

**COEUR D'ALENE TRIBE
DEPARTMENT OF LAKE MANAGEMENT**

WATER STORAGE/USE PERMIT

WATER PERMIT NO. 2008-01

THIS IS TO CERTIFY THAT:

Avista Corporation
P.O. Box 3727
Spokane, WA 99220

FILED AN APPLICATION FOR WATER STORAGE/USE PERMIT DATED DECEMBER 16, 2008, which is attached to and made part hereof as Appendix 1, and on that date paid to the Coeur d'Alene Tribe ("Tribe") the \$500.00 filing and processing fee required by Tribal law.

This application requests permission from the Tribe to store water upstream of the Avista Corporation's ("Avista") hydroelectric dams located on the Spokane River at Post Falls, Idaho, upon the submerged lands of Coeur d'Alene Lake, Hepton Lake, the St. Joe River, and the Coeur d'Alene River, as well as affected tributaries ("Submerged Lands"); located within the current boundaries of the Coeur d'Alene Indian Reservation ("Reservation") for use in the generation of hydroelectric power for the term of any new license issued pursuant to Part I of the Federal Power Act ("FPA"), 16 U.S.C. §§ 791 *et seq.*, by the Federal Energy Regulatory Commission ("FERC") to Avista in pending relicensing proceedings involving Avista's use, occupancy, and enjoyment for water storage and other purposes of the Submerged Lands within the current boundaries of the Reservation and any subsequent annual licenses.

Upon consideration of the application, A WATER STORAGE/USE PERMIT ("PERMIT") IS ISSUED AS FOLLOWS:

BENEFICIAL USE: Storage of water for use in hydropower generation at the Post Falls HED located on the Spokane River in Idaho and at each of Avista's four downstream HEDs (Upper Falls, Monroe Street, Nine Mile, and Long Lake) located on the Spokane River in Washington. These five HEDs are now licensed by FERC as the Spokane River Project, FERC No. 2545.

ANNUAL PERIOD OF USE AND RATE OF DIVERSION OR STORAGE:

Consistent with Avista's Current Operations between 1/01 and 12/31, Storage Up to 2,128 Feet Above Mean Sea Level ("MSL"), Drawdown commencing between the Tuesday after Labor Day and 9/15 of each year.

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The above provisions are subject to, and Avista shall be entitled to store water consistent with, the lawful requirements of the new license referenced above and any lawful requirements imposed by FERC by order or otherwise in relation to the operation of the hydroelectric dams under such new license; *provided, however*, that the provisions of this Permit do not authorize any material alteration in Avista's Current Operations or Storage on the Submerged Lands in excess of 2,128 Feet above MSL ordered or required by FERC if such material alteration in Current Operations or excess Storage results from requests made to FERC by Avista, and nothing in this Permit is intended or shall be construed to impair or limit in any way the right of the Tribe to challenge the legality of any requirement imposed by FERC that increases the Storage authorized by this Permit in excess of 2,128 Feet above MSL, or that materially alters Avista's Current Operations with respect to such stored water, or that authorizes the use of such stored water for purposes other than hydropower generation, or in a manner or to the extent inconsistent with this Permit or rights reserved or held by the Tribe pursuant to federal and Tribal law. The description of current and proposed operations set forth in Avista's Application for Tribal Water Storage/Use Permit submitted on December 16, 2008, is offered as and hereby deemed to be a reference point only and shall not be construed or interpreted to establish or determine any facts in any proceeding or forum regarding Avista's current or proposed operations of the five hydroelectric developments (Post Falls, Upper Falls, Monroe Street, Nine Mile, and Long Lake) now comprising the Spokane River Project, FERC No. 2545.

LOCATION OF POINT(S) OF DIVERSION/STORAGE: Submerged Lands within the Reservation

PLACE OF USE: Submerged Lands within the Reservation

PRIORITY: August 1907 for storage up to 2,126.5 feet above MSL
June 1941 for storage up to 2,128 feet above MSL

CONDITIONS OF APPROVAL AND REMARKS

1. The Tribe and Avista are entering into a Master Settlement Agreement, contemporaneously with the Tribe's issuance of this Permit, comprehensively resolving a number of issues, including the storage of water on Submerged Lands within the Reservation. This Permit is issued pursuant to the provisions of Section 44-25.01 of the Coeur d'Alene Tribal Code and the Tribe's retained sovereignty, as well as its reserved rights of dominion and control, over the Submerged Lands and Waters covered by this Permit, including its authority to regulate the use of such lands and waters, as well as activities and resources thereon, to protect the public health, safety or welfare. This Permit shall be construed in a manner that is consistent with that Master Settlement Agreement and with applicable federal and Tribal law.
2. This water use shall be appurtenant to the described place of use (storage).

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3. This Permit is subordinate and junior to the Tribe's proprietary right of exclusive use and occupancy of all surface and groundwaters (collectively "Waters") within the Reservation with a priority date of time immemorial.

4. The right to the use of water under this Permit shall be non-consumptive.

5. As of 2005, the Tribe estimates that Avista's storage of water above the dams at its Post Falls HED at 2,128 feet above MSL creates a total storage capacity upon submerged lands within the Reservation and upon submerged lands of Coeur d'Alene Lake outside the Reservation ("Total Submerged Lands") of approximately 284,471 acre feet of water. As of 2006, Avista estimates that its storage of water above its Post Falls HED at 2,128 feet above MSL creates a total storage capacity upon such Total Submerged Lands of approximately 266,692 acre feet of water. Pursuant to the Tribe's retained sovereignty over submerged lands and waters within the Reservation and consistent with Section 4 of Avista's Application for this Water Storage/Use Permit, dated December 16, 2008: (a) Avista and the Tribe shall work cooperatively during the term of this Permit to apply best scientific approaches mutually agreed upon by Avista and the Tribe to make reasonable calculations of the total volume of water stored above Avista's Post Falls dams at 2,126.5 and 2,128 feet above MSL, respectively, as well as the total volume of water stored on submerged lands within the current Reservation boundaries at those elevations; (b) Avista and the Tribe shall each pay their respective costs of these cooperative efforts; (c) pending further cooperative measurement efforts, Avista and the Tribe shall use the mean between their respective existing estimates, or 275,581.5 acre feet, as the best available measurement of storage volume above Avista's Post Falls dams upon the Total Submerged Lands at 2,128 feet above MSL; and (d) these cooperative efforts shall include the preparation of a map or maps clearly identifying, by section, township, and range, the location of water being stored on submerged lands within the Reservation.

6. This Permit is issued for the term of any new FPA license issued by FERC to Avista in pending relicensing proceedings involving Avista's use, occupancy, and enjoyment for water storage and other purpose of the Submerged Lands within the current boundaries of the Reservation and any subsequent annual licenses.

7. Upon issuance of this Permit, Avista is deemed to be in full compliance with Tribal Code Section 44-25.01. The payment of a processing or filing fee in the amount of \$500.00 at the time of Avista's filing of the Application for this Permit shall satisfy any and all payment obligations by Avista over the term of the Permit.

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8. The Tribe expressly reserves its rights of dominion and control over the Submerged Lands and Waters covered by this Permit, including its sovereign authority to regulate the use of such lands and waters, as well as activities and resources thereon, to protect the public health, safety or welfare.

Nothing in this Permit is intended, or shall be interpreted, to limit or impair in any way the Tribe's sovereign power or authority over Reservation Submerged Lands or Waters, including the Tribe's legislative, regulatory, and adjudicative power and authority over such lands and waters. All of the Tribe's property and sovereign interests therein of any kind, including its rights to use and regulate such lands and waters in any manner, are retained subject to the nonexclusive use of such lands and waters by Avista for water storage for hydropower purposes pursuant to this Permit.

9. Avista will be deemed to be in compliance with this Permit if, during the term of this Permit, Avista's storage of water is consistent with its current operations, subject to the requirements of any new license referenced above and any requirements imposed by FERC by order or otherwise in relation to the operation of the hydroelectric dams under any new license, as limited by the proviso set forth in the introductory portion of this Permit entitled "ANNUAL PERIOD OF USE AND RATE OF DIVERSION OR STORAGE."

10. If a dispute arises concerning this Permit, Avista and the Tribe agree to exhaust Tribal judicial and administrative remedies, if available and adequate, consistent with Section H.2d of the Master Settlement Agreement between Avista and the Tribe before seeking relief in the United States District Court for the District of Idaho.

This Permit is issued pursuant to the provisions of Section 44-25.01 of the Coeur d'Alene Tribal Code. Witness the seal and signature of the Director, affixed at the Coeur d'Alene Indian Reservation, this 16th day of December, 2008.


Phillip Cerna, Lake Manager
Coeur d'Alene Tribe
Department of Lake Management