higher flushing flow. Sufficient changes may include removal or replacement of in-stream infrastructure or blockages that currently result in flooding at flows above 30 cfs (e.g., undersized culverts, etc.), and any changes to the diversion structure required to safely divert higher flows into the slough. If the risk of flooding is reduced or eliminated and Albany staff determines the diversion structure can safely convey higher flows, then the City will work with the fisheries agencies towards meeting the goal of substantially increasing flushing flows in Hospital Slough.
5. The duration of these flows will be for a minimum of 12 hours, and preferably for at least 24 hours.

6. Three attempts to provide flushing flows will be made every other calendar year between October and June. If the three attempts are unsuccessful in a given year, additional attempts will be made the following year.
7. Pre- and post- flushing flow photos will be taken in any year that a flushing flow is anticipated at photo points 1-3 and 5-7 already used by Albany in the project assessment.
8. Photos will include both upstream and downstream views from each photo point that was established during the pilot study.
9. Email notification including the photos will be sent to the fisheries agencies once the flow is completed. If Albany is unable to conduct flushing flows in a select year, an email will be sent to fisheries agencies providing an explanation and plans for achieving the flow the following year.
10. If the opportunity or potential to remove culverts or improve flow or slough habitat conditions arises or becomes feasible, Albany will work with the fisheries agencies towards meeting this goal.
11. If flushing flows are not achieved in either Marks or Hospital Sloughs over a three-year period, Albany will arrange a meeting to discuss the issues that are preventing the flows from occurring and work with the fisheries agencies to resolve any problems as quickly as possible.
12. If fisheries agencies determine that flushing flows are not resulting in the desired creation of habitat for native fish species, then they can initiate discussions with the City of Albany regarding alternative actions and solutions.
13. Albany will work collaboratively with the fisheries agencies to make diversion flow operational changes in an effort to achieve flushing flow goals. However, nothing in this agreement obligates the City to make any capital investments to either modify the slough channels (e.g., remove flow restrictions) or to make modifications to the slough diversion structures to achieve the fishery agency flushing flow goals.