

PPL Montana, 45 Basin Creek Road, Butte, Montana, 59701



PPL MONTANA, LLC

PPLM-2188-3098

Kimberly D. Bose  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

November 11, 2013

RE: PPL Montana files a Renewed Seven Year (2014 through 2020)  
Thompson Falls Project Fish Passage MOU per Condition TC2

Dear Secretary Bose:

PPL Montana is required to implement Condition TC2 (Thompson Falls Project MOU with downstream fish passage funding), included in both the November 4, 2008 U.S. Fish and Wildlife Service Biological Opinion and in the February 12, 2009 Commission Order Approving Construction and Operation of Fish Passage Facilities at the Thompson Falls project. To comply with Condition TC2, PPL Montana herein provides a Renewed Seven Year (2014 through 2020) Fish Passage MOU with annual funding for downstream fish (bull trout) passage at the Thompson Falls Project. Signatures of approval for this Renewed MOU from U.S. Fish and Wildlife Service, Montana Fish, Wildlife and Parks, Confederated Salish and Kootenai Tribes and PPL Montana, appear on page 16 of the attached MOU.

Sincerely,

Jon Jourdonnais  
Manager Hydro Regulatory and Environmental Compliance

Cc: Jim Darling, MFWP  
Bruce Rich, MFWP  
Tim Bodurtha, USFWS  
Wade Fredenburg, USFWS  
Craig Barfoot, CSKT  
Les Everts, CSKT  
Brent Mabbott, PPLM  
Andy Welch, PPLM  
Dave Kinnard, PPLM

# **MEMORANDUM OF UNDERSTANDING**

## **Thompson Falls Hydroelectric Project**

### **PPL Montana**

Facilitation and Funding of Commission Order Approving Construction and Operation of  
Fish Passage Facilities, based on the Consultation Process, Fish Passage and  
Minimization Measures in USFWS Biological Opinion for Threatened Bull Trout

September 20, 2013

## CONTENTS

<u>Section</u>	<u>Page</u>
Purpose	4
Definitions	5
Committees	6
Adaptive Management Funding Account	7
PPL Montana Operations and Obligations	8
Authority	10
TAC Operations	11
PPL Montana Responsibility	11
Meetings and Quorum	11
TAC Decision-making	11
General Provisions	13
Term of MOU	14
Formal Signatures Executing MOU	16
Exhibits	
A. Initial members of PPL Montana Steering Committee and Thompson Falls Interagency TAC	17
B. PPL Montana Adaptive Management Funding Account	18
C. Conduct of TAC meetings	19

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made and entered into effective January 15, 2008, by and between PPL MONTANA, LLC, a Delaware limited liability company (“PPL Montana”), the UNITED STATES FISH AND WILDLIFE SERVICE (“USFWS”), MONTANA FISH, WILDLIFE AND PARKS (“MFWP”), and THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD NATION (CSKT), the later three organizations being collectively referred to herein as “TAC Agencies”.

### WITNESSETH:

WHEREAS, PPL Montana consulted with the USFWS, MFWP, CSKT, Montana Department of Environmental Quality (MDEQ), and the Federal Energy Regulatory Commission (FERC) in the development of a Biological Evaluation (BE) filed with FERC on April 4, 2008, assessing potential impacts to bull trout, which are federally listed as “threatened” under the Endangered Species Act (ESA), as a result of operations and proposed modifications at the Thompson Falls Hydroelectric Project; and

WHEREAS, the FERC issued a Biological Assessment (BA) to the USFWS on May 1, 2008 based in part on PPL Montana’s BE assessing potential impacts to bull trout as a result of operations and proposed modifications at the Thompson Falls Hydroelectric Project; and

WHEREAS, based on FERC’s BA, the USFWS issued an October 29, 2009 Biological Opinion (BO) to FERC and PPL Montana, its non-Federal designated representative, containing reasonable and prudent measures and associated terms and conditions to minimize impacts to the federally listed bull trout at the Thompson Falls Project; and

WHEREAS, the FERC will, at its discretion, require PPL Montana to implement minimization measures for bull trout at the Thompson Falls Project per its February 12,

2009 Order Approving Construction and Operation of Fish Passage Facilities, consistent with the reasonable and prudent measures and associated terms and conditions in the USFWS BO; and

WHEREAS, the parties hereto acknowledge that the Thompson Falls License may be revised on rehearing and may be further revised from time to time over the term of the MOU, thus references herein to the "License" shall refer to the then-effective Thompson Falls License; and

WHEREAS, the License provides that PPL Montana has responsibilities for hydro operations and certain other natural and cultural resources in relation to the License; and

WHEREAS, PPL Montana, as licensee for Thompson Falls is willing to accept the obligations imposed by the License and understands that implementation of bull trout minimization measures contained in the License shall occur in collaboration with the USFWS, MFWP, CSKT, and other agencies responsible for resource management; and

WHEREAS, minimization measures for bull trout in the License were developed in consultation with PPL Montana, FERC, USFWS, MFWP, CSKT, and other interests to address minimization measures for bull trout, however unforeseen circumstances may arise that necessitate change; and

WHEREAS, this MOU generally addresses the implementation of bull trout minimization measures for the duration of the term of the existing FERC License No.1869 for the Thompson Falls Project, together with any extension thereof prior to the issuance of a new license; and

WHEREAS, the parties to this MOU agree to seek cooperation leading to more efficient and effective resource management than could be achieved individually; and

WHEREAS, having voluntarily agreed to enter into this MOU, the parties hereby acknowledge that they do not intend this MOU to create contractual obligations and

further acknowledge that this MOU shall not be enforceable by or before any federal or state agency, or any court; and

WHEREAS, a previous five year version of this Memorandum of Understanding (MOU) was entered into effective January 15, 2008 through December 31, 2013 and was successfully implemented by and between PPL Montana, USFWS, MFWP and CSKT; and

NOW, THEREFORE, the parties agree as follows:

**I. Purpose**

A. The purpose of this MOU is to establish the terms and conditions for collaboration between PPL Montana and TAC Agencies in PPL Montana's implementation of minimization measures for bull trout as specified in the Thompson Falls License or other resource conservation measures related thereto taken voluntarily by PPL Montana.

B. This MOU provides for the continuing operation of a TAC made up of representatives of PPL Montana and TAC Agencies. This TAC shall function as the means for collaboration on the expenditure of mitigation funds and the implementation of bull trout minimization measures as specified in the License or other resource conservation measures related thereto taken voluntarily by PPL Montana.

C. This MOU provides for the allocation of annual TAC funds provided by PPL Montana. PPL Montana will bear ultimate responsibility for ensuring that bull trout minimization measures or other resource conservation measures taken voluntarily by PPL Montana are implemented in a manner consistent with requirements of the License.

D. To the extent consistent with the License, this MOU sets out provisions for adaptive implementation of minimization measures or voluntary minimization measures that may be appropriate due to advancement in technology, project experience that

dictates alternative methods implementation, and adequate response to unforeseen or changed circumstances or discoveries during the term of the MOU.

E This MOU provides assurances to interested agencies, stakeholders, and various publics that minimization measures to reduce impacts to bull trout at the Thompson Falls Project will be faithfully implemented in a timely fashion by PPL Montana and that operations and maintenance of the Thompson Falls Project shall be in compliance with the Endangered Species Act.

## II. Definitions

A. Resource Management - As used herein refers to management of required bull trout minimization measures in the Thompson Falls FERC license.

B. Adaptive Management (AM) – Is embodied by this MOU through prior consultation with the USFWS, MFWP, CSKT, and other agencies in preparation of the Thompson Falls Project BE, BA, BO and the Application to FERC to amend the project license. Adaptive management is natural resource management where decisions are made as part of an ongoing science-based process. Results are used to modify future management methods and policy. As improved conservation technologies and science become available or new management priorities are collaboratively established, minimization or conservation funds may be redirected to accommodate the changing technology and needs of the resource and society within the requirements of the license. The adaptive management process emphasizes collaboration but still places ultimate responsibility upon PPL Montana to comply with the license and other applicable laws. PPL Montana believes that this management approach is entirely consistent with the spirit of the Federal Power Act and the interests of the people of Montana as expressed directly through TAC agencies.

C. Minimization Measures – These are the reasonable and prudent measures that serve to minimize take and that are identified in the USFWS biological opinion under the Incidental Take Statement (ITS). The associated terms and conditions in the ITS set

out the specific methods by which the reasonable and prudent measures are to be accomplished.

D. Thompson Falls Hydroelectric Project - This includes all of the dam, spillway and all associated structures located on the Clark Fork River including the reservoir impoundment upstream of the dam and spillway and any associated structures and/or facilities needed to maintain and operate the hydroelectric facilities within the FERC project boundary.

### **III. Committees**

A. Technical Advisory Committee (TAC) – A committee made up of willing representatives from PPL Montana, USFWS, U.S. Forest Service (USFS), MDFWP, MDEQ, CSKT and other public or private interests whose purpose is to address potential impacts to bull trout from the operation and maintenance at the Thompson Falls Project on the Clark Fork River in western Montana. PPL Montana, USFWS, CSKT, and MFWP are formal voting members of the TAC whereas other interests are non-voting and advisory.

1. Representatives of TAC Agencies and their replacements from time to time shall be determined by each participating entity. Initial members of the TAC are listed in Exhibit "A".

2. PPL Montana will provide the TAC annual updates and annual work plans for review and approval. The TAC members will have a minimum of 30 business days, unless otherwise agreed to time period for review, to provide comments for all review materials provided by PPL Montana, including annual reports and work plans. PPL Montana will provide materials for review in advance of the 30 day notice to the extent practicable.

3. With regard to the TAC, federal, state, and CSKT government agencies do not waive or diminish in any way, the exercise of their authorities and rights



with respect to this or other proceedings. The USFWS expressly reserves authority under the ESA and Federal Power Act (FPA) with regard to procedures, policy, and regulations related to addressing impacts to bull trout from project operations and maintenance at the Thompson Falls Project.

B. PPL Montana Steering Committee. The PPL Montana Steering Committee for the Thompson Falls Project will consist of representatives of PPL Montana listed in Exhibit "A". At its discretion, PPL Montana may replace its representatives from time to time. This PPL Montana Steering Committee will provide general policy and regulatory guidance to the PPL Montana representatives on the Thompson Falls TAC but will otherwise not directly participate in TAC business or the TAC decision making process.

#### **IV. Adaptive Management Funding Account (AMFA)**

The TAC will apply the concept of adaptive management where applicable, when determining bull trout minimization priorities and schedules for funds to be paid out of the AMFA. PPL Montana will provide an account for funding downstream passage minimization measures approved by the TAC that meet the requirements of the BO.

All funding accounts will be internally managed by PPL Montana. However, no AMFA funds will be spent without prior approval from the TAC.

Annual payment. For the purpose of this MOU, PPL Montana will provide \$100,000 annually for seven calendar years beginning January 1, 2014 and provide a starting amount of \$150,000 in a TAC Reserve Account. PPL Montana will allow a maximum of \$250,000 to accrue (from unspent or transferred annual TAC funds) in the TAC Reserve Account for use by the TAC during this same seven year time period for implementation of downstream passage minimization measures in addition to License required studies, monitoring activities, reports, upstream fish passage minimization measures, gas abatement monitoring, predator control measures, and other means of reducing impacts on bull trout caused by operation of the Thompson Falls as described in Exhibit "B". Increases or decreases in MOU funding, provided by PPL Montana, to comply with

FERC-mandated minimization measures in the License can be addressed within provisions of this MOU. Per this MOU, PPL Montana may increase or decrease funds in any single year to support implementation of TAC-approved minimization measures for bull trout and to meet the requirements of the BO. Factors such as monitoring or study results, changing technology, or other needs of the resource may necessitate changes (increases or decreases) in funding amounts and schedules over time. This MOU is not intended to relieve PPL Montana of the obligation to make such funding changes. PPL Montana further anticipates that this MOU may be renewed or revised during the current FERC Project License term or extensions thereof. MOU renewal, if any, after December 31, 2020, with appropriate minimization funding level commitments will be based on PPL Montana's remaining compliance requirements within the License.

Bull trout minimization measures, including upstream and downstream fish passage structures, gas abatement measures, habitat restoration, or other minimization measures required by the FERC will be fully funded by PPL Montana if the cost of such measures is more or less than specified in this MOU.

## **V. PPL Montana Operations/Obligations**

V.1. PPL Montana Steering Committee Funds. PPL Montana estimates that a total of one-half employee full-time equivalent (0.5 FTE) will be required to manage PPL Montana responsibilities on the TAC, coordinate implementation of bull trout minimization measures, and to facilitate consultation between the FERC, state and federal agencies and the CSKT. PPL Montana will be responsible for funding the appropriate level of PPL Montana or outside consultants required staff required for adequate and timely project management of implementation, monitoring, and reporting on the effectiveness of bull trout minimization measures. PPL Montana will prepare and implement an internal budget appropriate for Steering Committee activities. The TAC will be responsible for advising PPL Montana should PPL Montana not fulfill its responsibilities in this regard.

V.2 PPL Montana administrative and other support. PPL Montana will provide reasonable administrative, clerical and support facilities for the TAC. PPL Montana will be responsible for preparing proposed agendas, and for the management and preservation of licensing data and studies including the provision of reasonable public access to such data and studies. PPL Montana shall provide assistance to the TAC for the purpose of identifying collaborative funding opportunities, application for grants, and managing any land transactions related to conservation activities such as conservation easement or fee title acquisition where needed and practicable.

V.3 PPL Montana will fully and faithfully perform all obligations to conserve, protect, and reduce impacts to bull trout per the FERC License Order and requirements in the USFWS BO.

V.4 PPL Montana shall promptly notify the USFWS if for any reason PPL Montana is unlikely or unable to fulfill any obligation per the FERC License order or per the USFWS BO.

V.5 PPL Montana will use its best efforts to help resolve disputes that may occur among TAC members, agency officials, local officials, or private parties with respect to the implementation of minimization measures per the FERC License agreement using dispute resolution process described herein.

V.6 PPL Montana will implement timely monitoring and reporting requirements per the FERC License Order, USFWS BO, and any other TAC approved agreement related to bull trout minimization measures.

D. Minimization Measures – minimization measures referred to herein are a specific reference to those bull trout minimization measures required by the License.

## **VI. Authority**

### **A. Authority to enter into MOU.**

1. PPL Montana is authorized to enter this MOU by PPL Montana, LLC, general corporate authority.
2. MFWP is authorized to enter into this MOU pursuant to Montana Code Annotated Sections 23-1-102, 23-1-107, and 87-1-201.
3. USFWS is authorized to enter into this MOU pursuant to the Fish and Wildlife Service Coordination Act (16 U.S.C. 661 et. seq.)
4. CSKT is authorized to enter into this MOU pursuant to CSKT Constitution Article VI.

B. Funding, authority, and operating limitations. It is understood that operating plans, procedures, schedules and agreements may be developed, as needed, by the participants to implement the specific objectives of this MOU. Nothing in this MOU or subsequent plans, procedures, or agreements will be construed as affecting the authorities of PPL Montana or TAC agencies as binding beyond their respective authorities or prerogatives for decision-making, or to require any of the TAC agencies to obligate or expend funds in excess of appropriated funds.

C. Limitations. Nothing herein shall be construed as obligating any Federal agency to expend or as involving the United States in any contract or other obligations for the future payment of money in excess of appropriations authorized by law and administratively allocated for any work under this MOU. PPL Montana's funding obligations in the context of this MOU will be limited to and governed by the License and PPL Montana's obligation as Licensee. If one or more of the TAC Agencies fails to fulfill any of its commitments made pursuant to this MOU, PPL Montana or any other TAC member, reserves the right to withdraw from this MOU or to renegotiate the terms set forth herein.

## **VII. TAC Operations**

A. PPL Montana Responsibility. PPL Montana will be responsible for managing the TAC AMFA for bull trout conservation and for providing technical input related to the implementation of bull trout minimization measures for the Thompson Falls Project. PPL Montana will also be responsible for seeing that minimizations funds and measures are authorized and spent for appropriate projects that comply with the License. In consultation with TAC members, PPL Montana will convene, facilitate and chair TAC meetings to fulfill implementation requirements of the License, and, with regular disclosure to TAC members, manage the TAC AMFA.

B. Meetings and Quorum. The TAC will meet on a regularly scheduled basis to develop annual work plans, prioritize the implementation of bull trout conservation measures in the license, and discuss the annual accounting of how funds have been used to implement measures and future funding strategies. A TAC quorum is herein defined as one voting representative from PPL Montana, USFWS, CSKT and MDFWP. Quorum decisions by the TAC will require each of these agencies to be present in person or by proxy.

C. Meeting participation. All TAC meetings are open to the public. TAC subcommittees and working groups may be organized as appropriate. Subcommittees and working groups may include staff personnel of PPL Montana or TAC Agencies, outside consultants or others. Any such subcommittees or working groups will be advisory to the TAC.

D. TAC decision-making. PPL Montana will bear ultimate responsibility for ensuring that the License conditions and bull trout minimization measures are implemented and funded in a manner consistent with requirements of the License. PPL Montana will seek to attain consensus among the voting members of the TAC in implementing minimization measures. Multiple representatives of PPL Montana and TAC Agencies may actively participate in TAC meetings. However, PPL Montana and

each TAC agency will designate one person to officially represent their organization (for TAC quorum voting) at each TAC meeting. All parties commit to a good-faith effort to resolve any differences in a timely and cooperative manner. In the event a consensus cannot be achieved among the voting members of the TAC, the TAC may elect to enter voluntary dispute resolution as set forth below:

Any dispute that arises in the implementation of this MOU and any implementation measure, or in any committees formed under this MOU, shall, in the first instance, be the subject of informal negotiations between the affected parties. If negotiations fail, a party or parties may refer a dispute to the TAC, along with a written statement outlining the dispute and any areas where the parties are in agreement. The TAC shall be convened by PPL Montana and, will develop consensus recommendations for the resolution of the dispute. During this informal dispute resolution period, any party may request the Director of FERC's Office of Dispute Resolution, or the Director's designee, to participate in the negotiations to assist in resolving the dispute. If no resolution is reached during the informal process, the disputing party or parties shall have thirty (30) days following the notice of the TAC recommendations to refer the dispute to FERC for expedited dispute resolution. All disputes taken to FERC under this MOU shall be governed by the alternate means of dispute resolution contained in FERC's Rules of Practice and Procedure, 18 C.F.R. Section 385.604, as amended from time to time or any succeeding FERC regulations governing alternative means of dispute resolution. The proposed TAC recommendations and all supporting documents, may be submitted to the FERC. If a disputing party does not refer a dispute to the FERC within the thirty-day (30) time period, the TAC recommendations will become binding on all parties.

E. Conduct of Meetings. Guidelines for the conduct of TAC meetings are attached in Exhibit "C" as may be amended from time to time by mutual consent of PPL Montana and the TAC agencies.

## **VIII. General provisions**

A. Re-openers – The parties to this MOU generally agree they will not invoke or rely upon any re-opener clause contained in the License with respect to any matter covered by this MOU unless the party determines that new information reasonably demonstrates that applicable provisions of this MOU are inconsistent with the public interest and affords the TAC, at least ninety (90) days to consider the new information and that party's position. Said party shall not be required to comply with this ninety (90) day notice provision if it believes an emergency situation exists, or is necessary to comply with the Endangered Species Act. Notwithstanding the provision of this paragraph, the parties agree that a TAC Agency may seek re-opening of the License as necessary to comply with any state or federal law and implementing regulations not pre-empted by the Federal Power Act, but this provision shall not be deemed to represent PPL Montana's or other parties consent to any such request by a TAC agency. In addition, the USFWS may seek re-opening of the License pursuant to its authority under the Federal Power Act, but this provision shall not be deemed to represent PPL Montana's or other parties consent to any such request by the USFWS.

B. Cooperate in Studies – The parties to this MOU agree to cooperate in conducting studies and monitoring activities implemented pursuant to the License and in providing reasonable assistance in any approval or permitting process that may be required for implementation of or specific conservation measures; provided that any of TAC Agencies are not, by this commitment compromising or relinquishing any legal authority they may have in those situations where they may be the permitting agency.

C. Separate agreements. For each minimization measure implemented pursuant to this License, the parties understand and agree that separate agreements

between PPL Montana and participating agencies may be executed as necessary to complete that project.

D. Term of MOU.

1. Duration. This MOU shall be effective upon execution by all parties and shall remain in effect through December 31, 2020, or termination of the License, whichever is later.

2. Renewal of the MOU. This MOU may be renewed by mutual consent of PPL Montana and TAC Agencies until the term of the current FERC license, any new license or any extension thereof, expires.

E. Termination of the MOU. This MOU may be terminated at any time by mutual written agreement of all parties.

F. Binding effect. As set forth herein, this MOU shall inure to the benefit of, and shall be binding upon the respective successors and permitted assigns of the parties hereto.

G. Assignment. The parties hereto may not assign this MOU without consent of other parties; provided that such consent will not be unreasonably withheld.

H. Modification. This MOU may be modified only in writing by mutual agreement of all the parties; provided that such consent will not be unreasonably withheld, and provided that PPL Montana may assign its rights and obligations hereunder to any other entity that becomes licensee of the Thompson Falls Project under the License.

I. Execution in counterparts. This MOU may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be one and the same instrument.



J. Precedent. Parties to this MOU understand and agree that this MOU establishes no principles or precedents with regard to any issue addressed herein or with regard to any party's participation in any future proceeding and that none of the parties to this agreement will cite either this MOU or its approval by FERC as establishing any principles or precedents except with respect to matters to which the parties have herein agreed.

K. PPL Montana will keep the TAC reasonably informed of the status of License compliance filings and, in the event that any such filing is disputed, PPL Montana shall notify all parties of the dispute and make copies of its filing available to all parties.

IN WITNESS WHEREOF, the parties have executed this Thompson Falls MOU  
by signatures below.

PPL MONTANA, LLC

By *Peter J. Simonich*  
Its Vice President / COO  
Date 11/5/13

OFFICE OF  
GENERAL COUNSEL  
BY: *[Signature]*  
DATE: 11/5/13

MONTANA FISH, WILDLIFE AND PARKS

By *Bruce Rich* *[Signature]*  
Its Fisheries Division Administrator  
Date 10/22/13

UNITED STATES FISH AND WILDLIFE SERVICE

By *Timothy S. Bodurtha*  
Its Supervisor  
Date September 23, 2013

THE CONFEDERATED SALISH AND KOOTENAI TRIBES OF THE FLATHEAD  
NATION

By *[Signature]* (ASKT CHAIRMAN)  
Its \_\_\_\_\_  
Date 10-29-13

**EXHIBIT "A"**

Initial members of the PPL Montana Steering Committee and Thompson Falls Technical Advisory Committee (TAC):

PPL Montana Steering Committee

Gordon Criswell (PPL Montana)

Dave Kinnard (PPL Montana)

Jon Jourdonnais (PPL Montana)

Brent Mabbott (PPL Montana)

Andy Welch (PPL Montana)

Thompson Falls TAC (designated representatives of)

PPL Montana (voting)

MFWP (voting)

USFWS (voting)

CSKT (voting)

MDEQ (non-voting)

USFS (non-voting)

Other agency or public participants (non-voting)

**EXHIBIT "B"**

Adaptive Management Fund Account  
PPL Montana 7 Year (beginning 1/1/14) Commitment

- PPL Montana Steering Committee  
(0.5 FTE)
- FERC license administration
  - interagency TAC management
  - implement minimization and conservation measures
  - agency and NGO cost share program coordination

PPL Montana will provide \$100,000 annually for seven calendar years beginning January 1, 2014 and provide a starting amount of \$150,000 in the TAC Reserve Account. PPL Montana will allow a maximum of \$250,000 to accrue (from unspent or transferred annual TAC funds) in the TAC Reserve Account for use by the TAC during this same seven year time period for TAC bull trout downstream passage and other minimization measures per the FERC License and USFWS BO. These measures include any required studies, monitoring, reports, upstream and downstream fish passage minimization measures, gas abatement monitoring, predator control measures, and other means of reducing impacts on bull trout caused by operation of the Thompson Falls Project.

## EXHIBIT "C"

### CONDUCT OF TAC MEETINGS

- I. Agendas. Agendas for TAC meetings will be developed by PPL Montana in consultation with agency TAC members. At minimum, a TAC meeting will be held twice annually through the term of this MOU, first to review progress and approve the annual report of the previous year's implementation work and subsequently to approve an annual work plan for each upcoming year.
- II. Meeting Summaries. PPL Montana will prepare TAC meeting summaries. The summaries will identify action items and decisions reached by the TAC. Summaries will be sent to TAC members as a mechanism for information exchange and coordination.
- III. Open Meetings. Non-TAC members (including the general public) can attend and observe TAC meetings in progress. However, only a designated portion of each TAC meeting may be open to comments from non-TAC members.
- IV. Caucus. Any TAC member may declare a caucus break. Caucus members will be asked to conclude their discussions in a timely manner so as not to unduly restrict the completion of the scheduled meeting agenda. Caucusing may continue as needed outside of and independent of TAC meetings.
- V. Good Faith. TAC members agree to act in good faith with respect to the concerns of the others to reach an agreement within this consultation process. Proposals, positions taken, written statements, and materials used will not be considered as TAC commitments unless TAC agreement is achieved. TAC members agree to participate in a free, open, and mutually respectful exchange of ideas, views, and information in attempting to achieve agreement. Personal attacks and prejudicial statements will not be tolerated. All TAC participants will be given an equal opportunity to be heard.
- VI. Public Statements. TAC members may describe proposals under discussion and develop positions in consultation with constituencies as required by respective agency

process. With the exception of information shared in confidence, a participant may make such public statements, including to the press, describing topics under discussion and their own views about these topics. No TAC member will describe or characterize the position of any other party in public statements or in the discussions with the press. As an exception, in any statements that a TAC member makes in an open public meeting to inform its governing entity, that member may describe the position of other participants. In doing so, participants shall consult those other participants and make a good faith effort to accurately describe their positions. All members agree not to divulge information shared by others in confidence nor will any party seek to place blame on any other party, even if that party withdraws from the process or the process is discontinued.

VII. Rights in Other Forums. Participation in a TAC does not limit the right or obligations of any individual or organization. Members will make a good faith effort to notify one another in advance, if litigation, or other action outside the committee process will be initiated, which will affect the terms of agreements or actions being taken by the committee.

VIII. Meeting Process. TAC meetings will be chaired and facilitated by PPL Montana. PPL Montana may also provide a meeting facilitator to conduct the meetings. PPL Montana or facilitator will work to insure that the TAC consultation process runs smoothly. The role of PPL Montana (or its designated facilitator) includes developing agendas, chairing meetings, working with TAC members both at and between meetings to resolve questions and to encourage and assist progress in accomplishing TAC goals, resolving any impasses that may arise, preparing meeting summaries, assisting in the location and circulation of background materials and materials prepared by participants, and other functions at the request of TAC members. In the event an outside facilitator is used, PPL Montana will pay for facilitation services with PPL Montana Steering Committee funds.

IX. FERC Communication Process. PPL Montana will, in consultation with TAC agencies, maintain appropriate correspondence and consultation with FERC staff and make required written filings with the FERC regarding implementation of, and any

amendments to, the License. TAC agencies also have an equal right to consult with FERC on Thompson Falls issues within the discretion of their respective agency and FERC rules governing consultation.

X. Public Participation. Each TAC meeting agenda will provide a specific time period for public comment. Members of the public will be able to observe TAC meetings in progress and offer comments during a specified public comment period at the invitation of TAC member(s). TACs may form subgroups to work on specific issues and may choose to include members of the public in the subgroup process. TAC members representing public agencies will be expected to reflect, take actions, and represent positions that reflect their respective public involvement responsibilities. Further, TAC members will assume responsibility as appropriate for directing public comment and public participation through appropriate forums within their respective agencies.

Document Content(s)

THO Fish Passage MOU.PDF.....1-23