

ATTACHMENT B

13. Remarks:

Avista Corporation (“Avista”) (formerly known as The Washington Water Power Company) owns and operates the Post Falls Hydroelectric Development (HED) located at Post Falls, Idaho. The location of the three dams and powerhouse at the Post Falls HED is shown in **Exhibits A-1 and A-2** (aerial photos of the site) and in **Exhibit A-3** (a copy of sheet 1 of 77 of the Exhibit G drawing for the Post Falls HED, project No. 2545 as licensed by the Federal Energy Commission (“FERC”) under the Federal Power Act.)

This is a **Notice of Claim to a Water Right** by Avista to use 1150 cfs at its Post Falls HED in the operation of its sixth (6th) hydraulic turbine.¹ This amount of water, under head, is used to turn the sixth hydraulic turbine which drives an electric generator. Through this process, electricity is produced and then distributed to users. This **Notice of Claim to a Water Right** by Avista to use 1150 cfs to generate electricity through its sixth (6th) turbine is the subject matter of **Water Right License No. 95-08003** with a priority date of March 17, 1980 (See **Exhibit B-1** attached hereto and incorporated by reference herein.)²

The date of priority for this **Notice of Claim to a Water Right**, as it was for **Water Right License No. 95-08003**; is March 17, 1980 (the date the water was applied for the beneficial use of electrical power generation), and the source of water is the Spokane River (tributary to the Columbia River):

The basis for Avista's Notice of Claim to a Water Right, filed herein, to use 1150 cfs at its Post Falls HED to generate electricity to an installed sixth turbine, includes, without limitation, the following:

1. Starting in 1907, Avista generated electricity through five (5) turbines at its Post Falls HED using 4250 cfs. On or around March 17, 1980, Avista installed a sixth (6th) turbine and used an additional 1150 cfs to generate electricity through the sixth (6th) turbine. Accordingly, Avista’s water right claim is established by the diversion and application of water to beneficial use (the generation of electricity). A claim to such a right, with a priority date of March 17, 1980, was previously submitted to the State of Idaho, Department of Water Resources. (See, **Exhibit B-1**) Avista has used this water right since 1980;

¹ Avista’s storage of water for electrical power production at the Post Falls HED is the subject matter of **Water Right Claim No. 95-9115 (Exhibit B-2)** and **Water Right Claim No. 95-9119 (Exhibit B-3)**. Both Exhibits are attached hereto and incorporated by reference herein.

² Starting in 1907, Avista began using 4250 cfs at its Post Falls HED to generate electricity through the use of five (5) turbines. This usage is the subject matter of **Water Right Claim No. 95-4518** attached as **Exhibit B-4** and incorporated by reference herein. On or around March 17, 1980, Avista installed a sixth (6th) turbine at its Post Falls HED. **Water Right License No. 95-08003** addresses the usage of an additional 1150 cfs to operate the sixth (6th) turbine.

2. Avista's water right claim is also predicated upon a grant by the State of Idaho through a settlement agreement and Judgment entered in Templin's Resort and Conference Center, et al. v. Louisiana-Pacific Corporation, et al., Cause No. 66937, in the First Judicial District of the State of Idaho in and for the County of Kootenai. (See, **Exhibits B-5 and B-6**) The Settlement Agreement (**Exhibit B-5**), which was incorporated into a Judgment entered by Judge Magnuson on March 10, 1989, states in pertinent part:

8. The State of Idaho, through the Board of Land Commissioners pursuant to Title 1, Chapter 38 of the Idaho Code and the rules and regulations adopted pursuant thereto, grants and confirms to The Washington Water Power Company [Avista], a corporation organized under the laws of the Territory and State of Washington which is qualified to do and is doing business in the State of Idaho, an easement for the perpetual right to occupy and use the following described parcel:

that part of the Spokane River lying below the natural or ordinary high water mark under natural conditions lying within the area described in the Post Patent lying west of the west boundary of the east half (E1/2) of the east half (E1/2) of the southwest quarter (SW1/4) of Section 3, Township 50 North, Range 5 West B.M. in Kootenai County, Idaho, (hereinafter called the "Line of Navigation") and east of the west boundary of the area described in the Post Patent, together with water rights and other rights appurtenant thereto

for the purpose of constructing, reconstructing, operating and maintaining the Post Falls Development (including, without limit, dams, powerhouse, turbines and generators, all electrical facilities, reservoir on the Spokane River and waters tributary thereto, which reservoir results from holding the elevation of Lake Coeur d'Alene at and below 2,128 feet above mean sea level as measured by the Lake Coeur d'Alene USGS water gage, and all other equipment and facilities used in connection with the Post Falls Development) in accordance with the laws of the United States and the State of Idaho. Said easement shall remain in effects so long as WWP [Avista] has a valid federal

license or right to operate the Post Falls Development. WWP [Avista] may, as a condition of this easement, regulate or restrict public access to the bed of the Spokane River in the area described in the Post Patent lying west of the Line of Navigation as may be needed to protect the public health, safety and welfare. This easement does not limit or otherwise effect WWP's [Avista's] construction, reconstruction, operation or maintenance of its Post Falls Development.

9. The State of Idaho has not and shall not impose any charge or fee with respect to WWP's [Avista's] construction, reconstruction, operation or maintenance of WWP's [Avista's] Post Falls Development as described in this Agreement and as described in the application to the Federal Energy Regulatory Commission (FERC) to amend the license for Project No. 2545 to include the Post Falls Development and as described in the FERC order for Project No. 2545 (See 16 FERC ¶62095). The application to amend the license included exhibits which were submitted to and/or approved by the FERC.

10. The State of Idaho acknowledges that WWP's [Avista's] construction and operation of its Post Falls Development has improved the navigability and the public's access to, and usage of, the Spokane River, Coeur d'Alene Lake, the Coeur d'Alene River, the St. Joe River, and the St. Maries River and other connected and tributary waters. The State of Idaho acknowledges that this settlement is clearly in the public interest and is consistent with the Public Trust Doctrine as set forth in Kootenai Environment Alliance v. Panhandle Yacht Club, 105 Idaho 622 (1983) and other applicable law.

11. The Land Board acknowledges and shall not object to WWP's [Avista's] right to construct, reconstruct, operate, and maintain the Post Falls Development and all of the structures and facilities associated therewith, **including the right to control the water surface elevation of the Spokane River upstream from the Post Falls Development and to regulate, maintain and control the water surface elevation of Coeur d'Alene Lake at and below 2128 feet above mean sea level as measured by the United States Geological Survey water gage at Coeur d'Alene Lake, which is referenced to the U.S.G.S., B.M., at the SE corner of the former Merriam**

Building having an original elevation of 2157.404 (datum shown minus 3.05 feet equals NGS). Such regulation and control of the water surface elevation on Lake Coeur d'Alene affects the water surface elevation of connected and tributary waters, including the Coeur d'Alene River, the St. Joe River, the St. Maries River and other connected and tributary waters. The State of Idaho retains such authority as it may have to review and regulate WWP's [Avista's] activities. [emphasis added]

12. WWP [Avista] shall continue to have the right to construct those facilities within the area described by the Post Patent lying between the west boundary of the Post Patent and the west boundary of the southeast quarter of Section 3, Township 50 North, Range 5 West B.M., as may be necessary or appropriate in connection with the operation of the Post Falls Development considering such factors as public safety, prudent utility operations, and the protection of WWP's [Avista's] property. Such facilities may include, without limitation, log booms and apparatus for the collection and removal of floating debris, safety lines to prevent members of the public and property from going through the spillgates located at the dams, and other similar facilities. The State of Idaho retains such authority as it may have to review and regulate WWP' [Avista's] activities.

3. Avista reserves the right to supplement the basis for its **Notice of Claim to a Water Right** filed herein.