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**POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON**

ELECTRON HYDRO, LLC,  
Appellant,

PCHB No. 21-043c  
SETTLEMENT AGREEMENT

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,  
Respondent.

Respondent, State of Washington, Department of Ecology (Ecology), represented by Sonia A. Wolfman; and Appellant, Electron Hydro, LLC (Electron), represented by Svend Brandt-Erichsen, hereby submit this Settlement Agreement (Agreement) to the Pollution Control Hearings Board (Board) as a full and final settlement of the above-referenced appeal, and request that the Board dismiss the appeal with prejudice.

**I. BACKGROUND**

1. On June 8, 2021, Ecology issued Penalty No. 19488 (Penalty) in the amount of \$501,000 to Electron for alleged violations of the Construction Stormwater General Permit (CSWGP) and RCW 90.48.080. The Penalty was related to the alleged unauthorized use and discharge of artificial turf and crumb rubber at Electron’s hydroelectric facility on the Puyallup River.



1 **B. Resolution of the Penalty**

2 **1. Cash Payment of \$100,200**

3 Electron agrees to make a penalty payment to Ecology of \$100,200. Electron's payment  
4 shall be by U.S. Mail or Federal Express, postage prepaid to Ecology and be postmarked within  
5 sixty (60) calendar days of the date the Board dismisses this appeal. Electron shall make the  
6 payment by check or money order directly payable to "Department of Ecology," make reference  
7 to Penalty No. 19488, and shall send the payment to:

8  
9 Department of Ecology  
10 Attn: Cashiering Unit  
11 P.O. Box 47611  
12 Olympia, WA 98504-7611

13 If Electron's payment of \$100,200 is not sent within sixty (60) calendar days of the  
14 Board's dismissal of this appeal, the full penalty amount of \$501,000 will become immediately  
15 due and payable to Ecology without further right of administrative or judicial review, except as  
16 provided in paragraph D of this Agreement.

17 **2. Supplemental Environmental Project (SEP) Payment of \$400,800**

18 Electron agrees to contribute \$400,800 to fund a supplemental environmental project  
19 ("SEP") that will benefit water quality and increase instream habitat within the Puyallup River  
20 watershed.

21 a. Within sixty (60) days of the Board's dismissal of this appeal, Electron shall  
22 deposit \$400,800 into a segregated escrow account to be held for the purpose of paying for the  
23 implementation of a SEP as described herein. Electron shall provide Ecology with  
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1 documentation of the deposit into the escrow account. The \$400,800 shall be disbursed from the  
2 escrow account in accordance with paragraphs B(2)(c) and (h).

3 b. If Electron fails to deposit \$400,800 into an escrow account as provided in  
4 paragraph B(2)(a), \$400,800 will become immediately due and payable to Ecology without  
5 further right of administrative or judicial review, except as provided in paragraph D of this  
6 Agreement. This payment shall be made as specified in paragraph B(1).

7 c. The terms of the escrow shall provide that if Electron fails to comply with  
8 paragraphs B(2)(d)-(h), any balance remaining in escrow shall immediately be paid to Ecology  
9 in full satisfaction of the penalty, without further right of administrative or judicial review,  
10 except as provided in paragraph D of this Agreement. This payment shall be made as specified  
11 in paragraph B(1).

12 d. Electron shall submit a project proposal to Ecology for review and approval  
13 within six months of the date the Board dismisses this appeal. In selecting a project, Electron  
14 shall coordinate with an organization engaged in fish habitat enhancement or restoration that is  
15 active in south Puget Sound. The project proposal shall identify the project proponent(s), and  
16 shall include a conceptual design and projected implementation dates. The project proposal also  
17 will include an explanation of the anticipated benefits of the project and relate the efforts  
18 undertaken to obtain input, and a summary of the input received, from regional stakeholders  
19 with an interest in fish habitat restoration and enhancement, and from the Puyallup Tribe of  
20 Indians. To facilitate completion of a larger project, Electron may propose a project that also  
21 would receive funding from a settlement of claims brought against Electron by the United States  
22 in federal district court under Docket No. 2:20-cv-1746 (the "Federal Court Action"). In that  
23 event, Electron must document that funding it provides for the project under the settlement of  
24 the Federal Court Action is in addition to the SEP payment and that the SEP payment is not  
25 being used to satisfy obligations under the Federal Court Action settlement. Alternatively, the  
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1 SEP payment may be combined with funds or funding commitments that the project proponent  
2 has obtained from other sources.

3 e. The proposed project may have been identified in response to Electron's  
4 inquiries, or it may be one that the project proponent already has designed or identified. If  
5 engineering design and permitting is not already completed for the proposed project, then as  
6 part of the project proposal submitted to Ecology, Electron shall provide a proposed budget for  
7 engineering design and permitting for the project. Ecology's approval of the project plan shall  
8 constitute authorization for the escrow agent to disburse escrowed SEP funds to the project  
9 proponent in the amount budgeted for engineering design and permitting. Electron shall provide  
10 Ecology's approval to the escrow agent, accompanied by a request to disburse the amount  
11 budgeted for engineering design and permitting to the project proponent. Electron shall provide  
12 documentation of the disbursement of escrowed funds to Ecology.

13 f. Electron shall submit engineering plans and construction schedule for the project  
14 to Ecology for review and approval within one year of the date the Board dismisses this appeal,  
15 along with an updated budget for project construction. If permits for the project have not been  
16 issued within one year of the date the Board dismisses this appeal, then Electron shall provide  
17 a report to Ecology on the status of permits no less frequently than the last business day of each  
18 month until the permits have been issued, and shall submit the engineering plans and  
19 construction schedule to Ecology within thirty (30) days after permits required for the project  
20 have been issued. The project budget must not exceed an amount that would allow an amount  
21 equal to at least ten (10) percent of the project budget to remain in the escrow account as a  
22 contingency against unanticipated construction costs. Ecology's approval of the engineering  
23 plans and project budget shall constitute authorization for the escrow agent to disburse escrowed  
24 SEP funds to the project proponent in the amount of the project budget. Electron shall provide  
25 Ecology's approval to the escrow agent, accompanied by a request to disburse the amount  
26 budgeted for project construction to the project proponent. Electron shall provide

1 documentation of the disbursement of escrowed funds to Ecology. Any request for release of  
2 the contingency funds that remain in escrow also must be approved by Ecology.

3 g. In entering into an agreement with any potential project proponent, Electron  
4 shall require that the project be completed in accordance with the schedule as approved by  
5 Ecology, including any schedule extension approved in accordance with this paragraph, and  
6 include provision for recapture of unexpended SEP funds in the event that the approved  
7 schedule for project completion, including any approved revision, is not met. Within two (2)  
8 years of Ecology's approval of the engineering plans, Electron shall provide Ecology written  
9 documentation that the project has been completed as specified in the engineering plans and  
10 construction schedule. In the event that project completion is anticipated to be delayed beyond  
11 two years, Electron shall provide advance notice to Ecology with a report from the project  
12 proponent explaining the reason for the potential delay and provide a revised project  
13 construction schedule, not to exceed one additional year. Should Ecology not agree to the  
14 revised project schedule, then Ecology shall notify Electron of the disapproval and Electron  
15 shall exercise the recapture provision described in this paragraph, providing notice to the project  
16 proponent that it must return any unexpended SEP funds to the escrow agent. Electron shall  
17 notify Ecology when recaptured funds have been returned to the escrow agent. The recaptured  
18 funds and any funds remaining in the escrow account shall be paid to Ecology in accordance  
19 with paragraph B(2)(c).

20 h. Should any funds remain in the escrow account upon completion of the project,  
21 upon approval of Ecology, such funds may be disbursed to the South Puget Sound Salmon  
22 Enhancement Group, or similar organization approved by Ecology, for use in water quality or  
23 fish habitat projects in the Puyallup River basin.

#### 24 C. Remedies

25 In the event that Electron violates the terms of this Agreement, Ecology may pursue all  
26 remedies available by law. By entering into this Agreement, Electron shall have waived its right

1 of administrative or judicial review on the underlying merits of the Penalty. However, Electron  
2 does not waive the right to contest whether violations of this Agreement have occurred. In any  
3 action to enforce the terms of this agreement, the prevailing party shall be entitled to an award  
4 of its reasonable costs and attorneys' fees incurred.

5 **D. Venue**

6 Electron agrees that the venue for any judicial action to enforce this Agreement and/or  
7 to collect the Penalty, or any portion thereof, shall be in Thurston County Superior Court.

8 **E. Press Releases and Other Documents**

9 Any press release or other public statement issued by Electron regarding performance of  
10 any term of this Agreement shall identify the same as resulting from a settlement with Ecology.  
11 In addition, any sum paid to a third party, not a party to this Agreement, as a result of this  
12 Agreement, shall be identified as resulting from a settlement with Ecology in any public  
13 statement.

14 **F. Waiver of Appeal Rights**

15 Electron understands that it has the right to contest the Penalty by presenting evidence at  
16 a Board hearing, and voluntarily waives its right to a hearing upon signature of this Agreement  
17 by representatives for Electron and Ecology.

18 **G. Dismissal of Appeal**

19 The parties consent to the submission of this Agreement to the Board and request that,  
20 based upon a full and final settlement having been reached, the Board dismiss this appeal with  
21 prejudice. Both parties further agree to bear their own costs and attorneys' fees associated with  
22 this appeal.

23 **H. Effective Date**

24 This Agreement shall become effective upon the date of issuance of the Board's order  
25 dismissing this appeal.  
26

1 **I. Signatories Authorized**

2 The undersigned representatives for Ecology and Electron certify that they are fully  
3 authorized by the party whom they represent to enter into the terms and conditions of this  
4 Agreement and to legally bind such party thereto.

5 **J. Execution**

6 This document may be executed in counterparts and may be executed by facsimile and/or  
7 electronically, and each executed counterpart shall have the same force and effect as the original  
8 instrument.

10 STATE OF WASHINGTON  
11 DEPARTMENT OF ECOLOGY

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12 \_\_\_\_\_  
13 Laura Watson  
13 Ecology Director

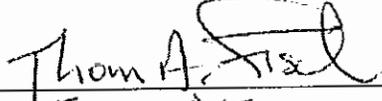
14 Dated: 11/1/22

16 ROBERT W. FERGUSON  
17 Attorney General  
18 

19 Sonia A. Wolfman, WSBA #30510  
20 Attorney for Department of Ecology  
20 (360) 586-6764

21 Dated: Nov. 1, 2022

ELECTRON HYDRO, LLC

  
By: THOM A. FISCHER  
Its: MANAGER

Dated: OCT 31, 2022

NOSSAMAN LLP

  
Svend Brandt-Erichsen, WSBA #23923  
Attorney for Electron Hydro, LLC  
(206) 395-7630

Dated: October 14, 2022