

BONNEVILLE POWER ADMINISTRATION

ADMINISTRATOR'S RECORD OF DECISION

**WILLAMETTE RIVER BASIN MEMORANDUM OF AGREEMENT
REGARDING WILDLIFE HABITAT PROTECTION AND
ENCHANCEMENT BETWEEN THE STATE OF OREGON AND
THE BONNEVILLE POWER ADMINISTRATION**

October 22, 2010

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ENHANCEMENT

1.0 INTRODUCTION

The Bonneville Power Administration (BPA) is entering into a long-term agreement with the State of Oregon to foster a cooperative relationship as partners; to permanently resolve long-standing issues regarding the protection, mitigation, and enhancement of wildlife affected by the construction and operation of federal dams in the Willamette River Basin; and to provide for important fish habitat protection and restoration.

The purpose of this Record of Decision (ROD) is to describe the backdrop that led to this Willamette Wildlife Habitat Protection and Enhancement Memorandum of Agreement (MOA), what the MOA contains, and why BPA has decided to enter into it.¹ This ROD also describes how entering into this MOA complies with the National Environmental Policy Act (NEPA).²

2.0 BACKGROUND

The MOA is intended to resolve Willamette wildlife mitigation in a manner consistent with the Northwest Power and Conservation Council’s (Council) Columbia River Basin Fish and Wildlife Program (Program). The Program specifically encourages such resolutions.

Whenever possible, wildlife mitigation should take place through long-term agreements that have clear objectives, a plan for action over time, a committed level of funding that provides a substantial likelihood of achieving and sustaining the stated wildlife mitigation objectives, and provisions for effective implementation with periodic monitoring and evaluation.³

Past efforts to reach such an agreement were unsuccessful. In 2006, BPA, the State of Oregon, tribes within the state, and others attempted unsuccessfully to settle the wildlife obligation for the entire state, not just the Willamette Basin. At the time, the entities participating in that

¹ The terms “Agreement” and “MOA” are interchangeable in this Decision.

² 42 U.S.C. § 4321, *et seq.*

³ Northwest Power and Conservation Council, Columbia River Basin Fish and Wildlife Program (Oct. 2009), section II.D.6.a, page 21 [hereinafter Council Program].

2006 effort attempted to divide the responsibility for what they considered the remaining wildlife obligation among the various partners and sized the obligation (in both share of funding and acreage) for each partner to the negotiation. The Willamette group included the Oregon Department of Fish and Wildlife (ODFW), Confederated Tribes of the Grand Ronde, Confederated Tribes of the Warm Springs Reservation of Oregon, and Confederated Tribes of the Siletz.

The 2010 proposed settlement builds on the 2006 effort. However, it differs by focusing solely on the Willamette Basin. Because ODFW is the primary wildlife management entity in the Willamette, and the earlier large group negotiations dissolved unsuccessfully, BPA decided to discuss resolution of Willamette wildlife matters with only Oregon.

Unlike the previous effort, the settlement does not assign responsibility for acquiring or protecting acreage to specific Parties. Oregon and BPA agreed to a new, open, collaborative process for selecting wildlife projects, so that that the acreage requirement will be met by a variety of partners in the Willamette Subbasin, including our tribal partners, non-governmental organizations, the U.S. Fish and Wildlife Service (USFWS), and other governmental partners.

2.1 BPA Wildlife Mitigation in the Willamette

BPA is obligated under the Pacific Northwest Electric Power Planning and Conservation Act, at to protect, mitigate, and enhance fish and wildlife affected by the construction and operation of federal dams in the Columbia River Basin, in a manner consistent with the Program developed by the Council.⁴ In the Willamette River Basin there are eight dams, constructed and operated by the U.S. Army Corps of Engineers, for which BPA shares a mitigation responsibility: Big Cliff, Foster, Green Peter, Dexter, Detroit, Hills Creek, Lookout Point, and Cougar. The MOA addresses the Northwest Power Act and all other applicable law regarding federal wildlife mitigation for the Willamette dams.

2.2 Wildlife Crediting Issues

The Council's Program assessed the effects of the federal hydropower projects on wildlife in terms of habitat units (HUs). These habitat units were derived through the application of Habitat Evaluation Procedures (HEP) analysis to the before inundation and after inundation conditions at the various dams. In the case of the Willamette system, those HUs were assessed in 1985 at 94,275 HUs lost for various species.

The number of HUs and the assessment methodology have remained a source of controversy and concern at BPA. BPA has long disputed the amount of area assessed for the construction and inundation impacts in the Willamette system.⁵ BPA routinely raised several serious problems with the loss assessments:

⁴ 16 U.S.C. § 839b(h)(10)(A).

⁵ Memorandum Supporting BPA's Recommendations for Amending the Council's Fish and Wildlife Program (April 4, 2008), http://www.nwcouncil.org/fw/program/2008amend/uploadedfiles/116/2_MemoOfSupport.pdf.

- the assessment assumed impacts occurred above full pool, the area directly affected by the actual construction and inundation of the dams, thus increasing the “documented losses by nearly 40%;
- the lack of appropriate species models to use in the evaluation procedure;
- the number of species used to develop the assessments overestimated the impact of the projects by a significant factor; and
- the failure of resource managers to then use the same number of species when assessing habitat gains on compensation sites.

The Council’s 2009 Program primary wildlife strategy is to “[c]omplete the current mitigation program for construction and inundation losses and include wildlife mitigation for all operational losses as an integrated part of habitat protection and restoration.” (Section D.6, page 20). The Program also recommends guidelines for negotiated wildlife mitigation agreements the Council anticipated would ultimately address the primary strategy. “Whenever possible, wildlife mitigation should take place through long-term agreements that have clear objectives, a plan for action over time, a committed level of funding that provides a substantial likelihood of achieving and sustaining the stated wildlife mitigation objectives, and provisions for effective implementation with periodic monitoring and evaluation.” (Section D.6.a, page 21). The Council noted that measureable objectives could include mitigated acres that related to the HUs.

In structuring the MOA, Oregon and BPA decided to concentrate on mitigated acreage as the objective of the agreement. Both sides had experienced the frustration of dealing with the HU assessments of previous HEP analyses, both from the original loss assessments and from evaluation of mitigated properties purchased prior to the initiation of these settlement discussions. Both Parties also saw promise in the new habitat assessment methodology known as the Combined Habitat Assessment Protocols (CHAP). Oregon even began the negotiations by applying an existing CHAP analysis to calculate habitat units per acre. But compared to the costs and additional delays in settlement and project development that arise when using an assessment methodology like HEP or CHAP, both Parties preferred the certainty that an acreage calculation provided.⁶

Both Parties agreed that the total acreage already mitigated, or planned as a condition of the agreement, totaled 9427 acres. Both Parties also agreed that inundated area equaled 17,791 acres. BPA believed that the total mitigated acreage should reflect acreage inundated by the Willamette dams subject to the Council’s Program. Thus, in BPA’s view, BPA’s “bound” for its mitigation acreage obligation was 17,791 minus 9,427, leaving a total of 8,364 acres to acquire.

Oregon felt that since the program losses were for construction and inundation, it implied the Council meant above pool losses for construction of the projects should also be included in a settlement. Oregon derived its initial acreage assessment on a CHAP analysis performed on the Lonestar Ranch property that calculated the habitat units at 2.75 HUs per acre. Dividing

⁶ Moreover, the need for a metric like HUs arose in the 1980s in response to a concern by wildlife managers that BPA would choose low value compensation sites. Time has shown that fear to be unfounded, because the agencies and tribes typically choose the sites.

that 2.75 HU/acre figure into the 94,275 HUs identified in the Council Program for Willamette losses yielded an acreage figure of 34,282.

The Parties also wanted to include operational losses in the acreage to be mitigated. Oregon factored in an additional 1000 acres for operational losses. Thus, Oregon “bound” equaled 35,282 acres impacted minus the 9,427 acres already mitigated for a total of 25,855 acres to be acquired.

Both sides eventually agreed to split the difference in their “bounds.” BPA did so because a moderate degree of mitigation for above pool impacts was reasonable given the roads and other infrastructure surrounding the dams. Thus the total negotiated wildlife losses in the Willamette are $(17,791 + 35,282)/2$ for a total of 26,537 acres of hydrosystem responsibility for construction, inundation, and operations. Subtracting the already mitigated acreage from the total resulted in 17,110 acres to be acquired. Prior to finalizing the MOA, BPA acquired an additional 230 acres of land for a USFWS project. Both Parties agreed to add that acreage to the already acquired total, resulting in the agreed total of 16,880 acres to be acquired.

In the structure of the MOA, the acreage to be acquired is a minimum figure. BPA has agreed to fund the MOA through Fiscal Year (FY)⁷ 2025. If the minimum acreage is acquired before the close of FY 2025, ODFW and its partners in implementation may continue to acquire mitigation acreage. Thus, the state and its partners may exceed the total mitigation figure and that remains a hope of the state. The incentive in the MOA is to acquire acreage in a cost-effective and efficient manner and potentially to exceed the minimum acreage total. Both sides would view that development positively. Acres acquired above the minimum would represent additional steps toward ecosystem restoration that remains a priority for both Parties to the MOA.

Subsequent CHAP analyses of the Zena Ranch, the Trappist Abbey, and the Wildish properties yielded a 4.3 HU/acre figure, which yielded an average of 3.91 HU/acre. Performing the same calculation on the 94,275 total habitat units identified in the Council’s program for the Willamette would yield a total construction and inundation debt of 24,111 acres. Adding in 1000 acres for operation losses would yield a total acreage figure of 25,111. This total compares favorably with the settlement total acreage of 26,537 acres—which is 3.59 HU/acre of expected gain based on all CHAP analyses done to date.

Both Parties believe that the MOA figure represents a fair allocation of the total wildlife mitigation obligation in the Willamette and the recent CHAP analyses support the conclusion that though acreage represents the objective in the Willamette, that acreage will adequately address the HU losses adopted in the Council Fish and Wildlife Program.

A mitigation ratio of 2:1 for wildlife is included in the Council Program, but is not a requirement for a wildlife settlement under the Program.⁸ Nevertheless, the acres covered by

⁷ BPA’s fiscal year is October 1 through September 30.

⁸ Cf., BPA’s Wildlife Crediting Policy (March 2002), <http://efw.bpa.gov/IntegratedFWP/WildCredMar02.pdf>. Moreover, Program documentation from the Council recognizes that BPA and wildlife managers may reach agreements using other ratios and the 2:1 recommendation does not affect those agreements.

the MOA provide more than 1:1 mitigation ratio for the acres actually flooded by the Willamette dams, and the potential for acquisition of additional acres is built into the MOA as well. In addition, the MOA does not rely on habitat projects in the Columbia River estuary for mitigation, but the Parties agree that these projects could be considered in case of legal challenges.

After settling on the overall mitigation acreage number, BPA and Oregon had to address a funding stream that would support attaining the minimum acreage figure. With the addition of the four FY 2010 properties noted in the MOA to the total mitigation already accomplished in the Willamette subbasin, the average purchase cost per acre for prior acquisitions is \$6,115. Keeping in line with that historic trend, the Parties agreed to an overall settlement that would average \$6,132 per acre for habitat purchases, without inflation. Costs, however, might well increase over the life of the MOA. The Parties factored in inflation and included a 2.5% inflation adjustment beginning in FY 2015, resulting in a per acre average over time of \$6,982.

Although recent acquisitions (including the Trappist Abbey and Wildish) have pushed beyond the \$6,982 per acre average, the Parties believe that knowing the amount of funding per year and having a target per-acre average will allow implementation to occur in a more cost-effective manner. Other less expensive properties could serve to reduce per-acre overall costs so that a property or properties that exceed the per-acre average would still fit within the cost structure of the MOA. Alternatively, projects that would potentially exceed the per-acre target could seek additional sources of funding or use other creative financing devices to fall within the MOA's per-acre range. Both Oregon and BPA believe that they will achieve the minimum acreage guarantee for the cost per acre in the proposed the MOA.

2.3 Wildlife Habitat and Willamette Biological Opinions Regarding Fish

While this MOA is focused on wildlife mitigation, BPA is also undertaking efforts to protect and restore habitat in the Willamette Valley to address impacts to certain fish species in response to consultations under the Endangered Species Act (ESA). In particular, as a result of ESA section 7(a)(2) consultation on the Willamette River Basin Flood Control Project, the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) issued a biological opinion (BiOp). That opinion found that the Willamette flood control project operations degrade the existing rearing, holding, and spawning habitat of upper Willamette River Chinook salmon and upper Willamette River steelhead. To help mitigate these adverse affects, NMFS included a habitat protection and restoration action in the Reasonable and Prudent Alternative (RPA) to the proposed operations. RPA 7.1 calls on the Action Agencies (BPA and the U.S. Army Corps of Engineers (Corps)) to "actively restore habitat downstream of the dams."⁹ The Action Agencies agreed to implement "a comprehensive habitat restoration program, in collaboration with [NMFS and USFWS], which will include funding for carrying out habitat restoration projects during the term of this Opinion."¹⁰ "The purpose of the program will be to protect and restore aquatic habitat to address limiting habitat factors for ESA-listed fish."¹¹

⁹ NFMS Willamette BiOp, at 9-76.

¹⁰ Id. at 9-77.

¹¹ Id. at 9-76.

The RPA further provides that

[b]y 2010, the Action Agencies will complete at least two of the highest priority projects that should result in significant habitat improvement for listed fish species. The Action Agencies will complete additional habitat projects each year from 2011 through the term of this Opinion. Alternatively, larger projects that might require several years to complete could be funded over a multi-year period instead of funding individual, smaller projects each year. NMFS will inform the Action Agencies whether they agree with the decision to fund and carry out these projects.

The USFWS also issued a biological opinion on the operation of the Willamette flood control project. USFWS concluded that operating the project would not jeopardize Oregon chub or bull trout, provided the Action Agencies implemented the habitat measures called for in RPA 7.1. (The NMFS and USFWS biological opinions are referred to collectively as the Willamette biological opinions.)

Although the Council's project recommendations and BPA mitigation budgets are often couched in terms of *either* "wildlife" or "fish" habitat, in actuality, habitat acquired for fish almost always has benefits for wildlife, and habitat acquired for wildlife often has benefits for fish. Because of this, BPA believed that the ultimate agreement needed to integrate BPA's ongoing efforts under the Willamette BiOps, including how to acknowledge credit for habitat acquired under a "fish program" that had benefits for wildlife, and visa versa. The MOA does this by providing for "dual benefits" for wildlife projects with fish benefits (and vice versa), and by ensuring a minimum commitment of 10% projects will be dual benefits. The dual benefits funding under the MOA will total over \$10 million. The 10% earmark is in addition to the \$500,000 to \$800,000 per year BPA has agreed to provide for BiOp RPA 7.1.3 implementation (although this amount could be reduced by mutual agreement with NMFS and Oregon if dual benefits projects under the MOA exceed 15%) as described fully in MOA Attachment 5.

In a related aspect, NMFS has agreed to ESA crediting for the Wildish property. This property on the Middle Fork of the Willamette supports a Chinook salmon core population, lies within an anchor habitat identified by the Habitat Technical Team as a highest priority area, and includes approximately six miles of stream. Acquisition of the property combined with restoration funding BPA is providing to The Nature Conservancy under a 2011 contract will provide credit for four years of projects as defined under the RPA. See MOA Attachment 1.

2.4 Key Habitat Available for Acquisition—The Wildish & Trappist Abbey Proposals

The opportunity to acquire two unique properties—The Willamette Confluence Project (Wildish) and Trappist Abbey—with the potential for significant wildlife as well as fish benefits provided an impetus for the current MOA. Because these properties had potentially high acquisition costs, their availability and the mutual desire of regional stakeholders to attain them led to renewed negotiations between BPA and Oregon, on a short timeline.

Both Wildish and Trappist Abbey are unusually large and biologically significant properties. BPA funded a CHAP analyses of the properties prior to agreeing to fund them. The Abbey scored 3.2 habitat units per acre. Wildish had 5.1 habitat units per acre. These were two of the highest HU scores attained in the Willamette subbasin.

The Wildish property (1271 acres) includes more than six miles of river and adjacent floodplains, and also extensive wetlands, upland oak woodlands, native prairie and hardwood-conifer forest. Conservation and restoration of habitats on this property will benefit more than 30 fish and wildlife species considered at-risk by conservation scientists, including upper Willamette Spring Chinook salmon, steelhead, northern red-legged frog, vesper sparrow and western meadowlark—Oregon’s state bird. The property includes six miles of federally designated Chinook critical habitat, and five miles of bull trout critical habitat. Restoration may also benefit the federally-listed Oregon chub. The property connects with another 3500 acres of public lands that are managed for conservation, providing an opportunity for partners to work together on over 4700 acres of extremely diverse and complex habitats.

For its Willamette Floodplain Restoration Study, the Corps recently completed a study which identifies 11 large-scale restoration projects near the confluence. Four of the top five projects are on the Wildish property.

The 1310 acre Abbey property contains coniferous forest, oak woodlands, oak savanna, and riparian forest habitats that provide habitat for species that have seen a 93% decline in oaks woodland and a 99% decline in oak savanna. Key species on the Trappist Abbey include the acorn woodpecker, western gray squirrel, western bluebird, the endangered Fender’s blue butterfly, and Taylor’s checkerspot butterfly. The Trappist monks have agreed to place a portion of the money they would receive into a fund for benefit of the conservation easement, resulting in no additional operations and maintenance costs to BPA and its ratepayers. While the Trappist monks desired to protect the property, because it is located within the Red Hills of Dundee and it has great value as vineyard property; they have already been approached by well-financed developers interested in creating a destination resort in wine country.

2.5 Development of the Willamette Wildlife MOA

In mid-winter of 2009, BPA realized that the Trappist Abbey and Wildish projects highlighted the agency’s need to ensure that it could capitalize them under its capitalization policy.¹² Beginning in 1991 and through FY 2010, BPA spent approximately \$26 million on wildlife projects in the Willamette. BPA had agreed to capitalize other projects in the Willamette given that the losses amounted to at least 17,911 acres—the actual sum of acres affected by construction and inundation of the Willamette dams. BPA used that total as its baseline obligation, but the Council and other entities, including Oregon, disagreed. The acreage secured through 2009 did not total half the inundated acreage, so the disagreement did not interfere with BPA’s ability to fund projects. But with the high cost of these two projects, coming together, BPA was uncomfortable making such a substantial investment without

¹² BPA Financial Policy, Fish and Wildlife Capitalization Policy (Aug. 03, 2005), <http://efw.bpa.gov/IntegratedFWP/FW%20Capitalization%20Policy%2011-4-04.pdf>.

complete agreement by the Council and Oregon on BPA's total wildlife mitigation responsibilities.

When BPA broached the issue with Oregon, the ODFW Willamette Mitigation Coordinator had just left for another job. ODFW's interim managers worked with BPA as best they could, but it took time for ODFW to assign and hire the employees needed to pursue this issue full time. ODFW assembled its team in April, and in May the two agencies met to discuss the funding and crediting issues underlying the Trappist Abbey and Wildish proposals. After a single staff-to-staff meeting, the agencies realized that resolving the crediting and funding issues for these two projects was just a step away from opening the way to a complete resolution of federal wildlife mitigation for the Willamette dams. Negotiations began in earnest on July 23, 2010 when ODFW's Director and senior policy staff meet with two of BPA's Vice Presidents.

BPA and ODFW needed an agreement by October 30, 2010; otherwise, the opportunity to secure the Wildish property would have been lost because the option to purchase would expire and the owners had informed The Nature Conservancy that they would not renew the purchase option.

By August 5, the Parties had met seven times and developed their principles of the agreement. By August 17, the Parties had enough of a draft MOA to be able to share an overview with the tribes and others.

BPA also began discussions with other federal agencies in July about the MOA. BPA consulted with NMFS, the Corps, Reclamation, and USFWS, and also briefed the Federal Caucus on the proposal. Negotiations with NMFS on the aspects of the MOA touching on the Willamette biological opinion reasonable and prudent alternative 7.1.3 took until October 14 to complete.

2.6 Integrating Tribal Interests into the MOA

BPA tried very hard to consult appropriately with the Confederated Tribes of the Grand Ronde (Grand Ronde Tribe), Confederated Tribes of the Warm Springs Reservation of Oregon (Warm Springs Tribe), and Confederated Tribes of the Siletz (Siletz Tribe). BPA began contacting the tribes on August 9, just two weeks after initiating negotiations with Oregon on July 23. Those tribes received information from BPA and Oregon as soon as the Parties had developed an agreement in principle. The tribes then received a working draft MOA on August 25, more than two weeks before the agencies released a draft for public review. The Parties made every effort to inform the tribes of the proposed MOA in a timely manner and to reflect tribal interests in it. Throughout the development of the MOA BPA met with each tribe when the tribal representatives were available, and answered questions from tribal staff and attorneys in calls and meetings. Ultimately, tribal comments helped Oregon and BPA improve the original draft provisions and add new ones to address tribal interests and concerns more thoroughly.

Two of the tribal governments, Warm Springs and Siletz, sent letters supporting the MOA. Although the consultation was not what the Grand Ronde desired, it was indeed as timely as possible. BPA appreciates the tribal support the MOA received, and believes for the following

reasons that the MOA provides the tribes better opportunities to participate in Willamette Basin wildlife mitigation than existed before.¹³

- The MOA overcomes any lingering crediting uncertainty and provides known, stable financial capability for 15 years for the tribes and others to use to fund wildlife mitigation projects.
- ODFW and BPA included provisions that acknowledge the tribes' interests in having the opportunity to engage in traditional cultural practices on properties funded under the MOA.
- The tribes have a seat in the collaboration group, if they want it, to help ODFW develop the project selection criteria and to then review projects.
- The tribes have the ability to seek government-to-government consultation on tribal projects that they think received unwarranted rankings in the prioritization process.

2.7 Timing Constraints

Time factors played a critical role in the approach the agencies took to coordinate with and include other entities in the MOA process. As a result of a new hatchery starting a year later than planned, BPA unexpectedly had a large amount of undedicated capital funding available for the Trappist Abbey and Wildish acquisitions in FY 2010. In addition, the agencies realized the difficulty in rationalizing these two expensive acquisitions absent full agreement on the overall federal responsibility for Willamette wildlife mitigation and the projects BPA had funded to date. Finally, the Wildish acquisition (with purchase and sale deadline of October 30, 2010) also influenced the timing of the negotiation process.

Despite these time constraints, the Parties made every effort to inform interested entities, particularly the affected tribes and entities known to be interested in Willamette wildlife issues, of the proposed agreement in a timely manner and to reflect their interests in it. NMFS and the Corps have sent letters of support, as have two of the tribal governments, Warm Springs Tribe and Siletz Tribe. Although not required, BPA provided a 30-day public comment period, and changes have been made to the MOA in response to tribal comments. The Council has implicitly endorsed the MOA through its action in August supporting the need to conclude an agreement for the purchase of the Trappist and Wildish properties. Although the consultation was not what some entities desired, it was indeed as timely as possible.

3.0 THE WILLAMETTE WILDLIFE HABITAT MOA COMMITMENTS

3.1 Overview

This MOA establishes a new partnership between Oregon and BPA, with both committing to work together on wildlife habitat mitigation and natural resource issues in the Willamette Basin. As detailed further in this section, the MOA provides for continued acquisition of

¹³ Two tribes from Idaho also commented on the draft MOA. BPA has already addressed the issues raised by the Shoshone Bannock and Shoshone Paiute tribes through the response to comments prepared with ODFW and this decision document. Moreover, BPA has provided specific responses to many of the issues directly through the documentation provided in southern Idaho wildlife mitigation settlement discussions and through information provided through the Council's Wildlife Crediting Forum.

wildlife habitat at a reasonable and predictable cost and schedule, and it encourages habitat projects with dual wildlife and fish benefits. The MOA provides a new open framework to select the most biologically valuable and cost-effective habitat projects, assuring lasting value for Oregon, BPA ratepayers, and the region.

In addition to funding the acquisition of key habitats at the outset (e.g., Trappist Abbey and the Wildish property), BPA will provide stable funding through fiscal year 2025 for Oregon, Oregon tribes, non-profits, and others to acquire and protect a minimum of 16,880 acres of important wildlife habitat in the Willamette River Basin such as forests, wetlands, and oak savannah. Oregon, through ODFW will work with tribes, federal and local agencies and others to develop objective criteria to select the most biologically valuable and cost-effective habitat in the future. Properties that also have habitat important for fish species will be targeted as well, at a minimum of 10 percent of the acquisitions under the MOA. BPA will also provide significant financial support to ODFW for management, operation and maintenance, and restoration of the habitats acquired.

3.2 Acquiring Habitat—Acreage Initially and Into the Future

In September and October 2010, the Parties targeted the acquisition of several key habitats, namely:¹⁴

- The Trappist Abbey easement acquisition
- The Wildish property fee title acquisition
- The Green Island Addition fee title acquisition
- The Yamhill Oaks Addition fee title acquisition

As of the date of this decision, the Yamhill Oaks Addition has been acquired, and the remaining acquisitions are in their final stages. As described further in section 3.9, below, BPA anticipates providing about \$32.8 million for these four acquisitions alone. Given their central importance to the mutual consideration for this agreement, BPA and Oregon agreed on a “time is of the essence” contingency regarding the Wildish and Trappist Abbey properties.¹⁵ If the Parties fail to close on these two acquisitions by October 28, 2010, either BPA or Oregon may terminate the MOA.

With these four acquisitions, totaling approximately 2,958 acres, 9,657 acres of the total losses will have been addressed, leaving a total of 16,880 acres still to be obtained.¹⁶ After these initial acquisitions, Oregon is responsible for finding a minimum of 16,880 additional acres of wildlife mitigation in the Willamette by 2025. To do so, ODFW will work with tribes and regional stakeholders in developing project selection criteria, discussed in more detail in section 3.4 below. These selection criteria are to be completed by October 1, 2012, and will be used to address acquisitions from that point forward.¹⁷

¹⁴ See MOA Section II.C and Attachment 4.

¹⁵ MOA Section II.C.

¹⁶ MOA Section II.C, Table 1.

¹⁷ MOA Section II.D.6.

Prior to those criteria being developed, ODFW will work with the tribes and regional stakeholders to identify appropriate projects already in development that could be funded under the MOA, using Council solicitation processes as needed.¹⁸

3.3 Project Selection & Prioritization Criteria¹⁹

A unique concept in this MOA is that entities other than Oregon can participate—any entity may submit a proposed project for acquisition funding by BPA under this MOA.²⁰ ODFW will work with tribes and regional stakeholders (including other federal and Oregon state agencies, local governments, and non-governmental organizations) to develop project selection and prioritization criteria.²¹ In order to develop these criteria, ODFW shall use a collaborative process involving affected tribes and regional stakeholders, referred to as the “collaboration group,” using an open and transparent process.²² The project selection criteria will target wildlife species, but are also expected to include criteria that benefit other non-targeted wildlife as well as other resources of interest to regional stakeholders.²³ In addition, ODFW with the collaboration group will develop criteria for prioritizing projects for implementation, including measures of cost-effectiveness for value obtained.²⁴ ODFW will submit any new projection selection and prioritization criteria to the Council’s Independent Scientific Review Panel and respond to any comments from the reviewers before adopting and relying on the criteria.²⁵

3.4 Process for Selection of Projects for Implementation²⁶

Once the project selection and prioritization criteria are in place, ODFW will give BPA a list of prioritized projects for implementation, noting whether ODFW concurs in the projects (only those projects that ODFW concurs in will be counted against the MOA mitigation obligations). If ODFW does not concur in a project, it must explain why, in writing to BPA, and the sponsor of the project may reformulate the project and resubmit it. If ODFW does not concur in a tribally-sponsored project, then ODFW and BPA will engage the tribal entity in a government-to-government discussion and strive for resolution. If BPA disagrees with ODFW’s prioritization of projects, then BPA and ODFW will engage in dispute resolution pursuant to the MOA.

BPA shall fund the projects, up to the particular year’s funding allocation, in the prioritized order in which ODFW concurred with BPA. BPA may fund projects in which ODFW does not concur, but BPA has no obligation to do so, nor would such projects count against the total federal obligations agreed to in the MOA. The process for acquiring the habitat (e.g., the real property transactional needs) is described in Attachment 8 to the MOA, and follows standard

¹⁸ MOA Sections II.D.6 and II.E.3.

¹⁹ MOA Sections II.D and II.E.

²⁰ MOA Section II.D.3.

²¹ MOA Section II.D.2.

²² MOA Section II.E.1

²³ MOA Section II.D.2.

²⁴ MOA Section II.E.2.

²⁵ *Id.*

²⁶ MOA Sections II.E.4 through II.E.7.

due diligence steps pursuant to federal law and regulation, and BPA-specific policies and regional practices recommended by the Land Trust Alliance.²⁷

3.5 Integration with Fish Needs—“Dual Benefits” Projects²⁸

In order to integrate into the MOA BPA’s on-going efforts for habitat acquisition to address listed fish needs, the Parties agreed to proceed using an ecosystem-based approach to provide benefits to listed and non-listed fish and wildlife.²⁹ The Council “believes that the wildlife mitigation projects should be integrated with the fish mitigation projects as much as possible.”³⁰ Similarly, the Program recommends that BPA use an ecosystem approach, and, “when possible, protect[] riparian habitat that can benefit both fish and wildlife....”³¹ When proceeding as recommended BPA deserves credit for “wildlife benefits resulting from riparian habitat improvements undertaken to benefit fish.”³²

Generally, the Parties will achieve this by integrating the project selection criteria with the criteria developed by the Habitat Technical Team under the NMFS biological opinion for project selection for use when “dual benefits” projects are identified.³³ “Dual benefits” projects are those certified by both BPA and Oregon as adjacent to a river, stream, lake, pond, or spring that significantly benefit at least one anadromous species under the NFMS biological opinion.³⁴ ODFW and the collaboration group will also coordinate with the Habitat Technical Team to review such projects. To ensure that the integration is proceeding, at least 10 percent of the BPA funded projects under the MOA must qualify as “dual benefits” projects, and there are provisions to track compliance towards that requirement on a regular basis.³⁵

The Parties also agreed on the mechanism for crediting projects against this MOA as well as under the RPA commitments of the Willamette BiOps. In sum, if a wildlife project under this MOA also benefits ESA-listed fish, then BPA and the Corps will get credit for that acquisition under the relevant biological opinion.³⁶ Similarly, if a fish habitat project undertaken for a Willamette biological opinion has significant wildlife benefits, then ODFW shall receive credit against its acreage commitment in this MOA.³⁷ In so doing, the Parties’ coordinated efforts

²⁷ BPA regrets that the attachment was incomplete and unavailable during the public review process. The Parties worked quickly to present the substantial elements of the MOA publicly. The attachment with the pre-acquisition, acquisition, and post-acquisition provisions, as well as the sample template conservation easement (MOA Attachment 7), were set last in the workload triage because those provisions largely mirror BPA’s other habitat mitigation the agreements that have been available publicly for years.

²⁸ MOA Section II.F.

²⁹ *Id.*

³⁰ Council Program, section II.D.6, page 21.

³¹ Council Program, section II.D.6.a, page 21.

³² Council Program, section II.D.6, page 20.

³³ MOA Section II.D.5.

³⁴ MOA Section II.F.1.

³⁵ MOA Section II.F.4. This process for tracking dual-benefits credit parallels the anticipated recommendation from the Wildlife Crediting Forum to the Council regarding when to count wildlife credit from fish projects.

³⁶ MOA Section II.F.1; see also MOA Attachment 1 (concurrence letter from NFMS); and Attachment 2 (Corps concurrence). In addition, the Bureau of Reclamation, the third Action Agency under the NMFS Willamette biological opinion, concurred (in an email dated October 6, 2010) in the MOA and how the Action Agencies would implement RPA 7.1.3.

³⁷ MOA Section II.F.2.

will work together to provide more benefits for both fish and wildlife than if they were done separately and independently.

3.6 Operation and Maintenance (O&M) Support

BPA has agreed to provide significant financial support through the term of the MOA to help ODFW develop a more robust wildlife habitat mitigation management program, to operate and maintain wildlife habitat lands acquired under this MOA, and to conduct restoration actions on such lands.³⁸

The MOA includes three funds. The Willamette Wildlife Fund will cover new projects of all kinds. Each new project recommended by ODFW and accepted by BPA will be evaluated for long-term O&M funding needs, and a share of the planned funding for that project will be deposited in a Stewardship Account held in trust for wildlife by Oregon to cover the O&M of the new project.³⁹ For all new or expanded projects, including those proposed by ODFW, the sponsors must submit project proposals under this MOA and must include their projected O&M funding in their application. BPA will pay the O&M for funded projects from the Willamette Wildlife Fund into the Stewardship Account.⁴⁰

Tribes not wanting stewardship funds for their projects held by Oregon may make other arrangements with the Parties to have a portion of their project funds from the Willamette Wildlife Fund applied to long-term O&M.⁴¹

In addition, the Parties agreed to an ODFW O&M Fund.⁴² This fund will allow ODFW to develop a more robust wildlife habitat mitigation management program in the Willamette, to implement this expanded program as outlined in the MOA, and to operate, maintain, and restore wildlife project lands currently operated by ODFW. An important component of ODFW's duties will be overseeing development of the project selection criteria, managing the project review process, certifying projects for acreage credit, and monitoring and evaluating projects for compliance with the terms of funding. In addition, as funding allows, ODFW plans to use this fund to assist with the restoration and management of properties acquired by others under ODFW's Willamette Basin Wildlife Mitigation.

BPA will provide additional O&M funding during fiscal year 2025 to fiscal year 2043. This additional O&M funding will help ensure the projects funded under this MOA are maintaining natural, native habitat characteristics and are becoming self-sustaining. The Parties will negotiate the amount of such additional O&M in the future. If a negotiated amount cannot be achieved, ODFW can seek the funding through the then-applicable Council program process including regional prioritization efforts.⁴³

³⁸ MOA Section II.G.2.

³⁹ MOA Section II.G.1.d.

⁴⁰ MOA Sections II.G.6 and II.G.1.d.

⁴¹ MOA Section II.G.1.d.iii.

⁴² MOA Section II.G.2.

⁴³ MOA Section II.G.4.

BPA also will continue to separately fund operations, maintenance, and restoration efforts under several other pre-existing agreements with existing partners.⁴⁴ The Parties' expectation is that with the considerable financial support provided by BPA, and the stable predictability it provides, the MOA can leverage other sources in support of additional actions, particularly for operation, monitoring, and restoration activities.

Attachment 6 in the MOA summarizes BPA's commitments to each fund, adjusted for inflation.

3.7 Permanent Protection; Land Management

All habitat acquired pursuant to this MOA must be protected permanently for wildlife habitat mitigation.⁴⁵ This does not preclude other uses of the acquired habitat, but such uses must be compatible with and not impair the wildlife mitigation purposes. Public recreational and educational use of habitat acquired under this MOA is an identified value, and is encouraged so long as it does not interfere with the purposes of wildlife mitigation.⁴⁶ In addition, BPA and Oregon agreed to support tribal traditional cultural uses provided such uses comply with any constraints set by the management plans and conservation easements to which those lands are subject.⁴⁷

For acquisitions in which BPA funds an entity to acquire fee title to the property, the entity must grant the United States (on behalf of BPA) a conservation easement, in the general form of Attachment 7 to the MOA. If the proposal is for a conservation easement acquisition, BPA requires that it have rights to enforce (described in Attachment 8) the easement.

BPA generally expects a project sponsor to develop a plan to guide management of any real property interest.⁴⁸ The MOA allows flexibility for management planning, however, and encourages programmatic planning. In addition, many conservation easements provide adequate protection and land use guidance to render a more detailed plan unnecessary. The requirements for such plans and their review are spelled out in MOA Attachment 8.⁴⁹

As described in the template conservation easement (MOA Attachment 7), development on the fee title properties is generally prohibited, unless addressed and agreed to in a management plan (e.g., for activities that will help sustain or improve the conservation values of the property).⁵⁰ The MOA also requires for annual monitoring and reporting regarding the acquisitions.⁵¹

⁴⁴ BPA currently has wildlife contracts within the Willamette subbasin with The Nature Conservancy (2009-017-00, 1992-059-00) and U.S. Fish and Wildlife Service (2000-016-00). These projects and associated contracts are separate from the MOA, and BPA currently funds them annually.

⁴⁵ MOA Section III.B.

⁴⁶ MOA Section III.B.5.

⁴⁷ MOA Section II.D.8.

⁴⁸ MOA Attachment 8, Section III.B.

⁴⁹ MOA Attachment 6, Section III.B.

⁵⁰ MOA Attachment 7, Section III.B.

⁵¹ MOA Attachment 8, Section III.C.3.

3.8 Council and Independent Science Review Panel (ISRP) Review

The Parties will operate consistent with the Council’s review and recommendation process under the Northwest Power Act.⁵² The Independent Scientific Review Panel will review any new project selection and prioritization criteria.⁵³ With this programmatic review of the criteria, the Parties do not anticipate that further Council or science review of the individual acquisition or restoration projects will be needed.⁵⁴ All new wildlife mitigation projects in the Willamette will be covered by an ODFW umbrella project⁵⁵ (subject to periodic categorical review by the Council), and an annual report will be prepared by ODFW for BPA and Council review.⁵⁶

3.9 BPA Funding

As depicted in Attachment 4 to the MOA, four important properties previously proposed for acquisition are targeted for the initial year of the MOA, including:

- The Trappist Abbey easement acquisition
- The Wildish property fee title acquisition
- The Green Island Addition fee title acquisition
- The Yamhill Oaks Addition fee title acquisition

As of the date of this decision, BPA expects to provide approximately \$32.8 million in capital for these initial acquisitions, including approximately \$20.8 million for Wildish, \$9.7 million for Trappist Abbey, and \$1.3 million for the Green Island Addition. BPA provided \$1.0 million for the Yamhill Oaks Addition, which recently closed.

Beginning in fiscal year 2011, BPA will provide a total of approximately \$144 million funding through fiscal year 2025, as described in Section II.G of the MOA, and depicted in Attachment 6. This total includes an inflation adjustment beginning in FY 2015.⁵⁷

BPA expects that the acquisition funding will largely qualify as capital under BPA’s Fish and Wildlife Capitalization Policy, and that the O&M funding generally will not. Sponsors of projects are required to identify total project costs—acquisition, restoration, and O&M costs, etc. BPA retains the flexibility to classify the dollar commitments in the MOA as capital or not in accordance with applicable accounting procedures and practices. Regardless, whether projects are defined as capital or expense, BPA will make the amounts committed in the MOA available.⁵⁸

⁵² MOA Section II.D.1.

⁵³ MOA Section II.E.2.

⁵⁴ MOA Section II.D.1.

⁵⁵ *Id.*

⁵⁶ MOA Section II.D.9.

⁵⁷ MOA Section II.G.7.

⁵⁸ See MOA Section II.G.

3.10 Budget Management⁵⁹

One of the most complicated aspects of managing implementation of a long term project relates to over- or under-spending on a planned budget. Carrying over funds from year-to-year creates problems because it means that the work planned and designed to address biological benefits is not being implemented in the expected timeframe. Carrying over funds can also result in a financial and implementation “bow wave,” where work that is not performed according to schedule is progressively delayed until it is finally set to be completed cumulatively all at the same time. This can create unacceptable financial pressures for BPA as well as logistical challenges for the implementing entity. As result, BPA and Oregon have agreed to a general framework for managing the MOA funds.

The Parties structured the MOA in a way that is flexible and builds on the recent experience gained through the Columbia River Basin Fish Accords to allow stable funding and effective implementation of the Accords. The Willamette MOA adopts the same budget principles as the Accords:

- the development of the accounting tools—such as pre-scheduling and rescheduling—necessary to transparently manage the funding agreements;
- structuring simple yet flexible principles that allow the rescheduling of the funding streams and encouraging the money to be spent at a reasonably steady pace to ensure that the expected benefits continue to be delivered over the life of the MOA;
- all the money is intended to be paid out—there is no three-year cliff or point at which unexpended funds from past years are no longer available for spending; and
- rescheduling up to 120 percent of the annual budget can occur automatically without additional process or negotiation. The MOA also contemplates rescheduling above that amount with adequate notice and when BPA has sufficient flexibility available in its overall fish and wildlife program budget.

The final MOA does not cease to make unexpended funds available after three years; instead, funds remain available until expended. In addition, the MOA now includes a provision to expressly address unexpended funds available when the MOA terminates: the Parties may either agree to deposit the unexpended funds into the Stewardship Account or extend the MOA until all funds are expended.⁶⁰

3.11 Completion of Wildlife Obligation and Commitments of Support⁶¹

For BPA, an important aspect of this MOA is confirmation that the total federal wildlife mitigation responsibility for the Willamette is agreed upon, and we will know with certainty when it has been fulfilled. Thus, Oregon agrees that BPA has satisfied the federal wildlife mitigation duties for the Willamette dams under applicable law and Oregon will not seek or support others seeking any more funding from BPA to mitigate for wildlife habitat affected by

⁵⁹ MOA Section II.G.3.

⁶⁰ MOA Section II.G.10.

⁶¹ MOA Section III.C.

the Willamette dams.⁶² Oregon will ensure that its comments and recommendations regarding Willamette wildlife in any future Council amendment will be such as to effectuate the MOA.⁶³ Moreover, Oregon shall assist BPA in addressing any allegations that BPA has not fulfilled its Northwest Power Act obligations in regards to wildlife habitat mitigation responsibilities for the Willamette dams, regardless of the forum, provided Oregon can do so without waiving its sovereign immunity.⁶⁴

3.12 Good Faith Implementation⁶⁵

The Parties recognized that over the course of a long-term agreement such as this, a variety of issues are likely to arise. The Parties have agreed to good faith implementation—that they will work together, in partnership, to implement the mutual commitments in the MOA. Some amount of disagreement and disputes are inevitable as implementation proceeds, and so BPA and Oregon have developed principles for communication and coordination necessary to address problems as they arise. These principles include best efforts to consult prior to taking any action that could reasonably be interpreted as inconsistent with any part of the MOA, and to take action to redress any point(s) of concern.

3.13 Dispute Resolution⁶⁶

Consistent with a collaborative approach, the MOA provides for informal dispute resolution as the primary effort to resolve disputes. If the Parties cannot resolve a dispute through informal discussions, however, then the Parties must submit the dispute to non-binding mediation before the initiation of any legal proceedings.

3.14 Indian Trust and Treaty Rights⁶⁷

Although the MOA is between BPA and Oregon, the Parties coordinated with the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of the Siletz Indians of Oregon to ensure their views were heard and considered. As a result, the MOA expressly provides for continued coordination with these tribes in the development of the project selection criteria, and provides for specific review mechanisms should a tribal project be proposed but not prioritized.⁶⁸ The Parties hope and expect that all of these tribes will have projects implemented under this MOA.

As a part of the discussions with these tribes, it was apparent that they held diverse views about their relevant authorities to manage wildlife in the Willamette Basin. BPA and Oregon acknowledge that the tribes' relevant legal authorities are complex legal and policy matters that

⁶² MOA Section II.C.2.

⁶³ MOA Section II.C.1.

⁶⁴ *Id.*

⁶⁵ MOA Section IV.A.

⁶⁶ Section IV.C.

⁶⁷ Section IV.G.

⁶⁸ MOA Sections II.D.2 and II.E.5.

the MOA is not intended to (and cannot) address or alter, as reflected in Recital E and the savings provisions in MOA Section IV.G.

3.15 Term of the MOA⁶⁹

The MOA extends from the date of last signature through September 30, 2025, with three exceptions. First, as a general rule, Oregon agrees that this MOA permanently satisfies the federal wildlife mitigation funding and acreage obligations for the Willamette dams under applicable law.⁷⁰ However, if substantial and significant changes occur in applicable federal law or in the physical attributes of the Willamette dams, either party may seek to increase or decrease the funding specified in the MOA.⁷¹ Second, BPA committed to provide additional on-going operation and maintenance funds for the ODFW O&M Fund (in amounts to be negotiated, or if not negotiated, determined through the Council process) from the period of September 30, 2025 through September 30, 2043.⁷² Finally, if funds remain unexpended at the end of the MOA, the Parties may agree to either deposit those funds in the Stewardship Account or extend the MOA until the funds are expended.

4.0 PUBLIC REVIEW & COMMENT

4.1 BPA Analysis of Comments

BPA received 79 written public comments.⁷³ The majority (58) supported the MOA and the purchase of the Trappist Abbey property and, to a lesser extent, the purchase of the Wildish property. Other commenters supported the settlement, but had specific questions or critiques of the proposed MOA. A minority of the comments received did not support the MOA.

In response to the comments received, BPA and ODFW revised the MOA as described generally in the next section. In addition, the agencies worked together on responses and grouped them by the theme or topic of the comment and attempted to address specific topics. Rather than respond to each individual comment separately, the agencies addressed common themes or issues in a single thematic response. The response to comments document is available on BPA's website.⁷⁴

4.2 Changes Made to the Final MOA

Following the release of the negotiated MOA for public review, the following changes were made to the MOA.

⁶⁹ Section IV.D.

⁷⁰ MOA Section III.C.

⁷¹ MOA Section III.C.2.

⁷² MOA Section II.G.4.

⁷³ See Comment List: Willamette Mitigation Settlement Agreement, <http://www.bpa.gov/applications/publiccomments/CommentList.aspx?ID=112>.

⁷⁴ <http://efw.bpa.gov/IntegratedFWP/policyframework.aspx>

- Bolstered the permanence of the MOA for satisfying the federal wildlife responsibilities in the Willamette Basin, and clarified the limited ability Oregon retained to seek further funding for the same.⁷⁵
- Elaborated on tribal participation in the MOA and specifically expressed support and recognition of the tribes’ interests in using lands under the MOA for traditional cultural practices where such practices do not conflict with the mitigation purposes of a project.⁷⁶
- Streamlined the collaborative process for developing and applying the project selection criteria.⁷⁷
- Updated the guidelines for the funding to enable maximum flexibility and ensured that the full BPA funding commitment would be expended.⁷⁸
- Provided new details for how BPA would fund ODFW to ensure long-term funding for protecting habitat secured under the MOA.⁷⁹
- Affirmed more strongly the value of cost sharing from other entities as an element to include in the project selection criteria, and support for using ecosystem services marketing opportunities leverage funding available under the MOA.⁸⁰
- Clarified the provisions related to fish habitat benefits and implementation of the habitat protection and restoration action in the NMFS Willamette biological opinion.⁸¹

4.3 Opportunities for Future Public Review of Site-Specific Project Implementation

As Oregon and other interested Parties begin implementing the projects committed to in this MOA, BPA or the project sponsor may also engage in further public involvement activities for individual site-specific projects. The degree of public involvement will be commensurate with the relative environmental impacts of, and public interest in, the site-specific action. BPA and Oregon will make diligent efforts to discover potentially interested and affected Parties, and will solicit public information when appropriate. Interested and affected Parties may include nearby landowners or other individuals, interest groups, tribes, and city, county, state, federal and regional agencies. Options to inform the public about site-specific projects include mailings, public notices, public meetings and workshops, notification in local papers and BPA’s monthly newsletter, postings on the internet and radio advertisements, and one-on-one meetings. BPA will document site-specific public involvement as part of the validation process (described further in the NEPA section, Section 6, below).

5.0 WHY BPA HAS DECIDED TO ENTER INTO THE MOA

5.1 The MOA Helps BPA Fulfill its Mission

BPA’s mission includes providing mitigation of the Federal Columbia River Power System’s (FCRPS) impacts on fish and wildlife, discussed in section 5.2, and providing an adequate,

⁷⁵ See MOA Section III.C.

⁷⁶ See MOA Section II.D.8.

⁷⁷ See MOA Section II.D.

⁷⁸ See MOA Section II.G.

⁷⁹ See MOA Sections II.G.1, II.G.2, and II.G.4.

⁸⁰ See MOA Section II.D.4.

⁸¹ See MOA Section II.F.

efficient, economical, and reliable power supply discussed below.⁸² Although not mutually exclusive, achieving this mission requires BPA to balance the competing interests and requirements for emission-free and economically valuable hydropower produced by the FCRPS, and for the protection and recovery of the fish and wildlife affected by that hydropower production.

Providing for an adequate, efficient, economical and reliable power supply is one of the purposes of the Northwest Power Act.⁸³ BPA fulfills this purpose in many ways: it seeks to keep rates as low as possible given sound business principles, and manages the power aspects of the FCRPS to meet reliability standards and the other purposes of the system.

BPA's decision to sign the MOA helps fulfill this statutory purpose because the MOA provides greater certainty of rate and borrowing needs by establishing long-term funding commitments that can be managed prospectively. Knowing the obligation and expectations will help provide cost and rate stability and certainty. The resolution achieved here ends the decades-old, time-consuming, and costly arguments over the federal wildlife mitigation responsibility for the Willamette dams. It hedges against future uncertainty in real estate prices and long-term O&M costs. And it incentivizes innovative, cost-effective approaches to protecting, mitigating, and enhancing wildlife and wildlife habitat affected by these dams.⁸⁴ BPA believes it is sound business and in the interest of both customers and wildlife to take the convergence of opportunities presented here—a willing and reasonable partner in Oregon, a window of capital available immediately for major acquisitions, and a shared desire for resolution—to permanently settle Willamette wildlife mitigation today.

5.2 The Willamette Wildlife MOA Complies with and Supports BPA's Legal Obligations

BPA's authority and ability to enter into this MOA is provided by federal statutes. Since BPA's inception, Congress has afforded the BPA Administrator broad discretion to enter into "such contracts, agreements, and arrangements . . . upon such terms and conditions and in such manner as he may deem necessary" to fulfill BPA's statutory purposes.⁸⁵ This includes the express authority to make payments from the Bonneville Fund to implement BPA's legal responsibilities under the Northwest Power Act and the ESA.⁸⁶ BPA is imbued with considerable flexibility and discretion when entering into arrangements such as this MOA, provided that BPA uses that flexibility and discretion to fulfill one or more of its statutory responsibilities. In this section, BPA describes how the MOA is both consistent with and helps BPA fulfill its federal obligations.

⁸² See "BPA Mission," part of BPA's Strategic Objectives 2010-2016 (July 7, 2009), available at http://www.bpa.gov/corporate/about_BPA/StratDocs/Strategic_Objectives_Paper_2010-2016.pdf.

⁸³ 16 U.S.C. § 839(2).

⁸⁴ BPA included examples of potential innovative approaches in its Comments on the Council's Draft 2009 Amended Fish and Wildlife Program (June 2008), http://www.nwcouncil.org/fw/program/2008amend/view_comment.asp?url=comments&desc=Recommendations&id=273

⁸⁵ 16 U.S.C. § 832a(f).

⁸⁶ 16 U.S.C. §§ 838i(b), 838i(b)(12).

5.2.1 Northwest Power Act

Under section 4(h)(10)(A) of the Northwest Power Act, BPA must use the Bonneville Fund and BPA's other authorities to protect, mitigate, and enhance fish and wildlife to the extent affected by the development and operation of the FCRPS in a manner consistent with the Council's Fish and Wildlife Program, the Council's Power Plan, and the purposes of the Act.⁸⁷ In this section, BPA explains how its decision to enter into the MOA meets these standards and other elements of the Act.

5.2.1.1 Consistency with the Council's Fish & Wildlife Program:

Using the recommended elements for a long-term agreement from the Council's Program as an outline shows the consistency of the MOA with the Program.⁸⁸

- **Measureable objectives, including acres of habitat types and number of habitat units by species to be acquired**
The agreement states that the Parties have defined the objectives in acres in an effort to resolve specific technical issues associated with species-habitat stacking, proper crediting of past wildlife mitigation, crediting ratios, above pool losses, and other disagreements concerning the original loss assessments.
- **Consistency with the policies and objectives of the strategies in the Program, including Table C-1**
The MOA ensures consistency with the Program by addressing the primary wildlife strategy of completely mitigating losses associated with construction, inundation, and operation of the system. At the close of the period of the MOA, Bonneville will have permanently completed mitigation requirements for construction, inundation, and operation of the Willamette projects and addressed the losses assessed in the Council's Program. The focal habitats for the MOA, developed through the Oregon Conservation Strategy, mirror those habitats identified in Table C-1 for the lower Columbia province.
- **Adherence to open public process**
Though details of these processes remain under development, the Parties commit to an open public process for developing criteria to implement the MOA, the inclusion of an open solicitation to identify projects to implement the MOA, and an open, public prioritization process.
- **Protection of riparian habitat benefitting both fish and wildlife**
Historically, about half the projects in the Willamette Wildlife Mitigation Program have had a substantial riparian component benefitting anadromous and some resident fish in the subbasin. The ecosystem focus of the Wildlife Mitigation Program will continue through the MOA. Oregon and BPA anticipate that "dual benefits" projects will continue within the structure of the MOA and have committed at least ten percent of the MOA funding will go toward "dual benefits" projects.
- **Incentives to ensure effective implementation with periodic monitoring and evaluation or a periodic audit**

⁸⁷ 16 U.S.C. § 839b(h)(10)(A).

⁸⁸ Council Program, Section II.D.6 (Wildlife Strategies).

The Parties plan to annually report on progress toward the goals of the MOA. The Parties have also committed to a three-year review of the implementation of “dual benefits” projects. Some funding in the expense portion of the ODFW operations and maintenance fund will also support monitoring and evaluating species expected to benefit from the habitat acquisitions in the Willamette subbasin.

- **Provisions for long-term maintenance**

Long term maintenance is covered for both new projects and those already existing under ODFW contract 1992-068-00. For new projects, the Parties created a Stewardship Fund that ODFW will hold in trust for O&M. The MOA establishes an ODFW O&M Fund to maintain ODFW-owned properties or properties funded through project 1992-068-00 in their full extent through FY 2025. In addition, the ODFW O&M Fund will provide the state the resources to expand and reinvent its wildlife mitigation program for the Willamette. BPA has also committed to negotiate additional operations and maintenance funds from FY 2026 through FY 2043.

- **Sufficient funding to achieve the objectives**

BPA has committed making funding available as provided in MOA Attachment 6. The Parties believe that with a competitive, open project selection process that allows for the funds to be used for many kinds of projects, this substantial financial commitment over the life of agreement is sufficient to address the federal responsibility for wildlife affected by the Willamette dams.

Both Oregon and BPA believe the MOA addresses these specific elements, establishing a new partnership approach and settling long-standing wildlife mitigation disputes.

BPA and Oregon presented the proposed MOA to the full Council at the August 18, 2010, meeting in Spokane. At the meeting, two recommendations that the Council was considering were the funding requests for the Trappist Abbey and Wildish properties. The Council was informed that BPA considered the completion of a settlement agreement a precondition for purchase of both properties. The Council unanimously recommended funding the properties, with the condition of a completed settlement agreement, which is by definition the MOA.

Thus, the Council has implicitly endorsed the MOA. By signing the MOA, Oregon and BPA will have fulfilled that condition.

5.2.1.2 Meeting Obligations for Construction, Inundation, and Operations

The Program recommends that “[t]he wildlife managers and Bonneville should also consider using mitigation agreements to settle operational losses in lieu of precise assessments of impacts.”⁸⁹ The Parties considered the information about operational impacts to wildlife habitat that surfaced in the Willamette BiOps consultations and then used their knowledge of the Willamette dams and the Willamette Subbasin Plan to estimate potential impacts from their operations. Overall, the effects were considered unlikely to be substantial. Instead of taking years, and probably millions of dollars, to study something that initial assessment indicated would be unlikely to be definitive or substantial, the Parties settled on a reasonable but generous amount of acreage to address operational impacts. Noting that these operational

⁸⁹ Council Program, section II.D.6.e, page 22.

losses were only for wildlife, and not for fish losses, the Parties agreed to consider an additional 1000 acres for operations losses and increased the funding level accordingly (see Section 2.2, above).

5.2.1.3 Compliance with the “In lieu” Provision of the Northwest Power Act

Under section 4(h)(10)(A) of the Northwest Power Act, Congress expressly limited BPA’s authority to provide protection, mitigation, and enhancement in the “in lieu” provision, which states:

Expenditures of the Administrator pursuant to this paragraph shall be in addition to, not in lieu of, other expenditures authorized or required from other entities under other agreements or provisions of law.⁹⁰

As explained by the House of Representative’s Interior Committee, “other fisheries efforts outside this Act . . . are expected to continue and to be funded separately.”⁹¹

Thus, if another entity is authorized or required under other agreements or provisions of law to undertake an activity, BPA cannot fund the activity under the authority of section 4(h)(10)(A) unless BPA’s funding is in addition to, not in lieu of, that other entity’s funding. The *in lieu* provision helps ensure that BPA’s funding for fish and wildlife protection, mitigation, and enhancement under section 4(h)(10)(A) is additive to on-going and future mitigation conducted by others, and is not simply supplanting other efforts outside of the Northwest Power Act.

Under the terms of the MOA, projects to be implemented must meet BPA’s *in lieu* policy. That policy was most recently updated with BPA’s 2007–2009 fish and wildlife funding decision, in which BPA provided express ratings and a ratings key for all projects proposed for BPA funding during that period.⁹² BPA will review Willamette wildlife habitat proposals for any *in lieu* issues as they are further refined, and work with Oregon or the applicable proponent to resolve any such issues prior to implementation should any issues emerge.

5.2.1.4 The MOA Supports Equitable Treatment for Fish and Wildlife

The Northwest Power Act requires that BPA exercise its FCRPS management responsibilities “in a manner that provides equitable treatment for . . . fish and wildlife with the other purposes for which such system and facilities are managed and operated.”⁹³ The Council describes equitable treatment as “meet[ing] the needs of salmon with a level of certainty comparable to that accorded the other operational purposes.”⁹⁴ Historically, BPA and the other Action

⁹⁰ 16 U.S.C. § 839b(h)(10)(A).

⁹¹ H.R. Rep. No. 976, 96th Cong., 2d Sess., pt. 2, at 45; see also 126 Cong. Rec. H9846 (daily ed. Sept. 29, 1980) (Rep. Lujan: section 4(h)(10)(A) would insure that the program will not call for measures already being implemented to protect, mitigate, and enhance fish and wildlife).

⁹² Letter from Greg Delwiche, VP Environment, Fish and Wildlife/BPA to Dr. Karier, Chair, Northwest Power and Conservation Council, February 9, 2007 (including *in lieu* table attachment), available at <http://www.efw.bpa.gov/IntegratedFWP/policyframework.aspx>.

⁹³ 16 U.S.C. § 839b(h)(11)(A)(i).

⁹⁴ 1992 Council Program, Vol. II, page 9.

Agencies have provided equitable treatment on a system-wide basis by operating the FCRPS consistent with the operational guidelines in the Council’s Fish and Wildlife Program and relevant Biological Opinions.⁹⁵ The MOA supports BPA’s commitments in the Willamette biological opinions by incorporating an Action Agencies’ plan for implementing RPA 7.1.3. In addition, the MOA accounts for 1000 acres of operational impacts to wildlife from the Willamette dams, and provides funding for mitigation of those impacts. Overall, power production from the Willamette dams is not a dominant purpose compared to the dams’ flood control, recreation, and fish and wildlife purposes, and flood control is the Corps’ operational priority over power production. Consequently, the MOA in combination with the Willamette BiOps provides a higher level of financial certainty for fish and wildlife, further solidifying BPA’s efforts to manage the FCRPS equitably for wildlife and power.

5.2.1.5 Consistency with the Council’s Power Plan

In its most recent Power Plan the Council recommended that “Bonneville should continue to carry out its fish and wildlife obligations, allocating its mitigation costs to the existing FCRPS.”⁹⁶ The Council further noted that the “critical elements of the fish and wildlife program that must be integrated with power plan development are projected changes to hydroelectric system energy and peaking capacity capability.”⁹⁷ One way the MOA supports such integration is by encouraging cost-sharing opportunities with entities seeking ecosystem services credits, such as carbon sequestration credit.⁹⁸

As previously discussed, BPA’s decision to enter into the MOA demonstrates its continuing efforts to meet its obligations to address the impacts to wildlife and fish from the construction and operation of the FCRPS in a manner consistent with the Council’s Program. As such, BPA’s decision is consistent with the Council’s specific fish and wildlife recommendation to BPA in the Council’s Sixth Power Plan.

5.2.2 Endangered Species Act

The MOA commits BPA funding intended to benefit ESA-listed and non-listed fish, and will help BPA meet its commitments in support of the Willamette BiOps. Implementation of specific projects will undergo additional environmental compliance review, including consultation with NMFS and the USFWS under the ESA as appropriate, to assure that all actions implemented with BPA funding will further the goals of the ESA.

⁹⁵ See, e.g., BPA, System Operation Review Environmental Impact Statement Record of Decision, page 14 (Feb. 21, 1997) (selecting an FCRPS operating strategy in which “[c]onflicts between power and fish are resolved in favor of the fish, providing equitable treatment of fish and wildlife with the other purposes for which the FCRPS is operated”); BPA, Fish and Wildlife Implementation Plan Environmental Impact Statement, pages 2-33 to 2-36 (Apr. 2003) (summarizing how BPA provides equitable treatment in FCRPS management); FCRPS Action Agencies, Biological Assessment for Effects of FCRPS and Mainstem Effects of Other Tributary Actions on Anadromous Salmonid Species Listed under the ESA, pages 1-9 to 1-15 (Aug. 2007) (describing the FCRPS’ overhaul—structural and operations changes for fish since 1994).

⁹⁶ The Sixth Northwest Conservation and Electric Power Plan, Document 2010-09 (February 2010), Chapter 13 (Bonneville Obligations) at 13-4, available at <http://www.nwcouncil.org/energy/powerplan/6/default.htm>.

⁹⁷ *Id.* at 13-14.

⁹⁸ MOA Section II.D.4.

5.2.4 Clean Water Act

Actions implemented under the Willamette MOA will provide additional support in achieving state water quality standards. For example, under the MOA, BPA will fund actions that will help to improve water quality in the Willamette River and its tributaries through habitat restoration and enhancement projects that create more natural river and flood plain functions and reconnect side channels. These actions support BPA's commitments to protect and enhance the physical and biological integrity of water quality within the Willamette Basin.

Some projects that BPA funds may result in temporary or short-term impacts to water quality as a function of in-water work. As discussed in more detail in the NEPA section below, evaluations and permits necessary to protect water quality will be secured as a requirement of the environmental clearance necessary for site-specific projects.

5.2.5 National Historic Preservation Act

Because this MOA provides for protection of habitat permanently, it is not generally expected to adversely affect cultural and historic resources (indeed, it is likely to protect them). Nonetheless, as some restoration or other actions could affect such resources, as projects are implemented under this MOA, BPA will consider and address the effects of the actions on cultural and other historic resources pursuant to the National Historic Preservation Act., as described below in the NEPA section.

6.0 NATIONAL ENVIRONMENTAL POLICY ACT ANALYSIS

Under NEPA,⁹⁹ BPA has assessed the potential for environmental effects related to entering into the MOA. Because the MOA involves commitments related to BPA's fish and wildlife mitigation and recovery efforts, BPA has reviewed its Fish and Wildlife Implementation Plan Environmental Impact Statement (FWIP EIS) (DOE/EIS 0312, April 2003), and the Fish and Wildlife Implementation Plan Record of Decision (FWIP ROD, October 31, 2003) to determine if BPA's participation in the Willamette MOA falls within the scope of the FWIP EIS and ROD. As discussed in more detail below, BPA has determined that the decision to enter into the MOA is adequately covered within the scope of the FWIP EIS and the Preferred Alternative (PA 2002) Policy Direction that was adopted by BPA in the FWIP ROD, and that entering into this MOA would not result in significantly different environmental effects from those examined in the FWIP EIS. BPA therefore has decided to tier its decision under NEPA for the MOA to the FWIP EIS and ROD.

6.1 BPA's Fish and Wildlife Implementation Plan EIS and ROD

BPA developed the FWIP EIS and ROD to establish a comprehensive and consistent policy to guide the implementation and funding of BPA's fish and wildlife mitigation and recovery efforts under existing statutes and policies. The FWIP EIS is intended to support a number of decisions related to these efforts, including decisions related to funding fish and wildlife

⁹⁹ 42 U.S.C. § 4321, *et seq.*

mitigation and recovery efforts; funding BPA's share of the Council's Fish and Wildlife Program; funding fish and wildlife research, monitoring, and evaluation (RM&E); entering into regional funding agreements; and funding habitat acquisition and improvement activities (FWIP EIS, Section 1.4.2; FWIP ROD, Section 7).

The FWIP EIS considered a wide range of potential Policy Direction alternatives for BPA's fish and wildlife mitigation and recovery efforts. The Final FWIP EIS identifies and evaluates the following alternatives that span the full range of reasonably foreseeable directions for fish and wildlife policy: Natural Focus, Weak Stock Focus, Sustainable Use Focus, Strong Stock Focus, Commerce Focus, and the PA 2002 Preferred Alternative Policy Direction (essentially a blend of the Weak Stock and Sustainable Use alternatives). In addition, the EIS includes a Status Quo alternative that serves as a baseline against which all alternatives can be compared.

The analysis in the FWIP EIS compares the potential environmental impacts for the possible range of implementing actions for fish and wildlife mitigation and recovery under each Policy Direction with the Status Quo. By considering the numerous potential fish and wildlife actions in the region, the FWIP EIS provides a cumulative assessment of potential environmental impacts from BPA's funding and implementation of these actions. The FWIP EIS also collects and sorts the many and varied proposed and on-going actions for fish and wildlife mitigation and recovery in the region (FWIP EIS, Volume III). These actions, referred to as Sample Implementation Actions (SIAs), are organized in the FWIP EIS in SIA tables for each Policy Direction alternative. These SIAs are representative of the types of actions that are consistent with the various alternatives.

The FWIP EIS also incorporates by reference BPA's Wildlife Mitigation Program EIS (DOE/EIS-0246, March 1997) and Watershed Management Program EIS (DOE/EIS-0265, July 1997). BPA's Wildlife Mitigation Program EIS provided a comprehensive analysis of different program alternatives for addressing BPA's wildlife mitigation projects, including land acquisitions and management; habitat restoration and improvements; installation of watering devices and riparian fencing; and other conservation actions. In the Wildlife Mitigation Program ROD (June 1997), BPA decided to implement a program to support this wide range of potential wildlife mitigation actions. Similarly, the Watershed Management Program EIS provided a comprehensive analysis of different program alternatives for addressing BPA's watershed management projects, such as riparian restoration and other vegetation management techniques; in-channel modifications and fish habitat improvement structures; and various land management techniques. In the Watershed Management Program ROD (August 1997), BPA decided to implement a program to support this wide range of potential actions intended to benefit fisheries, fish habitat, and aquatic ecosystems in the region. Subsequent to completion of these programmatic EISs and their associated RODs, BPA prepared over 340 environmental analyses for site-specific actions under the Watershed Management Program and Wildlife Mitigation Program EISs. Each of these analyses confirmed that the environmental consequences for routine fish and wildlife mitigation activities are predictable, and that, although there can be short term adverse effects from these activities, they continue to have net positive and increasingly beneficial impacts to fish and wildlife across the basin.

Through the FWIP ROD, BPA adopted PA 2002 as its policy direction for funding and implementing its fish and wildlife obligations. PA 2002 focuses on enhancing fish and wildlife habitat, modifying hydroelectric power operations and structures, and reforming hatcheries to both increase populations of listed fish stocks and provide long-term harvest opportunities (FWIP ROD, Section 3). SIAs that are consistent with PA 2002 include actions taken to replace wildlife habitat lost to hydro development, as well as to increase enhancement of fish habitat (e.g., through protecting high quality habitat, increasing tributary streamflow, removing passage barriers, and screening irrigation diversions) to improve fish productivity (FWIP ROD, Section 8). The FWIP ROD also adopts the strategy identified in the FWIP EIS for making subsequent fish and wildlife policy decisions based on the FWIP EIS and ROD if these decisions are adequately evaluated in the FWIP EIS and within the scope of PA 2002 (FWIP EIS, Section 1.4.1 and Figure 1-6; FWIP ROD, Figure 1, p. 15).

6.2 Environmental Analysis for the Willamette MOA

The MOA provides BPA funding commitments for habitat protection and enhancement projects for wildlife in the Willamette Basin and anadromous and resident fish species listed under the ESA. As discussed below, BPA has evaluated whether entering into the MOA is consistent, at a policy level, with the PA 2002 Policy Direction adopted by BPA in the FWIP ROD, as well as whether the types of projects and their associated environmental impacts that are expected to take place under the MOA are consistent with the types of projects analyzed and considered in the FWIP EIS and ROD.

6.2.1 Policy Level Evaluation

The MOA focuses on providing funding for land acquisitions and management projects in the Willamette River Basin intended to benefit wildlife and fish species. This focus is consistent with the focus of PA 2002 on enhancing fish and wildlife habitat through actions to replace wildlife habitat lost to hydro development and increase enhancement of fish habitat. By providing funding to the State of Oregon (which likely will also involve other local and regional interests as well) for these projects, the MOA also is consistent with PA 2002's goals of developing and implementing mechanisms for carrying out BPA's fish obligations with the government and people of the region. The MOA is precisely the type of regional funding agreement for fish and wildlife habitat acquisition and improvement activities that the FWIP EIS and ROD are intended to support. Accordingly, the objectives of the MOA are consistent with the purposes and goals of PA 2002, and overall, the MOA is consistent, at a policy level, with PA 2002.

6.2.2 Project Level Evaluation

Chapter 5 of the FWIP EIS describes potential impacts of fish and wildlife actions that could occur as a result of each of the Policy Directions considered in the EIS. Environmental impacts associated with each Policy Direction are discussed in Section 5.3 of the FWIP EIS and, more specifically for PA 2002, in Section 3A.3 of the FWIP EIS.

The land acquisition and management projects within the framework of the MOA are expected to result in short- and long-term benefits to fish and wildlife by increasing wildlife habitat

values within the Willamette River Basin and increasing and sustaining various fish populations. Overall benefits to wildlife would occur as a result of implementing the MOA through the process of acquiring and managing lands that will protect existing habitat values and ensure habitat availability for fish and wildlife species in the future. Human populations would also benefit from lands acquired as part of future actions under the MOA, as opportunities for recreation are maintained and aesthetic values are preserved. Lands acquired under the MOA would be protected from future development, which would avoid impacts related to development such as increased surface runoff, soil erosion, and vegetation disturbance. Land acquisition may in some instances provide additional protections for cultural resources, and vegetation management techniques would help to control invasive plant species and aid in the reestablishment of native plant species.

Potential negative environmental impacts of the projects under the MOA would be limited. On certain acquired lands, natural resources such as soils, vegetation, and water bodies on and near these lands could be affected by removal of structures, fences, and other human-introduced features, clearing of non-native vegetation, and other habitat restoration activities. However, these impacts would be temporary and very localized in nature and would be necessary to return the land to a more natural state. Negative impacts to human populations relating to removal of land from commodity production would affect only an extremely small portion of the lands available for those uses within the Willamette River Basin.

In sum, the habitat protection and enhancement projects contemplated in the MOA are the same type of projects that were considered in the FWIP EIS and that are included as part of PA 2002. In addition, while there could be some short-term localized impacts from the projects implemented under the MOA, the MOA will result in net benefits to wildlife and fish populations and habitat, water quality, and other natural resources. These impacts and benefits were recognized and considered in the FWIP EIS. The types of projects under the MOA and their expected impacts thus are consistent with the FWIP EIS and ROD, as well as PA 2002.

6.3 Further Project-Specific Environmental Review

While this NEPA analysis addresses the policy decision to enter into the MOA, there may be a need for further NEPA review of individual projects before they can be implemented. In addition, all projects undertaken pursuant to the MOA must be in compliance with all applicable federal, state, local, and tribal laws and regulations, which may require additional environmental permitting or approvals before a particular project can be implemented. The MOA recognizes that BPA may need to conduct further NEPA or other environmental review for an individual project before it can be implemented.

For routine land acquisition and enhancement projects that have predictable environmental effects already analyzed in the FWIP EIS, Watershed Management Program EIS, and/or Wildlife Mitigation Program EIS, a validation process will be conducted by BPA to ensure all applicable tribal, local, state, and federal laws and regulations, in addition to NEPA, have been addressed prior to implementation (for example, the validation process includes addressing impacts if any pursuant to the National Historic Preservation Act). Results of the validation process will be tracked and accessed through PISCES, a web-enabled software application that assists BPA and its fish and wildlife program participants in managing projects throughout the

Columbia River Basin, including the Willamette River Basin. These results will also be made available to the public on an ongoing basis throughout MOA implementation as new information about environmental compliance actions becomes available. BPA staff will work with Oregon to ensure that all applicable requirements have been met and are appropriately documented. The best management practices, restrictions, and mitigation measures imposed through regulatory processes will ensure that any project-specific adverse effects to water quality, habitat access, habitat elements, channel conditions and dynamics, flows, and watershed conditions will be brief, minor, and timed to minimize impacts.

Land acquisition and enhancement projects that are not routine would require additional site-specific NEPA analysis. These projects would include projects for which complicating factors exist at the outset or emerge as the project develops, thus necessitating additional NEPA analysis. BPA may determine during the validation process or otherwise that there are complicating factors that make this ROD an inappropriate basis for providing NEPA analysis and documentation for a given project, and therefore additional NEPA analysis will be completed. Complicating factors may include controversy over effects on resources, special regulatory requirements (federal, state, or local), the participation of other federal agencies (where environmental review methodologies may differ), unprecedented actions (with accompanying uncertainty in impacts), or extraordinary environmental circumstances. For such projects, BPA will determine the appropriate strategy to comply with NEPA on a case-by-case basis.

7.0 CONCLUSION

Based on the foregoing background and analysis, I have decided to sign the MOA. Executing the MOA is a final action under 16 U.S.C. § 839f(e)(5) since it obligated BPA to fund and acquire property for wildlife mitigation in Oregon. As reflected in that analysis, the MOA will help mitigate the impacts of the Willamette dams on wildlife and fish species, including species listed under the ESA, with projects that are expected to produce significant and measurable biological benefits. The MOA will provide greater certainty and stability in BPA's mitigation funding commitments, which will encourage cost-effective approaches to mitigation and help BPA manage its financial risks. The MOA supports a new productive, collaborative approach with the State of Oregon.

Executing the MOA helps fulfill BPA's statutory purpose of providing for an adequate, efficient, economical, and reliable power supply. The MOA provides greater certainty of costs and borrowing needs by establishing long-term funding commitments that can be managed prospectively. Executing the MOA is sound business because cost certainty and cost management benefit ratepayers and the region, and keep rates as low as possible. Knowing the obligations and expectations will help provide cost and rate stability and certainty. The MOA incentivizes innovative and cost-effective approaches to protecting, mitigating, and enhancing wildlife and wildlife habitat affected by these dams. I believe it is sound business and in the interest of both customers and wildlife to permanently settle the Willamette wildlife mitigation obligations.

Risks to BPA of signing the MOA are adequately covered by the collaborative commitments in the MOA and the support for the MOA from the Council, Warm Springs and Siletz tribes,

NMFS, the Corps, and many others. Without this MOA BPA may well have had to pause its wildlife mitigation efforts in the Willamette until the crediting and obligation issues had been resolved in another fashion. That concern outweighs the risks of proceeding in good faith with Oregon and seizing this historic opportunity to improve our working relationship.

Based on a review of the FWIP EIS and ROD, I have determined that entering into the MOA falls within the scope of the PA 2002 alternative evaluated in the FWIP EIS and adopted in that ROD. This decision is a direct application of PA 2002, and is not expected to result in significantly different environmental impacts from those examined in the FWIP EIS, and will assist BPA in accomplishing the goals related to PA 2002 that are identified in the FWIP ROD. Therefore, the decision to implement the MOA is tiered to the FWIP ROD.

Issued in Portland, Oregon, this 22nd day of October, 2010.

_____/s/ Stephen J. Wright_____
Stephen J. Wright
Administrator and Chief Executive Officer